

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha, Chief Justice

Mr. Justice Syed Mahmud Hossain

Mr. Justice Hasan Foez Siddique

Mr. Justice Mirza Hussain Haider

Mr. Justice Mohammad Bazlur Rahman

CRIMINAL APPEAL NO.144 OF 2014.

(From the judgment and order dated 02.11.2014 passed by the International Crimes Tribunal No.2 (ICT-2) ICT-BD Case No.03 of 2013)

Mir Quasem Ali:

Appellant.

=Versus=

The Chief Prosecutor, International Crimes
Tribunal, Dhaka Bangladesh:

Respondent.

For the Appellant:

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

For the Respondent:

Mr. Mahbubey Alaam, Attorney General, Bangladesh, (with Mr.
Murad Reza, Additional Attorney General, Mr. Momtaz Uddin
Fakir, Additional Attorney General, Mr. Biswajit Debnath,
Deputy Attorney General, Mr. Md. Ekramul Haque, Deputy
Attorney General, Mr. Kh. Diliruzzaman, Deputy Attorney
General, Mr. Masud Hasan Chowdhury, Deputy Attorney
General, and Mr. Bashir Ahmed, Assistant Attorney General),
instructed by Mrs. Mahmuda Parveen, Advocate-on-Record.

Date of hearing: 9th, 10th, 15th, 16th, 17th, 23rd and 24th February, 2016.

Date of Judgment: 8th March, 2016.

J U D G M E N T

Surendra Kumar Sinha, CJ.:

Prelude

Yahya Khan in a press conference in Dhaka on
November 27, 1969. declared that the elections would
be held on December 17 except in the cyclone affected

constituencies which would be decided by the Election Commission. He further made it clear that until elections in all constituencies were completed the National Assembly would not sit. Yahya further declared that it was his duty "to see that proposed constitution assured integrity, safety and security of the country and that all those who were participating in elections accepted Legal Framework Order (LFO). If they reject LFO after the elections, I will treat it as if they have not participated in elections and martial law continues in that case." He also assured that all the federating units would have maximum autonomy.

The elections were held in peaceful atmosphere. Awami League won 160 seats out of 162 constituencies in the then East Pakistan now Bangladesh in the National Assembly and 288 out of 300 in the Provincial Assembly. In West Pakistan, Bhutto's party (PPP) won 81 seats out of 138 constituencies. In the ultimate analysis, Awami League emerged as the absolute majority party in the National Assembly as well as in the Provincial "Assembly acquiring thereby the democratically to form government in the centre

and therefore to frame the constitution of the country at its instance.

On January 12 and 13, 1971 Yahya met Sheikh Mujibur Rahman, the majority leader and his top colleagues in Dhaka and discussed six points. Yahya Khan made a disclosure to the pressmen that Sheikh Mujibur Rahman was going to be the future Prime Minister of Pakistan. By the end of January, Bhutto came to Dhaka and learnt from Sheikh Mujibur Rahman that he was firm on six points, and that his discussions on revenue and tax matters with Yahya Khan were inconclusive. On February 13, Yahya Khan announced that the National Assembly would meet in Dhaka on March 3, 1971.

On February 15, Bhutto declared that it would be pointless for PPP to attend the Constituent Assembly if PPP could not participate in framing the constitution. On February 29, Bhutto declared that he would organize all of West Pakistan in violent protest if the National Assembly should be convened

on March 3. To avert the deteriorating situation, Sheikh Mujibur Rahman is known to have developed attitude to relax provincial power over aid and trade within the framework of foreign policy of the country and to clarify that express constitutional provisions were contemplated to empower the National Assembly to impose a federal levy on the federating units.

On March 1, Yahya Khan made announcement postponing the National Assembly session without consulting Sheikh Mujibur Rahman. This gave rise to angry demonstration of protests, processions with slogans against Yahya Khan, Bhutto and West Pakistan. The postponement was castigated as an entente with Bhutto and army to nullify Awami League's massive victory in the elections. Thousands of people gathered before Purbani hotel where Sheikh Mujibur Rahman was holding a meeting of party leaders. He at once convened a press conference, asked the agitating angry people to remain peaceful and non-violent, declared hartal (strike) for March 2. All offices,

businesses, shops, institutions, trains, airplanes etc. stopped functioning. The Martial Law Administrator (MLA) called army to prevent agitation. Curfew was imposed. Vice-Admiral Governor Ahsan was removed for his softness. Lt General Yakub was made the new Governor. He issued punitive martial law order, forbidding printing, publishing pictures, news items, views etc. against the integrity of Pakistan. Governor Yakub was replaced by Lt General Tikka Khan who was ruthlessly oppressive.

On March 3, Yahya Khan invited political leaders for discussion about holding National Assembly session a few weeks later after a conference. Sheikh Mujibur Rahman rejected the invitation and termed it a cruel joke after the killing of unarmed civilians after the elections by the army in different places on miscellaneous pretexts. On the same date, Sheikh Mujibur Rahman held a massive public meeting and mourned the death of the people killed by the army during protest demonstrations and before, and

extended hartal up to March 6, and announced a public meeting at race course to be held on March 7. He called upon Governor Yakub to bring back the army to the barracks. People across 'East Pakistan had already started to build barricades to impede the movement of the army. There was a press report on March 6 that MLA decided on March 5 to return army to the barracks as there were no untoward incidents during the past two days. It would appear that the postponement of National Assembly session without consulting Sheikh Mujibur Rahman was a blunder of Yahya Khan. Since March 1, economic, industrial, and all other activities in East Pakistan were carried on under order of AL.

Bhutto with his 81 seats in the National Assembly started to masquerade his party's majority in West Pakistan, and designed to demand two Prime Ministers for Pakistan - one in himself and the other in Sheikh Mujibur Rahman. This demand obviously meant that Bhutto's party would not agree to a

parliamentary majority rule of East Pakistan in the centre. His demand, by definition, meant a federation of Pakistan, each part having its regional Prime Minister. Bhutto was silent as to whether or not there would be any President in his scheme to look after Pakistan. It was generally presumed that Bhutto might have meant a confederation under a titular Yahya Khan. He further demanded that his party's consent must be taken in all matters of national importance. This meant that Awami League with an absolute majority in the National Assembly would not be able to take any majority decision in "matters of national importance" - such a perception which was, in fact, undemocratic, vague and unacceptable. Political leaders of West Pakistan other than those belonging to Bhutto's party kept almost mum over what Bhutto was demanding and saying. Bhutto stood firmly by his demands, while Sheikh Mujibur Rahman fervently requested the President to convene session of the National Assembly. It may be noted that there was a

proclaimed Presidential Decree limiting 120 days from the last day of the national election to complete the framing of the constitution, and that in case of failure the President would be free to dissolve the Parliament and call for another election.

Military rulers calculated that Sheikh Mujibur Rahman would declare independence on March 7, and accordingly, they kept necessary preparation ready to strike Sheikh Mujibur Rahman and his audience at the race course. Sheikh Mujibur Rahman sized up the danger and decided not to make imprudent declaration of independence in the public meeting. So, he worded his speech in a manner so as to avoid the instant danger. In the speech, he prudently demanded withdrawal of martial law, immediate transfer of power, judicial enquiry into the killings of Bengalees by the army, return of the armed forces to the barracks. He, however, urged upon the people of East Pakistan to get prepared for sangram (struggle) and not to wait for any order from him in case he

would not be in a position to give further order. "I am prepared to give my blood but shall not betray my people", said Sheikh Mujibur Rahman and proclaimed thunderously " the sangram this time is a sangram for liberation, the sangram this time is a sangram for independence".

The speech of March 7 was a masterpiece of Sheikh Mujibur Rahman's courage and political prudence and sagacity as an ultimatum to the military rulers. It inspired Sheikh Mujibur Rahman's immediate listeners and the rest of the people of East Pakistan but alarmed all in West Pakistan and the military rulers. The speech created the needed implicit force of determination and for popular fighting for independence. The unarmed people were already roused to fury against, and hatred for, West Pakistan and the military rulers, and the speech inspired people to fight for independence of Bangladesh.

It would appear that the speech of Sheikh Mujibur Rahman outlined all that was to be done to

make the non-cooperation stand successful and highlighted the atrocities perpetrated on the people of East Pakistan by the army. He, however, suggested peaceful settlement of the demands of East Pakistan and finally warned the rulers of relentless struggle for independence without any further order if no heed was paid to the grievances and demands. There was a speculation that something was going to happen. West Pakistan leaders like Wali Khan and Asghar Khan tried vainly for a compromise.

On March 10, German and Japanese citizens started to depart from Dhaka. The United Nations Secretary General, U Thant, advised his Resident Representative to remove U. N. officials if necessary. Sheikh Mujibur Rahman did not hesitate to comment "Removal of U. N. O. officials is not enough in the context of the killing and the violation of Human Rights". Yahya Khan flew to Dhaka on March 15 with a proposal for dialogue with Sheikh Mujibur Rahman, while Bhutto went on making provocative speeches in

West Pakistan. Bhutto declared that majority party rule would not apply in Pakistan and repeated that there should be two Prime Ministers in Pakistan. For the dialogue, Yahya Khan brought with him retired Chief Justice of the Supreme Court (Justice Cornelius), the Deputy Chairman of the Planning Commission (M.M Ahmed) and some Generals and Intelligence officers. Sheikh Mujibur Rahman joined the dialogue in deep consideration of the fact that in the West he was looked upon as a democrat and as such he should not disappoint the Western leaders by rejecting the dialogue, and so he included in his team some stalwarts of Awami League.

On March 16, Sheikh Mujibur Rahman met Yahya Khan with a black flag in his car and proposed a judicial enquiry to find out why army (called in civil duty) killed the people. Army continued its atrocities and on March 19 killed a lot of people at Joydebpur where people under leadership of Major K. M. Shafiullah vehemently resisted army movement. The

dialogue continued. Its proceedings were strictly guarded secrets. Press releases simply mentioned "progress". On March 21, newspapers had it that the dialogue was progressing satisfactorily and that General Yahya Khan asked Awami league and Pakistan People's Party of Bhutto to draft a constitution jointly on the basis of the points agreed upon, for discussion on the floor of the National Assembly.

The people of East Pakistan naturally believed that the settlement of the political, economic and constitutional issues was being made in a peaceful atmosphere. Information soon trickled down that Bhutto raised objection to the withdrawal of martial law before final and conclusive settlement of the issues and argued that withdrawal of martial law would create insurmountable legal vacuum. Justice Cornelius, Dr. Kamal Hussain and some legal stalwarts including advocate Brohi of Sind, however, did not see any insurmountable vacuum, because an Order of

the President could obviously cover the interim constitutional vacuum.

It was supposedly a wrong belief that the military rulers would spare East Pakistan for all that was done under Sheikh Mujibur Rahman's leadership since the declaration of non-cooperation. It was clear that Bhutto conspired with the military junta to undo the election victory of Awami league. From the attitude of General Yahya Khan towards the Assembly session one could easily predict that. The possibility of parliamentary government under Awami League as an absolute majority party was intolerable to the army in which East Pakistan had insignificant representation. The so-called dialogue was devised by military and intelligence strategists not only to reinforce Pakistan's military strength in East Pakistan for a massive assault but also to keep Awami League engaged in the dialogue, so that it could not find time to organize the people for resistance and offensive operations against the pre-planned military

assault. Sheikh Mujibur Rahman did not refuse to have a dialogue, because he was known in the West as a champion of democracy and for peaceful settlement of disputes.

When Awami League was in the dialogue, political agitation had not been relaxed and the students were spectacularly burning in agitation to get rid of the Pakistan rulers, although there was no objective armed preparation in East Pakistan for an armed confrontation. The six-point demands now lost their relevance to the students who by now became much more openly determined to go ahead for one point (independence). March 23 (Pakistan Day) was declared by Awami League as Resistance Day, which by implication marked the end of allegiance to Pakistan. It was on March 23, 1940 that the All-India Muslim League in its session in Lahore (Punjab) resolved a two-nation theory for Indian sub-continent with the objective purpose to create three independent states under a partition scheme of India. And the creation

of Pakistan was the outcome of this resolution with radical changes in 1946 (two states in place of three), and in 1947 (partition of Bengal and Punjab) accepted by Muslim league without any referendum. And the people of East Pakistan got a territory as Bangladesh, which was not our original demand.

March 25 was a day of speculation as to what was going to happen when the dialogue apparently came to a close without any proclamation of result. It was not known what the Awami League leaders decided about the next course of action, after it was declared that 23rd March (Pakistan Day) would be celebrated in East Pakistan (Bangladesh) as Resistance Day as a result of which Bangladesh Flag prepared by students was hoisted in Dhaka and outside and in foreign missions.

Students held a meeting in the morning of March 23 at Paltan, which commenced with the song - "Amar Sonar Bangla" and a flag of Bangladesh. A procession from the meeting marched to the residence of Sheikh Mujibur Rahman and the flag was presented

to him in a ceremonial style. The hoisting of Bangladesh flag on the Pakistan Day was an end of allegiance to Pakistan. On March 24, Yahya visited Dhaka cantonment and the Generals visited garrisons outside Dhaka. Yahya left Dhaka at 7 p.m. on March 25.

(Extracts from SHEIKH MUJIB: LIBERATION WAR: BANGLADESH by Abdul Khaleque.)

On the night following March 25, 1971, the Pakistani army had begun a relentless crackdown on Bangalees, all across what was then East Pakistan and is today an independent Bangladesh. Untold thousands of people were shot, bombed, or burned to death in Dhaka alone. Archer Blood, the United States' Consul General in Dacca had spent that grim night on the roof of his official residence, watching as tracer bullets lit up the sky, listening to clattering machine guns and thumping tank guns. There were fires across the ramshackle city. He knew the people in the deathly darkness below. He liked them. Many of the

civilians facing the bullets were professional colleagues; some were his friends.

It was, Blood and his staffers thought, their job to relay as much of this as they possibly could back to Washington. Witnessing one of the worst atrocities of the Cold War, Blood's Consulate documented in horrific detail the slaughter of Bangalees civilians: an area the size of two dozen city blocks that had been razed by gunfire; two newspaper office buildings in ruins; thatch-roofed villages in flames; specific targeting of the Bengalis' Hindu minority.

The U.S. Consulate gave detailed accounts of the killings at Dhaka University, ordinarily a leafy, handsome enclave. At the wrecked campus, professors had been hauled from their homes to be gunned down. The provost of the Hindu dormitory, a respected scholar of English, was dragged out of his residence and shot in the neck. Blood listed six other faculty members "reliably reported killed by troops," with

several more possibly dead. One American who had visited the campus said that students had been "mowed down" in their rooms or as they fled, with a residence hall in flames and youths being machine-gunned.

"At least two mass graves on campus," Blood cabled. "Stench terrible." There were 148 corpses in one of these mass graves, according to the workmen forced to dig them. An official in the Dhaka Consulate estimated that at least five hundred students had been killed in the first two days of the crackdown, almost none of them fighting back. Blood reckoned that the rumored toll of a thousand dead at the University was "exaggerated, although nothing these days is inconceivable." After the massacre, he reported that an American eyewitness had seen an empty army truck arriving to get rid of a "tightly packed pile of approximately twenty five corpses," the last of many such batches of human remains.

Blood detailed how Pakistan was using U.S. weapons-tanks, jet fighters, gigantic troop transport airplanes, jeeps, guns, ammunition-to crush the Bangalees. In one of the awkward alignments of the Cold War, President Richard Nixon had lined up the democratic United States with this authoritarian government, while the despots in the Soviet Union found themselves standing behind democratic India.

The onslaught would continue for months. The Dhaka Consulate stubbornly kept up its reporting. But, Blood later recalled, his cables were met with "a deafening silence." He was not allowed to protest to the Pakistani authorities. He ratcheted up his dispatches, sending in a blistering cable tagged "Selective Genocide," urging his bosses to speak out against the atrocities being committed by the Pakistani military.

But Pakistan's slaughter of its Bangalees in 1971 was starkly different. Here the United States was allied with the killers. The White House was

actively and knowingly *supporting* a murderous regime at many of the most crucial moments. There was no question about whether the United States should intervene; it was already intervening on behalf of a military dictatorship decimating its own people.

Indians were overwhelmingly outraged by the atrocities in East Pakistan. In a factionalized country where popular harmony is a surpassingly rare thing, there was a remarkable consensus: Pakistan was behaving horrifically; the Bangalees were in the right; India had to act in defense of democracy and innocent lives. Almost the entire Indian political spectrum, from Hindu nationalists on the right to socialists and communists on the left, lined up behind the Bangalees.

Bangladeshis still mourn their losses from not so long ago. This book (*The Blood Telegram*) is not - and does not purport to be - anything like a comprehensive account of these crimes against humanity. It mostly documents the American eyewitness

perspective on them, which is obviously only a part of the complete record of horrors. Still, this is an important portion, because it is the true local viewpoint of the Pakistani Government's superpower ally. After all, Archer Blood and the other U.S. officials reporting back to the Nixon administration knew they had every career incentive to downplay the enormity of what they saw; their stark reporting thus stands as a crucial and credible part of that wider story.

Yahya Khan had a green light for his killing campaign. At the White House, Richard Nixon and Henry Kissinger knew that a fierce assault was starting, but made no move to stop or slow it. He recounted the killing of politicians, professors, and students. The streets were flooded with Hindus and others trying desperately to get out of Dhaka. This assault, he wrote, could not be justified by military necessity: "There is no r[e]p[ea]t no resistance being offered in Dacca to military."

Blood's team also saw the Pakistan Air Force using F-86 Sabres, U.S. jet fighters famed for their performance in the Korean War. Blood reported daily sorties flown by an F-86 squadron at Dhaka's heavily fortified airfield, in flights of two or four. Two F-86s were seen taking off from Dhaka to crush Bangalee resistance in a nearby town.

Yahya's slaughter drove Bangalees to take up arms. The nucleus of the resistance was trained Bangalees serving in Pakistan's military, in units called the East Pakistan Rifles and the East Bengal Regiment, as well as police officers. Unable to stomach the crackdown, many of these Bangalees rebelled. They became early targets for Yahya's assault. As Archer Blood remembered, the Pakistani army "deliberately set out first to destroy any Bengali units in Dacca which might have a military capability," particularly the Bangalee troops in the East Pakistan Rifles. "And so they just attacked their barracks and killed all of them that they

could." Scott Butcher, the junior political officer in the U.S. Consulate in Dhaka, says that the Pakistan army swiftly turned on the Bangalees in their ranks: "a lot of the gunfire we heard were executions of some of those personnel."

As one of Yahya Khan's ministers later wrote, "The Pakistan Army's brutal actions . . . can never be condoned or justified in any way. The Army's murderous campaign in which many thousands of innocent people including women, the old and sick, and even children, were brutally murdered while millions fled from their homes to take shelter either in remote places or in India, constituted a measureless tragedy,". Days after the shooting stopped, Bhutto set up a judicial commission to investigate the battlefield defeat in East Pakistan led by Pakistan's chief justice Hamoodur Rahman as well as two other eminent judges. It produced a scathing official record condemning the military for corruption, turpitude, and brutality, and demanding

courts-martial for Yahya, Niazi, and other disgraced military leaders. While the report concentrates on military defeats, it includes frank testimony on the atrocities from senior army officers and civilian officials. This judicial commission convinced that "there can be no doubt that a very large number of unprovoked and vindictive atrocities did in fact take place," urged Pakistan's government to set up a "high-powered court or commission of inquiry" to "hold trials of those who indulged in these atrocities, brought a bad name to the Pakistan Army and alienated the sympathies of the local population by their acts of wanton cruelty and immorality against our own people."

But nothing happened. The report was so harsh on the military that it was suppressed, and only came to light in an Indian magazine in 2000 and in Karachi's intrepid *Dawn* newspaper in 2001. While Bhutto was keen to discredit the likes of Yahya Khan and Niazi, he - far from facing up to the horrors - refused to

accept losing Bangladesh and insisted on the necessity of the crackdown. "I would have done it with more intelligence, more scientifically, less brutally," Bhutto told an interviewer, heaping all blame on "Yahya Khan and his gang of illiterate psychopaths." Bhutto put the notorious General Tikka Khan in charge of the army, insisting that during the massacres "he was a soldier doing a soldier's job."

As for the women who were raped and killed, he flatly said, "I don't believe it." While saying that "such brutality" against the people was unnecessary, Bhutto defended the use of force at home: "You can't build without destroying. To build a country, Stalin was obliged to use force and kill. Mao Tse-tung was obliged to use force and kill."

**(The Blood Telegram by Gray J. Bass -
extractions)**

On March 25, 1971, the army occupation of East Pakistan turned into a genocide. On the late

afternoon of 25 March, the political confusion ended abruptly when the last President of united Pakistan, Yahya Khan, suddenly flew home to West Pakistan. Just prior to mid-night when the city was about to seek refuge from all the hustle and bustle of daily chores, the attack came. The Pakistani army indiscriminately attacked the Bangalees.

Army tanks went in different directions to demolish different targets. One contingent rolled through the main street from airport to the city and attacked a newspaper office in front of the Radio Pakistan Dhaka office, and the same contingent took over the control of the radio station. Another went towards Dhaka University and attacked students' dorms. This attack was actually video taped by a professor of Dhaka Engineering University, and the tape was smuggled out of the country as a first hand report of the massacre to the outside world. The area where the attack took place in the student dorms, there were also selective break-ins at the faculty residences

and a couple of professors were killed on that fearful night.

U.S M-24 tanks led the Punjabi-Baluchi assault upon student dormitories on the campus of the University of Dhaka. Iqbal and Jaganath halls were filled with sleeping students and faculty when the tanks opened fire and continued shooting at least five minutes. Soldiers crouched behind the tanks then charged into the shell-battered dorms with fixed bayonets and killed all persons still alive: students, professors, caretakers, and servants.

The highly equipped Pakistani army attack Dhaka city's largest police station (Police Line/Barrack at Rajarbag. The local police responded with their three-not three rifles. They were in their beds when the attack took place. Thus, they were in their traditional night suit-a loongy and a ganji. They scattered all over the neighborhood to escape the attack, then started organizing a resistance. It was beyond their imagination that the Pakistani army

would attack law enforcement officers of the same country when there was no declaration of war and there were no charges against the local police about major violations of the law of the land. The attack was swift and brutal. There were no accounts of the deaths as the army wiped out evidence and cleaned the city after seizing control. Before the so-called control of Dhaka city it was "a night of infamy" ... one could watch with horror the constant flash of tracer bullets across the dark sky and listened to the more ominous clatter of machine gun fire and the heavy clump of tank guns...(Blood, 2002: 195). "that night, the holocaust began" (Loshak, 1971:79).

The administration took maximum measures to keep the operation completely away from any foreign journalists. However, two journalists, Michel Laurent, a French photographer working for the Associated Press news agency, and Simon Dring, of the *Daily Telegraph* of London, resourcefully evaded the administration's control. In his report, Dring gave

the first eyewitness account of the terror campaign, which Pakistan's leaders had designed to "save" the "integrity" of their nation. "The first targets as the tanks rolled into Dacca", Dring reported, "were the students. Caught completely by surprise, some 200 students were killed in Iqbal Hall,...as shells slammed into the building and their rooms were sprayed with machine gun fire" (Loshak, 1971:80). As the Pakistani army violated the trust of the local police forces consequently many Bangalee lawenforcement agents left the force and joined the freedom fight. After the crack down the political protests turned into a resistance movement with the goal of creating a nation state-Bangladesh.

These selective attacks were also followed by many more random attacks. The rampage the West Pakistani army unleashed against the Bangalees of Dhaka City was not an isolated incidence. The West Pakistani army actually initiated a calculated and well coordinated attack on Bangalees across the

country. The attack of 25th March was a planned attack. The tragic events of 1971 need not be re-catalogued. Genocide, torture, murder, rape all were characteristic of West Pakistan's military regime's fumbling an unsuccessful attempt to maintain its repressive rule over its de facto eastern colony (Fickell, 1973:130).

Obviously, it was a fact that West Pakistani armies committed genocide in East Pakistan. People may try to ignore the veracity of the attack and downplay the atrocities committed by the Pakistani army and some of their stooges like the members of Al-Badar and Al Shams, "two separate wings" of Razakars organization. "Well-educated and properly motivated students from the schools and *madrasas* were put in Al-Badar Wing, where they were trained to undertake 'Specialized Operations' while the remainder were grouped together under Al-Shams, which was responsible for the protection of bridges, vital points, and other areas," - - Niazi wrote (1998: 78).

However, Niazi did not elaborate on "Specialized Operations," but those who lived through the period were very much aware of the meaning of "Specialized Operations" - killing innocent Bangalees.

The West Pakistani attack in March was an attack on a specific ethnic group to suppress their hopes and aspirations, destroy their identity and eliminate their existence; thus it was genocide. Genocide is the deliberate act, typically of a state, to destroy a specific group, typically defined in ethnic terms (Dictionary of Sociology, 2000). The word is derived from the *genos* (people or race) and the Latin *caedere* (to kill). The target of Pakistani armies was the Bangalees and not any other ethnic group.

When thousands of innocent people were being massacred and their houses were burnt, and women were being raped, the two most powerful nations in the world- America and China- were engaged in diplomatic networking, and the facilitator was the instrumental of the genocide. History repeatedly confirms that

political dynamics behave strangely and are mostly devoid of humanity or justice.

The calculated genocide on the part of West Pakistani army and administration created a backlash for the rulers. A resistance force was born which was known as Mukti Bahini with the total support of the people of the country except a handful of disgruntled political activists who did not believe in the power of people and supported genocide for their personal gains. The West Pakistani Army did not get the picture of the situation. "Despite their long and careful preparations, the generals' plans misfired... The plan recoiled. For the military elite never had any conception of the strength of Bengali feeling, nor the faintest idea of the determined spirit that would inspire the Bangla Desh resistance movement" (Loshak, 1971:88). The spirited Bangalee rose like a Royal Bengal Tiger and gave birth of another movement *Shadinater Songram* -Movement for Freedom- and the fighters were known as "Mukti Bahani" or "Mukti Fauz".

**(From Protest to Freedom : The Birth of Bangladesh by
Mokerrom Hossain by Mokerrom Hossain)**

For Genocide hard evidence of both local and foreign provenance abound to the effect that the primary responsibility is to be fixed on the Pakistani military that authored the "Operation Searchlight" and unleashed the genocide. To be added to this category of complicity is the role of the local collaborators called *razakars*. Robert Payne gives a chilling account of the Pakistani genocide in his widely read book *Massacre* : "For month after month in all the regions of East Pakistan the massacres went on. They were not the small casual killings of young officers who wanted to demonstrate their efficiency, but organised massacres conducted by sophisticated staff officers, who knew exactly what they were doing. Muslim soldiers sent out to kill Muslim peasants, went about their work mechanically and efficiently until killing

defenseless people became a habit like smoking cigarettes or drinking wine...

Such a narrative, among the many blood-curdling and heart-rending ones, clearly demonstrates that the mass killing in Bangladesh was among the most carefully and centrally planned of modern genocide's. Records suggest that a group of five generals planned and orchestrated the genocide : Yahya Khan, Tikka Khan, Chief of staff Pirzada, security chief Umar Khan, and intelligence chief Akbar Khan. None of the generals or the lower ranking officers involved on the ground has ever been brought to trial.

In a secondary sense, Zulfiqar Ali Bhutto is to be accused of complicity in the genocide. But the *Jamaat-i-Islami* in both the wings, was the main back-up political force that had its distorted and obscurantist Islamic ideology at the services of the genocidal military junta.

But as far as trial of the perpetrators of genocide in Bangladesh is concerned our immediate focus is on those who are called *razakars*, who in 1971, belonged either to *Jamat-i-Islami* in the then East Pakistan and its student wing *Islami Chatra Sangha*. Moreover, there were other collaborators who did not belong to these organisations, had their own political platforms, but shared the ideology of *razakars* in opposing Bangladesh and actively participating in the genocide. To this category belonged such rightist political parties as the Muslims League, (Council/Convention) and the *Nejam-i-Islam*. Of the many political personalities quarters who aided and allotted genocide special wanton should be made of late Fazlul Quader Chowdhury and his son Salahuddin Quader Chowdhury.

(Genocide in Bangladesh, 1971 : Fixing Responsibility By Dr. Syed Anwar Husain, published in **'Bangladesh Genocide 1971 And The Quest For Justice')**

International Media highlighted the massacre

The Times London

The slaughter in East Pakistan.

"The more than news from East Pakistan accumulates, the more horrowing it becomes. Senseless murder hysterical cruelty and what must be a creeping fear run like a current throughout this packed mass of human beings. "

16.04.1971

New Statesman

"The Blood of Bangladesh, If blood is the price of a people's right to independence Bangladesh has overpaid. "

05.04.1971

The Time Magazine

Pakistan Toppling over the Brink.

"In Dacca, army tanks and truckloads of troops with fixed bayonets came clattering out of their suburban base shouting "victory of Allah" and "victory to Pakistan" --- Dan Coggin reported: Before long, howitzer tank, artillery and rocket blasts rocket half a dozen scattered sections of Dacca. Tracers arched over the darkened city."

07.04.1971

The New York Times

Bloodbath in Bengal.

"---- On any basis, the United States would have a humanitarian duty to speak against bloodbath in Bengal."

12.04.1971

Time

"---Reports coming out of the East via diplomats, frightened refugees and clandestine broadcasts varied wildly. Estimates of the total dead ran as high as 300000."

14.04.1971

The New York Times

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

17.04.1971

The Evening Star

Death in East Pakistan

"----- A New York Times correspondent, who crossed from India into East Pakistan, reported that government troops, acting on orders from Karachi, have killed engineers, doctors, professors and students in an attempt to eradicate the future Bengali leadership."

03.05.1971

Time

"Dacca, City of the Dead.

----- a Westerner heard soldiers cry, " Kill the bastards !"

15.06.1971

The Washington Daily News

Slaughter in East Pakistan

"Eyewitness reports, one more ghasty than another, continue to filter out of East

Pakistan, telling of the massacre of the Bengali people by Pakistani Army----- evidence mounts that it is cold bloodedly murdering minority Hindus, Bengali separatists, intellectuals, doctors, professors, students, in short those who could lead a self governing East Pakistan."

28.06.1971

News Week.

The terrible blood bath of Tikka Khan

"----- Anthoney Mascaranhas, a Karachi newsman who also writes for the London Sunday Times was so horrified by the events he witnessed that he and his family fled to London to publish the story. He wrote , " I've seen people literally strick dumb by the horror of seeing their children murdered in front of them or their daughters dragged off into sexual slavery. I have no doubt at all that there have been a hundred "Mylaies and Liddices" in East Pakistan and I think, there will be more."

02.08.1971

Times Magazine

The Ravaging of Golden Bengal.

"----- Kushtia a city of 40,00 now looks, as a world Bank team, reported, "like the morning after a nuclear attack"

13.06.1971

The Sunday Times

Gencocide

By Anthony Mascarenhas

"For six days as I travelled with officers of the 9th Division head quarters at Comilla, I witnessed at close quarters the extent of the killing, I saw Hindus, hunted from village to village and door to door shot off hand after a cursory "short arm inspection" showed they were uncircumcised. I have heard the screams of men bludgeoned to death in the compound of Circuit House (Civil administration head quarters) in Comilla. I have witnessed the brutality of "kill and burn missions" as the army units, after clearing out the rebels, pursued the pogrom in the towns and the village"

10.07.1971

The Sunday Times

A Regime of Thugs and Bigots

An account by Murray Sayle.

"---- From Satkhira I proceeded to Khulna, administrative capital of the district. -----
-A quarter of the population of the whole district, which was more than three million at the last census, is missing , dead or gone to India. "

14.05.1971

Friday,

House of Commons

Estimates of the numbers who have died.

- "The official estimate of the West Pakistan Government is that only 15,000 have died, but the lowest independent estimates start at 100,000 and many estimates are over a million have died already.

31.03.1971

Statement by Mr. Russel Johnston, Member,
House of Commons, U.K. on March 31, 1971.

According to eye witness reports, have been
savage and indiscriminate and have resulted in
the widespread slaughter
of civilians. "

24.04.1971

আনন্দ বাজার

“পূর্ববঙ্গে গণহত্যা সম্পর্কে বৃটিশ পার্লামেন্টের প্রশমিক দলীয় সদস্য মিঃ ব্রুস ডগলাস ম্যান
এর বক্তব্য ।

“ভিয়েতনামে “মাইলাই” একটি ব্যতিক্রম, আর গোটা পূর্ববঙ্গই মাইলাই-
বায়াক্রমের সঙ্গে তুলনা হয় না ।

বাংলাদেশের অবস্থাকে অনেকে বায়াপ্রার সঙ্গে তুলনা করেছেন কিন্তু শ্রী ম্যানের মতে,
বায়াক্রমের সঙ্গে এখানকার পরিস্থিতির তুলনাই হয় না । বায়াক্রমে পূর্ববাংলার মত এক
নির্বাচন হয় নি ।”

April, 1971

Jhon Stonehouse's interview with B.B.C.

“What happened in East Bengal “makes Vietnam
look like a tea-party .”

05.07.1971

The Statesman

“British M.P. Arther Bottomley said this had
been the most horrowing mission he had
undertaken in his entire public life.

Oxfam Report

The testimony of 60 on the crisis in Bengal.

They are eye witnesses, and the story they tell
is horrifying. It is a story of millions
hounded, homeless and dying. It is too a story
of the world community engaged in a communal
ostrich act. ”

Senator Edward Kennedy

“The tragedy of East Bengal is not only a tragedy for Pakistan. It is not only a tragedy for India. It is a tragedy for the entire world community, and it is the responsibility of that community to act together to ease the crises.”

Nicolas Tomalian

“The Paksitan crises is the worst disaster that has faced the world for the past 30 years. The villains, those Pakistani generals who ordered a military attack on their own countrymen last March 25th, are more obviously in the wrong than any military aggressors since the Hitler war.”

John Pilger, Daily Mirror

“The life, or death, of Bangladesh is the single most important issue the world has had to face since the decision to use nuclear weapons as a means of political blackmail. It is that because never before have the world's poor confronted the world's rich with such a mighty mirror of Man's inhumanity.”

Dr. R.C. Hioman, MRCP, Save the Children fund, Bengal.

“Tens of thousands of children have already died in the refugee camps in the India border area.”

James Cameron, Journalist

“For six months we have stood by in shocked surprise and watched disaster grow into catastrophe and hourly nearer to tragedy and we still stand by and watch.”

P190- Claude Azonlay, Paris Match

"The whole world stands accused of inaction while seven million people are in danger of death. A graveyard of children.----- . In Bengal two million children are dying, killed by hanger, and we remain idle and no sanctions will be imposed on us except may be-of so remote-that of guilt. "

Ernest Hillen, Weekend Magazine (Canada)

"Unprecedented numbers of people are suffering and dying, and the members are growing, there is widespread famine, and there is the very real of war.

The blame for the catastrophe rightly enough belongs to the men who run the West Pakistan Government. The sheme belongs to all of us. Almost from the start, the World community could have stopped it; And it must be stopped now by whatever manner or means. Our children will inherit enough shame."

John Drewary, Canadian Broadcasting Corporation.

"I found it impossible to shut away the memories of what I saw, in the refugee camps of west Bengal and along with trials leading out of East Pakistan, in that corner of my mind reserved for other horrors I witnessed during wards I covered in Korea, the Congo, Egypt , Vietnam and Biafra. It is not that the brutization of the people of East Pakistan is worse than what has happened to countless others throughout history. The effect of sword, fire and starvation differ very little in degree on the individual body and spirit.

It is simply that the magnitude of the tragedy is so immense, so overwhelming, it overshadows all other things. The cry for help coming out of in and East Pakistan is echoing all around the world. If we ignore it we are killing our future too."

May 12, 1971 Congressional record- Extension of Remarks

A letter written by an American Family Evacuated from East Pakistan in the House of Representatives.

"We have been witness to what amounts to genocide. The west Pakistan 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 a mass grave for the thousands of students; they systematically eliminated the intelligentsia of the country, wiped out entire villages I could go on and on. Its hard to believe it happened---- That was great human tragedies of modern times."

Senator Tany Congressional record Senate

July 7, 1971. The war in East Pakistan.

U.S. Arms for Pakistan . A shameful record.

"This is, we submit, an astonishing and shameful record, with two meanings.

The first is that, for the shabbiest of political reasons, the United States is supplying military equipment to a brutal regime that has killed an estimated 200,000 of its citizens and driven me six million others out of their country."

Congressional record-Senate

July 20, 1971- Tragedy in Pakistan.

"The tragedy in Pakistan worsens each day."

University of California.

14 Professors of Univeristy of California.

Loss Angeles, Calif, May 17, 1971. Wrote a letter to the Editor

Loss Angeles Times.

They said;

"We, the under signed scholars of Asian Studies on the faculty of UCLA write to express our profound sense of anguish and shock at the news we have read and personally received of the brutal and protracted massacres of Bengali civilians by West Pakistan's armed forces since March 25, 1971. From every creditable report we have seen it appears that General Yahya Khan's Army directed the full strength of its fire power at such bastions of "resistance" to his military dictatorship as the unarmed camp of Dacca University."

July 20,1971.

Congressional record- Senate

"Tragic incidents in East Pakistan.

Mr. Saxbe, Mr. President, I invite the attention of Senators to further events and accounts relating to the tragic incidents in East Pakistan.

Mr. Saxbe readout an articles published in the Boston Sunday Globe July 11, 1971.

Title was :

East Pakistan a mounting crisis - witness reports on
Death, Destruction .

An eye witness account of the devastations left
by West Pakistani troops, fanning out along the
river leading from Dacca to the Bay of Bengal, is
told in the following excerpts from a tapeletter
recorded in the area in late May,

William H. Ellies, a Canadian engineer working on
coastal embankments near the Bay of Bengal ,
recorded his comments on an unofficial and highly
dangerous survey of the area in which he worked- ----

Barisal was completely deserted, only the dogs on the
streets although it was still an hour and a half
before curfew. I traveled to Jessore----- a road
that I have traveled many times before -----
villages on both sides of the road have been burnt.
As was pointed out to me, there is not a family in
this whole country that has not been affected that
has not lost members that have not been shot or not
looted, or had their women raped, or young girls
taken away."

July 23, 1971.

Congressional record- Senate

The situation in East Pakistan.

"Mr. McGovern, Mr. President, the present
situation of bloodshed and repression in the
East Pakistan should concern us all -----. One
need only read the report of the mission of the
World Bank to be moved by the sufferings of the
Bengalies, For example, in the town of Jessore,
where 80,000 lived a few months ago, only
15,000 to 20,000 people remained; 20,000 have

been killed and the rest of the population has fled into the country side. Thousands of East Pakistani are being slaughtered daily in a Gestapo like orgy of killing."

Some other news headings of the most influential and widely circulated newspapers and magazines in the world regarding genocide committed in Bangladesh are mentioned here.

Genocide (the Sunday Times, London 13.06.1971),
 A regime of Thugs and Bigots (The Sunday Times, London-11.07.1971),
 In Dacca, Troops use artillery to held revolt (The New York times, 28.03.1971),
 Plunge into chaos (The Synday Morning Herald-29.03.1971),
 Pakistan Tragedy (the AGE,- Canberra-29.03.1971),
 A Massacre in Pakistan (The Guardian, London 31.03.1971),
 In the name of Pakistan (The New York Times-31.03.1971),
 Weep for Bengal(The New Stateman, London-02.04.1971),
 The Slaughter in East Pakistan (The Times, London-03.04.1971),
 The Holocaust in East Pakistan must be ended (The New Nation-Singapore-06.04.1971),
 Mass murder in Bengali (Expression, Stock home 12.04.1971),
 Blood of Bangladesh (The New Stateman, London-16.04.1971),
 Death in East Pakistan (The Baltimore Sun-04.05.1971),
 Genocide in East Pakistan, (The Saturday review, USA-22.05.1971),
 East Bengal tragedy, (The Guardian, London-27.05.1971),

Tragedy in Bengalis, (Commentary Broadcast in the afro Asian Service of Radio Prague Zechoslovakia-14.06.1971). Another Genghis, (The Hongkong Standard-25.06.1971), Guilt and disaster over Pakistan (The Manila Chronicle-05.07.1971), East Pakistanis cry for help, (The Palaver Weekly-Ghana-08.07.1971); Normalse with bayonets (Vecernje Novosti-Yogoslvia-08.07.1971), Pakistan condemned (The New York Times-14.07.1971). The Bengal the murder of people , (The News Week - 02.08.1971); Cruel steps against population of East Pakistan (USSR Press, trued-02.04.1971), Premeditated brutality (Le-Monde, Paris-09.04.1971), Stop this genocide (DJakarta Times-15.04.1971), Army Terror (The Sun, London-26.04.1971).

Al-Badar

Islami Chhatra Sangha (ICS) was the student organization of Jamat-e-Islami. Solim Monsur Khaled, a Pakistani researcher, made a research work on Al-Badar Bahini. He took interviews of the members of Al-Badar Bahini who fled away to Pakistan after the War of Liberation as well as their friends in Bangladesh who were members of "Badar Bahini" and their organisers. He wrote a book named "Al-Badar" published by Talaba Publishers Lahore, Pakistan. It

has been narrated in the said book that on 10th March, 1971 a meeting of ICS was held in Dhaka where members of Mazlish-e-Sura and District Nazems of ICS were present. In four days meeting, the participants discussed about the prevalent situation of the country and led the following three proposals for the members of ICS.

- ১। পরিস্থিতি নিজের গতিতে চলতে দিয়ে বিচ্ছিন্নতাবাদীদের সঙ্গী হয়ে যাওয়া।
- ২। পরিস্থিতি নিজের গতিতে চলতে দেয়া এবং নিরপেক্ষ ভূমিকা পালন করা।
- ৩। পরিস্থিতির মোড় ঘুরিয়ে দেয়া।

Out of those three proposals, the ICS decided to follow the 3rd proposal, that is, “পরিস্থিতির মোড় ঘুরিয়ে দেয়া” ignoring the mandate of people given in the election held in 1970 in which Awami League got absolute majority in the National Assembly, ICS took aforesaid cruel/inhuman decision against the will of the people. In that meeting it was resolved, “-----সুযোগ এসেছে যাতে এখানে আল্লাহর দ্বীনকে তার আসল আকৃতিতে কায়েম করা আর দুনিয়ার সামনে এর সত্যতার বাস্তব সাক্ষ্য পেশ করা। আমাদের জন্য এটি সবচেয়ে বড় নেয়ামত। আমরা চাই যে পাকিস্তানের প্রতিটি মুসলমানের মধ্যে এই নেয়ামতের মর্যাদা দানের জনক সৃষ্টি করব। তাদের হৃদয়ে অন্তরে এই চিন্তাটি বসিয়ে দেব যে, এই নেয়ামতের হেফাজতের জন্য যে কোন কুরবানী স্বীকার করা কঠিন নয়। ----- আর জনক নিয়ে শাহাদত নসীব হলে তা হবে বহু উন্নতমানের শাহাদাত। ---- আমাদের পাকিস্তানের এই অংশকে হেফাজত করতে হবে। ঠিক এমনভাবে যেভাবে মসজিদ হেফাজত করা হয়। ---- ইসলামী ছাত্র সংঘ পাকিস্তানের অক্ষুণ্ণতা ও জনগনের জানমাল ও ইজ্জত

হেফাজতের জন্য সামনে অগ্রসর হবে। ----- আমরা এদিকে ইসলামী শক্তি নিয়ে দুশমনের সাথে ময়দানে সংঘাতে অবতীর্ণ হব অন্যদিকে ক্ষমতার কাছাকাছি পৌঁছে তার সংশোধনের মত আমাদের মত করে চেষ্টা করব। Though Pakistani Army slaughtered and destroyed united Pakistan and buried their own country on the night following 25th March, 1971 by opening fire and shelling using tanks, heavy machine guns etc. and thereby massacred thousands of innocent unarmed people when they were sleeping, the members of ICS started collaborating with the Pak army to save Pakistan in the name of Islam and thereby frustrated the mandate of the people. In order to form a separate Rajaker force ICS took decision in a meeting on 15.05.1971. Thereafter, on 16th May, 1971, Major Riyad Hossain Malik, of 13 Baluch Regiment started giving training to 47 ICS members. On 21.05.1971, they were named as "Al Badar" Bahini. In the said book the author narrated the formation and activities of Al-Badar Bahini in Chittagong as under:

“চট্টগ্রাম

এখানে ১০মে ১৯৭১ লে. কর্ণেল আজম ও অপারেশন চীফ ফাতেমী ছাত্র সংঘের দায়িত্বশীলদের সাথে পরামর্শ করেন। এই পর্যায়ে একটি মিটিং নেভাল হেডকোয়ার্টারে আর একটি সেনা যাত্রী ছাউনিতে হয়েছিল। ইসলামী ছাত্র সংঘের চট্টগ্রামের নাজেম সহায়তা দানের ব্যাপারে শর্তারোপ করেন এবং বলেন যে, আপনারা যদি সত্যিই আমাদের কাছে সহায়তা চান তাহলে কোন অপারেশনই পরামর্শ ব্যতিরেকে

হবে না। এই কথাটি মূলনীতি হিসেবে চূড়ান্ত করে লেখা হয়। বস্তুতঃ জুন এর মাঝামাঝি সময়ে চট্টগ্রাম শহরে সুলতান খালেদ বিন ওয়ালিদ, জহিরুদ্দিন মুহাম্মদ বাবর ও তারেক বিন রিয়াদের নামে আল-বদরের ক'টি কোম্পানি গঠন করা হয়। সমগ্র জেলায় ৩৭টি প্লাটুন ছিল। এখানে পাক বাহিনীর ২৪ ফ্রিগিয়ার ফোর্স রেজিমেন্ট মোতায়েন ছিল। ----- আবাসিক এলাকা গুলোর জিম্মাদার ছিল আল বদর এর উপর। ----- চট্টগ্রাম সেক্টরে আল- বদরের সবচেয়ে বেশী কাজ ছিল সিভিল প্রশাসনকে প্রশাসনিক ও প্রতিরক্ষার কাজে সহায়তা করা।” The author published the extracts of the interview given by Abdur Rahman (Chittagong), one of the members of Badar Bahini. He said : “পূর্ব পাকিস্তানের দূষ্কৃতিকারীদের মূলোচ্ছেদ করার জন্য পাকবাহিনী যখন তৎপরতা শুরু করল , তখনকার ছাত্র সংঘ এর কর্মী লেটার প্যাডে ছবি লাগিয়ে সিভিল ও সামরিক প্রশাসন থেকে সত্যায়িত করে নিত। এটিই হত তাদের আই,ডি, কার্ড। ---- আল বদরের তিনটি ব্যাচ ট্রেনিং নিল। আমরা সাদা ড্রেসে কাজ করতাম। ----- চট্টগ্রামের ভেতর তিনটি অস্ত্র কেন্দ্র ছিল। একটি মধ্যখানে, একটি উত্তরে, আরেকটি ছিল দক্ষিণে।” Lt. Gen. A.A.K. Niazi in his book, “Betrayal of East Pakistan”, stated about the formation of Badar Bahini with the following words:

“Two separate wings called Al-Badar and Al-Shams were organized. Well educated and properly motivated students from the schools and madrasas were put in Al- Badar Wing, where they were trained to undertake “ Specialized Operations” while the remainder were grouped together under Al-Shams, which was responsible for the protection of bridges, vital points, and other areas.” (underlined by us)

“The campaign confirmed the IJT’s place in national politics, especially in May 1971 , when the IJT (Islami Jamiete Tulba= Chatro Sangho) joined the army’s counterinsurgency campaign in West Pakistan. With the help of the Army the IJT organized two paramilitary units, called al-Badar and al-Shams, to fight the Bengali guerrillas. Most of al-Badar consisted of IJT members, who also galvanized support for the operation among the Muhajir community settled in East Pakistan, Matiur Rahman Nizami, the IJT’s nazim-I a’la (supreme head or organizer) at the time, organized al-Badar and al- Shams from Dhaka University,” [Seyyd Vali Reza Nasr, The Vanguard of the Islamic Revolution: The Jama’at Islami of Pakistan] (emphasis supplied)

Hussain Haqqani in his book “Pakistan Between Mosque and Military” has narrated the formation of Al- Badar Bahini which is as follows:

“Army decided to raise a Razakaar (volunteer) force of one hundred thousand from the civilian non Bengalis settled in East Pakistan and the Pro Pakistan Islamic groups. The Jammāt-e-Islami and specially its students wing, the Islami Jamiat-e-Talaba (IJT), joined the military’s efforts in May

1971 to launch, two paramilitary counterinsurgency units. The IJT provided a large number of recruits. By September, a force of fifty thousand Razakaars had been raised. Secular West Pakistani Politicians complained about "an army of Jamaat-e-Islami nominees". The two special brigades of Islamis cadres were named Al- Shams (the sun, in Arabic) and Al- Badar (the Moon). The names were significant for their symbolic value. Islam's first battle, under Prophet Muhammad, had been the battle of Badar, and these paramilitary brigades saw themselves as the sun at the crescent of Islamic revival in South Asia."

(underlined by us)

Admittedly, the appellant Mir Quasem Ali was leader of ICS Chittagong town unit in 1971. It is also admitted that he became the Secretary General East Pakistan ICS on 7th November, 1971. Admittedly, he was selected as Secretary General of ICS considering his performance and activities as leader of Chittagong ICS and Al- Badar Bahini. It is evident that while discharging his duties as Secretary General of East Pakistan ICS he was given charge of Chittagong Division of ICS as well. Such promotion and prize post were given definitely on consideration of his effective activities and

performance as leader of ICS Chittagong town unit. In the case of Ali Ahshan Mohammad Mujahid- Vs. the Chief Prosecutor, 20 BLC (AP)266 and in the unreported case of Motiur Rahman Nizami, this Division held that the Al-Badar Bahini was formed with the members of ICS. The Pakistani politicians admitted that the members of Badar bahini were "Jammat-e-Islami nominated army".

There are overwhelming strong evidence that the above crimes were committed by Pakistani regular and auxiliary forces during the Bangladesh War of Liberation in 1971 (anti-liberation forces call it civil war which, however, in no way diminishes the criminal liability of the perpetrators). In terms of number of people killed (about three million), women raped (two hundred thousand) and persons forced to flee their homes to turn refugees (ten million took shelter in India), the above crimes undoubtedly rank first after Nazi holocaust during the Second World War, followed by genocide committed by Khmer Rouge regime of Pol Pot in mid-seventies in Cambodia, brutal elimination of about one million Hutus by the

Tutsis in Rwanda in the late eighties and the ethnic cleansing of the Muslims by the Serbs in Bosnia in the early nineties of the last century. While these latter offenders had been prosecuted, or are being prosecuted, it is preposterous that the crimes committed in Bangladesh during 1971 have remained to date with impunity.

The rationality of holding the trial can be explained from several perspectives:

- These crimes are so heinous in nature that it shocks the conscience of the human kind. It shakes the foundation of human civilization itself. The perpetrators are regarded as the *hostis humani generis* i.e. enemy of the human kind under international law. That is why such crimes should not go unpunished.
- Peaceful co-existence is not possible between the violators and the victims. From the

viewpoints of restorative justice even after so many years such trial should be held.

- Holding of such trial also deserves significance for the sake of revival of the spirit of liberation war and the ideals for which the people fought in 1971. To get relief of ignominy (we have for not able to punish the committers) such trial is necessary.
- From a sense of deterrence, that is, to create an example for the future violators (holding of trials of) the suspected criminals should be brought to justice.
- In order to show respects to the departed souls of 1971, the trial should take place.

(War Crimes and Genocide 1971: Bringing the Perpetrators of Justice by Dr. Mizanur Rahman and S. M. Masum Billah, published in Bangladesh Genocide 1971 And The Quest Fr Justice).

Newsweek in its 28th June, 1971 issue published a news with the heading "The terrible Blood Bath of

Tikka Khan" in which descriptions of brutality were given with following words: " Other foreigners, too, were dubious about the atrocities at first, but the endless repetition of stories from different sources confined them. " I am certain that troops have thrown babies into the air and caught them on their bayonets" says Briton, John Hastings, a Methodist missionary who have lived in Bengal for twenty years " I am certain that troops have raped girls repeatedly, then killed them by pushing their bayonets up between their legs". In the said news item another fact, which goes deep into the heart, was narrated which was " Another woman, the bones in her upper leg shattered by bullets, cradles an instant in her arms . She had given birth prematurely in a paddy field after she was shot. Yet , holding her newborn child in one hand and pulling herself along with the other she finally reached the border". The most brutal armed anti-civilian state machinery in modern times, taking help of Razakars, Al-Badar, Al- shams bahinies committed such genocide.

Pictures of rape committed by brute Pakistani army and their auxiliary forces came out in the light in the interview of Dr. Jefree Davis taken by one Bena De Costa which was translated by Shilabrata

Borman and published in the book “ গণহত্যা” of Ain -O- Shalish Kendra. Relevant portions of the contents of the said interview are as follows:

ড. জেফ্রি ডেভিস

যুদ্ধবিধ্বস্ত বাংলাদেশের স্বৈচ্ছাসেবী একজন ডাক্তার

বীণা ডি কস্তা

আমি নারী মুক্তিযোদ্ধা, সমাজকর্মী, বীরঙ্গনা প্রমুখের সাক্ষাৎকার গ্রহণ ও কাহিনী সংগ্রহ করার এক পর্যায়ে নথিপত্রে ডঃ জেফ্রি ডেভিস নামে এক চিকিৎসকের উল্লেখ পাই, যিনি ১৯৭২ সালে যুদ্ধবিধ্বস্ত বাংলাদেশের কাজ করেছেন। নিম্নে তার সাক্ষাৎকারটি তুলে দেওয়া হলো। এই সাক্ষাৎকারের অংশবিশেষ সিডনিতে তার বাড়িতে নেয়া এবং বাকিটা কাছাকাছি একটি রেস্টোরাঁয় বসে। এই সাক্ষাৎকারে জাতি গঠনের কর্মকাণ্ডে সম্পৃক্ত নারী ও পুরুষের কাহিনীগুলো সংগ্রহনের প্রয়োজনীয়তা স্পষ্টভাবে ফুটে উঠেছে। আমাদের অনেকেই এখন সঙ্কীর্ণ রাজনীতির বেড়াজালে আবদ্ধ হয়ে আছেন। আর এর ফলে ইতিহাসবিস্মৃতিতে আক্রান্ত হচ্ছে আমাদের জাতীয় বয়ান।

পাঠকদের মনে রাখা প্রয়োজন, আমার প্রশ্নের উত্তর খুঁজতে গিয়ে ড. ডেভিস প্রায় ৩২ বছর আগেরকার ঘটনাবলি স্মরণ করার চেষ্টা করছিলেন। এ কারণে কয়েক স্তানে তার জবাব অস্পষ্ট মনে হতে পারে। সিডনি, এনসডব্লু, অস্ট্রেলিয়ার এক মেডিকেল গ্রাজুয়েট ড. জেফ্রি ডেভিস ১৯৭২ সালের মার্চ থেকে প্রায় ছয় মাস বাংলাদেশে কাজ করেছেন। তিনি ইন্টারন্যাশনাল প্ল্যানড প্যারেন্টহুড, ইউএনএফপিএ এবং ডব্লু এইচও এর পৃষপোষকতায় কাজ করেছেন। স্মৃতিচারণার শুরুতেই তিনি জানান, তার কাজের অত্যন্ত স্পর্শকাতর প্রকৃতির কারণে কোন সংগঠনই তাকে তাদের লোক হিসাবে দাবী করতে রাজি ছিল না।

ড. ডেভিস স্মৃতিচারণ করতে গিয়ে বলেন, পশ্চিম পাকিস্তানি সৈন্যরা তাদের ক্যাম্পে বাঙ্গালি মেয়েদের বন্দি করে রাখার সময় জন্মানো যেসব শিশু বেঁচে গেছে, তাদেরকে টিকিয়ে রাখার চেষ্টা করছিলাম আমরা। এছাড়া আমাদের ওপর নির্দেশ ছিল, যে সমস্ত নারীর ভ্রূণ জন্মগ্রহণের জন্য তৈরী হয় নাই তাদের গর্ভপাত ঘটানোর চেষ্টা করা যাতে তাদেরকে রোগাক্রান্ত ও পুষ্টিহীন শিশুর জন্ম দিতে না হয়। আর এ কাজে আমরা সফল হয়েছি। এটা ঠিক যে, নির্যাতিত মেয়ের সংখ্যা ছিল বিপুল। তবে আমরা সেখানে পৌঁছানোর আগেই অনেক মহিলাকে মেরে ফেলা হয়েছিল। অথবা অনেকেই তাদের পরিবারে ফেরত পাঠানো হয়েছিল। পরিস্থিতি ছিল আতঙ্কজনক। আমরা বুঝলাম, আমাদের বসে থাকলে চলবে না। কী করা যায় সেটা ভেবে বের করার চেষ্টা করছিলাম। সেসময় ইংল্যান্ড থেকেও আরেকজন এসেছিলেন। কিন্তু পরে আমি তার খোঁজ হারিয়ে ফেলি। পরিস্থিতিটা সত্যি বীভৎস ছিল।

প্রশ্ন : আপনি কি স্বেচ্ছাপ্রণোদিত হয়ে সেখানে গিয়েছিলেন?

জেফ্রিঃ হ্যাঁ, স্বেচ্ছাপ্রণোদিত হয়েই গেছি।

প্রশ্ন : এই কাজ করার ইচ্ছে আপনার কেন হয়েছিল?

জেফ্রিঃ এডভান্স প্রোগনেন্সি টার্মিনেট করার কৌশল জানা ছিল আমার। আমি মূলত ইংল্যান্ড থেকে ট্রেনিং নিয়েছি। যা হোক আমি সাধারণত ৩০ সপ্তাহের নিচের প্রোগনেন্সি টার্মিনেট করছিলাম।

প্রশ্ন : ঢাকায় কোথায় কাজ করেছেন আপনি?

জেফ্রিঃ আমি ধানমন্ডির একটি ক্লিনিকে কাজ করেছি। অন্যান্য শহরে হাসপাতালের যেসব ধ্বংসাবশেষ ছিল, সেগুলোতেও আমি কাজ করেছি। আমি মূলত যা করেছিলাম সংখ্যা এতো বিপুল ছিল -- সেসব শহরের লোকজনকে প্রশিক্ষণ দিতে শুরু করি। তারা কিছুটা রপ্ত করে ফেলতেই আমি পরের শহরের দিকে পা বাড়াই।

প্রশ্ন : রেকর্ডের স্বার্থে আপনি দয়া করে বলবেন কি, সেখানে আপনি ঠিক কী কাজ করছিলাম?

জেফ্রিঃ আমি যাওয়ার সামান্য আগে সেখানে একটি নারী পূর্ণবাসন সংগঠন তৈরী করা হয় । সেটির দায়িত্বে ছিলেন বিচারপতি কে,এম, সোবহান । তারা গর্ভবর্তী সকল মহিলাকে এক জায়গায় নিরাপদে রাখার চেষ্টা করছিলেন এবং যাদের ক্ষেত্রে সম্ভব তাদের গর্ভপাত ঘটানোর ব্যবস্থা করছিলেন । আর যারা সন্তানের জন্ম দিয়েছে তাদের সন্তানদের সংগ্রহ করে আমরা ইন্টারন্যাশনাল সোশ্যাল সার্ভিসের (আইএসএস) হাতে তুলে দিচ্ছিলাম ----- ।

প্রশ্ন : সেসময় আপনার সঙ্গে আর কারা কাজ করেছিল মনে করতে পারেন কি?

জেফ্রিঃ যুদ্ধোত্তর পুনর্বাসন কেন্দ্রের প্রধান ছিলেন বিচারপতি সোবহান । আর মূল সক্রিয় ব্যক্তিটি ছিলেন ভন সচুক--- তিনি ছিলেন সুইডিশ । তার নামের প্রথম অংশটি মনে করতে পারছি না । আমার মনে হয়, তার স্ত্রীর নাম ছিল মেরি । তারা অর্থ দিয়ে সাহায্য করেছিলেন । বাঙ্গালী কর্মকর্তাদের নাম আমি মনে করতে পারছি না ---- । তাছাড়া কেউ তো এই ইতিহাস জানতে কখনও আগ্রহ প্রকাশ করেনি--- ।

প্রশ্ন : এ কথা কেন মনে হয়েছে আপনার ?

জেফ্রিঃ এর কারণ এর সঙ্গে গর্ভপাত এবং সন্তান দত্তক নেয়ার বিষয় জড়িত ছিল । আরেকটা ব্যাপার হলো, পশ্চিম পাকিস্তান একটা কমনওয়েলথভুক্ত দেশ । আর এর কর্মকর্তাদের সকলেই ব্রিটেনে প্রশিক্ষণপ্রাপ্ত । এটা বৃটিশ সরকারের কাছে ছিল অত্যন্ত বিব্রতকর একটা ব্যাপার । পশ্চিম পাকিস্তানি কর্মকর্তারা বুঝতে পারছিল না এ নিয়ে এতো হেঁচো করা হচ্ছে কেন । আমি তাদের অনেকের সঙ্গে কথা বলেছি । তারা কুমিল্লার একটি কারাগারে বন্দি ছিল । খুব করুণ অবস্থায় ছিল তারা (হাসি--- যেটি তাদের প্রাপ্য ছিল) । আর তারা বলেছিল, এরা কী করতে চাচ্ছে ? আমাদের কী করা উচিত ছিল বলে এরা মনে করে? এটা তো যুদ্ধ রে ভাই ।

প্রশ্ন : তারা নারী ধর্ষণের ব্যাপারটা কীভাবে জয়েজ করার চেষ্টা করেছে?

জেফ্রিঃ ওরে বাপস ! তাদের ওপর টিক্কা খানের এক প্রকার আদেশ বা নির্দেশই ছিল যে, একজন সাচ্চা মুসলমান তার বাবা ছাড়া সবারই সঙ্গেই লড়াই করবে । কাজেই তাদের যা করতে হবে তা

হলো যতোটা পারা যায়। বেশিসংখ্যক বাঙ্গালী নারীকে গর্ভবতী করা। এটাই ছিল তাদের কাজের পেছনের তত্ত্ব।

প্রশ্ন : মেয়েদের গর্ভবতী করতে হবে কেন? এর কারণটা কি আপনাকে তারা বলেছে?

জেফ্রিঃ হ্যাঁ, বলেছে, (তারা বলেছে)। এর ফলে পূর্ব পাকিস্তানে এমন একটা গোটা প্রজন্ম সৃষ্টি হবে, যাদের শরীরে বইবে পশ্চিম পাকিস্তানিদের রক্ত তারা একথাটাই বলেছে।

প্রশ্ন : পাকিস্তানিদের অসংখ্য নথিপত্রে এখনও বলা হয়, ধর্ষণের ঘটনার সংখ্যা অত্যন্ত বাড়িয়ে বলা হচ্ছে আপনি কি তাদের এ দাবি সত্য মনে করেন?

জেফ্রিঃ না, না, --- তারা ধর্ষণ করেছে। সম্ভবত তারা প্রকৃতই যা করেছে, তার তুলনায় অনেকগুণ কমসংখ্য দাবি করা হয়। তারা যে পদ্ধতিতে শহর দখল করতো তার বিবরণ খুব কৌতুহলোদ্দীপক। তারা তাদের পদাতিক বাহিনীকে পেছনে রেখে গোলন্দাজ বাহিনীকে সামনে নিয়ে আসতো। তারপর হাসপাতাল, স্কুল-কলেজ গোলা ছুঁড়ে গুঁড়িয়ে দিতো। এর ফলে শহরে নেমে আসতো চরম বিশৃংখলা। আর তারপর পদাতিক বাহিনী শহরে ঢুকে পড়ে মেয়েদের বেছে বেছে আলাদা করতো। শিশুরা ছাড়া যৌনভাবে ম্যাচিওরড সকল মেয়েকে তারা একত্রে জড়ো করতো। আর শহরের বাকি লোকজনকে বন্দি করে ফেলতো পদাতিক বাহিনীর অন্যারা। আওয়ামী লীগের সঙ্গে যুক্ত সবাইকে গুলি করে মেরে ফেলা হতো। আর তারপর মেয়েদের পাহাড়া দিতে কম্পাউন্ডে নিয়ে এসে সৈন্যদের মাঝে বিলিয়ে দেয়া হতো। অত্যন্ত জঘন্য একটা ব্যাপার ছিল এটা। বিশ্বের কোথাও কখনও এমন ঘটনার নজির পাওয়া যায় না। তবুও এমনটাই ঘটেছিল।

প্রশ্ন : যুদ্ধের অভিজ্ঞতা নিয়ে ক্লিনিকের নারী-পুরুষ বা কোনো সমাজকর্মীদের ও সঙ্গে কোনো কথা হয়েছে আপনার? বিশেষত ধর্ষণ শিবিরের (রেপ ক্যাম্প) মেয়েদের অভিজ্ঞতার ব্যাপারে?

জেফ্রিঃ হ্যাঁ, আমরা সব সময় এসব অভিজ্ঞতার কথা শুনতাম। তারা যেসব ঘটনার কথা বলতো তার কোনো কোনোটা ছিল রীতিমতো রক্ত হিম করা। বিশালদেহী পাকিস্তানী সৈন্যদের দ্বারা বারবার ধর্ষিত হওয়ার কাহিনী শুনেছি আমরা। আপনি বিশ্বাস করতে পারবেন না, কেউ এ ধরনের

কাজ করতে পারে। ধনী এবং সুন্দরী মেয়েদেরকে অফিসারদের জন্য রেখে দেয়া হতো আর বাকিদের অন্যান্য র‍্যাঙ্কের সৈন্যদের মধ্যে বন্টন করে দেয়া হতো। আর মেয়েদের দারুণ কষ্টে ফেলে দেয়া হতো। তাদেরকে পর্যাপ্ত খেতে দেয়া হতো না। অসুস্থ হয়ে পড়লে তাদের চিকিৎসা দেয়া হতো না। অনেকেই ক্যাম্পের মধ্যে মারা গেছে। এসব ঘটনা সহজে কেউ বিশ্বাস করছিল না। এগুলো যে সত্যি ঘটতে পারে, এটা বিশ্বাস করতে কেউ রাজি ছিল না। কিন্তু এ সংক্রান্ত তথ্যগুলোই প্রমাণ করছে যে, ঘটনাগুলো সত্যি।

প্রশ্ন : হ্যাঁ, আপনার কথা আমি বুঝতে পারছি। আপনি জানেন গত চার বছর ধরে আমি নিজেও এসব মেয়েকে খুঁজে বের করার চেষ্টা করছি। তারা সংখ্যায় বিপুল। তাদের অনেককেই পাওয়া যাওয়ার কথা কিন্তু আমি নিজে খুবই কমসংখ্যক মেয়েকে খুঁজে পেয়েছি।

জেফ্রিঃ হ্যাঁ, অনেকেই অস্বীকার করেছে। তারা ব্যাপারটা একেবারে চেপে গেছে। এমনটা হয়।

প্রশ্ন : যুদ্ধের পরপরই পরিস্থিতি কি কিছুটা ভিন্ন ছিল? কেউ কি তার অভিজ্ঞতা জানিয়েছে?

জেফ্রিঃ কেউ এ বিষয়ে কথা বলতে রাজি ছিল না। আপনি প্রশ্নের পর প্রশ্ন করে যাবেন, কিন্তু কোনো উত্তর পাবেন না। মাঝে মাঝে এমনও হয়েছে, তারা স্মৃতি হারিয়ে ফেলেছে। পুরুষরাও কেউ এ বিষয়ে একদম কথা বলতে রাজি ছিল না। কেননা তাদের মতে, মেয়েরা কলঙ্কিত হয়ে গেছে। আর বাংলাদেশে মেয়েদের মর্যাদা অনেক কম, এটাও ঠিক। এরকম অবস্থায় তারা সম্মত হারালে তাদের কোনো মর্যদাই আর অবশিষ্ট থাকে না। তাদের তখন বাঁচা মরার কোনো তফাত থাকে না। আর পুরুষরা তাদের মেরে ফেলেছে। আমি বিশ্বাস করতে পারছিলাম না। পশ্চিমা বিশ্বে এমনটা কল্পনাই করা যায় না।

প্রশ্ন : আপনি নিশ্চয় বাংলা বলতে পারতেন না। আপনার পক্ষে মানুষের সঙ্গে কথা বলতে কি বেগ পেতে হতো?

জেফ্রিঃ না। আমার একজন দোভাষী ছিলেন। একজন পুরুষ দোভাষী। তারা সবাই খুব দ্রুত সংগঠিত হয়ে গিয়েছিল। তারা আমাকে একটা ল্যান্ডরোভার যোগাড় করে দিল। একজন ড্রাইভার

আর একজন ফিল্ড অফিসার পেয়েছিলাম আমি। ৬২ ওই ফিল্ড অফিসার আমার দোভাষীর কাজ করে দিতেন। ড্রাইভারের নাম ছিল মমতাজ। তবে ফিল্ড অফিসারের নাম করতে পারছি না। তিনি একজন সরকারী চাকুরে ছিলেন। সরকারি কর্মকর্তাদের অধিকাংশই ইংরেজীতে কথা বলতে পারতেন। তিউনিশিয়ায় যে কষ্ট করতে হয়েছে, এখানে সেটা হয়নি (ড. ডেভিস তিউনিশিয়ায় জনসংখ্যা কার্যক্রমের কাজ করেছেন)।

প্রশ্ন : মেয়েরা কেন এ ব্যাপারে নীরব ছিল, আপনার কী মনে হয়?

জেফ্রিঃ আতঙ্কে। তারা সবাই দুঃস্বপ্ন দেখতো। সেই আতঙ্ক কখনোই কাটিয়ে ওঠা যায় না। অধিকাংশেরই ভীষন সুায়বিক উদ্বেগ দেখা দেয়। আর তাছাড়া আমরা ছিলাম বিদেশি। তারা কোনো বিদেশিকে বিশ্বাস করতে পারছিল না। তাদেরকে নিয়ে আমরা কী করতে যাচ্ছি তারা জানতো না---

প্রশ্ন : ধর্ষণ শিবিরগুলো যেখানে ছিল, সেরকম কোনো জায়গায় কি আপনি গেছেন?

জেফ্রিঃ ধর্ষণ শিবিরগুলো ততোদিনে তুলে দেয়া হয়েছিল এবং পনবার্সন সংগঠন সেখান থেকে মেয়েদেরকে তাদের নিজ নিজ গ্রাম ও শহরে পাঠিয়ে দেয়ার চেষ্টা করছিল। তবে অনেক ক্ষেত্রে যেটা ঘটেছে যে, স্ত্রীকে স্বামীর কাছে ফেরত পাঠানোর পর স্বামী স্ত্রীকে মেরে ফেলে। কেননা স্ত্রী তার সম্ভ্রম হারিয়েছে। অনেক ক্ষেত্রে কী ঘটেছে জানারও চেষ্টা করতো না তারা। দেশের প্রত্যন্ত অঞ্চলে, যমুনা নদীতে লাশ ভাসতে দেখা গেছে। এ ঘটনাটি ইউরোপে উদ্বেগ সৃষ্টি করেছিল। কিন্তু এগুলো অব্যাহত ছিল।

প্রশ্ন : যে সব মেয়েরা কথা কি আপনার মনে আছে? কতোজনের গর্ভপাত ঘটয়াছেন আপনি?

জেফ্রিঃ সঠিক পরিসংখ্যান স্মরণ করা কঠিন। তবে দিনে প্রায় একশ জন করে।

প্রশ্ন : ঢাকায়, না দেশের অন্যান্য অংশে?

জেফ্রিঃ সংখ্যা উল্লেখ করা কঠিন। ঢাকায় গড়ে দিনে একশ জন করে, আর দেশের অন্যত্র সংখ্যাটা ওঠানামা করেছে। কেউ কেউ কলকাতায় গিয়েছিল----

প্রশ্ন : শতকরা হারে বলতে পারবেন? যেমন ধারণা শ্রেণীভিত্তিক, ধর্মভিত্তিক দিক থেকে কতজন মেয়ের দেখা পেয়েছেন আপনি?

জেফ্রিঃ সব শ্রেণীর মেয়েই ছিল। তাদের ধর্ম নিয়ে আমাদের মাথাব্যথা ছিল না---আমরা শুধু তাদের বিপদ থেকে উদ্ধার করার চেষ্টা করেছি। তবে মোটের ওপর বলা যায়, যারা ধনী তারা যুদ্ধের পরপরই কলাকাতা চলে গিয়ে গর্ভপাত ঘটাতে পেরেছিল।

প্রশ্ন : গর্ভপাত ঘটাতে রাজি কিনা মেয়েদের কাছে সেটা কি জানতে চাওয়া হতো? তাদের ইচ্ছা-অনিচ্ছার ব্যাপার ছিল কি?

জেফ্রিঃ হ্যাঁ, অবশ্যই। আমার যতোজন মেয়ে পেয়েছিলাম তাদের সবাই গর্ভপাত ঘটাতে চেয়েছিল। এতে রাজি নয়। এমন কাউকে আমরা পাইনি। অন্যদিকে যেসব মেয়ে সন্তানের জন্ম দিয়েছিল, তারা তাদের সন্তানকে পূর্ণর্বাসন সংগঠনের হাতে তুলে দিয়েছিল। আর এভাবে এসব শিশু আইএসএসের কাছে এবং অন্যান্য দেশে পৌঁছেছে। তবে তারা সংখ্যায় কতো আমার কোনো ধারণা নেই।

প্রশ্ন : এ ব্যাপারে বিশদ প্রশ্ন করায় আমি আপনার কাছে ক্ষমা চেয়ে নিচ্ছি। তবে পূর্ণর্বাসন কর্মকাণ্ডে তাদের মতামত বা ইচ্ছা-অনিচ্ছার সুযোগ রাখা হয়েছিল কিনা এ ব্যাপারে আমার সত্যিকার কৌতুহল রয়েছে। গর্ভপাত ঘটানোর সময় কোনো মহিলা কাঁদছিল বা মানসিকভাবে ভেঙ্গে পড়েছিল এমন কোনো ঘটনা কি মনে করতে পারেন?

জেফ্রিঃ না তাদের কেউই কাঁদেনি। তারা খুবই শক্তমনের পরিচয় দিয়েছিল। তারা একেবারেই কান্নাকাটি করেনি। তারা একেবারে শান্ত থেকেছে। ও, ঈশ্বরকে ধন্যবাদ। এর ফলে আমাদের পক্ষে কাজটা সহজ হয়েছিল।

প্রশ্ন : আপনি বলেছেন, যেসব মহিলা গর্ভপাত ঘটাতে রাজি ছিলেন, আপনি শুধু তাদেরই চিকিৎসা দিয়েছেন। আমি আমার সে প্রসঙ্গে ফিরে যেতে চাই। মহিলারা তাদের সম্মতি কাকে জানিয়েছিল? সংশ্লিষ্ট ডাক্তারদের, নার্সদের, সমাজ-কর্মীদের?

জেফ্রিঃ ও হ্যাঁ।

প্রশ্ন : তাদের কি কোনো কাগজে স্বাক্ষর করতে হয়েছে?

জেফ্রি : আমার মনে হয় তাদেরকে সম্মতিসূচক একটা ডকুমেন্ট স্বাক্ষর করতে হয়েছিল। তবে আমি নিশ্চিত নই। সরকার পরোক্ষভাবে ব্যাপারটা আয়োজন করেছিল। এটার আয়োজন মূলত করেছিল পূর্ণবাসন সংগঠন এবং আর যেসব মহিলা তাদের সাহায্য করেছিল তারা। তবে এটা নিশ্চিত যে, যারা গর্ভপাত ঘটাতে রাজি ছিল না, তারা কেউ ক্লিনিকের কাছে ঘেঁষেনি। কাজেই এটা কোনো ইস্যু ছিল না।

প্রশ্ন : আপনি কি শেষ পর্যন্ত গর্ভপাত ঘটিয়েছেন? সেটা তো গর্ভধারণের একটা অগ্রসর পর্যায় হওয়ার কথা, তাই না?

জেফ্রি : হ্যাঁ, সেখানে আমার ছয় মাসের অবস্থানকালে পুরো সময়টাই আমি গর্ভপাত ঘটিয়েছি। মহিলারা এমন তীব্র অপুষ্টিতে ভুগছিল যে, ৪০ সপ্তাহের ভ্রূণ প্রায় ১৮ সপ্তাহের একটি ভ্রূণের সমান হতো।

প্রশ্ন : নারীদের কোনোরকম পরামর্শ দেয়া হতো কিনা মনে করতে পারেন?

জেফ্রি : পরামর্শ? পূর্ণবাসন সংগঠন তা দিতো। সেখানে নারী সমাজকর্মীরা তাদের সঙ্গে কথা বলতেন। আমার মনে হয় না তাতে তাদের খুব একটা লাভ হতো। কেননা তারা সবাই ছিল অপুষ্টিতে ভোগা। যৌনরোগ ও অপুষ্টিজনিত রোগবালাইয়ে আক্রান্ত ছিল তারা। খুব ভয়ঙ্কর পরিস্থিতি ছিল সেটা। দেশে তখন এসব সমস্যা মোকাবিলার মতো সম্পদ, ঔষধপত্র বা সুযোগ সুবিধা একেবারেই ছিল না। সীমিত সম্পদ যাছিল তাও যুদ্ধাহত সৈন্যদের জন্য রাখা ছিল। মেয়েদের জন্য কিছুই অবশিষ্ট ছিল না। আমাদের নিজেদের ষ্টাফ নিয়ে আসতে হয়েছিল।

প্রশ্ন : আপনারা সরবরাহ কোথা থেকে পেতেন? সেগুলো কি যথেষ্ট ছিল?

জেফ্রি : ইংল্যান্ড থেকে। আমাকে আমার নিজের প্রয়োজনীয় জিনিসপত্র নিয়ে আসতে বলা হয়েছিল। এছাড়া আমি দুই সেট যন্ত্রপাতি ও এন্টিবায়োটিক সঙ্গে নিয়েছিলাম।

প্রশ্ন : ছয়মাস ধরে গর্ভপাত ঘটানোর কাজে আপনি মাত্র দুই সেট যন্ত্রপাতি ব্যবহার করেছিলেন?

জেফ্রি : হ্যাঁ। স্থানীয় হাসপাতালের যন্ত্রপাতিগুলো সব ধবংস করে ফেলা হয়েছিল। ঔষধপত্র যা অবশিষ্ট ছিল, তার সবই ছিল যুদ্ধাহতদের জন্য।

প্রশ্ন : সেই যন্ত্রপাতিগুলো কি শারীরিকভাবে নিরাপদ ছিল?

জেফ্রিঃ হ্যাঁ । বিশেষজ্ঞ অল্প বয়সীদের ক্ষেত্রে সেসব রোগবাহী শরীরে নিয়ে সন্তান জন্ম দেয়ার চেয়ে এটাই বরং নিরাপদ ছিল ।

প্রশ্ন : আপনি কি গর্ভপাত ও দত্তক গ্রহণ উভয় কর্মকাণ্ডের সঙ্গেই যুক্ত ছিলেন?

জেফ্রিঃ হ্যাঁ । তবে দত্তক কর্মসূচীর ক্ষেত্রে শুধু শিশুদের আইএসএসের হাতে তুলে দেয়া আমার কাজ ছিল । গর্ভপাত ঘটানো ও জন্ম নেওয়া শিশুর সংখ্যা ছিল বিপুল । যুদ্ধের সময় মেয়েদের যেসব সামরিক কম্পাউন্ডে রাখা হয়েছিল, সেগুলোর আকার নিশ্চয়ই বিশাল ছিল । তবে আমি সেখানে যাওয়ার আগেই সেগুলো বন্ধ করে দেয়া হয়েছিল ।

প্রশ্ন : ঢাকা শহরের বাইরে যেসব জায়গায় আপনি গেছেন সেগুলোর অবস্থা কেমন ছিল? সেখানে কী ধরনের সুযোগ- সুবিধা আপনারা পেয়েছেন । ?

জেফ্রিঃ হাসপাতাল আর পুনর্বাসন সংগঠন --- সেটার নাম কী ছিল, আমি মনে করতে পারছি না । সম্ভবত বাংলাদেশ জাতীয় নারী পুনর্বাসন সংগঠন বা এ জাতীয় কিছু । বেশির ভাগ বড় কেন্দ্রগুলোর এরাই কাজ করছিল । আমার যাওয়ার আগে সেখানে খুব অল্পসংখ্যাক গর্ভপাত করা হয়েছিল । কেননা কেউ সেটা করতে চাচ্ছিল না । হাসপাতালের মেডিক্যাল স্টাফদের বেশির ভাগ মনে করছিল এটা বে-আইনী কাজ যা হোক, আমার কাজ অনুমোদন করে আমি স্বরাষ্ট্র সচিব রব চৌধুরীর কাছ থেকে একটি চিঠি পেয়েছিলাম । সেখানে বলা হয়েছিল , আমি যা করতে চাচ্ছি, তা আইনসিদ্ধ এবং তারা সবরকম সাহায্য দিতে রাজি আছেন । চিঠিটা আমি এখন আর খুঁজে বের করতে পারবো না । এটা সম্ভবত এখানেই কোথাও আছে--- বাংলাদেশ সংক্রান্ত প্রচুর কাগজপত্র জমিয়ে রেখেছি আমি---- এগুলোকে আমার গুরুত্বপূর্ণ মনে হয়েছে, কেননা আমার মনে হয়েছে, বাংলাদেশে যা দেখেছি তেমনটা পৃথিবীর আর কোথাও ঘটতে দেখবো না আমি । কাজেই আমি এসব কাগজপত্র রেখে দিয়েছি । সেসময় এগুলো খুবই ভয়ঙ্কর মনে হচ্ছিল ।

প্রশ্ন : মেয়েদের সবাই কি গর্ভপাত করতে বা সন্তানকে দত্তক দিতে রাজি হয়েছে?

কেউ কি সন্তানকে রেখে দিতে চায়নি?

জেফ্রিঃ হ্যাঁ --- দুয়েকজন চেয়েছে---

প্রশ্ন : আপনি কি জানেন তাদের ভাগ্যে কী ঘটেছিল ?

জেফ্রিঃ আমার কোন ধারণা নেই । আইএসএস সেখানে যতো শিশু পারা যায় সংগ্রহ করেছে ।

কেননা আমেরিকাও পশ্চিম ইউরোপে তখন দত্তক নেয়ার মতো শিশুর অভাব দেখা দিয়েছিল ।

আর তারা যতোটা পারা যায় বেশিসংখ্যক শিশু সংগ্রহ করার চেষ্টা করছিল ।

প্রশ্ন : ইন্টারন্যাশনাল সোশ্যাল সার্ভিসেস ?

জেফ্রিঃ হ্যাঁ । সংস্থাটি ওয়াশিংটন ডিসি ভিত্তিক । দত্তক সংক্রান্ত প্রথম সারির সংস্থা ।

প্রশ্ন : মায়েদেরে কী হতো ?

জেফ্রিঃ গর্ভপাত বা সন্তান জন্ম দেওয়ার পর তারা কিছুদিন সেখানে থাকতো আর তারপর ত্রান

পুনর্বাসন কেন্দ্রে গিয়ে আশ্রয় নিতো । তারা যতোদিন খুশি সেখানে থাকতে পারতো । তারপর

তারা নানারকম কেন্দ্রে গিয়ে আশ্রয় নিতো । যতোদিন খুশি সেখানে থাকতে পারতো । তারপর তারা

নানারকম প্রশিক্ষণ কর্মসূচিতে যোগ দিতো । আমি তাদের দুয়েকজন দেখেছি । বানিজ্যিক

ভিত্তিক পোশাক তৈরী করছিল তারা । ঢাকা, দিনাজপুর, রংপুর নোয়াখালীতে এমনটা দেখেছি ।

সাক্ষাৎকার দেওয়ার জন্য ড. ডেভিসকে আমার আন্তরিক ধন্যবাদ । তাঁর কাছ থেকে বিদায় নেয়ার আগে আমরা আরেকবার তাঁর বাংলাদেশ সফরের ব্যাপারে বিস্তারিত আলোচনা করেছি । আমাদের আলোচনায় স্বাভাবিকভাবেই ভবিষ্যতে একটি যুদ্ধাপরাধ টাইবুনালাল গঠনের সম্ভাব্যতার প্রসঙ্গে এসে পড়ে । জেফ্রি আমার হাত শক্ত করে ধরে সেটি তাঁর বুকে রাখেন । তাঁর চোখে অশ্রু । বাংলাদেশ ন্যায় বিচার পাওয়ার চেষ্টা করলে তিনি তার সাথে সবকিছু করবেন বলে জানান । প্রাথমিক পদদেক্ষপ হিসেবে আমি সত্যি আশা করি, এই সাক্ষাৎকার আগ্রহী গ্রুপকে তাঁর কাহিনী আনুষ্ঠানিকভাবে লিপিবদ্ধ করতে উৎসাহিত করবে ।”

Appellant Mir Quasem Ali, produced exhibit-“B”
প্রামাণ্য দলিল- মুক্তিযুদ্ধে চট্টগ্রাম written by Gazi Salauddin and

relied on this book. Since he himself relied on this book, he could not question the reliability and authenticity of the contents of the book. From the book it appears that the father of the author was killed at Pahartoli slaughter centre in Chittagong. In the preface of the said book the author stated - “বাংলাদেশের মুক্তিযুদ্ধের নয় মাসে ত্রিশ লাভ বাঙ্গালী শহীদ হওয়া, দুইলাক্ষ মা- বোনকে ধর্ষণ করা এবং ----- গুলি ও জবাই করে পাখির মত হত্যা করেছে অপামর জন সাধারণকে । তাদের এ হত্যাকাণ্ড থেকে রেহাই পায়নি ৯০ বছরের বৃদ্ধ থেকে মায়ের কোলের দুধের শিশু পর্যন্ত । গ্রামের পর গ্রাম অগ্নিদগ্ধ করেছে । এ হত্যাকাণ্ডে তাদেরকে সহায়তা করেছে এ দেশীয় দালাল রাজাকার আল-বদর, আল- শামস, জামায়েত ইসলামী মুসলিম লীগ, নেজামী ইসলামী সমর্থক বাঙ্গালী নরপশু ও বিহারীরা । He added- মুক্তিযুদ্ধ চলাকালীন পাক বাহিনী ও তাদের দোশর রাজাকার, আল-বদর, আল-শামস, জামায়াতে ইসলামী ও বিহারীরা যে নৃশংস ধ্বংসযজ্ঞ চালিয়েছিল তা আজ বাঙ্গালির স্মৃতি থেকে হারিয়ে যেতে বসেছে যার অন্যতম কারণ একদিকে স্বাধীনতা বিরোধী চক্রের সুকৌশল অভিসন্ধি, অন্যদিকে সংরক্ষণের অভাব । ”

The publisher of the book in his comment has said- “এতে আছে একাত্তরে পাকিস্তানী হানাদার বাহিনী ও তাদের সহযোগীদের নৃশংস বর্বরতা এবং গেরিলা যুদ্ধের দালিলিক ধারাপাত । গ্রন্থের সকলতথ্য উপাত্ত বাঙ্গালী জাতিসত্তার আনন্দ বেদনার অশ্রুপাত ।” “এই বইতে চট্টগ্রাম জেলায় মুক্তিযুদ্ধের নয় মাসে চট্টগ্রামে কী কী ঘটেছিল , কোথায় কোথায় পাক হানাদার বাহিনী ও তাদের দোসররা মুক্তিযোদ্ধা ও নিরীহ বাঙ্গালীকে হত্যা করেছে তা সন্নিবেশিত হয়েছে ।”

It appears from this defence document that the author holding research and inquiry over the subject matter for few years found the following places as slaughter centres and concentration camp of Pakistani army, Badar Bahini and other auxiliary forces who committed genocide in Chittagong :

“1. Kalurghat Betar Kendra, 2, Shershab Housing Estate, Parbat Rifle Club, behind Dr. Mazhar High School, Chandmari. 3. Infront of Medical College and behind of Appello Pharmacy, 4. Nashirabad Housing Society, Road No.2, 5. Between Enam Khar Pahar field and Forest Research Institute, 6. Infront of the Central Store of Bangladesh Betar Central Store, 7. Nathpara and Abdurpara , South

Kawkhali, 8. Sholoshahar Rail Station , 9. Hill of Probortok Shangha, 10. Panchlaish Police Station 11. In front of Pahartali Eye Hospital , 12. West Rampura (Sabujbagh), 13. Chasma Pahar, Sholoshahar, 14. West Rampura (Sabujbagh), 15. South Kattoli Jelepara, 16. Purba Pahartoli Bhaddya Bhumi (more than 10,000 persons were killed here) 17. Besides of Custom Academy and Chittagong Divisional Stadium , 18. South Kattoli (east side of Rail Line) Sddique Counsiler's house, 19. East side of City Gate, Dhaka Trunk Road, 20. No.11, South Kattoli, house of Mohammad Chowdhury, 21. Godown of Leather, Chaktai Khal, 22. Chaktai Khalpar, 23. Middle place of New Market, Ice Factory Road, 24. South Corner of Gulbabahar Hamdu Miah Road, 25. Mohamaya Dalim Bhaban, in front of T & T Bhaban, 26. Goods Hill, Chittagong, 27. Chittagong Circuit House, 28. Army Camp besides Chittagong Stadium 29. Hotel Dewan, Dewan Hat More, 30. Chandrapura Rajakar Camp, 31. Hotel Tower, Jamalkhan Torture Cell, 32. C.R.B. Torture Cell, 33. Banglo in front of Hill, Sarson Road, 34. Chittagong General Post Office, 35. Lalkhan Pahar, 36. Al Badar Bahini Camp, Panchlaish, 37. Railway Banglo of Batali Hill, 38. Ispahani Moar (at present Highway Plaza Bhabon), 39. Tulshi Dham, 40. Lalkhan Bazar, 41. South Bakolia Mozaher Ulum Madrasha, 42. Sowat ship massacre in Karnaphuli river, 43. Eid Ga Radio Store Army Camp, 44. Dampara Police Line, 45. Chittagong Police Line, Old Gate Grave yard, 46. Char Chaktai Khalpar, 47. Jhautala Bihari Colony, 48. Labonghata, Middle place of Sadar Ghat and Majhi Ghat, 49. Army Camp of Jamburi Math, 50. Ambagan, Railway Workshop, 51. Pahartoli Hazi Camp Torture

Cell, 52. Dewan Hat Civil Godown, 53. Char Chaktai Khalpar, 54. Sulkabahar, Hamdu Miah Road, 55. Doublemooring Navy Camp Club, 56.1 No.1, Jetty Gate Booking Office, 57. Bandor Army Camp, beside of Bandar Police Station, 58. Pakistan Bazar Camp, 59. Chittagong Port, Jetty No.1 to no.15, 60. Sadarghat Rajakar Camp (Torture Cell and Slaughter House), 61. Pahartali Railway School, 62. Railway Safety Tank, 63. Tigerpass Neval Office, 64. Behind of Hazrat Garib Ullah Shah Mazar, 65. House of Saadi, in front of Ambagar School, 66. Hallishahar Bihari Colony, 67. E.P.R. Camp, 68. Semen's Hostel, 69. Airport Army Camp, 70. Zelepara Baddya Bhumi, 71. Navy Head Quarter, Patenga, 72. Chittagong Dock Yard camp, 73. South Chittagong Airport, 74. Inside of Padma Oil Company Ltd., 75. Khoiyarchara Purba Pool Moghra, Dr. Ahmed Shobhan Sarak Station Road, Trunk Road, under the bridge of Barotakia Bazar, 76. Zorargonj Baddyabhumi, south east point of Chhuti Kha Digi and South east point of Babu Kha Dighi, 77. Besides of Highlu Pool, south side of Highlu Court, Dumghat Rail Station, 78. Adjacent of Eshakhali Lushakhali Jhulanta Bridge, 79. Middle Mirsharai Sadar Trunk Road and Mirsharai Station Road Uttor Bhalbaria, 80. Jagoth Mallapara, Raozan, 81. 9 No Pahartoli Union , Ward No.2, Unasattarpara, 81. No.9, Pahartoli Union, Ward No.7, Unasattwarpara, 82. Sitakhunda Urban area, Railway Station adjacent to Railway Colony, 83. Sitakunda Urban area Railway Station to Chandranath Mandar Road, Sitamondir, 84. In front of Mahantabari, Sitakunda Urban area Railway Station to Chandranath Mandari Road, 85. Purba Mondakini, 86. Dewan Nagar, 87. South

Ishamoti, 88. South of Rangunia College, 89. Pemra Rangunia, 90. Datmara, 91. Narayanhat, Datmara boarder, 92. Hashnabat (Chowhdury Mazhirbari) Dathmara, Ultavita, 93. Binajuri (Nanupur), 94. Taleipara Khal, West of Maizbhander, 95. Karnafuli Tea Garden, Gopalghata, 96. South Kanchannagar, Gomosta Pukurpar, 97. Gopal Ghata, Shahnagar/ Lelang, 98. Raktachhari (Kanchannagar), 99. Choumohoni , Kanchannagar, 100. In front of Fatikchhari Police Station, 101. Khankaiya Khal , Dharmapur, 102. Nazir Hat, 103. Jamijuri Baddyabhumi, 104. Bular Bhalook Palpara, 105. Muzaffarabad, 106. Potia, 107. Chandanaish, 108. Dohazari Shankha River Bridge, 109. Kanchana Baddyabhumi, 110. Churamoni Baddyabhumi, Awchira Union, 111. Keranihat Baddyabhumi, 112. Raikhali Raisarmar Ghat, Paschingomti, Boalkhali Upazila Sadar, 113. Kaloorghat Bridge of Karnafuli River, 114. West Shakpura, 115. Kadhurkhil Girls Primary School, 116. Banskhali Degree College adjacent, 117. Maddyapara Shirod Chandra Dash Pukurpar adjacent to Banigram, 118. Kilpara Ward No.1, 119. South Bandar Baddyabhumi, 120. Poroykora High School Pukurpar, Bakhuapara, Purba Kannara, 121. Bandar Baddyabhumi, 122. Surma Pukurpar, 123. East Barkhayen Pukurpar, 124. West of Joykali Bazar, 125. Foyes Lake slaughter centre (more than 10,000 civilians were killed here)" (emphasis given).

Many news item, regarding the genocide committed in Chittagong by brute Pak army and its auxiliary forces namely Al-Badar, Al-Shams, Razakars etc., were published in different news papers in subsequent

after 16.12.1971. Two of those news items published were as follows:

দৈনিক বাংলা

০৩-০২-১৯৭২

আর এক বধ্যভূমি চট্টগ্রামের দামপাড়া

জল্লাদ বাহিনী এখানে কয়েক হাজার লোক হত্যা করেছে।

ঃ নিজস্ব প্রতিনিধিঃ

“ চট্টগ্রাম, ৩১ শে জানুয়ারী। এই শহরের দামপাড়ায় গরীবুল্লাহ শাহর মাজারের পাশে একটি লোমহর্ষক বধ্যভূমি আবিষ্কৃত হয়েছে। গত ৩০শে মার্চ থেকে ডিসেম্বর প্রথম সপ্তাহ পর্যন্ত এই বধ্যভূমিতে বর্বর পাক বাহিনী প্রায় কয়েক হাজার লোককে হত্যা করেছে বলে অনুমান করা হচ্ছে। বধ্যভূমির স্থানটি আমাকে দেখিয়েছিল গরীবুল্লাহ শাহর মাজারের সংলগ্ন দোকানদার নাসির আহমদ।

গত ২৫ শে মার্চ থেকে ১৬ই ডিসেম্বর বাংলাদেশ স্বাধীন না হওয়া পর্যন্ত এই হত্যাকাণ্ডের ষোল আনাই তিনি স্বচক্ষে দেখেছেন। এই দীর্ঘ সময় তিনি তাঁর দোকানেই ছিলেন। নাসির আহমদ আমাকে বলেছেন, গত ৩০শে মার্চ থেকে ডিসেম্বর প্রথম সপ্তাহ পর্যন্ত অতিরিক্ত বৃষ্টির দিন ছাড়া প্রত্যহ সন্ধ্যায় কড়া মিলিটারী পাহারায় পাঁচ থেকে ছয়টোক বোঝাই লোক নিয়ে আসা হত।

এই হতভাগ্যদের চোখ কাপড় দিয়ে বাঁধা থাকতো। তাদের বধ্যভূমিতে নামিয়ে দিয়ে ট্রাকগুলি চলে যেতো। এই হতভাগ্যদের বধ্যভূমিতে লাইন দিয়ে দাঁড় করিয়ে গুলি করা হত্যা করা হতো। তারপর অন্য একদল মিলিটারী ট্রাক নিয়ে বধ্যভূমিতে এসে লাশগুলি ট্রাক বোঝাই করে অনত্র সরিয়ে নিয়ে যেত। নাসির আহমদ আমাকে আরো বলেছেন যে, নিয়মিত এই হত্যাযজ্ঞের শুরুতে লাশ পুঁতবার জন্য বধ্যভূমির পাশে একটি গভীর গর্ত খনন করা হয়।

মাত্র কয়েক দিনে লাশে এই গভীর গর্ত ভর্তি হয়ে গেলে সদ্যমরা লাশগুলিকে ট্রাকে চড়িয়ে অন্যত্র সরিয়ে ফেলার ব্যবস্থা করা হয়। আমার অনুরোধে নাসির আহমদ এই গর্তের মুখ থেকে

সামান্য মাটি সরিয়ে পাঁচটি নরকংকাল উঠান। তাঁর মতে সেই গর্তে কমপক্ষে পাঁচ হাজার নরকংকাল রয়েছে। এই লোমহর্ষক বধ্যভূমিতে চারিদিকে পাহাড় দিয়ে ঘেরা। বধ্যভূমির চারিদিকে বিক্ষিপ্তভাবে ছড়িয়ে রয়েছে হতভাগ্যদের জামা-কাপড় জুতা প্রভৃতি। মাটিতে রয়েছে চাপ চাপ বিস্তর রক্তের দাগ যা প্রমাণ করেছে যে গত ডিসেম্বরের প্রথম দিকে এখানে কয়েকশ লোককে হত্যা করা হয়েছে।

বধ্যভূমির পাশে হাঁটার সময়ে মাটিতে আমি গোটা দশ স্যুট ও দেখতে পেয়েছি। এতে প্রমাণিত হচ্ছে যে, রেলওয়ে পোর্ট ট্রাস্ট এবং অন্যান্য অফিসের যে সব হতভাগ্য অফিসার নিঁখোজ হয়েছেন, তাঁদের অনেককেই এই বধ্যভূমিতে হত্যা করা হয়েছে। নাসির আহমদের মতে অত্যাচারের কালো দিনগুলোতে বর্বর পাকবাহিনী এই বধ্যভূমিতে কয়েক হাজার লোককে হত্যা করেছে। তিনি বলেছেন যে, নিয়মিত এই হত্যাযজ্ঞের শুরুতে চোখ বাঁধা অবস্থায় বধ্যভূমিতে আনা একদল লোককে গুলি করে হত্যা করলে গুলির আওয়াজে হতভাগ্যদের লাইন করে দাঁড়ানো অন্যদল মৃত্যুভয়ে চিৎকার করতো বলে পরে রাইফেলে সাইলেন্সার লাগিয়ে গুলি করে মারার পদ্ধতি প্রবর্তিত হয়।

নিয়মিত এই লোমহর্ষক হত্যাকাণ্ডের আরও দুইজন সাক্ষী পাওয়া গেছে।”

চট্টগ্রামের ২০টি বধ্যভূমিতে বাঙ্গালী নিধনযজ্ঞ চলেছে

ঃ পূর্বদেশ প্রতিনিধিঃ

চট্টগ্রাম, ১২ই জানুয়ারী। -চট্টগ্রাম শহর ও শহরতলী এলাকা সমেত জেলার আরো ৯টি থানাতে হানাদার খান সেনারা সর্বমোট ২০টি বধ্যভূমিতে বাঙ্গালী নিধনযজ্ঞ অনুষ্ঠান চালিয়েছে। শহর ও শহরতলী এলাকার ১০টি বধ্যভূমির মধ্যে আটটিতে গড়ে পাঁচ হাজার করে বাঙ্গালীকে হত্যা করা হয়েছে বলে অনুমতি হচ্ছে।

এছাড়া পোর্ট এলাকা এবং নেভী ব্যারাক এলাকাতে সুদীর্ঘ ৯ মাসব্যাপী মানুষকে হত্যা করে কি হারে কর্ণফুলি নদীতে ভাসিয়ে দেয়া হয়েছে, তার কোন হদিসও বের করা সম্ভব নয়।

চট্টগ্রাম শহর ও শহরতলী এলাকার ১০টি এবং গ্রাম অঞ্চলের গোটা পাঁচেক বধ্যভূমি ইতিমধ্যে আমি ঘুরে দেখেছি।

এসব বধ্যভূমি বাঙ্গালী হত্যার সঠিক সংখ্যা হয়তো পাওয়া যাবে না, কিন্তু এখনো সরকার যদি ব্যাপক অনুসন্ধান ও তথ্য সংগ্রহের জন্য এগিয়ে আসেন তবে হত্যাযজ্ঞের ব্যাপকতাসহ একটা আনুমানিক সংখ্যাও নির্ণয় করতে পারবেন বলে বিশ্বাস। কোন কোন মহল চট্টগ্রামে নিহত লোকের সংখ্যা ১ লাখ হবে বলে অনুমান করছেন।

কিন্তু আমার মনে হয়, বিভিন্ন থানাসহ ও সংখ্যা অন্ততঃ তিন লাখে দাঁড়াবে। শহর ও শহরতলীর আম বাগান, ওয়ারলেস কলোনী, শেরশাহ কলোনী ও ফয়েজ লেকসহ গোটা পাহাড়ী এলাকাতে এখনো ২০ থেকে ২৫ হাজার বাঙ্গালীর মাথার খুলি পাওয়া যাবে। এছাড়াও রয়েছে চাঁদগাও, লালখান বাজার, হালিশহর, কালুরঘাট ও পোর্ট কলোনী ইত্যাদি বধ্যভূমি। চট্টগ্রাম ক্যান্টনমেন্ট ও সার্কিট হাউসেও হাজার হাজার লোককে ধরে নিয়ে হত্যা করা হয়েছে।

গ্রামাঞ্চলে মিরেশুরাই ও সীতাকুন্ডের পাহাড়, রাজউজান, পটিয়া সাতকানিয়া এবং বাঁশখালীর বনাঞ্চলের ও হাজার হাজার বাঙ্গালীকে হত্যা করা হয়েছে। বেসরকারী উদ্যোগে সমস্ত এলাকায় রিপোর্ট সংগ্রহ অনেকটা কঠিন কাজ। আমার ব্যক্তিগত অভিজ্ঞতা অনুযায়ী সারা চট্টগ্রামে জেলাতে তিন লাখ বাঙ্গালীকে হত্যা করা হয়েছে।

বিভিন্ন বধ্যভূমিতে আজো বহু নরকংকাল ইতস্ততঃ বিক্ষিপ্ত অবস্থায় পাওয়া যাচ্ছে। শহরের ওয়ারলেস কলোনী, ঝাউতলা ও নাছিরাবাদের পাহাড়ী এলাকাগুলোতে লুকায়িত বহু নরকংকালের অস্তিত্ব আজো পাওয়া যাবে। ইতিমধ্যে ঝাউতলা এলাকার বিভিন্ন সেপটিক ট্যাঙ্ক, পাহাড়ী ঝোপ ঝাড়ের মধ্যে অনেকগুলো কংকাল দেখতে পেয়েছি।

সীতাকুন্ডের শিবনাথ পাহাড়ে কয়েক হাজার বাঙ্গালীকে হত্যা করা হয়েছে। মিরেশুরাইয়ের জোরারগঞ্জ এবং ওয়ারলেস এলাকাতে মানুষ জবেহ করার স্থায়ীকেন্দ্র স্থাপন করা হয়েছিল। রাস্তার

ট্রাক, বাস এবং ট্রেন থেকে হাজার হাজার লোককে ধরে এনে আটক করে রাখা হতো এবং প্রতিদিন ৫০ জন অথবা ১০০ জন কওে হত্যা করা হতো।

এ সমস্ত এলাকাতে অসংখ্য কবর আজো দেখতে পাওয়া যায়। মানুষের পরিহিত কাপড়-চোপড়, জুতা স্যান্ডেল ইত্যাদিও এখানে পড়ে আছে। স্থানীয় জনসাধারণের ধারণা মতে শুধু মিরশেরাই ও সীতাকুন্ডের বধ্যভূমিগুলোতে ১৫ থেকে ২৫ হাজার লোককে হত্যা করা হয়েছে।

এ ছাড়া রাউজান, পটিয়া ও বাঁশখালী ইত্যাদি থানাতেও প্রায় অনুরূপহারে গণহত্যা চালানো হয়েছে।”

Those are few instances out of thousands brutality committed by the Pak army with the active support and participation of the local auxiliary forces started on the night of March 25,1971, which were acts of treachery unparalleled in contemporary history, a programme of calculated genocide. From the above stated news items, statements, press releases and articles there is was no doubt to hold the view that it was a widespread and systematic attacks against civilian population. There is no reasons to believe that the appellant had no knowledge about the genocide and atrocities committed by Pakistani army. The appellant, without standing besides the helpless unfortunate people of his motherland, involved himself with the atrocities and brutalities as deposed by the P.Ws. 1,2, 3,4,5, 6,7,8, 9, 10, 11, 14, 15, 16, 17 , 18, 19 and 20. The oral and

documentary evidence clearly show that he participated, instigated, suggested, aided, provoked the Pak army and also involved in abduction, torturing and killing of unarmed civilians which were crimes against humanity.

Dalim Hotel : torture cell

Material exhibit VI is a book named “সেই সময় আনন্দ বেদনায়” written by Advocate Shafiul Alam who, in an article, “দুঃস্বপ্নের নরকে হোটেল ডালিম”, had given descriptions about the brutality committed in the Dalim Hotel. Mr. Khandaker Mahbub Hossain, learned Counsel for the appellant in course his submission admitted that Advocate Shafiul Alam was well-known Advocate of Chittagong Bar Association and he was a man of integrity. Advocate Shafiul Alam in the said article, published in the book “১৯৭১ ভয়াবহ অভিজ্ঞতা” edited by Rashid Haider in 1989 and in the “দৈনিক সুপ্রভাত বাংলাদেশ”, had given descriptions of the atrocities committed in Hotel Dalim which are as follows:

দুঃস্বপ্নের নরকে : হোটেল ডালিম

“সেদিনটি ছিল সাতাশে নভেম্বর ৭১। সন্ধ্যা থেকেই শহরে কারফিউ। আমার আশ্রয় বাড়িতে গৃহকর্তার সাথে রেডিও শুনছিলাম।

সরকারী নির্দেশাবলি প্রচার হচ্ছিলঃ আইন হাতে নিও না ; পরোয়ানা ছাড়া কাউকে গ্রেফতার করবে না; ধৃত দুস্কৃতকারীদের থানায় সোপর্দ কর ইত্যাদি। ভাবছিলাম, কত মিথ্যা অসার এ উক্তিগুলো। হঠাৎ

কড়ানাড়ায় শব্দ শুনে গৃহকর্তা দরজা খুলে দিলেন। আর অমনি একদল লোক ছুঁড়মুড়িয়ে ঘরে ঢুকে পড়ল। সকলের হাতে তাক করা আগ্নেয়াস্ত্র। নাক-মুখ কালো কাপড়ে ঢাকা। সদর্পে আত্মপরিচিতি হাকল; আমরা বদরবাহিনীর লোক, নড়াচড়া করবে না কেউ। লাইন হয়ে দাঁড়িয়ে নাম বলার নির্দেশ করল। আমার নাম বলতেই নাক মুখ ঢাকা উন্মীলিত চোখের অস্বাধারী দলনেতা বললঃ তোমাকে গ্রেফতার করা হলো। সরকারী নির্দেশের উল্লেখ করে আমার গ্রেফতারি পরোয়ানা দেখতে চাইলাম। বললঃ আমাদের ওসব লাগে না। আসলেই লাগতো না; আজো লাগে না। এখনো তারা যুদ্ধরত, আজো হাতে সেই পরাজিত অস্ত্র। অতঃপর দলনেতা আমার হাত চোখ বেধে কোমরে রশি লাগাতে ছুকুম দিল। কিন্তু হঠাৎ দেখি, আমার গৃহকর্তা সে অস্বাধারীর সামনে দৌড়ে এসে বলছে, না, ওকে আমার বাড়ি থেকে নিতে দেবো না। আমি জানি, বদরবাহিনী মানুষ খুন করে। তোমরা তদন্ত করো, ও কোন দুস্কৃতকারী নয়। দলনেতা রাগতস্বরে তাকেও গ্রেফতার করতে নির্দেশ করলো, আর অমনি দুজন লোক এসে তার কোমরে রশি পরিয়ে দিল। আমি জোর প্রতিবাদ জানালাম, তোমরা আমাকে নিতে এসেছ; আমি তো যাচ্ছি। তাঁকে ছেড়ে দাও, নয়ত এক পাও নড়ব না আমি। কোন ভ্রক্ষেপ না করে ধাক্কাতে ধাক্কাতে রাস্তায় নিয়ে এলো। সেখানে তাদের ক'জন পরিচিত লোক। বিস্তারিত পরিচয় জানাবার পর ওরা আমার গৃহকর্তাকে ছেড়ে দিল। অতিশয় মহৎ হৃদয়ের অধিকারী ষাটোর্ধ সদাহাস্যময় এ রুগ্ন মানুষটি ছিলেন আমৃত্যু অখন্ড পাকিস্তানে বিশ্বাসী। কিন্তু অন্যায় বাড়াবাড়ির সাথে জীবনে আপোস করেন নি কখনো; সেদিনও না। কতো না মুক্তিসেনা জ্ঞাতে, অজ্ঞাতে এ বাড়িতে তাঁর স্নেহময় আনুকূল্যে শক্তি সঞ্চয় করেছিলো সেদিন। তিনি আজ বেচে নেই। কিন্তু আমার সবচেয়ে আদরের মানুষ মরহুম সৈয়দ মঈনউদ্দীন হোসাইন চিরদিন বেচে থাকবে আমার হৃদয়ে, আমার স্মরণে।

রাস্তায় নামতেই ওরা আমার চোখ দুটো কালো কাপড়ের শক্ত আটুনিতে বেঁধে, হাত দুটোও পেছন দিকে মুড়ে রশি দিয়ে বেঁধে ফেলল। ক'মিনিট হাঁটতেই পৌছে গেলাম গন্তব্যে। বুঝলাম, আমাদের পাড়ার শেষ প্রান্তের হোটেল ডালিম; এখন বদর বাহিনীর নির্যাতন শিবির। তিনতলায়। বারান্দার মাঝামাঝি পৌছতেই বিকট বর্বর স্বরে কে একজন চুঁচিয়ে উঠল; হল্ট। আমি দাঁড়িয়ে গেলাম। সবাই চলনে বলনে সবকিছুতে সামরিক; কথাবার্তায় উর্দু ইংরেজির ব্যবহারই বেশি। হঠাৎ দরজা খোলার শব্দ পেলাম। দুপা ভেতরে দিতেই হঠাৎ পিঠে বুটের আঘাতে ছমড়ি খেয়ে ঘরের মেঝেয় লুটিয়ে পড়লাম। মনে হলো, উপবিষ্ট

শায়িত কতিপয় মানুষ যেন যন্ত্রণাভরে হঠাৎ কাতরে উঠল। মুখে গরম রক্ত প্রবাহ অনুভব করলাম। দাঁত ভেঙেছে, নয়ত জিব কেটেছে। দরজা বন্ধ হওয়ার সাথে সাথেই কে একজন জিজ্ঞেস করল, কে তুমি ভাই? নাম বলতেই দুজন জড়িয়ে ধরলো স্বপ্নোহে। এরা আমার অতি নিকটের মুক্তিযোদ্ধা, জাহাংগীর আর ছানাউল্লাহ চৌধুরী। আমাকে দেয়ালের সাথে ঠেস দিয়ে বসিয়ে দিল ওরা। হাত-চোখ আমার তখনো বাধা। আর সকলেরও তাই। এমন কি পনেরো দিন আগের লোকদেরও; এটাই এখানকার নিয়ম। সকলে জানতে উদগ্রীব বাইরের অবস্থা কেমন, যুদ্ধের অবস্থা, কীভাবে ধরা পড়লাম ইত্যাদি। আবার হঠাৎ বুটের আওয়াজ কানে এলো। মনে হলো বেশ কজন ক্রমশ নিকটতর হচ্ছে। সেন্ট্রি দরজা খুলে হাঁক দিলো; খান সাহেব এসেছে, সকলে উঠে দাঁড়াও। বাইরে থাকতে শুনেছিলাম এ খান সাহেব ভয়াল নির্ভুর শক্তির এক লোক। এখানকার সর্দার। প্রথমে, নাম ধাম আর কিছু সাধারণ গোছের রাজনিতির কথা জিজ্ঞেস করল। মনে হলো কে যেন লিখছিলো এসব। হঠাৎ ভেংচি উচ্চারণে খান সাহেব বললোঃ “জয় বাংলা বলো না?” বললাম, সেতো সকলেই বলছে। আর অমনি মুখে এসে লাগল এক তীব্র ঘৃষি। তারপর, অকথ্য গালাগাল, আর চারদিক থেকে বেশ কজন সমান তালে ইচ্ছামতো সারা গায়ে সজোরে লাথি ঘৃষি মেরে চলল। বুঝলাম, দাত ভেঙেছে আর নাক দিয়ে রক্ত গড়িয়ে পড়ছে। অসহ্য আঘাতের তোড়ে মেঝেয় পড়ে গেলাম। যন্ত্রণায় হঠাৎ উহ আল্লাহ শব্দ করে উঠলাম। আর অমনি মুখে সজোরে আঘাত হেনে বললঃ “শালা, লেনিন আর মাও সে তুং বল- আল্লা- নয়”। মাত্রা যেন ক্রমশ বাড়ল। নির্যাতনের কতো না অভিনব কায়দাকৌশল। তারপর কিছুই আর মনে পড়লো না। হঠাৎ কখন ঘুম ভেঙ্গে গেলো; ঠান্ডা মেঝের ওপর পড়ে আছি। সারা গা জ্বরে পুড়ে যাচ্ছে। ভীষণ পানির তেষ্টা লাগছে। ওঠার শক্তিও নেই আমার। আবার নেতিয়ে পড়লাম। শুনলাম দূরে কোথায় কাক ডাকছে; হয়ত ভোর আসছে পৃথিবীর বুকে।

যেন ভোর থেকেই এ বদরপুরীতে সে কী এক হস্তদণ্ড- ছুটোছুটি চলছে। সিড়ি বারান্দা ছাদে সজোর চলন আর বুটের ওঠা নামার শব্দ। অন্ধকার প্রকোষ্ঠের পুরনো বন্ধুদের নিকট এসবের নানা অর্থ তাৎপর্য দেখলাম অতি স্পষ্ট। স্ববগতোক্তির মতই অনেকে ফিসফিস করে বলছেঃ ইস্! ছাদ হতে লাশগুলো নামাচ্ছে বা এটা বোধহয় জসীমের গলার শব্দ কিংবা, কেন যে ছেলেটা এতো বেশি কথা বলে বুঝি না, অথবা, শুনছ, এটা নতুন চালান নিশ্চয়ই ইত্যাদি। শরীর আর মন দুটোই অচল অবশ হয়ে পড়েছে। এমন সময় হঠাৎ দরজা খোলার শব্দ পেলাম। সাথে সাথেই বন্ধুরা চোখ আর হাতের বাঁধন পরে নিল। ব্যাপারটা খুব আনুদে

লাগল আমার । একটু স্বাভাবিক থাকার জন্যে দরজা বন্ধ থাকার সময়ে চোখ আর হাতের বাঁধন হালকা করে ফেলা এবং দরজা খোলার শব্দ শোনার সালে সাথে নিজ নিজ দক্ষতায় আবার উক্ত বাঁধন পরে ফেলার কৌশল বন্ধুরা ইতোমধ্যেই রপ্ত করে ফেলেছিল কিন্তু ধরা পড়ে যেতো অনেকেই ।

অস্বধারী সেন্ট্রি ঘরে ঢুকেই শুরু করল কুৎসিত অকথ্য গালাগালি । অপরাধ, হাত আর চোখের বাঁধন হালকা বা খোলা কেন । তারপর কারো চুল ধরে টান দিল বা কাকেও লাথি কিংবা দেয়ালের সাথে মাথা ঠুকে দিয়ে চলল । বুটের ডগা দিয়ে আমার গায়ে ধাক্কা দিয়ে বলল, তুমিই বুঝি কাল রাতের মেহমান? সব কথা খান সাহেবকে সত্যি সত্যি বলে দেবে; নয়তে ঐ শালার দশা হবে ।” বুঝলাম না ঠিক কার দিকে নির্দেশ করল । তারপর লাইন করে সবাইকে টয়লেট রুমে যাওয়ার নির্দেশ দিল । এসময় কিছুক্ষণের জন্য হাত ও চোখের বাঁধন খোলা হয় । জলভর্তি টিনের এক বড় গ্লাস বা মগে । এতেই প্রয়োজনীয় শৌচকাজ সারতে হবে, পালাক্রমে । একই ব্যবস্থা খাওয়ার বেলায়ও । একথোলা পাস্তা ভাত, কুচি কুচি করে কাটা একমুঠো পেপে-মুলা তরকারি । কোন মতে দুজনের খাবার । এখন ভাগ করে সাতজনে খেতে হবে । আর জলভর্তি সকালের ওই মগ । জলপানের ভান করে গলা ভেজাতাম সবাই । অথচ কারো কোন ক্ষোভ নেই । অভুক্ত কৃষ্ণগর্ত সাতজন লোক প্রশান্ত মনেই প্রতি চব্বিশ ঘন্টায় একবার পানাহার পর্ব শেষ করত । প্রীতি আর ভ্রাতৃত্বের কী অপূর্ব দৃষ্টান্ত ।

দুপুরে স্বপন এসে বললঃ আজ দাদা , পাঁচজন খতম । এতক্ষণে কর্ণফুলীতে ভাসছে । জসীম ভাই বোধহয় বাঁচবে না এবার । ছাদ থেকে লাফিয়ে পালাতে গিয়ে যে ছেলেটি ধরা পড়েছিল , তিনতিন অচেতন থাকার পর আজ মারা গেছে ।

এ স্বপন ছিল আমাদের অন্ধকার প্রকোষ্ঠ আর বদরপুরীর যোগসূত্র । কয়েক মাস আগে সে ধরা পড়ে জনৈক মুক্তিসেনাকে তার বাড়ীর পার্শ্বের গোপন পথ দেখাবার অপরাধে । বিশৃঙ্খল আচরণের পুরস্কার হিসাবে, এখন কিশোর স্বপন এঁটোজল আর ঘরমোছার কাজ করে । সব ঘরে তার অবাধ গতি । কাজের ফাঁকে স্বগতোক্তির মতো বিড়বিড় করে প্রতিদিন সে সংবাদ ও সিদ্ধান্তের বহু কথা জানাতো । আমরা মোটামুটি সবকিছু আঁচ করে নিতাম । আমাদের ঠিক ওপরেই এ বদরপুরীর নির্যাতন কক্ষ । স্বপন বলত, ওরা নাকি বলে ‘এটা হাবিয়া দোজখ’ ; সে এটার অর্থ বুঝত না । সে বলত , এ ‘হাবিয়াতে’ গেলে কেউ আর ফেরে না তেমন । আমাকে বললঃ ‘দাদা আপনি এখানে বেশিদিন আর থাকবেন না, আপনি ও আরো

চারজন , খাতায় আজ আপনাদের নাম লিখেছে'। সঠিক কিছু বুঝলাম না, সেও তেমন কিছু পরিষ্কার বোঝেনি। মনটা খুব ভারী লাগল। গতরাতে মোটেই ঘুম হয়নি। সেকি ভয়াত রাত। মাথার ওপরে ছাদে সারারাত চলেছে হুডুম-দুডুম লঙ্কাকাণ্ড। সে কী ভয়ার্থ বুকফাটা কান্না আর আর্তি। মাঝে মাঝে নর পিচাশগুলোর নির্ভুর অটহাসির রোল। 'হাবিয়া দোজখই' বটে।

সেদিন দুপুরে হঠাৎ দরজা খুলে গেলো তিন চারজন লোক অনেকটা কাঁধে ঝুলিয়া কে একজনকে নিয়ে এলো রুমে। অনেকটা নিষ্ফেপ করার মতো দুরে ফেলে দিল যেন। দরজা বন্ধের সাথে সাথেই চোখ আর হাতের বাঁধা খুলে তাকে কোলে তুলে নিলাম। 'ভেন্টিলেটর' ফুঁড়ে আসা এক চিলতে রোদে তার মুখটা তুলে ধরল সকলে। সবাই আঁতকে উঠল, এ যে জসীম। কিশোর মুক্তিযোদ্ধা জসীম। মাথাটা যেন হঠ্যাৎ কোল থেকে আলগা হয়ে গেলো। কারো বোঝার বাকি রইলো না, জসীম আর নেই। ওই এক চিলতে রোদে তার নিঃশব্দ মুখটা চিকচিক করে জ্বলছে। কী সুন্দর মায়াবী মুখ।

সেদিন বিকেলেই দুজন এসে আমাকে নিয়ে গেল ওই 'হাবিয়া দোজখে'। চোখের বাঁধন খুলতেই দেখি কালো পোশাকধারী দুজন 'জল্লাদ' মেঝেয় শায়িত এক যুবকের বুকের ওপর রাখা তক্তায় দাঁড়িয়ে আছে। পাশে একজাতীয় কালো লম্বা বেল্ট হাতে আরো দুজন দাঁড়িয়ে, দুরে আরো কয়েকজন চেয়ারে উপবিষ্ট। যুবকটির প্রতি নিষ্ফিণ্ড হচ্ছিল নানা প্রশ্নবাণঃ স্বীকারোক্তি আদায়ের এক পৈচাশিক কায়দা। যুবকটি সচেতন কি অর্ধমৃত বোঝা যাচ্ছিল না। চারদিকে গোটা ছাদটাই ঢাকা। এক ভয়াত আলো-আঁধারে মনে হলো এ যেন এক বিপুল অস্ত্রভাণ্ডার। চারদিকে চোখে পড়ল রকমারি নির্যাতন সামগ্রী। লোহার রড়, সূঁই, ইট, কাঠের তক্তা, বেয়নেটযুক্ত রাইফেল ইত্যাদি। সবকিছুর ব্যবহারই চলত ধৃত ব্যক্তিদের 'স্বীকারোক্তি' ও 'জিজ্ঞাসাবাদ' গ্রহণকালে। হঠ্যাৎ দেখি এক সজোর লাথির আঘাতে যুবকটি ফুটবলের মতো গড়িয়ে গেল, আর পাশব অটহাসিতে ওরা যেন ফেটে পড়ল। আমার দায়িত্বে নিয়োজিত বাক্তিটি এক নিঃশ্বাসে একরাশ প্রশ্ন ছুড়ে 'ঠিকঠিক' জবাব না দিলে আমার পরিণতি আরো ভয়বহ হবে এই মর্মে সাবধান করে দিল। কথাগুলো ছিলঃ 'বাপের বাড়ী ইন্ডিয়া থেকে কখন এসেছ; কী কী এনেছে; তোমার পার্টির আর সব নেতারা কোথায় আছে; শহরে কী দায়িত্ব পালন কর; কাগজপত্র-নকশা কোথায় রেখেছ' ইত্যাদি। বললামঃ 'আমি কখনো ভারতে যাইনি, এতদিন গ্রামের বাড়ি ছিলাম; গত চার মাস থেকে শহরে পেশাগত কাজে ব্যস্ত।' লাথি ধাক্কা-ঘুষি অস্ত্র ব্যবহার করলো 'স্বীকারোক্তি' প্রদানের জন্যে। আমি

দৃঢ়ভাবে বললাম। ‘এর চেয়ে বেশি আর কিছু আমার বলার নেই।’ একটু পরে রুমে নিয়ে এলো। আসার সময় বললঃ তোমাকে ‘আসল জায়গায়’ পাঠাতে হবে।

দুদিন পর দেখলাম হঠাৎ ‘বদরপুরীতে’ হস্তদস্ত শোরগোল চিৎকার পড়েছে। বেশ কজনকে বিভিন্ন রুম থেকে নিচে এনে একট্রাকে উঠানো হলো, আমাকেও। বলল ‘এবার সোজা জান্নাত’ উঠে দেখি আমার দুজন বিশিষ্ট বন্ধু ন্যাপ নেতা নুরুল্লাহী সাহেব আর সাইফুদ্দীন খান। অপর দুজন সাংবাদিক মেহবাহ খান ও মুক্তিযোদ্ধা সেলিম। চড়াই-উৎরাই হয়ে ট্রাকটি যেন কোন এক উঁচু জায়গায় থামল। কোন এক সেনাছাউনি মনে হলোঃ সৈন্যরা উর্দুতে কথা বলছিল। একজন রাগত স্বরে বললঃ সমুদ্রে ফেলে না দিয়ে এখানে কেন? অন্যজন বললঃ “ হ্যাঁ মাছলি- কা খোরাক, মাছলি খাহলেতে, আওর হামলোগ মাছলি খাহকে মোটা হোতে।” এদের কথার ফাঁকে বুঝলাম আমাদের ‘সার্কিট হাউস ছাউনিতে’ আনা হয়েছে। মনটা যেন আঁতকে উঠল হঠাৎ। তখনো আমাদের হাতে এ বাড়ির কতো না তথ্য “ ইলেকট্রিক চেয়ারে” শক দিয়ে প্রতিদিন মানুষ মারা হচ্ছে এখানে। এদের গণকবরের ছবি সম্প্রতি আমরা সংগ্রহ করেছি। ভাবলাম, সময় কি তবে একেবাবে ফুরিয়ে এলো! এর মধ্যে একজন সৈনিকট্রাকে উঠে আমাদের নাম-ধাম তথ্য লিখছিল। একজন বদর সেনা বলল কোন মিটিং এর মাঝখানে থেকে আমাকে ধরেছে। “ আমি বললামঃ মিটিংটা কি আমি একাই করছিলাম? অন্য লোকগুলো তবে কোথায় গেল?” সৈন্যটি বললঃ “আরে বদরী ইয়ে তো বিলকুল ঠিক বাৎ তব অসলি বাৎ কেয়া হ্যায় বাতাও।” সে আমতা আমতা করে কথা খুঁজছিল। সৈন্যটি অট্টহাসিতে বলল, “ কেয়া বাৎ হ্যায় বাহাদুর জওয়ান?” আমরাও সজোরে হেসে উঠলাম।

হঠাৎ আদেশ এলো আমাদের ফেরত নিয়ে যাওয়ার। চারদিকে ছুটোছুটি আর চিৎকার। কুৎসিত ভাষায় গালাগাল, রাগত স্বরেঃ বুঝলাম, ‘বাহাদুর সিপাইদের’ আজ ‘মুক্তির বাচ্চারা’ বোধহয় বেশ ভাল মারই দিয়েছেঃ এবার হোটেল ডালিম নয়; ছটগ্রাম কারাগার। আরও দুবার জিজ্ঞাসাবাদের তারিখ পেলাম। কিন্তু ওরা আপন প্রাণ বাঁচতেই ব্যস্ত তখন।

অবশেষে এলো সে কাংখিত বিজয় দিবস ষোলই ডিসেম্বর উনিশশ একাত্তর। কিন্তু আজো কি হয়েছে বাঙালির দুঃস্বপ্নের অবসান?” (emphasis supplied)

If we read the oral and documentary evidence regarding descriptions of brutality committed in hotel Dalim and we have no hesitation but to draw conclusion that the appellant and his accomplices are

responsible for the holocaust committed in Dalim Hotel. It is proved beyond all shadow of doubt from the evidence of P.Ws. 1, 2,3, 4, 5, 6, 7, 8,9, 10, 11, 14, 15, 16, 17, 18, 19 and 20 and from the contents of material exhibit-VI that the Dalim Hotel was used as one of the torture cells of Badar Bahini, Chittagong and the appellant was in command position of that brutal force.

ACTIVITIES OF BADAR BAHINI

Let us see the news items regarding the activities of Al-Badar Bahini which were published in the different news paper subsequent after 16th December, 1971:

23.12.1971

The Observer

"Al-Badar leader held-

"Abdul Khaleque, a collaborator of the notorious fascist Al- Badar Bahini was caught on Wednesday in Rampura. He disclosed the names of nine Al-Badar members who conducted the cold blooded murders of the intellectuals in the city prior to the shameful surrender of the occupation arms."

29.12.1971

The Morning News.

"Nazmul Huq: Victim of Badar Bahini."

26.12.1971

The Dainik Pakistan/ Bangla

"কুখ্যাত আল বদর বাহিনী

এদের ধরিয়ে দিন ।”

18.12.1971

The Dainik Purbadesh

“কুখ্যাত আল বদর বাহিনী শিকার ঐ সব বুদ্ধিজীবীরা আজ কোথায়?”

20.12.1971

The Dainik Purbadesh

“মানবেতিহাসের জঘন্যতম অপরাধের বিচার চাই ।”

28.12.1971

The Dainik Purbadesh

“ওদের খুঁজে বের করতে হবে ।”

“দখলদার পাকিস্তানী বাহিনীর যোগসাজসকারী ও বাংলাদেশের কতিপয় কু-সন্তানের নেতৃত্বে আল- বদর, আল- শামস ও রেজাকার বাহিনী সোনার বাংলার জ্ঞান প্রদীপ বুদ্ধিজীবীদের হত্যার জন্য যারা দায়ী তাদের খুঁজে বের করার ও বিশেষ ট্রাইব্যুনালে বিচার করার দাবী উঠেছে ।”

19.12.1971

The Dainik Purbadesh

“এই নৃশংস হত্যাকাণ্ডের জবাব কি ?”

এরশাদ মজুমদার

ইতিহাসের ঘণ্যতম হানাদার পাক বাহিনী ও তাদের পদলেহী আল-বদর ও আল শামস স্বাধীনতার সোনালী লগ্নে শেষ বারের মতো হিংস্র ছোবল মেরে চিরদিনের মতে কেড়ে নিয়েছে আমাদের জাতির জ্ঞানের উজ্জ্বল প্রদীপ প্রায় দুশো বুদ্ধিজীবী, শিক্ষাবিদ ও সাংবাদিককে ।

স্বাধীনতার উষ্ণ আলোর ধারার স্নান করেও আমরা আজ আলোর অভাব অনুভব করছি ।

কিন্তু মনে প্রান জাগে আমরা কি ইতিহাসের এই নৃশংসতম হত্যা কাণ্ডের জবাব খুঁজে পাব না?

কেন এই হত্যাকাণ্ড? বাঙ্গালী জাতিকে জ্ঞানের আলো থেকে বঞ্চিত করার জন্য?

বাংলার বুদ্ধিজীবী, সাংবাদিক ও শিক্ষাবিদদের এই হত্যা কাণ্ডের সাথে জড়িত কুখ্যাত কর্নেল ইজাজ ও বিগ্রেডিয়ার রশীদ এখন কোথায়? এই নরপশুদের কি গ্রেফতার করা হয়েছে?

বাংলা মানুষের এই জ্ঞানের প্রদীপ নয়নমনিদের শেষ মুহূর্তে নিশ্চিত করার জন্য দায়ী জেনারেল নিয়াজির বিরুদ্ধে কি অভিযোগ আনা হয়েছে?

প্রশ্ন উঠেছে একটাজাতিকে নিশ্চিহ্ন করার জন্য নিয়াজী গোষ্ঠী যে উদ্যোগ গ্রহণ করেছে এবং ইতিমধ্যে যাদের হত্যা করা হয়েছে সেই অভিযোগে তাদের বিরুদ্ধে যুদ্ধ অপরাধের অভিযোগ আনা হবে না কেন?

আন্তর্জাতিক রেডক্রস লীগব্যাপারে কি কোন উদ্যোগ গ্রহন করতে পারেন না ? শুনেছি হোটেল ইন্টারকমে অবস্থানরত রেডক্রস কর্মকর্তার নিহত অথবা এখনও নিখোঁজ ১৫৫ জন বুদ্ধিজীবীর নাম পেয়েছেন ।

23.12.1971

The Dainik Purbadesh

“আল বদরের নর পিচাশরা ওদের হৃৎপিণ্ড টেনে বের করেছে ?”

ঢাকা, ২২শে ডিসেম্বর। - গত ১লা ডিসেম্বর ভোর চারটার , ধর্মাত্মক আল-বদর বাহিনীর একজন --- সৈয়দ নাজমুল হক , সাবেক পিটিআই এর চীফ রিপোর্টার এবং ---- --- রাও ফরমান আলীর প্রত্যক্ষ তদারকিতে কুখ্যাত বদর বাহিনীর বাংলার শত শত বুদ্ধিজীবীকে একই উপায়ে অপহরণ করে এবং তাদের উপর অমানুষিক নির্যাতনের পর হত্যার কারে। বাংলার এই সব সূর্য সন্তানদের খুনীরা প্রথমে মোহাম্মদপুরস্থ ফিজিক্যাল ট্রেনিং স্কুলে নিয়ে যায় এবং রায়ের বাজারের ইটখোলার কাছে বধ্যভূমিতে নিষ্ঠুরভাবে হত্যা করে। সৈয়দনাজমুল হকের ভাগ্যে এই ঘটেছে।

জনাব হকের মৃতদেহ এখনো খুঁজে পাওয়া যায়নি তবে যে সব হতভাগ্য দের মৃতদেহ খুঁজে পাওয়া গেছে তাদের শরীরে অকথ্য নির্যাতনের চিহ্ন দেখা গেছে। কারো নাক কেটে দেয়া হয়েছে। কারোর হাত, আঙ্গুল, কারো বুক চিরে নর-পশুরা বের করেছে হৃৎপিণ্ড। কারো দেহে ফালি ফালি কাটার দাগ। পিচাশরা কারো মুখ পুড়িয়ে দিয়েছে এসিড দিয়ে।

শতাধিক বিদেশী সাংবাদিক দেখতে গিয়েছিলেন এই নারকীয় হত্যাকাণ্ড। পিচাশদের এই রক্তপিপাসা দেখে তারা স্তম্ভিত হয়ে বাকরুদ্ধ হয়ে গেছেন। তারা বলেন বিশ্বের ইতিহাসে এরূপ নিষ্ঠুর ধরনের হত্যাকাণ্ড এই প্রথম।

একজন বিদেশী সাংবাদিক এরূপও বলেছেন, “আমরা যে মানুষ তা এ দেখে বিশ্বাস করার কোন উপায় নেই। নিজেদের মানুষ বলে পরিচয় দিতেও আমাদের লজ্জা হওয়া উচিত।”

05.01.1972

The Dainik Purbadesh

“বদর বাহিনীর শিকার আরও সাতজন বুদ্ধিজীবীর লাশ উদ্ধার ”

“নরপশুটি গোরস্তানের পাশে দাঁড় করিয়ে গুলী করে তাঁদের মেরেছে।”

27.12.1971

The Dainik Azad

“আর একটা সপ্তাহ সময় পেলে ওরা বাঙ্গালী বুদ্ধিজীবীদের সবাইকে মেরে ফেলতো।”

“বদর বাহিনীর মাষ্টার পণ্ডান”

“নিজস্ব নিবন্ধকার”

পাকিস্তানী হানাদার বাহিনীর গণহত্যায় সাহায্যকারী দলগুলোর মধ্যে জামাতে ইসলামীর ভূমিকা ছিল সবচেয়ে ঘৃণ্য ও জঘন্য। মওদুদী গোলাম আজম- আবদুর রহিমের নেতৃত্বে পরিচালিত জামাতে ইসলামী বাংলাদেশের স্বাধীনতা সংগ্রামের শুধু ঘোরতর বিরোধিতাই করেনি- লক্ষ লক্ষ বাঙ্গালীকে পাইকারীভাবে হত্যার কাজে সক্রিয় সহযোগিতাও করেছে। আর এই জঘন্য হত্যাকাণ্ডে সহযোগিতা করতে গিয়ে তারা পবিত্র ইসলামের নাম ব্যবহার করেছে। ধর্মের নামে এতবড় জঘন্য বর্বরতা সভ্য দুনিয়ার আর কোন দেশে কখনও সংঘটিত করেছে বলে কখনো শুনা যায় নি।

হানাদার পাকিস্তানী বাহিনীর নির্বিচারে গণহত্যার সক্রিয় সহযোগিতা করেই জামাতে ইসলামী ক্ষান্ত হয়নি- বাংলাদেশের বুদ্ধিজীবী সমাজকে সম্পূর্ণ নির্মূল করার উদ্দেশ্যে তারা গড়ে তুলে ছিল এক গুপ্ত সন্ত্রাসবাদী সংগঠন বদর বাহিনী নামে যা সর্বসাধারণের নিকট পরিচিত ছিল। পাকিস্তানী

হানাদার বাহিনীর আত্মসমর্পনের শেষ মুহুর্তে এই বদর বাহিনী বহু সংখ্যক বুদ্ধিজীবীকে রাতের অন্ধকারে ধরে নিয়ে নৃশংসভাবে হত্যা করেছে এ খবর এখন সবাই জেনে গেছে। -----”

19.12.1971

The Dainik Pakistan

“শতাব্দীর জঘন্যতম হত্যাকাণ্ড সংঘটিত করেছে,

“আল- বদর বর্বর বাহিনী ”

বহু লাশ উদ্ধার ।

কোন ভাষায় প্রকাশ করব

“আল- বদর পশুদের এই নৃশংসতা । ”

(বাংলাদেশ রিপোর্টার)

“স্বাধীনতার আনন্দ উচ্ছ্বাসের মাঝে গতকাল শনিবার বাংলাদেশের রাজধানী ঢাকা নগরীতে শোকের ছায় নেমে আসে। মুক্তির আন্দনকে ছাপিয়ে ওঠে কান্নার রোল। শতাব্দীর জঘন্যতম হত্যাকাণ্ড সংঘটিত হয়েছে ঢাকা নগরী ও বাংলা দেশে গত ফেব্রুয়ারী থেকে। তা আবার চরমে উঠেছিল মুক্তির পূর্বক্ষণে।

এই নৃশংস হত্যাকাণ্ড চালিয়েছে গত সপ্তাহ ধরে জামাতে ইসলামীর আল বদর।

শহরের কয়েকজন বুদ্ধিজীবী ও যুবককে একে একে ধরে নিয়ে গিয়ে অমানুষিকভাবে হত্যা করে----- ”

19.12.1971

The Dainik Pakistan

“কোন ভাষায় প্রকাশ করব “আল বদর” পশুদের এই নৃশংসতা ”

(বাংলাদেশ রিপোর্টার)

“দৈনিক বাংলা গভীর বেদনা এবং ক্ষোভের সাথে জানাচ্ছে যে, আল- বদর এবং আল শামস বাহিনী হিংস্র শাপদের নখর বিস্তার করে সংঘবদ্ধভাবে গত কয়েকদিনে আমার দেশের বহু সংখ্যক গণ্য সাংবাদিক, সাহিত্যিক শশিক্ষক, চিকিৎসক আইনজীবী ও ছাত্রকে নৃশংসভাবে হত্যা করেছে। গত কয়েক মাস যাবৎ হানাদার পাক বাহিনীর সহযোগী ফ্যাসিস্ট জামাতে ইসলামী এবং অন্যান্য উগ্র দক্ষিণপন্থী দলের সংগঠিত আল - বদর ও আল- সামস বাহিনী বাংলা দেশের অধিকৃত এলাকায় মধ্যযুগীয় বর্বরতার চেয়েও নিষ্ঠুর তাণ্ডব লীলা চালিয়ে যাচ্ছিল হানাদার বাহিনীর চরম পরাজয়ের প্রাপ্তে এসেও তারা তা অব্যাহত রেখেছিল। আগের চেয়ে অধিকতর নারকীয় উল্লাস নিয়ে তারা ঝাঁপিয়ে পড়লে, আমার দেশের সাংবাদিক, সাহিত্যিক, চিকিৎসক, শিক্ষক ও আইনজীবীদের উপর হানাদার পাক বাহিনীর বিরুদ্ধে মিত্রবাহিনীর চরম পর্যায়ে সংগ্রাম শুরু হওয়ার পর তারা বাড়ী বাড়ী হানা দিয়ে ধরে নিয়ে গেলো প্রিয় স্বজনদেরঃ আমার দেশের সোনার সন্তানদের। ----- ”

19.12.1971

The Dainik Ittefaq

“সোনার বাংলার নৃশংসতম হত্যাযজ্ঞ ।”

“সাংবাদিক, সাহিত্যিক অধ্যাপক চিকিৎসক ও বুদ্ধিজীবীসহ শতাধিক সোনার দুলাল নিহত ।”

05.01.1972

The Dainik Ittefaq

“নরপিচাশদের দ্বরা অপহৃত আরও কতিপয়
বুদ্ধিজীবর গলিত লাশ উদ্ধার ।”

12.01.1972

The Dainik Ittefaq

“দুইটি রহস্যময় কূপ

বুদ্ধিজীবীদের হত্যার রহস্যের নয়া সূত্র? ।”

19.12.1972

The Dainik Ittefaq

“নৃশংসতম হত্যায়ত্ত

ইহারা এখনও নিখোঁজ ।”

(ইওফাক রিপোর্ট)

“দখলদার পাক সামরিক বাহিনীর পক্ষপুষ্ট বর্বর বদর বাহিনীর নৃশংস ও ইতিহাসের জঘণ্যতম হত্যায়ত্তের শিকার বাংলা দেশের অগণিত প্রতিভার মধ্যে গতকল্য (রবিবার) পর্যন্ত অধ্যাপক মুনির চৌধুরী, ঢাকা বিশ্ববিদ্যালয়ের রোকেয়া হলের প্রভোষ্ট বেগম আখতার ইমাম সহ আরও কয়েক জনের লাশ বধ্য ভূমি হইতে সনাক্ত ও উদ্ধার করা হইয়াছে । ইওফাকের কার্যনির্বাহ সম্পাদক জনাব সিরাজুদ্দীন হোসেন, দৈনিক সংবাদের যুগ্ম সম্পাদক জনাব শহীদুল্লাহ কায়সার, অধ্যাপক মোফাজ্জল হায়দার চৌধুরী প্রমুখসহ সোনার বাংলার প্রতিভাসম্পন্ন বহু সেনারা সন্তানের আজও কোন সন্ধান মিলে নাই । কেহ কেহ এখনও অনুমান করিতেছে যে, বধ্যভূমির পার্শ্ববর্তী সাত মসজিদের সন্দিকটস্থ এলাকায় ঘাতকদের কোন অন্ধ প্রকোষ্টে অপহৃতদের কেহ কেহ হয়তো জীবিত আছেন । তবে এই এলাকায় গিয়া এখনও কোনরূপ অনুসন্ধান চালানো সম্ভব নয় । ”

09.01.1972

The Dainik Purbadesh

“বধ্যভূমি শিয়ালবাড়ী

“মীরপুরের উপকণ্ঠে ঝোপ-ঝাড় ও পাতকুয়ায় হাজার হাজার নরকংকাল পাওয়া গেছে । কাল বৃহস্পতিবার স্থানীয় একজন লোকে খবর পেয়ে আমরা অকুস্থল পরিদর্শন করে এসেছি । এই এলাকার বনে-বাদাড়ে- লাশ অসংখ্য কংকাল ছড়িয়ে ছিটিয়ে আছে । পাকিস্তানের হানাদার দস্যু বাহিনী ও তাদের সঙ্গোপাঙ্গদের কুখ্যাত আল বদর ও মুজাহিদ বাহিনী এই স্থানটিকে বধ্যভূমি হিসেবে নির্বাচন করেছিল বলে মনে হয়ে ।

বধ্যভূমির নাম শিয়ালবাড়ী । এককালে যে এখানে জনপদ ছিল তা আজ বোঝার উপায় নেই । বিস্তীর্ণ অঞ্চল ঝোপঝাড় ও লতাপাতায় ছেয়ে আছে । পথঘাট দুর্গোম শুধু রক্তের স্বাক্ষর গায়ে নিয়ে ইতিহাসের করুণ কাহিনী হয়ে নিজের ধবংশবশেষের ওপর দাড়িয়ে আছে শিয়ালবাড়ীর গ্রাম । ----- শিয়ালবাড়ী গ্রামে একদিন যারা সুখের নীড় বেধেছিলেন তারা কেউ নেই । খান সেনা ও কুখ্যাত বদর-মুজাহিদ বাহিনীর পৈচাশিক অত্যাচারের ভয়ে কেউ হয়তো প্রাণ নিয়ে পালাতে পেরে ছিলেন, কেউ পারেন নি । তাদের ছাড়া বাইরের অসংখ্য লোককে যে ওখানে নিয়ে নৃশংস নির্বিচারে হত্যা করেছে তার সুস্পষ্ট চিহ্ন এখানে বিদ্যমান---

23.01.1972

The Dainik Sangbad

“একাত্তরের বাংলায়”

“ শহীদুল ইসলাম ”

“স্বাধীনতা । উত্তপ্ত রক্তের বদলে স্বাধীনতা রক্তের সাগর হাতে তুলে আনা স্বাধীনতা । নেকড়ের মুখ হতে ছিনিয়ে লওয়া স্বাধীনতা । এ একটি ইতিহাস । একটি নৃশংস বর্বরতার ইতিহাস । নির্মম ও নিষ্ঠুর ইতিহাস । একটি করুণ ইতিহাস । বেদনার ইতিহাস । সভ্যতার জঘন্যতম অধ্যায়ের পৈশাচিক ইতিহাস । লজ্জার ইতিহাস । ঘৃণার ইতিহাস । কত জীবন । কত প্রাণ । কত প্রতিভা । স্বামী-বাপ- পুত্রবধু ক্ষয় গেছে । ক্ষয় হয়ে গেছে কত নবজাত শিশু । বলির শিকার হয়েছে লাখ লাখ মায়ের সন্তান । টুকরো টুকরো করে কাটা হয়েছে তাদের । শান দেয়া বটিতে জবাই করা হয়েছে । রাস্তায় রাস্তায় বেয়েনেটের খোঁচায় খোঁচায় চিড়ে চিড়ে প্রাণ নেয়া হয়েছে কত কুলবধুর । উত্তর সাঁড়াশী দিয়ে জিহবা টেনে বের করা হয়েছে - চোখ উপড়িয়ে ফেলা হয়েছে কত নিরীহ মানুষের । হাত- পা- নাক -কান কেটে কেটে একটা বীভৎস । মানুষে মানুষ মারে । হত্যা করে । জবাই করে । সভ্যতার একি পরিমান? মায়ের বুক থেকে ছিনিয়ে নিয়েছে কত শিশু কত যুবক কত যুবতী । কতবধু হয়েছে স্বামী হারা । স্বামী হয়েছে বধুহারা আর সন্তান সম্ভবা মাকে আছড়ে আছড়ে মারা হয়েছে । গলাটিপে হত্যা করা হয়েছে কত বাপকে ।

সেই ২৫শে মার্চ । সেদিন থেকে শুরু হলো হত্যা । দীর্ঘ ১০টি মাস চালানো হত্যালীলা । ওরা কাউকে খাতির করেনি । ক্ষমা করেনি । শ্রমিক-কৃষক- সাংবাদিক সাহিত্যিক-ডাক্তার-অধ্যাপক- রাজনীতিবিদ- ছাত্র-যুবক তথা বাংলার আবালবৃদ্ধবণিতা সকলকেই হত্যা করেছে । বর্বর সৈন্যদের সহযোগী আল-বদর, চিতার মত চোখ--- অদৃশ্য হাত । এখানে গুরুতর মা বোনকে জ্যাগু পুড়েছে । মাটিতে পুতে পৈচাশিক অত্যাচার চালিয়েছে । তার কঠোর চিংকার মর্মভেদী আর্তনাদ আজ ও পৃথিককে দিশেহারা করে । ভুলিয়ে দেয় ।

স্তুপ স্তুপ হাড় ইতস্তত পড়ে আছে । হাজার বছর পর কোন প্রত্নতাত্ত্বিক যদি খনন চালান তবে খুঁজে পাবে উনিশ’ শ একাত্তরের বাংলার রূপ । কোন ইতিহাসিক যদি ইতিহাসের রিচার্স করে তবে খুঁজে পাবেন চেঙ্গিশ, তৈমুর, হিটলার, মূসোলিনী---

The Guinness Book of Records lists the Bangladesh Genocide is one of the top genocides in the 20th Century. It was one of the worst genocides of the world. “There is no doubt that mass killing in Bangladesh was among the most carefully and centrally planned of modern genocides. For month after month in all the regions of East Pakistan the massacres

went on. They were not the small casual killings of young officers who wanted to demonstrate their efficiency, but organized massacres conducted by sophisticated staff officers, who knew exactly what they were doing. Muslim soldiers, sent to kill Muslim peasants, went about their work mechanically and efficiently until killing, defenseless people became a habit like smoking cigarettes or drinking wine---- Not since Hitler invaded Russia had there been so vast a massacre" (Robert Payne). Those "willing executioners" were fuelled by an abiding anti-Bengali racism, especially against Hindu minority."

Facts

This statutory appeal is directed from a judgment of the International Crimes Tribunal No.2 convicting the appellant Mir Quashem Ali in respect of charge Nos.2, 3, 4, 6, 7, 9, 10, 11 and 14 analogously and sentencing him to 20 years in respect of charge No.2; 7 years in respect of other charges except charge No.11 in which he is sentenced to death and also convicting him in respect of charge No.12 by majority and sentenced to death. He was acquitted in respect of the charge Nos.1, 5, 8 and 13.

Charge No.2

This charge is as follows:

'The on 19 November, 1971 at about 2.00 p.m. during the War of Liberation you Mir Kashem Ali being the President of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals and under your leadership Victim Lutfar Rahman Faruk and Seraj were abducted while they were staying in the house of Mr. Syed At 35 Bokshirhut ward under Chaktai area of Baklia Police Station by Pakistani invading force and members of Al-Badar Bahini. They were taken to Mohamaya Hotel popularly known as Dalim Hotel Torture Cell at Andarkilla under Kotwali Police Station organized by you. In your presence and instigation they were tortured there. Victim Lutfar Rahman Faruk was taken outside thereafter to identify houses of pro-liberation activists and were set fire on those houses. Keeing Lutfar Rahman Faruk under torture for 2/3 days at Dalim Hotel, was handed over to Circuit House under control of Pakistani occupation force where he was again tortured and then sent to Chittagong jail. Thereafter, Faruk was freed after 16th December, 1971.

Therefore, you are hereby charged for abetting and facilitating commission of offences of abduction,

confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2) (a) (g) (h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.'

In support of this charge, the prosecution examined one witness , the victim P.W.20 Lutfur Rahman Faruk. From the evidence of P.W.20, it appears that he is a Science Graduate and in 1971 he was aged at about 22 years. In his evidence, he stated that about 3 p.m. on 19th November, 1971 the members of Al-Badar bahini, Al-Shams and Pak army surrounded their shelter where Munsurul Haque Chowdhury, Abul Kalam, freedom fighter Siraj and this witness were gossiping. At that time, his mother called him. He opened the door and found the members of Al-Badar bahini and Pak-army in front of the door. Siraj and this witness tried to flee away but they ordered, "Hands Up" and he stood up. Abul Kalam fled away. Confining Shiraj and this witness, they brought them in hotel Dalim where he found Mir Quashem Ali and another person. This witness found many people

confined in hotel Dalim. As per direction of Mir Quashem Ali, members of Badar bahini locked up him in blindfolding condition. They, pursuant to the order of Mir Quashem Ali, tortured this witness whole night by electric wire. At one stage, he became senseless. When he was brought to hotel Dalim he requested the appellant to give him a glass of water to for "Ifter" since he was fasting but the appellant directed to give urine instead of water. Mir Quashem Ali uttered, 'তোদের আবার রোজা কিসের, ওকে প্রশাব দাও খাওয়ার জন্য'. He said that he was kept confined for about 7 / 8 days. Every day members of Badar bahini tortured this witness inhumanly and did not allow him to have food regularly. He said that Mir Quashem Ali was the leader of Badar Bahini camped in hotel Dalim. He was brought to Circuit house and keeping him confined the army tortured him brutally. At one stage, he was brought to a room behind circuit house where he saw deadbodies of 400-500 people. He saw a killer killing a young man there. He also attempted to kill this witness. This witness added that due to inhuman torture he became impotent. (saying so, he started crying on dock).

In his cross-examination, he said that Hotel Dalim is situated about 1½ Kilometer off from his

house. On 19.11.1971, Mir Quasem Ali was the President, Islami Chhatra Sangha of Chittagong Town Unit. To answer a question put by the tribunal, this witness said that he knew Mir Quashem Ali as student leader before his arrest on 19.11.1971. He denied the defence suggestion that he did not see the appellant Mir Quasem Ali in Dalim Hotel and that at his instance the members of Al-Badar Bahini tortured this witness through out the whole night and he lost his senses. He also denied the defence suggestion that he did not request the members of Al-Badar Bahini to give him some water since he was fasting and that Mir Quashem Ali directed to give him (witness) urine instead of water.

Mr.S.M. Shahjahan repeatedly argued that in cross-examination this witness admitted that he married in 1979 and as such his claim that he became impotent due to torturing is not true. He further submits that wife of this witness gave birth to a child which proved that his claim as to his impotency is not true.

The story of becoming or unbecoming impotent is not so important in this case if it is found that the evidence adduced by this witness is true so far as it relates to charge framed against the appellant.

From the above quoted evidence, it appears to us that P.W.20, victim Faruk, was abducted by the members of Al-Badar Bahini and Pak-army. Thereafter, he was brought to Hotel Dalim. He was brutally tortured by the members of Al-Badar Bahini as per direction of the appellant. When he was brought to Hotel Dalim he found the appellant there. The appellant passed the order to torture this witness. Accordingly, at the instance of the appellant, the members of Al-Badar Bahini assaulted him inhumanly through out the night by electric wire. When he was brought to Hotel Dalim he requested the appellant to give him a glass of water stating that he was fasting. Then this appellant Mir Quasem Ali who, is a Muslim and according to him he was fighting for Islam and Islamic Republic of Pakistan, said, ‘তোদের আবার রোজা কিসের, ওকে প্রশ্রাব দাও খাওয়ার জন্য’.

That was the offer of a Muslim before "iffter" ! It appears that the date of arrest of this appellant was on 19th November, 1971. 'Eid-ul- Fitr' was observed in 1971 on 21st November. That is, this witness proved beyond reasonable doubt about the date, time, place and manner of occurrence. The testimonies of this witness, who himself is an injured witness, are natural. Though there is no

corroborative evidence in respect of charge No.2, the evidence of this P.W.20 is so natural, clear and specific that we do not find anything to disbelieve the witness. The demeanour of this witness, the plausibility and clarity of his testimony are so natural that we do not find anything to discard his testimony. It is well settled principle that conviction and sentence can be awarded on the basis of testimony of a solitary witness if such testimony is free from any doubt. This witness is an injured witness and his evidence is full, complete and the contents of his testimony have not been shaken in any manner by the defence in cross-examination. There is no lacking in terms of the indicia of reliability as to be devoid of any probative value. It is also settled principle that not the quantity but the quality of evidence is to be considered. There is no impediment in law to award conviction on the basis of the testimony of single witness if he is trustworthy. On perusal of the evidence of this witness it appears to us that his testimony is trustworthy and reliable. In the case of Prosecutor V. Bagilishema (ICTR-95-IA-(Appeals Chamber) July 3, 2002 para 79 it is observed that it is well settled that the testimony of a single witness on a material

fact may be accepted without the need for corroboration. The probative value to be attached to testimony is determined according to its credibility and reliability. Tribunal found the testimony of this witness credible and reliable. In *Muvunyi V. Prosecutor*, Case No. ICTR-200-55-A-A (Appeals Chamber) August 29, 2008 it was held that " A Trial Chamber has the discretion to rely on uncorroborated, but otherwise credible, witness testimony" . In *Kayelijeli V. Prosecutor*, Case No. ICTR 98-44A-A (Appeal Chamber) May 23, 2005 observed that Appeals Chamber has consistently held that a Trial Chamber is in the best position to evaluate the probative value of evidence and it may, depending on its assessment, rely on a single witness's testimony for the proof of a material fact". Acceptance of and reliance upon uncorroborated evidence, *per se* does not constitute an error of law. We do not find any wrong in the decision of the Tribunal. Accordingly, we are of the view that the Charge No.2 as framed against the appellant has been proved beyond all shadow of doubt. The Tribunal rightly convicted the appellant on this charge.

Charge No.3:

The Charge is as under:

'That you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals and under your leadership Victim Jahangir Alam Chowdhury was abducted on 22 or 23 November, 1971 in the morning with the help of Al-Badar Bahini and Pakistan army from his rented house at Kodam Tali under Double Mooring police station. Thereafter he was taken to Mohamaya Dalim Hotel Torture Cell at Andarkilla under Kotwali Police Station where he was mercilessly beaten and tortured at your instance. When the countgry was liberated then he was rescued from Dalim Hotel Torture Cell in the early morning on 16th December, 1971 by his relatives and pro-liberation forces.

Therefore, the appellatnt is charged for abetting and facilitating commission of offences of abduction, confinement and torture as crimes against humanity and thereby he has substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2) (a) (g) (h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. He is also liable for commission of above offences under Section 4(1) and 4(2) of the Act.'

In support of the charge, the prosecution examined P.W.1, Sayed Md. Emran, P.W.2 Md. Sanauallah Chowdhury, P.W.3 Nasiruddin Chowdhury, P.W.14 Foyez Ahmed Siddique, P.W.16 Jahangir Chowdhury. The victim of this charge Jahangir Alam Chowdhury (P.W.16) is aged about 66 years and in 1971 he was 23 years old. He is a graduate. In 1969-70, he was Sports Secretary of Chittagong City College Student Union. P.W. 16, the injured witness in his evidence said that two days after Eid-ul- Fitr in 1971, the members of Pak-army and Al-Badar Bahini surrounded their house and arrested him. Thereafter, he was brought at Hotel Dalim where he found his brother Dastagir Chowdhury and neighbour Mofiz who were also arrested and kept confined there. Firstly, he was kept confined in a room of the first floor of said Hotel and thereafter, was shifted in the second floor. Advocate Shafiul Alam was also arrested and confined in the said room by the members of Al-Badar Bahini including Nurul Afsar and Mir Quasem Ali. Thereafter, confining in a kitchen he was tortured. The members of Al-Badar bahini, producing this witness before their supporters, showed the marks of violence appeared on his person. His face was disfigured due to assault. In one night, torturing

this witness, Nurul Absar brought him near the staircase and removing the cloth from blind-folded eyes asked him to read out the contents written on a paper and directed him to read out the contents in radio who expressed his inability to do so and requested them to kill him. At the time of those conversations, Mir Quashem Ali was present. Nurul Absar directed a boy to fasten his eyes again who fastened his eyes and, thereafter, they started torturing this witness inhumanly, consequently, he became senseless.

He was rescued from said Dalim Hotel on 16th December, 1971. He identified the appellant in dock.

In his cross-examination, he said that he is the President of Sadarghat Thana Awami League. He further said that he found Sayed Md. Emran and Md. Sanauallah Chowdhury confined in Hotel Dalim. He denied the defence suggestion that it is not true that Afsar Ali and Mir Quasem Ali arrested Advocate Shafiul Alam and kept him confined and he found bleeding injury on the face of Advocate Shafiul Alam. He also denied that it is not true that at the time of his torturing Nurul Afsar and Mir Quasem Ali were not present.

P.W.1 Sayed Md. Emran, in his examination -in-chief said that he found the P.W.16 Jahangir

Chowdhury and others confined in a room of hotel Dalim. P.W.2 Md. Sanauallah Chowdhury, another victim, in his evidence said that he had found Jahangir Chowdhury and others confined in a room. P.W.14 in his cross-examination said that on 16th December, 1971 he rushed to Dalim Hotel to rescue the victims and found P.W.16 along with others confined there. That is to say, the testimony of injured witness P.W.16 has been corroborated by P.Ws.1,2,3 and 14. Contents of material Ext.VI the book written by Advocate Shafiul Alam also corroborated the testimony by the P.W.16. In that book Advocate Shaiful Alam, in 1989, stated that he was arrested by the members of Al-Badar Bahini and kept confined in Hotel Dalim. He found Jahangir Chowdhury in that room.

Mr. S.M. Shahjahan, learned Counsel, submits that P.W.16 did not claim that at the time of abduction, the appellant was present. P.W.16 in his evidence stated that he was abducted by the members of Al-Badar Bahini and Pak-army. It is true that the P.W.16 did not say that at the time of abduction, the appellant was present but he said that he found Mir Quasem Ali in Hotel Dalim where he was kept confined. He found the appellant when Nurul Afsar removed the piece of cloth from his eyes. In such view of the

matter, we do not find any force in the submission made by S.M. Shahjahan.

On careful consideration of the evidence of P.Ws.1,2,3,14 and 16 and contents of material exhibit-VI, we are of the view that those witnesses corroborated each other as to the presence of the appellant in Hotel Dalim where the P.W.16 Jahangir Chowdhury was kept confined and brutally tortured after his abduction. We have no hesitation to hold that the prosecution has been able to prove the charge No.3 against the appellant beyond all reasonable doubt.

Charge No:4

The charge is as under:

'In the late night of 24th November, in 1971, you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chitagong Town Unit and or a member of group of individuals at your instanace Victim Saifuddin Khan (now deadd) was abducted from Aziz colony under Double Mooring Police jStation and kept him confined in Dalim Hoteal Torture Cell under Andarkilla by the members of Al-Badar Bahini where he along with others were severely beaten and tortured by l-Badar Bahini under our leadership. Thereafter, on 2nd or 3rd December, at any time they were sent to Chittagong

jail where victim's wife Nurjahan met him through Jailor and she found her husband with blood strained injuries. On 16th December, 1971 in the morning he was released from jail.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2) (a) (g) (h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for commission of above offences under Section 4(1) of the Act.'

In support of this charge, the prosecution examined P.W.14 Foyez Ahmed Siddique who is a commerce graduate and at the relevant time he was aged about 23/24 years. He in his evidence said that on 24th November, 1971 his brother-in-law Shifuddin Khan was abducted by the members of Al-Badar Bahini. Mir Quasem Ali was the Commander of Al-Badar bahini. Hearing the facts of abduction of Shifuddin Khan, he rushed to Hetol Dalim and found Afsar Uddin, a leader of Islami Chhatra Sangha there. Afsar Uddin was 2/3 years junior to this witness when he was student of

Commerce College, Chittagong. He assured this witness saying that Shaifuddin Khan is his relative as well so he would look after him. He said that on the morning of 16th December this witness and others went to Hotel Dalim and rescued all the prisoners. On 17th December, 1971 his brother-in-law, victim Shaifuddin Khan, was released from Chittagong jail who disclosed to this witnesses that on 2nd/3rd December, 1971 he was sent to Chittagong Jail. He also disclosed that he was severely tortured in Dalim Hotel. He also came to know from his brother-in-law that some of the prisoners of Dalim Hotel were severely tortured and killed and thereafter their dead bodies were thrown into river Karnafully.

Mr. S.M. Shahjahan, learned Counsel appearing for the appellant, submits that except this hearsay witness there is no evidence on record who said that the appellant abducted the victim Shaifuddin Khan and tortured him in Hotel Dalim.

On perusal of the evidence of this witness it appears that he heard that members of Al-Badar Bahini abducted Shaifuddin Khan and, thereafter, keeping him confined in Hotel Dalim, tortured him and, thereafter, sent him to Chittagong Central Jail. He simply stated, ‘আল-বদরের কমান্ডার ছিলেন মীর কাশেম আলী’ | It is

true that Mir Quasem Ali was the Commander of Al-Badar Bahini but this witness did not say that at the time of abduction of victim Saifuddin Khan by the members of Al-Badar bahini, the appellant Mir Quasem Ali was present there with the Bahini or at the time of his torture, the appellant was present. In absence of such evidence, it is difficult to uphold the order of conviction of the appellant in respect of charge No.4. So we are of the view that this appellant is entitled to get benefit of doubt in respect of this charge. He is acquitted of this charge.

Charge No.6:

The charge is as under:

'On 28th November, 1971 at about 10-30/11.00 a.m. Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals at his instance victim Harun-or-Rashid Khan (now dead) was abducted by the members of Al-Badar Bahini with the help of Pakistani force and kept him confined holding his hands ited and folding his eyes in Dalim Hotel Torture Cell at Andarkilla under Kotwali Police Station where he was tortured. Thereafter, at your directives on being tied and folded eyes, he was taken to another Torture Cell

known as Salma Manjil under Paschliesh in Chittagong. He was rescued from Salma Manjil on 16th December, 1971 in the morning by pro-liberation forces and local people when the country became freed from foes.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against humanity as specified in section 3(2) (a) (g) (h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act. You are also liable for commission of above offences under section 4(1) and 4(2) of the Act.'

In support of the aforesaid charge No.6, the prosecution examined one witness who is P.W.15 Julekha Khatun who in her evidence said that on 28th November 1971 her husband, victim Harun-Or-Rashid Khan, was abducted by Al-Badar Bahini under the leadership of Mir Quasem Ali. Harun-Or-Rashid was severely tortured in Hotel Dalim and was kept confined 3/4 days. Thereafter, he was shifted to Salma Monzil another torture cell of Al-Badar Bahini. He was tortured severely keeping confined in a bathroom. There were other prisoners. The appellant

tried to kill him in Salma Monjil. She, in her evidence, said that she married victim Harun-Or-Rashid in 1976 and he heard about the occurrence from her husband. In her cross-examination, this witness stated that Harun-Or-Rashid was author of several books and his several articles were published in different magazines. There are different articles of the victim about the war of liberation. She told that her husband did not write anything implicating Mir Quashem in any paper. In cross-examination she denied the defence suggestion that it is not true that Mir Quasem Ali and members of Al-Badar Bahini did not abduct her husband and keeping him confined in Hotel Dalim and Salma Monjil tortured him severely.

It is held that Mir Quashem was the leader of Al-Badar Bahini and in comand position of hotel Dalim torture cell but this witness stated that she married the victim Harun-Or-Rashid in 1976. Her husband disclosed about the aforesaid facts to her thereafter. Relying upon the testimony of this solitary hearsay witness, who heard about the occurrence long after the occurrence, the conviction of the appellant in this charge is unsafe. We are of the view that the appellant is entitled to get

benefit of doubt on this charge. So, he is acquitted of this charge.

Charge No.7:

The charge is as under:

'On 27th November, 1971 after Magrib prayer you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals, at your instance victim Md. Sanauallah Chowdhury, Habibur Rahman (now dead) and Elias were abducted from 111 Uttar Nala Para under Double Mooring Police Station by the members of Al-Badar Bahini and kept them confined in the Torture Cell at hotel Mohamaya popularly known as Dalim Hotel at Andarkilla of Kotwali under your control. At his directives, members of Al-Badar Bahini tortured them severely who found many people there in the same condition during their forceful confinement in the Torture Cell. They saw that some of them were taken away and they heard that they were killed by Al-Badar Bahini at your instigation. Said Dalim Hotel was absolutely controlled by you as a high command of Al-Badar Bahini and central leader of Islami Chhatra Sangha. By Your order victims Habibur Rahman and Md. Sanauallah Chowdhury were released on 6th December and

9th December, 1971 respectively on condition that they would have to provide information about the freedom fighters regularly.

Therefore, you are charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the actual commission of offence of crimes against the humanity as specified in section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under section 20(2) of the Act.'

In support of his charge, the prosecution examined P.W.2 Md. Sanaulah Chowdhury who is a graduate and during the war of liberation he was aged about 25/26 years. P.W.2 in his evidence stated that after magrib prayer on 27th November, 1971 along with his sister's husband Habibur Rahman (since dead) neighbour Zafar Ahmed (since dead), Elias and he himself were gossiping in their house. Someone knocked at the door. Accordingly, one of them opened the door. At that time, 7/8 armed personnel entered into their house and started searching and found two books written by Abul Quashem of Sandip. The armed personnel arrested this witness, Habibur Rahman, Elias and others and brought them to Dalim Hotel and

confined them in a room. This witness found many other persons in the said room who were tortured inhumanly. Out of them, there were Advocate Shamsul Islam and Shah Alam of Uttar Nakhalpara. He also found Tuntu Sen, and Ranjit Das and others confined there. Thereafter, the members of Al-Badar Bahini kicked a person and threw him in the said room who was crying. He was Advocate Shafiul Alam. He added, “আমাকে ডালিম হোটেলে আটক থাকা অবস্থায় প্রায়শই বিভিন্ন রুমে নিয়ে নির্যাতন করা হতো। এই নির্যাতনের সময় কখনও কখনও মীর কাশেম আলীও উপস্থিত থাকতো। মীর কাশেম আলী ও আমাকে আটক অবস্থায় ডালিম হোটেলে জিজ্ঞাসাবাদ করেছে।” In his cross-examination by the defence, he said that before the war of liberation he knew Hotel Dalim. He also replied in his cross-examination that he did not see any army or bihari in Hotel Dalim. He denied the defence suggestion that what he told about Mir Quashem Ali is not true. He also said that it is not true that after 7th November 1971 Mir Quasem Ali left Chittagong. He also denied defence suggestion that he has deposed falsely. P.W.1 Md. Sayed Md. Emran in his examination-in-chief said that he saw Md. Sanauallah Chowdhury (P.W.2) confined in Hotel Dalim. P.W.13 Md. Hasan, who is a B.Sc. engineer and was aged about 16/17 years during the war of liberation, said in his evidence that in the last part of November 1971 some

armed personnel surrounded their house and house of his uncle Bashirul Huda and arrested three persons, namely, Habubur Rahman, Illias and Sanullah. Thereafter, they were kept confined in Hotel Dalim. 3/4 days, thereafter, P.W.2 Sanullah Chowdhury returned home who told that he was kept confined in Hotel Dalim and the members of Al-Badar Bahini tortured him mercilessly. That is, the testimony of injured witnesses P.W.2 has been corroborated by P.W.1 and 13. We do not find any materials contradictions and discrepancies in the evidence adduced by these three witnesses. Accordingly, we are of the view the prosecution has been able to prove charge No.7 against the appellant beyond all shadow of doubt.

Charge No. 9

The charge is as under:

'That on the following of 29th November, 1971 at about 4.00/4.30 a.m. you Mir Quashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and/or a member of group of individuals made a plan and directed your cohorts the armed members of Al- Badar Bahini who surrounded the Nazirbari situated under Chandgaon police station, abducted Nuruzzaman along with his cousins Sayed Md. Osman

Hossain, Sayed Md. Jamaluddin, Sayed Md. Kamaluddin, Sayed Md. Sarwaruddin, Sayed Md. Golam Kibria and Sayed Md. Golam Raman therefrom and then took them to the Torture Centre of Al- Badar Bahini situated in Dalim Hotel at Anderkilla under Kotowali Police Station. Thereafter, under your direction the members of Al- Badar Bahini confined those unarmed civilians therein tortured them till 15th December, 1971, and they were subsequently released on 16th December therefrom on the Victory Day of Bangladesh.'

'Therefore, you are charged for abetting and facilitating the offences of abduction, confinement, and torture as crimes against humanity and thereby you have substantially contributed the commission of offence of crimes against humanity as specified under section 3(2) (a), 3(2) (a) (g) and 3(2) (a) (h) of the Act.'

'You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.'

In support of his charge, prosecution examined P.W.18 S.M.Jamal Uddin who is one of the victims .At present he is aged about 75 years and during the war of liberation he was aged about 33 years old. He in his evidence said that on 29th November 1971 at about 4/ 4.30 a.m. the members of Al-Badar Bahini entered

into his dwelling hut and arrested him. He was brought in front of N.M.C. High School. Nurul Quddus, Nurul Hasem, Nurul Huda, Nasir and many others were also arrested and brought in front of the said school. Similarly, Ishkander and Zakaria were brought in front of the said school. Thereafter, they were shifted to Hotel Dalim. This witness was kept confined in a room of ground floor of Hotel Dalim. He found 3 / 4 dead bodies lying in Hotel Dalim. He has given descriptions of the dealings of the appellant and his Badar bahini with him and others with the following words:

আমাদের যখন আটক রাখা হয়েছিল তখন শীতকাল ছিল এবং আমাদের আটককৃত রুমের মেঝেতে পানি ঢেলে দেওয়া হয়েছিল। যখন আমরা ভীত সম্ভ্রান্ত হয়ে প্রাণ ভয়ে আল্লাহর নাম ডাকছিলাম তখন বদর বাহিনীর লোকেরা যারা রুমের বারান্দা দিয়ে হাটাহাটি করছিল তারা বলছিল আল্লাহর নাম ডেকে লাভ নাই, ইন্দিরা গান্ধির নাম নাও। আমি যখন পানির তৃষ্ণায় আল- বদর সদস্যদের কাছে পানি চাচ্ছিলাম তখন আল- বদর সদস্যরা প্রশ্রাব করে তা পান করার জন্য আমাদের সামনে দিত। যে খাবার গুলো আমাদেরকে সরবরাহ করা হতো তা আমাদেরকে না দিয়ে আল- বদর বাহিনীর সদস্যরাই খেয়ে ফেলতো। আটক হওয়ার ৩ / ৪ দিন পরে আমাকে নিচতলা থেকে চোখ বেঁধে হোটেলের তৃতীয় তলায় একটি কক্ষে নিয়ে যায় এবং সেখানে নিয়ে গিয়ে আমার চোখের বাঁধন খুলে দেয়। চোখ খোলার পর সেখানে আল- বদর কমান্ডার মীর কাশেম আলী ও শোয়েব আলীকে দেখলাম। সেখানে আমাকে হাত পা বেঁধে পা উপর দিক করে ছাদের কোন একটি অংশের সাথে বুলিয়ে সেখানে উপস্থিত বদর বাহিনীর সদস্যরা ইলেকট্রিক ওয়ার দিয়ে পিটাতে শুরু করে এবং জিজ্ঞাসা করে মুক্তি বাহিনীর কাকে কাকে চাঁদা দিয়েছে তা জানাও। নির্যাতনের এক পর্যায়ে আল- বদর বাহিনীর সদস্যরা আমাকে নামিয়ে মীর কাশেম আলীর নির্দেশে

লাথি মেরে সিঁড়িতে ফেলে দেয় এবং আমি গড়াতে গড়াতে নিচে পড়ে যাই। তখন আমি প্রচণ্ড জ্বরে আক্রান্ত ছিলাম। আল- বদরের কমান্ডার ছিলেন মীর কাশেম আলী।”

He got released from the camp of Al- Badar Bahini on 13th December 1971.

In cross examination he said that earlier he was acquainted with the name of Mir Quashem Ali. He denied the defence suggestion that it is not true that he never saw Mir Quashem Ali and he was not Al-Badar commander.

P.W.8 Iskender Alam Chowdhury another victim witness corroborated the testimony of victim P.W.18 stating that on 29th November, 1971 he was arrested by the members of Al-Badar bahini and Pak-army and brought in front of Mosque where he found Salahuddin, S.M. Jamaluddin (P.W.18) Abu Zafar and Zakaria, wherefrom, they were brought to Hotel Dalim. P.W.12 Md. Hasan in his evidence said that he was arrested by the members of Al-Badar bahini and brought in front of Mosque where he found Md. Iskander. P.W. 18 S.M. Jamal Uddin, Md. Salahuddin and 12 others who were also arrested. Wherefrom, they were brought to hotel Dalim. P.W.19 S.M. Sarwaruddin in his evidence said that the victim P.W.18 S.M.Jamaluddin along with Kamaluddin, Imran, Kibria and Osman were arrested by the members of Al-Badar bahini and Pak-army and they

were brought in front of N.M.C. High School. Thereafter, they were shifted to hotel Dalim through a truck. P.Ws.8,12 19 in their evidence fully corroborated the testimony of P.W.18.

We do not find any material contradictions and discrepancies in the evidence of P.W.18, P.W.8, P.W.12 and P.W.19 so far as it relates to charge No.9.

Accordingly, we are of the view that the prosecution has been able to prove the charge No.9 beyond all reasonable doubt.

Charge No.10

The charge is as under:

'That on the following of 29th November, 1971 at about 4.30/5.00 a.m. you Mir Quashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and/or a member of group of individuals made a plan and directed your cohorts, the armed members of Al- Badar Bahini who surrounded the area of Nazirbari, abducted Md. Zakaria, Md. Salahuddin aalias Chutgtu Miah, Iskander Alam Chowdhury, Md. Nazim Uddin along with many others therefrom and then took said four civilians to infront of N.M.C. High School first and them they were taken to the Torture

Centre of Al- Badar Bahini situated in Dalim Hotel at Anderkilla under Kotowali Police Station. Thereafter, under your direction the members of Al- Badar Bahini confined those four persons therein tortured. The victim Msd. Nazimuddin was released from the Torture Centre on 30th November, 1971 as he was under age, and after 7/8 days victim Md. Zzakaria was released on the request of his father and uncle, and another victim Md. Salahuddin alias Chuttu Miah was released on 11/12th December, 1971, on the request of his relative, and finally the victim Iskander Alam Chowdhury was released from the said Torture Centre on 16th December, 1971, the Victory Day of Bangladesh.

Therefore, you are charged for abetting and facilitating the offences of abduction, confinement, and torture as crimes against humanity and thereby you have substantially contributed the commission of offence of crimes against humanity as specified under section 3(2) (a), 3(2) (a) (g) and 3(2) (a) (h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.'

In support of this charge, prosecution relied on the evidence of P.W.8, Iskander Alam Chowdhury, P.W. 10 Md. Zakairia, P.W. 11 Nazim Uddin P.W.1

Sayed Md. Emran and P.W.9 Md. Salauddin @ Chutu Miah and P.W. 12 Md. Md. Hasan.

P.W.8 Iskender Alam Chowdhury , a Diploma Engineer, who was aged about 23 years during the war of liberation, in his evidence said that with the intention to participate in the war of liberation , he returned home from Pakistan and participated in different fights against the Pakistani Army with other freedom fighters. On 29.11.1971, at about 4.00 a.m., members of Al-Badar Bahini and Pakistani Army surrounded his house and arrested him. They brought him in front of a Mosque where he found P.W.9 Salauddin, P.w.11 Nazim Uddin, P.W.10 Jakaria and Jafar under arrest and, thereafter, they were taken in front of N.M.C. Model High School wherefrom they were shifted to Dalim Hotel, Torture Cell of Al-Badar Bahini. They kept this witness confined in a small room of the ground floor of the Hotel along with others. In his evidence, he added- “ঐরুমে যাবার পর কোন একজন লোক বললো , খান কোথায় ? উত্তরে কেউ একজন বললো মীর কাশেম আলী সাহেব আমি আসছি । এরপর একজন আমার কক্ষে প্রবেশ করে উপর্যুপরি কিল-ঘুষি লাথি মেরে ফেললে দেয় এবং ইলেকট্রিক ওয়ার দিয়ে পিটাতে শুরু করে । এই সময় আমি কলেমা পড়তে থাকি । একপর্যায়ে নির্যাতনকারীদের মধ্যে একজন আমার চোখের বাঁধন খুলে দেওয়ার

পরে আমি মীর কাশেম আলীসহ আরেক জনকে দেখতে পাই যিনি সম্ভবত পূর্বে উল্লেখিত খান হতে পারে।

চোখ খোলার পরে মীর কাশেম আলী আমার কাছে থেকে মুক্তিযোদ্ধা এবং তাদের ঘাটি সম্পর্কে তথ্য জানতে চায়। কিন্তু আমি কোন তথ্য না দেওয়ার প্রেক্ষিতে মীর কাশেম আলী এবং ঐ রুমে অবস্থানকারী লোকজন আমার উপর আবার নির্যাতন শুরু করে। এ পর্যায়ে মীর কাশেম আলী বললো আমি যদি মুক্তিযোদ্ধাদের অবস্থান সম্পর্কে তথ্য না দেই তাহলে আমাকে মেরে কর্ণফুলী নদীতে ফেলে দেবে। এরপর আমাকে ডালিম হোটেলের দোতলা থেকে নিচতলায় নিয়ে আসা হয়। এ অবস্থায় আমি মৃত্যুর প্রহর গুনতে থাকি।

১৯৭১ সালের ১৫ ডিসেম্বর ডালিম হোটেলে আল বদর বাহিনী লোকজনের আনাগোনা কমে এসেছে বলে বুঝতে পারি। পরদিন ১৬ ডিসেম্বর সকালে স্থানীয় লোকজন ডালিম হোটেলে এসে আমরা যে কক্ষে আটককৃত অবস্থায় ছিলাম তার দরজা ভেঙ্গে আমাদেরকে উদ্ধার করে ----
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In his cross examination this witness said that he returned from Pakistan through PIA and, thereafter, he went to his house in Chittagong by road, launch and finally by train. At that time, Road and Railway communications were collapsed. He went to Chandpur from Sadarghat by Launch. In his cross examination he denied the defence suggestion that since he fled away from Pakistan Airforce he was arrested and kept confined in jail hajat. He also denied the defence suggestion that it is not true that after arrest he was not kept confined in a room of Hotel Dalim and one of the members of Badar Bahini

asked, "where is Khan?" Responding, another member said "মীর কাশেম আলী সাব আসছি". He also denied the defence suggestion that he was not tortured in Hotel Dalim. P.w.9 Salauddin @ Chutu Mia was aged about 17 years in 1971. He was arrested by the members of Al-Badar Bahini. He found that Jakaria, Nazim and Iskendar were also arrested. They were brought to N.M.C. Model High School and thereafter, shifted to hotel Dalim. In his evidence, he said "ডালিম হোটেলের সামনে যাওয়ার পর আল-বদরা আমাদেরকে ট্রাক থেকে নামিয়ে চোখ বেঁধে ফেলে এবং ডালিম হোটেলের ভিতরে নিয়ে একটি কক্ষের তালা খুলে আমাদেরকে সেখানে ঢোকায়। তখন সেখানে আগে থেকে আটককৃত লোকদের কান্নাকাটি শুনতে পাই। কক্ষে ঢুকিয়ে আল বদররা বাইরে থেকে তালা মেরে চলে যায়। ওখানে আটক করার ২/ ৩ দিন পর কোন এক রাতে দরজা খুলে ইলেকট্রিক ওয়ার দিয়ে এলোপাথাড়ি ভাবে আমাদের পেটাতে থাকে। এর ৪/ ৫ দিন পর কেউ একজন আমাদের রুমে প্রবেশ করে। আমার নাম ধরে ডাকে। যখন আমি ডাক শুনে তার সামনে উপস্থিত হলাম তখন লোকটি আমার চোখ খুলে আমাকে দেখে আবার আমার চোখ বেঁধে ডালিম হোটেলের উপরে নিয়ে যায় এবং ঐ লোকটি আমাকে বলে যে, 'আমাদের কমান্ডার মীর কাশেম আলী তোমাকে জিজ্ঞাসা করবে কোথায় মুক্তিবাহিনী অবস্থান করছে এবং কোথায় কোথায় অস্ত্র লুকানো আছে'। এরপর আমি মীর কাশেম আলীর সামনে গেলে সে আমাকে জিজ্ঞাসা করে, 'বলো কোথায় অস্ত্র আছে এবং মুক্তিবাহিনীরা কোথায় আছে, না বললে তোমাকে কেটে টুকরো টুকরো করে কর্ণফুলী নদীতে ভাসিয়ে দেব'। আমি কোন তথ্য না দিলে মীর কাশেম আলী উপস্থিত আল-বদরদেরকে বলে ওকে ভালো করে ধোলাই করো। এর পর আল-বদররা আমাকে নির্যাতন করতে থাকে। এর কিছুক্ষণ পর আমাকে বেঁধে আবার আমাকে হোটেলের নিচের কক্ষে নিয়ে যায়।" . He denied the defence suggestion that he was not kept confined in a room of hotel Dalim and,

thereafter, he was brought before Mir Kashem Ali who asked him about the whereabouts of Muktibahini and their arms and, thereafter, Quasem Ali uttered that after killing him his dead body would be thrown into river of Karnafuli and that Mir Kashem Ali directed the members of Al-Badar bahini to assault him. Another victim, witness P.W.10 Md. Jakaria in his evidence said that he was aged about 30 /32 years during War of Liberation. He said that 5 / 7 days after Eid-Ul-Fitr held in 1971 he was arrested by the members of Al-Badar Bahini. They brought him in in front of a Mosque where he found P.W.8 Iskendar, P.W.9 Salauddin , P.W.11 Nazim and others who were also arrested by the members of Al-Badar bahini. Thereafter, they brought those victims in front of N.M.C. school and then to hotel Dalim by a truck. They were confined in a room on the ground floor of the said hotel where they found other prisoners. Two days thereafter, his brother Iskendar was taken to the first floor of the said hotel who was brutally tortured. He heard the sound of crying. Thereafter, this witness was taken to the first floor. He narrated the subsequent facts with the following words:

‘যখন আমি উপরের তলায় যাচ্ছিলাম তখন আমার ভাই এক্ষেত্রকে দোতলায় বারান্দার সিঁড়িতে ক্রন্দনরত অবস্থায় দেখতে পাই। দোতলায় নিয়ে আল-বদররা আমাকে মুক্তিবাহিনী কোথায় আছে বা অস্ত্র কোথায় আছে এই তথ্য গুলো দেওয়ার জন্য চাপ প্রয়োগ করতে থাকে। আমি অপরাগতা প্রকাশ করলে আল-বদররা আমাকে নির্যাতন করতে শুরু করে। এ পর্যায়ে আরেকটা লোক এসে একই তথ্য জানতে চায়। এবারও আমার অপরাগতা প্রকাশ করায় আগত লোকটি আল-বদরদেরকে বলে, ‘আবার পিটাও’ তখন আল-বদররা আবারও আমার উপর নির্যাতন শুরু করে। এরপর আমাকে আবার নিচের কক্ষে নিয়ে যায়। যে আল-বদররা আমাকে এতোক্ষণ যাবত নির্যাতন করছিল তাদের একে অপরের সাথে কথা বলাবলি থেকে জানতে পারি যে, যে লোকটি পরবর্তীতে এসে আবার পিটাও বলে উক্তিটি করেছিল তার নাম মীর কাশেম আলী।’’

In his cross examination he denied the defence suggestion that the statements quoted above are not true. P.W. 11 Md. Nizam Uddin was aged about 40 years in 1971. He is an Arts graduate. In his evidence he said that the members of Al-Badar Bahini surrounded his house and arrested him. They brought him in front of Mosque where he found his brother Choto Miah , Jakaria and others. From there, they were brought to N.M.C. Model High School and then to hotel Dalim by truck and kept confined in a room where he found other prisoners. They were brutally tortured. He said ‘আহত ব্যক্তির আমাকে বলল, ‘তোমাকেও এভাবে নির্যাতন করা হবে’। একথা শুনে আমি ভয়ে কাঁদতে থাকি। নির্যাতন ব্যক্তির আরো বলছিল এটা মীর কাশেম আলীর নেতৃত্বে একটি নির্যাতন কেন্দ্র। এর ৩/ ৪ দিন পর আল- বদরের লোকজন এসে আমাকে রুম থেকে বের করে মীর কাশেম আলীর কাছে নিয়ে যায়। মীর কাশেম আলীর নিকটে আমাকে উপস্থিত করলে

সে আমার নিকট মুক্তিযোদ্ধাদের সম্পর্কে তথ্য জানতে চায়।' In cross examination he denied the defence suggestion that Mir Quasem Ali was not the leader of said torture cell and this witness was produced before him. P.W.1 in his evidence corroborated the testimony of those victims witnesses. In his evidence, P.W.12 Md. Hasan, who was aged boy of 19 years in 1971, said that the members of Al-Badar Bahini surrounded his house and arrested him along with Professor Moulana Nurul Islam his father Abdus Satter, Nurul Kuddus, Nurul Hashem, Md. Ibrahim, Abdul Hakim, Idris, Md. Shafi and 25 others and brought them in front of N.M.C. Model High School under the leadership of Mir Quasem Ali. In his evidence he further said that he also found Syed Md. Emran, Sayed Md. Jamal, Syed Md. Sarowar, Syed Md. Kamal, Md. Ishkender, Md. Nazim, Md. Salauddin and 10/ 12 others who were arrested by the members of Al-Badar Bahini. He said that he was released due to his age. In his cross examination he denied the defence suggestion that at the time of his arrest Mir Quasem Ali was not present and persons confined were not tortured.

From the evidence stated above, it appears that the P.W.8, 9, 10 and 11 are injured witnesses, they were brutally tortured by the members of Al-Badar

Bahini including the appellant. They corroborated each other as to date, time, manner of occurrence. We do not find anything to disbelieve testimonies of these witnesses. We are of the view, that the prosecution had been able to prove charge No.10 against the appellant beyond all shadow of doubt.

Charge No.11

The charge is as follows:

'That at any time after the Eid-ul-Fitre day held in 1971, you Mir Quashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals made a plan and at your instance the members of Al-Badar Bahini having abducted Jasim, a freedom-fighter, from an unknown place of Chittagong town, took him to the Torture Centre of Al-Badar Bahini situated in Dalim Hotel at Anderkilla under Kotowali police station. Thereafter on 28th November, 1971 under your direction and hint, the members of Al-Badar Bahini having confined him therein tortured to death and then his dead body

along with 5(five) other dead bodies of unknown persons, who were also tortured to death by the members of Al-Badar Bahini, were thrown into the Karnafuli river.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement, torture and murder as crimes against humanity and thereby you have substantially contributed the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are also liable for commission of above offences under Section 4(1) and 4(2) of the Act.'

Witnesses

In support of the charge, the prosecution has relied upon Syed Md. Emran (P.W.1), Md. Sanauallah Chowdhury (P.W.2), Nasir Uddin Chowdhury (P.W.3), Jahangir Chowdhury (P.W.16), Hasina Khatun (P.W.17) and S.M. Sanowar Uddin (P.W.19) and also relied upon S.M. Jamal Uddin (P.W.18), Lutfar Rahman Faruq

(P.W.20) and Nurul Islam (P.W.24) to prove circumstantial evidence. Besides it has also relied upon some documentary evidence.

Analysis of the evidence

P.W.1 stated that he had studied at Chittagong Collegiate School and his classmates in that school were former Minister Dr. Afsarul Amin, Moinuddin Khan Badal and the accused Mir Quashem Ali. He claimed that he participated in the liberation struggle as a freedom fighter against Pakistani occupation army and the commander of his force was engineer Afsar Uddin. Their task was to keep the Pak army at tensed situation and killing of collaborators and disrupting the communication system etc. In conformity with their responsibilities, they involved in direct fight with Al-Badar forces and without any loss they defeated the forces. He narrated the incidents in respect of charge Nos.7, 9 and 10 and then stated that at one stage, he was detained and

taken to the Dalim Hotel which was converted as Al-Badars torture camp and in course of discussions with other detainees namely, Sanauallah Chowdhury, Zahangir Alam Chowdhury and advocate Shafiul Alam Chowdhury, he came to know that on 28th November, 1971, the Al-Badar forces tortured one freedom fighter in the room where they were staying and killed him. His name was Jasim Uddin, a resident of Sandwip, who was a minor freedom fighter. He came to know about the name of that freedom fighter from an employee of the camp (Swapan). Sanauallah Chowdhury knew Jasim Uddin from before. They also came to know that the Al-Badar forces killed 3/4 hostages in another room and threw their dead bodies into Karnofuli river. He came to know about the killing of Jasim Uddin from Swapan.

He was thoroughly cross-examined by the defence. He stated that he knew about the Dalim Hotel since 1969. It was a residential hotel. He expressed his ignorance about the identity of Matiur Rahman alias Moitta Gunda Razakar. He made positive statements

that at any point of time he had heard any Razakar named Matiur Rahman. He denied the defence suggestion that before 29th November, Bibirhat Razakars Camp's commander had been attacked under his command or that in the said attack Jasim Uddin died. By giving this suggestion, the defence has practically admitted the status of this witness as a veteran freedom fighter as well as the killing of Jasim, who was also a freedom fighter. We fail to understand why the defence gave this suggestion, inasmuch as, after this suggestion, there is hardly any scope on the part of the defence to deny the killing of young freedom fighter Jasim Uddin unless it proved the manner of killing of Jasim Uddin that he was killed at the encounter with Razakars at Bibirhat Razakars camp. He admitted that under his planning the freedom fighters attacked Razakars and Al-Badars camps from Baddarhat to Balirhat area near Khaja Road by forming different groups. He also admitted that in the similar manner, there was a fight at Chatgaon area on 29th November.

He, however, denied the defence suggestion that there was no existence of Al-Badars camp under Panchalais Thana. He reasserted his claim by making positive statement that Dalim Hotel was used as torture camp of Al-Badars.

The defence did not at all give any suggestion to this witness denying the said positive statements with the result that it had totally accepted his above positive assertions. He denied the defence suggestion that the appellant Mir Quashem Ali was appointed as General Secretary of East Pakistan Islami Chattras Sangha or that after 7th November, 1971 he stayed at Dhaka. He then made positive statement that after 7th November, 1971, Mir Quashem Ali stayed at Chittagong all along. This statement also suggestive that Mir Quashem Ali never stayed at Dhaka after 7th November. He also denied the defence suggestion that in course of operation at Balirhat area, he was arrested. He denied the defence suggestion that Dalim Hotel was not used as torture

centre of Al-Badar forces or that it was controlled by Mir Quashem Ali or that Motiur Rahman alias Moitta Gunda controlled the said house. By these suggestions also the defence has impliedly admitted the positive claim of the prosecution that Dalim Hotel was used by the Al-Badars as its torture centre, inasmuch as, the defence could not establish that there was existence of one Motiur Rahman Razakar, who was in charge of Dalim Hotel or that he was involved in all the atrocities committed in the said centre.

P.W.2 was an employee of Chittagong Deputy Commissioner's office. He stated that on one occasion on 27th November, 1971, he was gossiping with neighbours Habibur Rahman, his brother-in-law Zafar Ahmed and Elias, and at that point of time, some one knocked at the door and as soon as the door was opened, 7/8 armed civilians trespassing into the house detained them on the point of arms and searched the house. They took one two-in-one transistor and two books written by Abul Kashem and thereafter, took

them to Dalim Hotel by blindfolding their eyes. They were taken into a room in the second floor. They could not trace out in which room Elias was taken. Later on they removed their veil of their eyes and saw other detainees who were kept on blindfolded condition. Some of them were trembling on the floor, of them, they could recognize advocate Shamsul Islam and Shah Alam.

In support of charge No.11 he stated that, sometimes thereafter he saw that a person was thrown inside their room by kicking from his backside. The person was screaming. He was known to advocate Shafiul Alam, who with Jahangir helped him sit leaning towards the wall. On the following day they heard the screaming of the victims on the roof top due to torture. At one stage sounds of screaming disappeared and sometimes thereafter, a person was taken into their room. At that time someone told the Al-Badar commander that the person was still alive, who directed to throw him inside so that other

detainees could realize the consequence if they did not disclose the truth. At one stage the boy was thrown inside their room, when advocate Shafiul Alam whispering slowly that the leader was Mir Quashem Ali, Bangalee Khan commander of Badar Bahini. The boy who was thrown inside the room was on critical condition and on seeing his condition, advocate Shafiul Alam Khan hugged him and told them that he was Swandip's minor freedom fighter Jasim. Sometimes, thereafter, the boy died on the lap of Shafiul Alam. All of them were remorseful on seeing the brutality of the incident. After the dusk Al-Badars took the dead body of the boy.

This witness corroborated the testimony of P.W.1 as regards the identification of Jasim saying that in the camp the duty boy Swapan intimated them that Jasim was tortured on the roof top of the building and his dead body along with Tuntu Sen and 4/5 others was thrown into the Karnofuli river. He stated that when he was detained at Dalim Hotel, Mir Quashem Ali

interrogated him and that the torture of the victims was perpetrated in presence of Quashem Ali. In course of cross-examination, he replied to a query that the head office of Al-Badars camp was set up at Dalim Hotel. He stated that he knew Dalim Hotel from before the war of liberation. The second and third floors were used as hotel. In reply to an another query made by the defence, he stated that he did not see the Pakistani army or Beharis in the Dalim Hotel. By this statement, he reasserted his claim that Dalim Hotel was under the control of the appellant Mir Quashem Ali, who was the commander; and that all atrocities and killings were perpetrated under his direction and command. He denied the defence suggestion that Mir Quashem Ali did not reside in Chittagong after 7th November till the liberation of the country or that he was not the commander of Al-Badars or that he was deposing being tutored.

P.W.3 is a freedom fighter and a student of higher secondary examination during the relevant

time. He stated that after the 26th March declaration by Bangabandhu Sheikh Mujibur Rahman, he went to India for guerilla training in April and towards the mid June he entered into the country. He was a member of Bangladesh Liberation Force commonly known as Mujib Bahini. He crossed through Boalkhali and from there to Potia to Anwara to Chandanaish to Satkaniya and Bashkhali and fought with the occupation army. Towards the mid October, 1971, he came to Chittagong town and joined with the co-fighters to fight with the occupation forces. At that time, he took shelter at Mohaddes Vhila of Andar killa owned by Nazir Ahmed Chowdhury. That house was situated near Dalim Hotel which was used as Al-Badars' head quarter. His secrete shelter had been leaked out towards the end of November, 1971. At dead of night the members of Al-Badar gheraoed his shelter and he was taken to Dalim Hotel on blindfolding condition and he was kept in a dark room. He was tortured by the Al-Badar forces with a view to collecting information

regarding the location of the arms that he kept and his co-fighters. As he did not disclose anything, he was taken out of the room and sometimes thereafter Mir Quashem Ali came to his room with some Al-Badar forces. Mir Quashem Ali told his forces by pointing fingers at him as to whether anything could have been collected from his lips and directed them to torture him. Thereafter, the Al-Badar forces tortured him with lathis, iron rods and electric wire and at that stage, Mir Quashem Ali wanted to know the names of co-fighters, their shelter and their arms. As he did not give any reply he was tortured severely causing serious bleeding injuries and then they left.

In support of charge No.11, he stated that he found one Swapan who was an employee of Al-Badar forces. This Swapan stated that on the top floor of Dalim Hotel, freedom fighter Jasim, Tuntu Sen, Ranjit Das were tortured to death and their dead bodies were thrown into Karnofuli river and that Mir Kashem Ali directly supervised the killing. In course of cross-

examination he stated that Mir Quasem Ali sustained injury on 6th December, 1971 and since that date till the date of liberation of the country, he did not see Quasem Ali in Dalim Hotel. In reply to a query of the court, he stated that the previous name of the hotel was Mohamaya Hotel and in 1971, Islami Chatta Sangha took control of the Hotel and renamed it as Dalim Hotel. He stated that in Chittagong Al-Sham's forces camp was set up at Fazlur Quader Chowdhury's goodshill house and another was at Tower hotel. He denied the defence suggestion that Dalim Hotel was under the control of Matiur Rahman Razakar and that a case was instituted against him after the liberation of Bangladesh. Therefore, this suggestion impliedly supports the prosecution case.

P.W.16 Jahangir Alam Chowdhury is also a veteran freedom fighter. He was the Deputy Leader of Chittagong Joy Bangla Force. He stated that after the declaration of independence by Bangabandhu, he joined the liberation forces. He narrated about his training

and participation at different fronts of guerilla operation. About two days after Eid of 1971, the Pak army declared curfew and Al-Badar forces gheraoed Kadamtali area. He was taken out of the house by folding his hands towards backside at Dalim Hotel where Badar Bahinis' camp was established. He was kept on the veranda of Dalim Hotel and tortured by the forces, and thereafter, he was taken into a room in the ground floor. He found the detainees there, amongst them, his young brother Dastagir Chowdhury and neighbour Mofiz. He concealed his identity to them and at dusk Nurul Afsar and Abul Kashem threw advocate Shafiul Alam into their room and locked the door from outside. There was profuse bleeding through the mouth of Shafiul Alam. At that time Mir Quashem Ali and Nurul Afsar told Shafiul Alam that the others would get lesson on seeing his condition. Thereafter, they helped Shafiul Alam sit leaning towards the wall. One day at noon, Nurul Afsar, Mir Quashem Ali and Jalal brought 14/15 years old boy Jasim of

Swandip, threw him inside their room and on seeing him Shafiul Alam told that the boy was no longer alive. Thereafter, the boy, namely, Swapan who supplied their food, on seeing Jasim told that in the similar manner many persons were killed and their dead bodies were thrown into the Karnofuli river. Jasim's dead body was taken by Al-Badar forces in the evening. He stated that he was forced to read out a statement on the radio proclaiming that there was normalcy in the country and as he refused to read out the same, Nurul Afsar and Kashem pounded and tortured him. In course of cross-examination, he expressed his ignorance as to whether Dalim Hotel was under the control of Matiur Rahman alias Moitta Gunda. He was thoroughly cross-examined by the defence but it could not elicit anything which could discredit his testimony in any manner.

P.W.17 Hasina Khatun is the cousin of victim Jasim. She stated that she was the editor of a weekly and owned a press under the name 'Progoti Printing

Press.' She stated that Jasim was a student of intermediate. He was a freedom fighter and he used to come to their home regularly. On the occasion of Eid in 1971, Jasim came to her house to relish polao, kurma. Despite limitations she served him by cooking polao and after relishing the foods, Jasim prayed to Almighty to give her such wealth which would allow her to relish polao, kurma throughout her life. At the time of his departure Jasim sought her blessings so that they could achieve their goal by liberating the country. After liberation as Jasim did not return she was perturbed and searched the whereabouts of Jasim. At one stage, she met advocate Shafiul Alam and asked about Jasim. Shafiul Alam wanted to know whether she was asking about Sandwip's house. When she replied in affirmative, Shafiul Alam told her that when he was detained at Dalim Hotel, Jasim was also detained in the same room, and under the leadership of Mir Quashem Ali Al-Badar force members tortured him to death. Shafiful Alam further told

that the room was locked up from outside and he was blind folded. After Jasim was thrown inside the room he was on a critical condition and soon thereafter he breathed his last. On hearing the news, she started crying and at that time, Shafiul Alam told her to contact Saifuddin Khan. She then met Saifuddin Khan who had also narrated the similar story. She wanted to know about the dead body of Jasim, when Saifuddin Khan, told that Jasim's dead body was thrown into the Karnofuli river. He further stated to her that when he was detained at Dalim Hotel, one Swapan working at Dalim Hotel told him about the said fact. She stated that all the persons with whom she met told her in one voice that under the leadership of Mir Quashem Ali, Al-Badar force members tortured and killed Jasim and threw his dead body into Karnofuli river.

In course of cross-examination, she stated that Jasim was 10/12 years younger to her. She expressed her ignorance as to whether Jasim was detained by Pakistani force. By this suggestion, the defence has

practically admitted the prosecution's claim of detention and killing. She stated that Jasim had four brothers and three sisters, of them, one brother Dr. Rajib Humayan is the professor of Dhaka University. She stated that the worker of Dalim Hotel Swapan could not be traced out after the liberation war. In a reply to a query, she stated that throughout her lifetime she would remember the memory of commander Mir Quashem Ali.

P.W.18 S.M. Jamal Uddin stated that on 29th November, 1971, at about 4 a.m, some Al-Badar forces entered into his house and detained him along with other brothers and took them to N.M.C. High School field. On reaching there he saw Nurul Quddus, Nurul Hashem, Nurul Huda, Nasir and others who were also brought there. Two trucks were kept standing in front of the school and all the detainees were taken to Dalim Hotel with those trucks. They were kept in a room on the ground floor. When he reached to the room, he found 3/4 dead bodies and after removing the

veil of his eyes, he saw Al-Badar leader Mir Quashem Ali. He was tortured as per direction of Mir Quashem Ali. He was examined to prove circumstantial evidence that Dalim Hotel was used as torture center which was commanded by Mir Quashem Ali.

P.W.19 S.M. Sarwaruddin was a 12th standard student during the liberation period. On 29th November, 1971, he along with his cousin Emran (P.W.1) was sleeping in the house. At 4 a.m, some people knocked at the door and on opening the door, some civilians with two Pak army and one Al-Badar member entered into the house. They tortured him, and thereafter, they tied their hands towards backside and were taken to N.M. High School compound, and thereafter, from there the Al-Badar force took them to Badar forces headquarters. At night Mir Quashem Ali and his forces tortured him and wanted to know whether he knew Emran. He also asked about the whereabouts of freedom fighters, their arms and whether he joined the freedom fight. When he denied

his involvement, as per order of Kashem, the Al-Badar forces tortured him. This witness was also examined to prove the circumstantial evidence. P.W.20 also deposed to support circumstantial evidence. Same is the statements with regard to P.W.24 Md. Nurul Islam.

Defence Witnesses

Montaz Nur Uddin (D.W.1) is the younger sister of the accused. She stated that her brother came to her Dhaka residence in the first week of November, 1971. In 1972 March she along with her husband shifted to Comilla as her husband got a job at Comilla College. Her brother left her Dhaka residence in March 1972 and went elsewhere. Till she left for Comilla in the first week of November, 1971, her brother was staying with her at Dhaka. In course of cross-examination, she stated that her father resided at Comilla in connection with his service. Her brother was staying with her father. She could not say when her father came to Comilla. She then said, her brother came to Dhaka to give her company. She

stated that when she left for Comilla, her bother left for Comilla to stay with her father. On perusal of her statements we find apparent inconsistency in her testimony. She stated in chief that her bother left elsewhere in March 1972 from her residence of Agamoshi Lane, Dhaka but in cross-examination she stated that at the time of her departure her brother also left Dhaka to stay with his father in Comilla. She did not explain where her brother stayed before November 1971. He was then a bachelor. If he came in the first week of November 1971 to give company to her and if he left for Comilla in 1972, certainly Mir Quashem Ali stayed with his father at Comilla but documentary evidence along with the oral evidence clearly showed that he was in Chittagong during the relevant time.

Mohammad Ali (D.W.2) stated in chief that he was a freedom fighter and came to Chittagong after taking training during the liberation struggle period. When staying at a secret home in Chittagong, he came to

know that Dalim Hotel was set up as torture center, which was under the control of Motiur Rahman Moti with some Razakars; that said Motiur Rahman was involved in antisocial activities with the help of some Beharis and tortured the innocent people in the said centre. In course of cross-examination he stated that he along with his other mates numbering four were provided with sten guns to each of them and an ammunition box. In the month of November, they did not involve in any operation at Chittagong and in the first week of December, they attacked a petrol pump. He expressed his ignorance that Mir Quashem Ali was a prominent leader of Islami Chattra Sangha or that he was involved with Al-Badar activities or that the leaders or the workers of Islami Chattra Sangha became the members of Al-Badar forces. He further stated that till September before he left for training, he was in Chittagong town. He could not say whether Shanti Committee was raised with the members of Muslim League and Jamat-e-Islami; that in

Chittagong Rajakar, Al-Badars and Al-Shams forces were in existence. He expressed his ignorance that Razakars, Al-Badars and Al-Shams members killed innocent people and threw their dead bodies in the Kornafuli river.

The statements of this witness are self-explanatory as regards the veracity of his testimony and no further explanation is necessary. Even he did not know that Mir Quashem Ali was a prominent leader of Islami Chattra Sangha. He did not admit the involvement of Muslim League and Jamat-e-Islami leaders in the Shanti Committee. Even he did not admit the existence of Razakars, Al-Badars and Al-Shams, and their atrocious activities in Chitagong. How much interested a witness he is will be evident from the above statements? Though he claims as a freedom fighter, in fact he is apparently a member of the same force which committed atrocities in Chitagong, otherwise he could admit at least Mir Quashem Ali's status as the President/Secretary of

Islami Chatra Sangha, Chittagong chapter. He is absolutely partisan and biased witness. So, no reliance can be placed upon this witness.

Abu Taher Khan (D.W.3) claimed that he was employed at Railway Engineering Department as store clerk in Chittagong in 1971. He claimed that he was deposing on behalf of Mir Quashem Ali as per request of his son Barrister Arman, who requested him to say something about Mir Quashem Ali, as he was a freedom fighter since there was allegation against his father that he was operating the torture centre at Dalim Hotel. He stated that Dalim Hotel was used as torture center by Motiur Rahman and his accomplices in 1971 and innocent people were tortured there. He produced exhibits A, B, C and D, some information, slips and documents. In course of cross-examination he stated that except Chatra League, he had no acquaintance with Chatra Sangha or other student leaders. He then said, he knew Mir Quashem Ali for the first time in 1983, when he became the Director of Islami Bank in

connection with his visitation to the bank for bringing an advertisement in his magazine. He denied the defence suggestion that Dalim Hotel was under the control of Mir Quashem Ali, which was used as Al-Badar's torture center or that Mir Quashem Ali was the commander of Al-Badar forces or that in 1971 Al-Badars, Al-Shams members captured the supporters of pro-liberation, tortured and killed them at Dalim Hotel. He also expressed his ignorance as to whether Jamat-e-Islami members formed shanti committee. He admitted that he heard Gulam Azam's name but he expressed his ignorance as to whether Gulam Azam was in the Shanti Committee. He denied the prosecution suggestion that in 1971, Gulam Azam was the Ameer of Jamat-e-Islami. He expressed his ignorance as to whether in the Central Shanti Committee, the members of Muslim League, Jamat-e-Islami, PDP, Nezam-i-Islami and their leaders were included. He also expressed his ignorance whether in goodshill Chitagong, Circuit House, Stadium, Doshbarman Building, Dalim Hotel etc.

were used as camps of Pakistani army, Al-Badars, Al-Shams, Razakars as torture centers.

A plain reading of his testimony clearly reveals that he is also a partisan witness, inasmuch as, he has totally denied the involvement of leaders of Muslim League, Jamat-e-Islami, PDP, Nezam-i-Islami in the formation of Shanti Committee at Chittagong. Even he denied the existence of the camps set up by Al-Badars, Al-Shams, Razakars and Pakistani army at Goodshill, Circuit House, Stadium, Dalim Hotel and other places. Like D.W.2, he also did not admit the complicity of Razakars, Al-Badars, Al-Shams in the killing of innocent persons in Chittagong. If he was involved in East Pakistan Railways Employees League, Chittagong Unit, and involved in liberation struggle as claimed, it is unbelievable story that he would not know Mir Qusheem Ali, who was admittedly the president of Islami Chattra Sangha, Chitagon chapter. Even he was not prepared to admit Gulam Azam's role in 1971.

If the statements of these three witnesses are taken to be true, it may be inferred that there was no anti-liberation forces in 1971 formed/raised with the members Muslim League, Jamat-e-Islami, Nezam-i-Islami, PDP, Islami Chattra Sangha and that only Pakistani armies perpetrated the atrocities. Even D.W.3 denied the involvement of Pakistani force in the atrocities. If their statements are taken to be true, the history of our liberation struggle has to be re-written. The nature of the statements, the tenor, the manner and the disclosures that they made are totally absurd, imaginary and based on hypothesis. By relying upon these type of witnesses, the defence has practically denied the atrocities perpetrated by paramilitary forces raised by the anti-liberation forces with a view to frustrating the liberation struggle. The tribunal thus committed no error in ignoring their evidence.

Findings of the tribunal

The tribunal after assessment of the evidence held that it was proved that Jasim was brutally tortured to death in confinement at Al-Badars camp at Dalim Hotel; that the killing of Jasim, a young freedom fighter in the captivity at the Al-Badar camp was the ending phase of the organized and system cruelties; that as revealed, as a practice, as routine activities at the torture and detention camp the force detained civilians, brought there on capture; that it was not practicable for any stranger at all to witness the criminal activities carried out there including the act of inflicting torture to Jasim; that even it was not feasible to see exactly at what time, how and who had dumped the dead body of Jasim to the river Karnofuli; that for this obvious reason, the prosecution in order to prove the commission of the offence of murder and accused's culpability therewith, depends upon some detainee witnesses who had occasion to see brutally injured Jasim in their room and knew from one Swapan, a

worker at the camp in respect of causing ruthless torture and dumping him; that the defence did not dispute that after the independence P.W.17 had met advocate Shafiul Alam and Saifuddin Khan for getting information about her missing brother Jasim; that advocate Shafiul Alam narrated the harrowing memoirs of his incarceration at Al-Badar camp set up at Dalim Hotel; that from the traumatic memoir in confinement at the camp, as narrated by co-detainee advocate Shafiul Alam in his article goes to show that one afternoon, Swapan came to their room and told "brother, today five have been 'finished' and meanwhile being floated in the river Karnofuli and perhaps Jasim will not survive this time"; that it is proved from the evidence of P.Ws.1, 2, 3, 16 and 19 that 'system cruelties' practiced routinely at the Al-Badar camp; that under explicit guidance and inducement of accused Mir Quashem Ali, detained Jasim was tortured to death by Al-Badar members and then his dead body was dumped to the river Karnofuli; that

the nature and extent of brutality forming attack directed against civilians, as revealed, indeed demonstrates the grave antagonistic attitude of Al-Badar members and the accused Mir Quashem Ali who had been the steering capacity of them, imbued by his political ideology; that the defence documents "প্রমাণ্য দলিল-মুক্তিযুদ্ধে চট্টগ্রাম" প্রকাশকাল 2012; also shows that Jasim of Sandwip is a martyr youth freedom fighter.

It was further held that in absence of anything contrary, it is thus admitted by this document that Jasim was a freedom fighter and was killed in 1971; that accused Mir Quashem Ali had active affiliation and substantial influence over the Dalim Hotel camp and thereby he could not absolve the responsibility of the criminal acts of causing death of detainees by inflicting ruthless torture; that it has been proved that accused Mir Quashem Ali by his conscious act and conduct, instruction, order, directives, instigation, inducement forming part of attack coupled with his substantial authority participated in the commission

of offence; that Jasim, a brave youth freedom fighter laid his life at this infamous Al-Badar camp in captivity due to untold barbaric torture caused to him; that such antagonistic act or conduct, culpable presence at the Al-Badar camp coupled with authority indicating 'superior' position are convincingly sufficient to conclude that the criminal acts that eventually caused Jasim's killing were the outcome of 'common purpose' to which accused Mir Quashem Ali was a part and the murder was committed with his knowledge and that accused Mir Quashem Ali by his act and being in commanding position of the Al-Badar camp contributed substantially to the commission of murder of Jasim.

The tribunal also noticed the comments made by Prof. Golam Azam regarding the role of Mir Kashem Ali in 1971 which had been published in the 'Daily Sangram' in the issue of 21st June, 1971 as under:

"Being a potential leader of ICS the student wing of JEI accused Mir Quasem Ali also thus

sided with that ideology devoid of any extent of humanity and the core spirit of the holy religion Islam. Objective of such proposal initiated by the then JEI chief to whom the accused Mir Quasem Ali was one of loyalists by virtue of his position in the ICS was indubitably to make the antagonistic and ghastly criminal actions of Al-Badar, Razakar and other forces toughened to combat the pro-liberation Bengali civilians, 'miscreants' . Such malignant proposal, even in the early part of November 1971, on part of Jamat-e-Islami was again ensued."

It further noticed the Hussain Haqqani's article written in 'Pakistan Between Mosque And Military' where he observed "Al-Badar acted as the Pakistan army's 'death squads' and exterminated leading left wing professors, journalists, litterateurs and even doctors.

Submissions

While evaluating the evidence, the tribunal noticed the philosophy developed in other regions on charge of crimes against humanity on hearsay evidence and approved the principles argued in Muvunyi observing as under:

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

The tribunal also noticed the case of Nchamihigo on the question of corroborative evidence observing that corroboration is not necessarily required and a tribunal may rely on a single witness testimony as proof of a material fact and a sole witness testimony could suffice to justify a conviction if the tribunal is convinced on the testimony of the witness beyond all reasonable doubt. It quoted with approval the

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

It further noticed the case of Prosecutor V. Staisic and Stojan Jupljan observing that in evaluating the evidence, particularly in assessing inconsistencies and observed that the Trial Chamber took into account: the passage of time, the differences in questions put to the witnesses at different stages of investigations and in-court, and the traumatic situations in which many of the witnesses found themselves, not only during the events about which they testified, but also in many

instances during their testimony before the Trial Chamber. Inconsequential inconsistencies did not lead the Trial Chamber to automatically reject evidence as unreliable.

It further noticed the case of *Tadic* and quoted with approval on the question of participation of the accused as under: "Actual physical presence when the crime is committed is not necessary..... an accused can be considered to have participated in the commission of a crime..... if he is found to be concerned with the killing." and concludes its finding that hearsay evidence is to be weighed in context of its credibility, relevance and circumstances. Keeping this legal position, the tribunal took the advantage to weigh the probative value of hearsay evidence of witnesses made before it in relation to charges framed against the accused.

As regards raising of Razakars, Al-Badars, Al-Shams forces during the relevant time, the tribunal quoted with approval from Sunset at Midday as under:

'To face the situation Razakar Force, consisting of Pro-Pakistani elements was formed. This was the first experiment in East Pakistan, which was a successful experiment. Following this strategy Razakar Force was being organized through out East Pakistan. This force was, later on Named Al-Badar and Al-Shams and Al-Mujahid. The workers belonging to purely Islami Chatra Sangha were called Al-Badar, the general patriotic public belonging to purely Islami Chatra Sangha were called Al-Badar, the general patriotic public belonging to Jamaatg-e-Islami, Muslim League, Nizam-e-Islami etc. were called Al-Shams and the Urdu-speaking generally known as Bihari were called Al-Mujahid.' It also noticed New York Times-January 3, 1972 issue written by Fox Butterfield and quoted as under:

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

It also quoted with approval of the issue of Muktiyudhdhe Dhaka 1971 as under:

“আলবদররা ছিল মেধা সম্পন্ন সশস্ত্র রাজনৈতিক ক্যাডার। ইসলামী ছাত্র সংঘের নেতৃত্বদ এ বাহিনী গঠন করে এবং কেন্দ্রীয়ভাবে জামায়াতে ইসলামীর নিয়ন্ত্রনে এ বাহিনী পরিচালিত হয়।” and concluded its argument observing that admittedly, accused Mir Quashem Ali was the President of ICS, Chittagong town till 8th November, 1971 and afterwards he was elected as the general secretary, East Pakistan ICS. However, despite this pertinent but admitted fact, it was observed, the prosecution requires to prove, by adducing evidence, accused's association with the AB force and his participation with its activities in Chittagong as narrated in the charges framed for holding him responsible and guilty. ‘Merely on the admitted fact of his position in the ICS the accused cannot be held liable for the atrocities allegedly committed at the AB camp at Dalim Hotel. Burden squarely lies upon the prosecution to prove the accusation beyond reasonable doubt by evidence and circumstances.’

On behalf of the appellant it was argued as under:-

- a) there is no direct evidence to implicate the convict appellant in the alleged abduction, confinement, torture and murder of Jasim and the other five unknown persons - the tribunal erroneously convicted the appellant for the charge only on the basis of some so-called circumstantial evidence.
- b) there is not a single witness on record to show that the convict appellant abducted, confined and tortured or killed Jasim.
- c) the tribunal failed to consider the evidence which are all hearsay in nature.
- d) that the charge is defective, inasmuch as, the date, the time and the place of occurrence has not been mentioned.

- e) P.W.17 made inconsistent statement to the investigating officer who also made hearsay evidence.
- f) P.W.17 did not file any complaint against the appellant-had he been involved, she would have filed the case against him.
- g) material exhibit VI series did not incriminate the appellant in any way.
- h) non-examination of Jasim's brother cast doubt about the complicity of the appellant.
- i) P.Ws.1, 2, 3 and 16 made inconsistent statements regarding the manner of torture, killing and identification of Jasim at Dalim Hotel.
- j) the tribunal erred in law in relying upon the evidence of P.W.19 in failing to notice that this witness said nothing in support of the charge.

- k) there is no legal evidence to show the presence of the appellant at the crime scene.
- l) finally, the tribunal erred in law in convicting the appellant without considering the defence evidence.

Findings

Let us now consider whether there is any direct involvement of the accused in support of the charge. It is to be noted that the incidents of offences of the nature have been perpetrated about 42 years before the trial has taken place. It is one of the challenging task to collect legal evidence because of the changes during this intervening period, but also the fact that most of the witnesses are not alive. More so, in the intervening period, the political scenario had been changed after the killing of Bangabandhu Sheikh Mujibur Rahman. The regime which came to power rehabilitated the anti-liberation forces and the persons who perpetrated these crimes

against humanity were also accommodated in the government. Those perpetrators perpetrated crimes against humanity in a similar manner. They not only screen out the legal evidence but also distorted the history of the liberation struggle lest their abhorrent roles are known by the young generation. This has done by the defeated forces of the First World War and the Nazis in the second world wars, even thereafter, in Cambodia, Khemr Rouge regime of polpot, Tatisis in Rwanda, Serbian forces in Bosnia etc. The court can take judicial notice of this common practice from the history. In our country the admitted position is that some right wing political parties with direct cooperation and participation of the perpetrators remained in power from 1975 and destroyed, destructed, and defaced almost all legal evidence in a planned manner.

It is, therefore, sufficient to convict an accused person charged with offences of crimes against humanity if it is proved that the offender

has some knowledge of, and sympathy for the inhumane policy so as to give him a mental element more culpable than that of the ordinary offender. This principle has followed in other regions of the globe where similar crimes have been committed. In some cases it has been held that if an offender merely awares that his crime is also being committed by others in a widespread basis, he may be held guilty of the offence. The expression 'awareness' must be taken to include some approval of policy, as for example, in Dusko Tadic case, the accused was a local thug who was allowed to enter occasionally to torture prisoners. He was implicated in the ethnic cleansing of his village, by calling out Muslim civilians from houses, forcibly separating the women and children and elderly from the older men, and dispatching them to different camps. The tribunal held that this behaviour amounted to a crime against humanity compendiously described as 'persecution', namely, repeated inhuman acts of harassment, torment,

oppression and discrimination intended to cause suffering and inflicted because the victims belong to a different ethnic group from their persecutors. The Judges are at one end of the spectrum, exercising a power to persuade which foot soldiers like *Tadic*, at the other end, actually put into practice - all are guilty; their responsibility as individuals may differ in degree, but not in kind. (Crimes Against Humanity by Geoffrey Robertson. P 316-317).

It was held by this Court in earlier cases that due to lapse of time, evidence collection and use of old evidence in atrocity cases is also complicated by the instability of post-atrocity environments, which results in much evidence being lost or inadequately preserved. The investigation officers and the prosecutors have to trawl through decades-old records, track and verify witnesses. In this connection Alphons M.M. Orie, a Judge of International Criminal Tribunal for the former Yugoslavia (ICTY) in the Hague, in an article on 'Adjudicating Core International Crimes cases in which Old Evidence is Introduced' under the heading "The limits

of the Legal Approach to Old Evidence" observed 'It might therefore be that the legal approach does not produce a fully satisfactory answer to the challenges encountered when dealing with 'Old Evidence' about events that have long since passed'.

One of the challenges associated with the delayed criminal justice against the perpetrators of crimes against humanity is the location, treatment, assessment of old evidence and apathy of the succeeding governments in power. It is an admitted fact that the members of Shanti Committee and the Razakars, Al-Badars, Al-Shams, who actively opposed the liberation struggle and involved in the commission of inhuman acts like killing, rape, torture, arsoning, and other related activities were allowed to come out of hiding and resumed normal life under the regimes after August, 1975. Some revived Jamat-e-Islami and others joined other political parties in power after the horrific incidents of killing in 1975. Since then a culture of impunity prevailed and the perpetrators of crimes against humanity were rehabilitated in political activities and allowed them to freely participating in political life and even went on

to hold high posts like Members of Parliament and Ministers. One of those beneficiaries is the appellant Mir Kashem Ali. He amassed a big business conglomerate as will be discussed later on by use of his political clout with persons in power.

The perpetrators like him not only destroyed the legal evidence, they also successfully distorted the history of liberation struggle, erased their names from the list of collaborators, persecutors, perpetrators of barbarous crimes. Naturally, it is a difficult task to collect legal evidence in support of the charges. This case should be considered in the context of the changed circumstances. Even then there are some strong uncontroverted evidence, which prove the appellant's culpability and his horrific role played in 1971. Besides the documentary evidence, the prosecution led ocular evidence in support of the charge. The witnesses are local and some of them knew the accused from his boyhood and one of them is his classmate. These evidence proved that Mr. Kashem Ali raised Al-Badar forces at Chittagong and he became the commander of the said force. He was the philosopher, architect, organiser of the forces, the

planner of the killings and perpetrated the killings as per his plan.

In this regard we would like to reiterate the findings arrived at by this court in Muhammad Kamaruzzaman in Criminal Appeal No.62 of 2013. In that case, we had elaborately discussed the doctrine of superior responsibility or command responsibility and also the theory of civil superior responsibility within the meaning of section 4(2) of the Act, 1973. This court observed, this responsibility can be taken into account as an aggravating act to assess the degree of accused's participation to the accomplishment of criminal acts about the role of Razakars and Al-Badar forces responsibility. It noticed the provisions of the East Pakistan Razakars Ordinance, 1971, the Ansars Act, 1948 and held that the Razakars were regulated by the Razakars Ordinance after repeal of the Ansars Act. Though a Director was holding the office as chief executive officer, the force was governed by Ordinance No.X of 1971 and

subsequently this force was placed under the command of army officers by an amendment made in the Army Act by Central Government's notification dated 7th November, 1971. The Razakars or the commander of the Razakars had no command responsibility but in fact, the accused Mohammad Kamaruzzaman performed the responsibility as a superior commander by abusing the power as he was in the good book of the military junta. He was allowed to act according to his whims and volition.

In view of the above findings, the plea taken by the defence that Razakar Motiur Rahman had control over Dalim Hotel falls through. Rather it is on evidence the accused Mir Quashem Ali was the President of Islaami Chatra Sangha, Chittagong chapter. He raised Al-Badar forces at Chittagong and set up its head quarter at Dalim Hotel. There are strong conclusive evidence on record that this torture centre was under the control of the accused. There is nothing on record to assume that Motiur

Rahman or the Pakistani army controlled this torture centre. Although under the prevailing law, the army was at the helm of the affairs as there was no law and order prevailing in the country, these paramilitary forces openly perpetrated torture, killing, rape and other horrific acts with full support, cooperation and logistics support of the army.

Learned Counsel for the defence argued the case in a manner as if the accused has been arraigned for commission of normal offence of murder under the prevailing criminal laws. The general doctrines and the principles for proving a charge against an accused person on the basis of oral evidence of the witnesses are not applicable in this case. The procedural laws, say, Code of Criminal Procedure, the Evidence Act, the Police Regulations are not applicable. We noticed that the learned Counsel has treated the case as if he were arguing a normal criminal case and the criminal jurisprudence developed in this country will be applicable. Practically he failed to persuade us on any

of the points canvassed. He raised trifling inconsistencies in the evidence and the hearsay evidence as if hearsay evidence is not admissible in law.

Learned Counsel failed to repel any of the findings arrived at by the tribunal by referring to any authority in support of his arguments. We have given our conscious thought on the findings and reasonings. The observations are based on established philosophy developed in the mean time on the trial of offenders on crimes against humanity and we find no cogent ground to depart from the same.

The expression common knowledge used in subsection (3) of section 19 of the Act 1973 denotes facts that are commonly accepted or universally known, such as general facts of history of liberation war or geography or the laws of the nature. When there is no direct evidence to connect the accused with a particular incident even though the common knowledge pointing fingers towards the accused, the tribunal is given the liberty to accept secondary

sources, such as the reports, articles, books, video interviews treating them as corroborating evidence without attempting to collect primary sources of evidence because the lapse of time impacts on the quality of evidence. The accused was a powerful central leader of Islami Chatra Sangha and leader of Al-Badar forces which formed the killing squad. He is also a central leader of Jamat-e-Islami, one of the powerful political party in the country which maintains a cadre force. This party has influence over a section of people at Chittagong, and also over a good section of people around the country, so naturally, the witnesses remain traumatized all the time.

It was observed in Muhammad Kamruzzman's case that it is a fact of common knowledge that Al-Badar was an armed para militia force which was raised for 'operational' and 'static' purpose of the Pakistani occupation army. Under the government management, Al-Badar and Razakars were provided with training and

allocated fire arms, exhilarated the Al-Badar forces to perpetrate planned systematic killing of innocent persons, freedom fighters, their supporters, rape of women, torcing houses of Awami League supporters, and helped the occupation army continue in power for a longer period causing sufferings to the innocent persons and destroying the economy of the country.

There are unimpeachable ocular as well as circumstantial evidence which the court can take judicial notice. Besides those evidence, there are admissions of the accused as regards his status as superior commender and also his role in the perpetration of crimes against humanity at Dalim Hotel particularly the killing of Jasim Uddin. By giving suggestion to P.W.1 the defence has practically admitted the killing of Jasim. It was suggested to this witness that under his command, the freedom fighters attacked Bibirhat Razakar camp and in the said attack Jasim was killed. By this suggestion the defence has admitted that Jasim was a

freedom fighter and that he was killed on encounter at Bibirhat camp but it failed to prove the latter suggestion, which manifestly prove the killing of Jasim at Dalim Hotel. He made affirmative reply to the first suggestion but negative reply in respect of the latter one. He reasserted his claim that Dalim Hotel was used as Al-Badars torture center. It was also suggested to him that he was arrested at the time of attacking Razakars, Al-Badar camps from Baddarhat to Balirhar area. He denied the suggestion and by this suggestion as well, the defence has practically admitted this witness's detention at Dalim Hotel on 28th and 29th November, 1971. The defence has also admitted that this Dalim Hotel was used as torture center but according to it, it was controlled by Razakar Motiur Rahman but failed to substantiate its claim. This suggestion also justified the prosecution's claim that this Dalim Hotel was used as torture centre and that the accused had control over the said camp as commander.

P.W.2 asserted that when Jasim was thrown inside the room by the accused and his cohorts, advocate Shafiul Alam disclosed his identify as Mir Quashem Ali - Bangalee Khan, Badar Bahinis commander; that the boy was in critical condition, and that the boy breathed his last on the lap of Shafiul Alam. The defence did not challenge this incriminating evidence and the same remain uncontroverted. This witness made positive statement in chief that the appellant Mir Quashem Ali interrogated him at Dalim Hotel. The defence has not challenged the statement and the statement remain uncontroverted. This is a strong circumstantial evidence to prove his role at Dalim Hotel and to connect him in respect of all inhuman acts perpetrated there that he was the main architect. The defence has not also challenged the statement of this witness that Swapan intimated them that on the previous night of 28th November, 1971, Jasim was tortured on the roof top of Dalim Hotel and that his dead body was thrown into the Karnofuli

river. On a question put by the tribunal in course of cross-examination, this witness made positive statement that Al-Badar Head Office was set up at Dalim Hotel. The defence did not give any suggestion to this witness that he was deposing falsely, and therefore, there is no reason to disbelieve him in presence of uncontroverted incriminating evidence. He made definite statement in course of cross-examination that 'ডালিম হোটেলে আমি পাকিস্তানি আর্মি বা বিহারিদের দেখিনি' that to say, he did not see Pakistani army or Beharis at Dalim Hotel. This statement clearly negated the defence claim that Dalim Hotel was used as torture centre by Matiur Rahman Razakar.

There is also uncontroverted statement of P.W.3 regarding what he heard from Swapan and his inmates that in presence of Mir Quashem Ali, three persons including Jasim were tortured to death and that Mir Quashem Ali organized Al-Badar forces at Chittagong; that as per his direction the freedom loving people were caught, brought them at the torture center and

killed them. P.W.16 also made statements that Swapan told him on seeing Jasim that previously also another person was thrown into the Karnofuli river after killing and that the Jasim's dead body was taken by Al-Badar force in the evening. These statements remain uncontroverted. These statements proved that Mir Quashem Ali's forces threw Jasim inside the room where he was staying at Dalim Hotel and on seeing the boy, Shafiul told that the boy had already died. In view of this positive statements about the direct involvement in the killing of Jasim, the submission that there is no direct evidence to implicate the appellant in the killing has no leg to stand on. The fact that Jasim was apprehended, tortured and died due to torture later on has also been admitted by the defence.

It was suggested to P.W.17 that Jasim was arrested by the Pakistani army which she denied, but the defence failed to substantiate its claim. It was also suggested to P.W.19 that he was in Chittagong

Jail during the relevant time as accused in connection with the killing Moulana Abdul Kasem. By giving this suggestion, the defence has also admitted his detention at Dalim Hotel because the defence could not prove that he was in jail in connection with a criminal case. The defence did not produce any document to prove that P.W.19 was an accused of the murder of Moulana Abdul Kasem.

As regards the appellant's superior responsibility as commander of Al-Badar force, P.W.9 expressed his ignorance in reply to a query made by the defence that besides Dalim Hotel, the Pakistani army set up another camp. By giving this suggestion also, the defence has admitted the prosecution version, inasmuch as, the defence wanted to impute the blame upon the Pakistani army about the killing of Jasim. The defence had sufficient opportunity to disprove the charge of superior responsibility of accused that being in command position, he planned, organised and perpetrated crimes against humanity at

Dalim Hotel. The defence failed to substantiate its plea, rather its witnesses also admitted the atrocities committed at Dalim Hotel, and in the absence of proof that Dalim Hotel was under the control of Motiur Razakar or the Pakistani army, the accused cannot avoid his superior responsibility in respect of crimes perpetrated there in presence of the above uncontroverted evidence.

The defence also failed to notice that the situation during that time was so abnormal that normally the police had no power to investigate any normal case of murder. It is our common knowledge that the killing of a person at the hands of law enforcing agency or para military forces or military was taken to be a premium for the killer. The country was under martial law, and the paramilitary forces were raised with the like minded rightist and fanatic religious minded Bangalees with the object to frustrate the liberation of the country and with that end in view they were involved in genocide, mass

killing, looting and other crimes. The question of arrest of a witness in connection with a murder case during the relevant time was an absurd story introduced by the defence. P.W.20 also deposed to prove circumstantial evidence. He stated in chief that as per order of Mir Quashem Ali, the members of Al-Badar force blindfolded him and then they took him to Dalim Hotel and as per order of Mir Quashem Ali, the Al-Badar forces tortured him. He further stated that Dalim Hotel was under the control of Mir Quashem Ali and that he raised the Al-Badar forces at Chittagong. This statement remains uncontroverted. The defence suggested to this witness that the Pakistani force stayed in the ground floor of Dalim Hotel. He denied the suggestion and stated that the Pakistani force had movement in the said hotel. This statement also proved the prosecution version that the Pakistani force had no control over this Hotel and that it was this appellant who was in full command of Dalim Hotel. We also noticed the

uncontroverted statement of P.W.24, who stated that in course of investigation, he ascertained that in 1971 Mir Quashem Ali was involved in the abduction, torture, killing and other crimes against humanity; that Al-Badar forces were raised with the cadres of Islami Chattra Sangha by the accused and that being the commander of Al-Badar forces, he expressed his solidarity with the anti-liberation forces and committed atrocities in entire Chittagong town.

In course of hearing the court drew the attention of the learned Counsel in respect of these uncontroverted evidence. Learned Counsel could not give favourable reply and kept silent. These uncontroverted evidence sufficiently proved beyond doubt that the accused-appellant raised Al-Badar forces in Chittagong; that the Dalim Hotel was taken control by the Al-Badar forces and used as torture center of Al-Badar forces; that the accused played the role of commander of the forces; that all decisions, planning, strategy, raid, arrest, mode of

torture and concealment of dead bodies after the killing were taken at Dalim Hotel by the accused alone; that Jasim was a young freedom fighter, who was captured and detained in Dalim Hotel; that Jasim along with 4/5 other innocent persons were tortured to death on the roof top of Dalim Hotel and was thrown his dead body into Karnafuli river; that P.Ws. 2 and 16 saw the accused at the time of throwing the paralyzed body of Jasim into their room; that P.Ws. 1, 3, 18, 19, and 20 heard from Swapan the story of torture of Jasim and 4/5 others and concealment of their dead bodies; that P.W.17 corroborated them in material particulars; that there are incriminating uncontroverted evidence on record pointing fingers at Mir Kashem Ali that he was not only the commander but also theoretical leader of Al-Badar forces, which perpetrated all atrocities, crimes against humanity in Dalim Hotel and that killing of Jasim Uddin along with 4/5 other was perpetrated with direct participation of the appellant. In view of the above,

the submissions made the learned Counsel as noted above are hypothetical and contrary to the evidence on record.

It was submitted on behalf of the appellant that since the appellant was charged with for abetting and facilitating the offence of abduction, confinement, torture and murder of Jasim along with 4/5 others, the tribunal acted illegally in awarding the sentence of death. As observed above, though the accused appellant was charged with for abetement of the offence by the same time his attention was also drawn to section 4(2) of the Act 1973. This is an error on the part of the prosecution for charging the accused for abetment but this error will not detract the culpability of the accused in awarding the maximum sentence by the appellate court. As noticed above, in support of the charge, the appellant directly participated in the torture, there are uncontroverted evidence that the appellant's role in respect of all charges was in the capacity of superior commanding

officer - he had the command position and control over the Al-Badar forces. The tribunal also noticed that he was the commander of Al-Badar forces and Dalim Hotel was under his control but it committed a fundamental error in framing charge arraigning him as an abettor without portraying him as the principal offender. This is a mere error and/or willful laches on the part of the prosecution in conducting the case over which I would discuss later on.

The evidence on record sufficiently proved that the accused was a commander and had superior command over his force. The tribunal held that the duty to prevent arises when the commander acquires actual knowledge or has reasonable ground to suspect that a crime is being or is about to be committed. It has further observed that the prosecution has been able to prove that the system of criminal activities were carried out within the knowledge of accused Mir Quashem Ali and despite being in commanding position of Al-Badar camp, the accused failed to prevent the

commission of crime. This finding is inconsistent with earlier findings, and this is based on misconception of law. As a matter of fact, the question of preventing crime against him does not arise in view of the fact that there is direct evidence that he himself had participated in the torture being in a position of commander.

There is no doubt that a charge is an important step in a criminal trial. Its object is to enable defence to concentrate its attention on the case that the accused has to meet. In the alternative, it may be said that a charge is a precise formulation of the specific accusation made against an offender, who is entitled to know its nature at the very earliest stage. But due to defect of a charge, the accused person cannot get the benefit or avoid the actual penalty for the offence he has perpetrated in a case if it is found that the accused has faced trial and the prosecution leads evidence in his presence and

that the accused has got the opportunity to cross-examine the witnesses.

It is now the established jurisprudence that mere error, omission or irregularity in the charge does not vitiate the trial or conviction. The accused has defended the charge by Counsel and he knows what have been deposed by the witnesses against him, and therefore, no prejudice is caused to the accused, and the accused cannot plead in such a case that by reason of such error, a failure of justice has occasioned due to defect in framing the substantive charge against him. It is now established that mere omission to frame a proper charge will not vitiate the trial if the accused has sufficient opportunity to defend the accusation and cross-examine the witnesses. In determining whether any error, omission or irregularity in a proceeding has occasioned failure of justice, it is the tribunal which shall consider having regard to the facts by reason of not framing of the substantive charge.

In judging a question of prejudice, as of guilt, the tribunal must act with broad vision and look to the substance and not in technicalities. Its main concern should be to see whether the accused had a fair trial; whether he knew what he was being tried for; whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. If an accused is defended by his counsel, it may in a given case be proper to concede that the accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted no further particulars, provided it is always borne in mind that no serious defect in the mode of conducting the trial can be justified. Reference in this connection is on the cases of *W. Slaney V. State of M.P.*, AIR 1956 S.C. 116, *Gurbachan Singh V. State of Punjab*, AIR 1957 S.C. 623. These cases were decided on consideration of two Privy Council cases.

Mr. Kh. Mahbub Hossain, learned Counsel knew this principle and when the court pointed out this fact the learned Counsel relented. The entire evidence have led portraying the accused as the principal offender that he being in command position, joined the commission of torture and interrogation. He was the commander of Al-Badar forces commonly known as the 'killing squad' perpetrated the offence at Dalim Hotel. The defence has admitted the killing of Jasim but according to it, he died elsewhere. It failed to substantiate its plea. There are direct uncontroverted evidence of killing of Jasim and 4/5 others at Dalim Hotel at the instance of the accused and removal of the dead bodies after killing. The defence has, as observed above, did not dispute this fact. In that view of the matter, the accused cannot escape from the substantive charge of killing of young freedom fighter Jasim and 4/5 others by torture. P.W. 2 has narrated the horrific condition of Jasim when his paralysed body was thrown inside

the room. The inmates were moved on seeing the manner of torture and the cruelty shown by throwing the paralysed body inside the room only to set as example that everyone's fate would be destined in the similar manner had he not disclosed everything that they wanted to know. The acts were cruel and inhuman. The incident of killing was so brutal and diabolical that the accused deserved the maximum sentence.

The accused appellant's act attracts sub-section (2) of section 4 of Act, 1973. So far as it relates to 'Any commander.....participates in the commission of any of the crimes specified in section 3.....' Section 4(2) of the Act, 1973 reads thus:

"Any commander or superior officer who orders, permits, acquiesces or participates in the commission of any of the crimes specified in section 3 or is connected with any plans and activities involving the commission of such crimes or who fails or omits to discharge his duty to maintain

discipline, or to control or supervise the actions of the persons under his command or his subordinates, whereby such persons or subordinates or any of them commit any such crimes, or who fails to take necessary measures to prevent the commission of such crimes, is guilty of such crimes."

The doctrine of superior command may be *de-jure* or *de facto* criminal responsibility in relation to crimes committed by subordinates where, at the relevant time of commission of crimes, he was in command position and his position at the time of perpetration of crime with others was superior - subordinate relationship. If this has been established his culpability would be such that he knew or had reason to know that the crimes had been committed or were about to be committed and, with and despite that knowledge, wilfully and culpably failed to prevent the crimes. The prosecution in order to put him liable must prove that the accused had

effective control over his force. He must have had the material ability, at the time of the commission of crimes, to prevent or punish the crimes of his subordinates. The prosecution has been able to prove these requirements beyond doubt.

Though in Mohamamad Kamaruzzaman, this court held that as per law then prevailing, the command responsibility lies with the army, this is an exceptional case in which we find that the accused had full control and command over the Al-Badar forces deployed at Dalim Hotel. This cannot be taken as an exception, inasmuch as, in Mohammad Kamaruzzaman case also this court held as under:

"In true sense there was no rule of law in the country in 1971. The country was run by the will of the dictators. This Al-Badar force was raised with the object to exterminate the pro-liberation forces and their supporters. In fact this force acted as the Pakistan Army's 'death squad'. Hussain Haqqani, termed them as such and the prosecution evidence also revealed that

the accused's force acted as 'killing squad'. However, taking into consideration the law as stood, and the jurisprudence developed in the international arena, it is difficult to apply the doctrine of 'Superior Responsibility' in this case."

The above observation so far as it relates to last sentence was made in the facts of that case. The tribunal rightly held in this connection that the doctrine of superior responsibility is applicable even to civilian superiors of paramilitary organizations. As a matter of policy, civilians should also be subject to the doctrine. Since Al-Badar 'killing squad' was formed with the workers of Islami Chatra Sangha (ICS), accused Mir Quashem Ali, by virtue of his leading position in ICS had acted as a potential member of Al-Badar 'high command' in setting up 'Al-Badar torture and killing camp' at Dalim Hotel in Chittagong. 'Accused's recurrent cruel activities and acts carried out at the camp, as found proved by evidence, demonstrates that in exercise of

his 'commanding position' he rather consciously induced the AB members in committing the untold recurrent torture and torture to death of civilians and non combatant freedom fighters kept confined there on capture, to further the notorious purpose and plan of his parent organisation JEI that actively sided with the Pakistani occupation army.'

Though the accused-respondent was charged with for abetment and facilitating the offence of murder, it is found that he has directly involved in the commission of torturing to death of Jasim. If an offender in the capacity of superior commander directly participates in the commission of crimes against humanity, his culpability is higher than other offenders. It is because the superior must prevent the crimes committed by his subordinates and if there is failure either one or both of this obligations, could render his superior liability and his offence is taken as an aggravated one. It is now established that a superior commander is required to

adopt and take necessary measures so that no crime against humanity is committed by his subordinates. The dereliction on the part of the superior of duty attributable to him is taken to be so gross that not any kind of failure to fulfil his duty would automatically render a superior responsibility.

In an article written by Guenael Mettranx on 'The Doctrine of Superior/command Responsibility' and the commentaries of K. Ambos 'Superior Responsibility' in A. Cassese et al., The Rome Statute of the International criminal court on consideration of also 93(3) American Journal of International Law, 537 (1999) by I. Bantekas, 'The contemporary Law of Superior Responsibility', concluded his opinion as under:

'A Superior, whether *de jure* or *de facto*, may be held criminally responsible under the doctrine in relation to crimes committed by subordinate where, at the time relevant to the charges, he was in a relationship of

superior-subordinate with the perpetrators, knew or had reason to know (or, in the case of military superiors at the ICC, 'should have known') that these crimes had been committed or were about to be committed and, with and despite that knowledge, willfully and culpably failed to prevent or punish these crimes.'

The International law imposes a responsibility on superiors to prevent and punish the crimes committed by the subordinates because if he does not prevent them, the commander should bear the responsibility of his failure to act. The commander is held responsible in proportion to the gravity of the offences committed. This view has been taken in case No.IT-01-44T, ICTR and affirmed by Zlatko Aleksovski, in case No.IT-95-14/1-T, ICTY; Milorad Knojelac, case No.IT-97-25-A, ICTY; Enver Hadzihasanovic and Amir Kubura, case No.IT-01-47-A, ICTY. It was emphasised that 'direct and superior

responsibility and it is not appropriate to convict under both grounds for the same count. In such a case, the accused should be convicted for direct responsibility and his superior position should be considered as an aggravating factor for sentencing.'

We find no mitigating ground to commute the sentence of death in respect of the charge. The tribunal rightly held that accused Mir Quashem Ali has incurred criminal liability which may legitimately be taken into account as an aggravating factor for the purpose of determination in the degree of culpability and awarding sentence. I find no cogent ground to depart from the above views.

Charge No.12

The charge is as under:

"That at any day and at any time in the month of November, 1971, you Mir Kashem Ali being the president of Islami Chhatra Sangha, Chittagong Town Unit and or a member of group of individuals made a plan and directed the members

of Al-Badar Bahini who having abducted Jahangir Alam Chowdhury (now dead) from the House No.139 and Ranjit Das alias Lathu and Tuntu Sen alias Raju from the House No.114 both of Hindu populated Hajari Lanek of Chittagong town and took them to the Torture Centre of Al-Badar Bahini situated in Dalim Hotel at Anderkilla under Kotowali police station and tortured them there. Though on the following day said Jahangir Alam Chowdhury was released from the said Torture Centre, but later at your instance the members of Al-Badar Bahini killed Lathu and Razu and kept their dead bodies concealed. At the time of abduction of the said victims, you along with Al-Badar, Rajakar and Al-Shams Bahinis and Pakistani Army plundered many shops and about 250/300 houses were burnt and compelled more than one hundred families to go to India as refugees."

In support of this charge, the prosecution has examined 7 witnesses - they are Md. Sanullah Chowdhury (P.W.2), Nasir Uddin Chowdhury (P.W.3), Sunil Kranti Bordhan (P.W.4), Shibu Das (P.W.5), Mridul Kumar Dey (P.W.6) and Prodib Talukder (P.W.7). It also relied upon exhibits VI series. The charge relates to killing of Ranjit Das alias Lithu and Tuntu Sen alias Razu - the killing was also perpetrated in Dalim Hotel. P.W.2 stated that he was detained at Dalim Hotel, in a room of the first floor and on reaching there, he found some persons who were groaning on the floor, among them, advocate Shamsul Islam and Saha Alam. Besides them, Tuntu Sen and Ranjit Das of Hajari Goli were there. There was another person of Sadar gahat whose name he could not remember. In course of conversation, he came to know the names of Tuntu Sen and Ranjit Das. Sometimes, thereafter, he was taken to the third floor. On the following day, Swapan, a worker of Al-Badar camp informed him that Tuntu Sen, Ranjit Das and 4/5 other

persons died of torture. He further stated that sometimes Mir Quashem Ali was also present at the time of torture.

P.W.3 Nasir Uddin Chowdhury, a freedom fighter who was also victim stated that a worker of Al-Badars namely Pankaj or Swapan told that on the roof top of Dalim Hotel Tuntu Sen and Ranjit Das of Hajari Goli and a freedom fighter of Sandwip namely Jasim were tortured to death and their dead bodies were thrown into the river Karnofuli. He came to know from Swapan and other inmates that at the time of killing those three persons, Mir Quashem Ali was present and as per his direction, they were killed. P.W.4 Sunil Kumar Borman alias Dulal stated that he was taken to Dalim Hotel in a truck and kept in a room with other victims and found Mir Quashem Ali in the room. Mir Quashem Ali queried to them about what they knew. When they did not give any reply Mir Quashem Ali directed to torture them. He further stated that he came to know from other detainees who were kept in

the ground floor that Tuntu Sen and Ranjit Das and others were killed by order of Mir Quashem Ali. The wives of Tuntu Sen and Ranjit Das queried about them and he replied to them that they were killed. At that time, he came to know that as per order of Mir Quashem Ali, Al-Badars took them from their houses blindfolding them. This witness in course of cross-examination replied to a query that he disclosed the killing of Tuntu Sen and Ranjit Das for the first time in the tribunal.

P.W.5 Shibu Das stated that he was three years old during the war of liberation and the son of Ranjit Das. He stated that his father died in November, 1971, who was selling bottles and also owned a tea stall. In November, 1971, under Mir Quashem Ali's leadership his father was taken from the house to Dalim Hotel. Tuntu Sen was also taken with him and they were killed at Dalim Hotel. Dalim Hotel was used as the center of Badar force.

P.W.6 Mridul Kanti Day stated that in November 1971, Tuntu Sen and Ranjit Das were taken by Al-Badar forces. On the following day of taking he came to know that under the leadership of Mir Quashem Ali these two persons were tortured at Dalim Hotel by Badar forces. After liberation he found many people around the Dalim Hotel including Ranjit Das's wife Prova Rani. She was telling him that she could not be traced out her husband and neighbour Tuntu Sen. He came to know from the people standing there that the people of Mir Quashem Ali probably killed them. The whereabouts of Tuntu Sen and Ranjit Das could not trace out. In course of cross-examination he admitted that nobody told him as to when, who and how Tuntu Sen and Ranjit Das were taken away.

P.W.7 Prodip Talukder stated that he was 6/7 years old in 1971. He was staying at Tuntu Sen's house on Hajari Lane. One day in 1971 he went to Shib Mondir with Tuntu Sen. At that time Al-Badar members took Tuntu Sen to Dalim Hotel. His grand mother

Rosabala went to Dalim Hotel to release Tuntu Sen. The Al-Badar forces told her to tell the commander, about the release and without his consent they could not release him. She queried the name of the commander at which they told his name was Mir Quashem Ali. Along with his uncle Tuntu Sen, Ranjit Das was also taken by the Al-Badar forces. One day his grandmother was moving in front of Dalim Hotel when Tuntu Sen called her through the window and at one stage, he jumped from the third floor through the window on the C.I sheet roofed house. Thereafter, she kept him concealed with a mat made of date leaves. Mir Quashem Ali then told to catch him and at one stage he was taken to Dalim Hotel and tortured to death. He claimed that he heard those facts from his grandmother. We are surprised to notice on reading the evidence that he made out totally a third case which was not only improbable but also inconsistent with the evidence of P.Ws.4-6. In course of cross-examination, he stated that his claim of going to

Shib Mondir with his uncle, taking him to Al-Badar camp, his detention by Al-Badars, the attempt taken by his grand mother to release his uncle and taking away Ranjit Das and his uncle to Al-Badar force, which he disclosed for the first time in the tribunal.

After analysing the evidence of P.Ws.2, 3, 4, 5, 6 and 7, in the majority opinion it was held that 'it stands proved that Tuntu Sen and Ranjit Das were tortured to death in their captivity in AB camp headquartered at Dalim Hotel building and their dead bodies were thrown into the river Karnofuli. It is thus lawfully inferred that the victims were brought to that camp on forcible capture. The killing of Tuntu Sen and Ranjit Das in confinement at AB camp was not an isolated event. It was a part of routine pattern of system cruelties directed at pro-liberation civilians, in furtherance of common purpose and plan. The fact of confinement of Tuntu Sen and Ranjit Das has been corroborated by P.W.2 who

was also kept detained at the same A.B. camp since 27 November to 09 December, 1971..... Already it has been proved that accused Mir Quasem Ali had been going out with the AB camp and its criminal activities ever since it was set up at Dalim Hotel building and he had been in steering position of the camp. Thus, it may lawfully be inferred that accused Mir Quasem Ali was knowingly concerned even with the act of confinement of Tuntu Sen and Ranjit Das and causing brutal torture to them that resulted in their death which was a part of organised system cruelties.'

In the minority opinion, Md. Mozibur Rahman, J. observed that the order sheet shows that no tentative date has been mentioned about the abduction and taking them to Dalim Hotel for confining there; that P.W.7 was 6/7 years old at the relevant time and the manner of the incident he described regarding the capture and torture was completely distinct from what had been mentioned in the charge; that P.W.5 was

merely a child and no reliance could be placed upon his testimony whose evidence had not been corroborated by any other witness; that P.Ws.2 and 3 claimed that they heard from Swapan but these witnesses had never seen Tuntu Sen and Ranjit Das at Dalim Hotel; that they did not know where, when and how these two persons were abducted; that from the documentary evidence it was revealed that the prosecution had relied upon an article 'Dushopner Norokey: Dalim Hotel'; that had such incident took place, the writer would have mentioned the story of killing of Tuntu Sen and Ranjit Das in the said article; that P.Ws.4 and 6 appeared to him unreliable witnesses on the face of their testimonies, inasmuch as, P.W.6 claimed that the victims had been abducted in the last part of November, 1971 but in course of cross-examination, he admitted that none told him as to who, when and how the victims had been captured; that they could say anything about the participation of Mir Quashem Ali and that P.W.4 in course of cross-

examination admitted that he had got no personal knowledge about the killing of Tuntu Sen and Ranjit Das and in that view of the matter, the prosecution has hopelessly failed to prove the charge against him.

On behalf of the defence the following points have been agitated by the learned Counsel:-

- a) the learned Judges in the majority opinion erred in law in relying upon P.Ws.3, 4, 5, 6 and 7 who made inconsistent statements.
- b) the learned Judges erred in fact in holding that the defence did not deny that Swapan told P.W.2 about the death of victims.
- c) advocate Shafiul Alam in his book 'সেই সে সময় আনন্দে বেদনায়' material exhibit-VI said that he was confined at Dalim Hotel on 27th November and on the following day Shafiul Alam came to know from Swapan

that Tuntu Sen died on that day after remaining in unconscious condition for three days, from which, it was submitted that on 25th November he wanted to escape and died on an attempt to escape from the roof top.

- d) P.W.2 admitted in cross-examination that he did not know Tuntu Sen and Ranjit Das from which it is not believable story that he talked with Tuntu Sen and Ranjit Das on 27.11.1971.
- e) the tribunal erred in law in believing P.W.5 who was barely three years old at the relevant time and his claim of hearing the incident from his mother was not believable.
- f) the tribunal erred in believing P.W.6 who himself was not sure about the appellant's complicity, inasmuch as, he himself used the word 'probably' Mir

Quashem Ali's people killed Tuntu Sen and Ranjit Das.

- g) the presence of P.W.6 at Hajari Lane in 1971 is also not believable and the tribunal erred in law in believing him.
- h) the tribunal erred in law in believing P.W.7 who also admitted that before Tuntu Sen was detained, all houses of Hajari Lane were burnt by the Pak army and that his claim that he was residing at his uncle's house is an absurd story.
- i) the tribunal failed to notice that advocate Shafiul Alam in his book 'সেই সে সময় আনন্দে বেদনায়' did not implicate the appellant in the killing of the victims.

On the other hand, learned Attorney General submitted that the article of advocate Shafiul Alam namely 'সেই সে সময় আনন্দে বেদনায়' was written in the year

1989, but during the relevant time of occurrence most of the freedom fighters were detained by Al-Badar forces, and P.W.2 made positive statement that he heard from advocate shafiul Alam about the identity of the accused and that Shafiul Alam narrated about the use of Dalim Hotel as torture centre and in the absence of drawing his attention as to the remarks made by Shafiul Alam in his book, the accused cannot raise the point at this late stage. His further contention is that P.W.2 in his statement claimed that he was brought to Dalim Hotel and kept in a room in which other persons were also detained in that room and that from the conversations he came to know the names of Tuntu Sen and Ranjit Das, and in view of this innocent statement, the tribunal is justified in believing him as neutral witness.

On the question of identification of the appellant, he further submitted that advocate Shafiul Alam recognized victim Jasim when he was thrown into their room and at that time, he said regarding Mir

Quashem Ali to P.W.2 and that Swapan also disclosed to him about Tuntu Sen and Ranjit Das. It is further submitted that though the evidence of P.W.3 is hearsay in nature, under the Act hearsay evidence is admissible and that no suggestion was put to P.W.3 about his testimony, and therefore, his evidence remain uncontroverted. On the question of reliability of P.W.4, he submitted that on a close scrutiny of the evidence of P.W.4, it is proved that when P.W.4 was taken to Dalim Hotel, Mir Quashem Ali was present there and when P.W.4 did not disclose anything about what Mir Quashem Ali wanted to know, the latter threatened to kill him and that this witness heard from the detainees that Tuntu Sen and Ranjit Das had been killed by order of the appellant Mir Quashem Ali and Tuntu Sen's wife also told them as per order of appellant Tuntu Sen and Ranjit Das were taken by Al-Badar forces.

He further submits in reply to the objection raised by the defence in respect to violation of

section 16(1)(c) Act of 1973 and Rule 20(1) of Rules that in the formal charge, the time and the month, the name of the victims have been mentioned and that even if it is assumed that there is conflict between section 16 (1)(c) and rule 20, the substantive law will prevail over the Rules. As regards the objection as to disbelieving P.W.4 in view of the fact that he has been disbelieved in respect of charge No.13, he submits that for that ground, this witness cannot be disbelieved which is a distinct charge.

As regards the reliability of the testimony of P.W.5, it is submitted that though P.W.5 was minor at the relevant time, he stated in course of cross-examination that he shifted from Hajari Lane only three years back and that he stated that during the relevant time, his family resided at Hajari Lane. On the question of credibility of P.W.6 as raised by the defence, it is submitted that P.W.6 deposed after 43 years and due to lapse of time, he could not remember everything for which he could not be disbelieved. As

regards the credibility of the claim of P.W.7 that his family had resided at Hajari Lane during the relevant time, it is submitted that Tuntu Sen not being a freedom fighter it was not unnatural on his part to live at Hajari Lane and that P.W.7 positively stated in his testimony that his grand mother told him that the appellant Mir Quashem Ali was Al-Badars commander and when his uncle tried to escape as per order of Mir Quashem Ali, he was taken back to Dalim Hotel and that the defence has failed to discredit his testimony in course of cross-examination.

On analysing of the evidence of P.W.2, we noticed that this witness simply said that in course of discussion among the inmates he came to know the names of Tuntu Sen and Ranjit Das. Nothing more he stated about killing or abduction of these two victims or the complicity of the appellant, but as regards the appellant's complicity in the torture of Jasim and throwing his unconscious body he implicated the appellant. P.W.3 said that he heard from Swapan

that Tuntu Sen and Ranjit Das along with Jasim were tortured on the roof top and their dead bodies were thrown into Karnofuli river. P.W.2 was also an inmate but he did not corroborate P.W.3. Though P.W.3 stated as per direction of Mir Kashem Ali, Tuntu Sen, Ranjit Das and Jasim were thrown into Karnafuli river after killing, which he heard from Swapan, he made inconsistent statement with P.w.2 as regards this incriminating portion. P.W.4 was also detained in the Dalim Hotel and he simply stated that the detainees told him that as per order of Mir Quashem Ali Tuntu Sen and Ranjit Das were killed. He made a totally different version. He did not claim that Swapan told about the torture and killing. It is not at all the claim of other two detainees P.Ws.3 and 4. Therefore, we find three different versions from the lips of three detainees of Dalim Hotel.

P.W.5 was barely a boy of three years old and he is the son of Ranjit Das. He stated that he heard from his mother that Al-Badar forces killed his

father. On the next breath, he stated that in November, 1971, under the leadership of Mir Quashem Ali his father was taken from their house to Dalim Hotel and Tuntu Sen was also taken from his house. Though he did not disclose from whom he heard the said fact, it may be presumed that he heard from his mother this fact, but his claim has been totally contradicted by P.Ws.6 and 7.

P.W.6 is a resident of Hajari Lane and volunteered in Chief that during the carnage in 1971 majority people of Hajari Lane left the locality. This is the specific defence version. He did not disclose his place of abode at that time. He did not disclose the source wherefrom he came to know that Al-Badars took the victims towards the later part of November, 1971. He claimed that one day thereafter he came to know that Mir Kashem Ali's leadership the victims were taken. He also did not disclose the source from whom he knew that the accused took the victim. He did not claim that he was related to the

victims. He further claimed that Ranjit Das's wife Prova Rani told him on the following day of independence that she could not trace out Ranjit Das and Tuntu Sen. He did not claim that Prova Rani told him that in late November, 1971, Al-Badar forces or under the leadership of Mir Quashem Ali, these two persons were taken from their houses. He then stated that from the detainees who were found there, he came to learn that the people of Mir Quashem Ali probably killed Tuntu Sen and Ranjit Das. He used the expression 'probably' meaning thereby he was not sure about the statements made by the detainees. P.Ws.2, 3 and 4 were the detainees but they did not say as such.

P.W.7 made totally a different story. He was barely 6/7 old during the relevant time and claimed that one day he went to Shib Mondir intersection with Tuntu Sen. He did not disclose the month not to speak of date. On their way back he said, Al-Badars took his uncle (mama) Tuntu Sen to Dalim Hotel. This

statements totally contradicts the statement of P.W.5, who stated that they were taken from their houses which he heard from his mother. P.W.7 further stated that when his grand mother went to Dalim Hotel to release Tuntu Sen, the Al-Badar forces did not release him saying that in the absence of their leader they could not release him. It was totally an absurd story that during the crucial time a Hindu woman would dare to visit the torture center of Al-Badar force to release her son. Though he did not disclose the age of his grand mother, his age being 6/7 years, his grand mother might be around 50 years old at that time or below. It is also an absurd story to believe that Tuntu Sen would say something through the window to his grand mother and then he would be able to jump from the third floor to the contiguous building which had CI sheet roof. Even if it is assumed that he jumped on the roof top of CI sheet roofed building, he would be unhurt by such jumping and that the Al-Badar force would not hear the sound

is not a believable story. In view of his later statement that 'তখন আমার দীদা তাকে একটি চটাই দিয়া জড়িয়ে বুকে রাখে', it is totally an unbelievable story that under such circumstances she would be able to keep Tuntu Sen by concealing him inside a mat built with coarse or date leaves or palm-leaves or bamboo slips (চটাই). Next question is where from she got the চটাই. Assuming that after jumping she took him to her house and there she concealed him in the manner he stated. Is it probable story that after he was targeted by the Al-Badar forces he could be concealed in the same house under a চটাই.

Assuming that he was not taken to his house, inasmuch as, Mir Quashem Ali directed to catch Tuntu Sen. So, apparently as soon as Tuntu Sen jumped from the third floor, Mir Quashem Ali saw the incident or heard the sound or that his forces could hear the sound of jumping, and directed to catch and to detain him. Now the question is wherefrom she got the mat to conceal the victim. From the latter statement it is

proved that the victim was not taken home after jumping and if that being so, he was not taken from his house with Ranjit Das as claimed by P.W.6. We failed to understand which version is true. When these inconsistencies have been drawn to the attention of the learned Attorney General, the latter simply replied that because of long delay, there might be some inconsistency in the statements. This is not at all a minor inconsistency. We are conscious about the delayed statements and ignored minor inconsistencies in previous judgments, but it is of such a nature that one version does not corroborate the other. We find six different versions from the lips of P.Ws.2, 3, 4, 5, 6 and 7. Two witness did not at all implicate the appellant and other witnesses made completely different versions.

These are the evaluations of the testimonies in chief of P.Ws.2, 3, 4, 5, 6 and 7 without considering their statements in course of cross-examination. Even if their statements in chief are taken as true, it is

difficult on our part to rely on any of the witnesses so far as it relates to abduction and killing of Ranjit Das and Tuntu Sen at the instance of the accused. What's more, the tribunal itself disbelieved the story of abduction, confinement and torture of Sunil Kranti Badhan (P.W.4) in respect of charge no.13 on the reasoning that he had no reason to recognize Mir Quashem Ali at the camp as claimed and that prosecution has failed to prove Mir Quashem Ali's participation in the commission of the charge. It further observed that his (P.W.4) claim of frequent movement from his native village to Chittagong town seemed to be unusual considering the prevailing situation in 1971. If his presence is disbelieved at Chittagong town during the relevant time, how he could be believed that while he was in detained condition, his inmates told him that Mir Quashem Ali's people as per order of Mir Quashem Ali killed Tuntu Sen and Ranjit Das. In the majority opinion the learned Judges were totally unmindful in this regard.

So, the submission of the learned Attorney General does not impress us. Besides the above, the tribunal erred in law in believing P.W.2 so far his statements regarding the disclosure of the name of Tuntu Sen and Ranjit Das. He simply stated that from the discussions among the detainees that he came to know that Tuntu Sen and Ranjit Das were also detained. In the earlier observation, it was observed that this witness did not implicate the appellant so far as it relates to abduction, detention and torture and then killing of Tuntu Sen and Ranjit Das. Assuming that Mir Quashem Ali being the commander of Dalim Hotel, he cannot avoid the responsibility of detention, torture and killing of the victims in view of his superior responsibility under section 4(2) of the Act, 1973. As observed above, under this provision if it is found that he has failed to 'control or supervise the actions of the persons under his command or his subordinates' he will be held responsible for the offence.

In the majority opinion, the learned Judges failed to notice that besides P.W.2, advocate Shafiul Alam was also a detainee with him. In his book 'Dussapnar Narokey; Hotel Dalim' exhibit-VI advocate Shafiul Alam vividly narrated the horrific incident experienced by the author during his detention in the Dalim Hotel. He mentioned the names of the detainees among them P.Ws.2 and 16 were with him, but he (Shafiul Alam) did not utter a single word about the detention of Rajit Das and Tuntu Sen. P.W.16 also did not disclose their names which appear to us ridiculous. Why did he not narrate this incident if they were detained and tortured at that centre? When a documentary evidence and an oral statement come before a tribunal relating to an incident, the documentary evidence will prevail over the oral testimony. Had Ranjit Das and Tuntu Sen been abducted, detained, tortured, killed and concealed their dead bodies by the Al-Badar forces by throwing them in the Karnofuli river, advocate Shafiul Alam

would have given at least a hint about them. He was conspicuously silent about these two victims although he narrated the other incidents which supported the oral testimonies of the witnesses. This exhibit VI has been relied upon by the prosecution and it is not the defence document and we find no cogent ground to ignore this documentary evidence and rely upon the testimonies of P.Ws.2, 3, 4, 5, 6 and 7 in presence of their totally absurd and imaginary statements as discussed above. In view of the above, we have no reason to doubt that the appellant is entitled to get the benefit of doubt in respect of the charge.

Sub-Rule (2) of rule 43 says that a person charged with crimes as described under section 3(2) of the Act shall be presumed innocent until he is found guilty. This rule speaks in clear terms that an offender who is charged with crimes against humanity shall be presumed to be innocent unless and until the prosecution has proved the charge beyond reasonable doubt. Rule 50 says that the responsibility of

proving a charge against an offender exclusively lies upon the prosecution. If any doubt is created in the mind of the tribunal, the offender shall get the benefit of doubt. In view of the forgoing discussions, we have no hesitation but to hold the view that the prosecution has miserably failed to prove this charge beyond reasonable doubt against the appellant, and therefore, the minority opinion expressed by Md. Mozibur Rahman Mia, J. is perfectly correct one and that the majority opinion is not acceptable one.

Charge No.14

The charge is as under:

"That at the end of November, 1971 Nasiruddin Chowdhury took shelter in the house of A.J.M. Nasiruddin, situated at Nazir Ahmed Chowdhury Road under Kotowali Police Station, Chittagong Metropolitan area. While he was staying in that house, one day at dead of night you Mir Kashem Ali as a leader of Islami Chhatra Sangha accompanied by members of Al-Badar Bahii raided that house and abducted Nasiruddin Chowdhury and took him to the

Torture Centre situated in Dalim Hotel and at your direction and presence they tortured him therein for many days. On 16th December, 1971 victim Nasiruddin Chowdhury along with 100/150 persons were released from that Torture Centre by the local people.

Therefore, you are hereby charged for abetting and facilitating the offences of abduction, confinement and torture as crimes against humanity and thereby you have substantially contributed to the commission of offences of crimes against humanity as specified under section 3(2)(a), 3(2)(a)(g) and 3(2)(a)(h) of the Act.

You are liable for commission of above offences under section 4(1) and 4(2) of the Act."

In the support of the charge, the prosecution examined P.Ws.1, 3, and 14. P.W.3 is the victim Nasir Uddin Chowdhury himself. He was aged about 17 years in 1971. He is an M.A. and journalist by profession. This injured witness in his evidence said that he was arrested by the members of Al-Badar Bahini in last part of November, 1971. He said - "আমাকে ঘুম থেকে জাগিয়ে চোখ বেঁধে মারতে মারতে আল-বদররা ডালিম হোটেলে নিয়ে যায় সেখানে একটি অন্ধকার কক্ষে আমাকে ঢুকিয়ে মারধোর করতে থাকে এবং আমার কাছ থেকে জানতে চায় আমার অস্ত্রসম্বল কোথায় এবং আমার সহযোগীরা কোথায়। আমার কাছ থেকে কোন কথা বের করতে না পেরে আল-বদররা

আমার কক্ষ থেকে বের হয়ে যায় এবং যাওয়ার আগে আমার চোখের বাঁধন খুলে দিয়ে যায়। কিছুক্ষণ পর মীর কাশেম আলী অন্যান্য আল- বদরদেরকে নিয়ে আবার আমার কক্ষে প্রবেশ করে। মীর কাশেম আলী তখন আমাকে দেখিয়ে তার সংগে আসা আল- বদরদেরকে বলে ওর কাছ থেকে কি এখনও কিছু আদায় করতে পারোনি? ওকে আরও পেটাও। এরপর আল- বদররা আমাকে লাঠি, লোহার রড, ইলেকট্রিক তার ইত্যাদি দিয়ে আমাকে ইচ্ছামতো পেটাতে থাকে। এক পর্যায়ে মীর কাশেম নিজেই আমাকে জিজ্ঞাসা করে, তোমার সহযোগীদের নাম কি? তাদের শেল্টার কোথায়? তাদের অস্ত্র কোথায়? আমি যতই বলতে থাকি আমি মুক্তিযোদ্ধা নই বা আমার কাছে কোন অস্ত্র নেই বা আমি এসবের কিছুই জানি না তখন আমাকে তারা ততই পেটাতে থাকে এবং পেটাতে পেটাতে আমাকে রক্তাক্ত করে এক পর্যায়ে তারা বের হয়ে যায়। আমাকে যে বিল্ডিংয়ে রাখা হয়েছিল সেখান থেকে আমি আরো মানুষের আর্তনাদ ও গোঙ্গানীর শব্দ পেতাম। ঐ সকল মানুষকেও সেখানে নির্যাতন করা হতো।

৬ ডিসেম্বর ১৯৭১ আল বদর সদস্যদের মুখে বলাবলি হচ্ছিল চট্টগ্রাম বিমান বন্দরে বোম্বিং হয়েছে এবং সেখানে মীর কাশেম আলী আহত হয়েছে, এই কথাটি যখন প্রচারিত হয় তখন আল- বদররা আমার এবং অন্যান্য বন্দীদের উপর অত্যাচারের মাত্রা বাড়িয়ে দেয়। আমাদেরকে প্রায়শই ডালিম হোটেলের এক রুমে থেকে অন্য রুমে নিয়ে নির্যাতন করা হতো। সহবন্দীদের কাছ থেকে তখন আরো জানতে পারি মীর কাশেম আলীর নির্দেশে এবং তার উপস্থিতিতে অনেক বন্দীকে নির্যাতন করে হত্য করা হয় এবং পরবর্তীতে নিহতদের লাশ কর্ণফুলী নদীতে ফেলে দেওয়া হয়।”

Thereafter, he said that he was released from the said torture cell on the morning of 16th December, 1971. P.W.1 another victim witness, in his evidence said that Md. Nasir along with others was kept confined in the said camp. P.W. 14 in his evidence said that on 16th December, 1971 he rushed

into Dalim Hotel and recovered Nasir Uddin Chowdhury along with 150 others. That is, P.W. 1, 14 in their evidence corroborated the testimony of the victim P.W.3. We do not find any contradictions or discrepancies in the evidence of the P.Ws. 1, 3 and 14 to disbelieve their testimonies. We are of the view, that the Tribunal rightly held that the prosecution has been able to prove charge No.14 against the appellant beyond any shadow of doubt.

Plea of alibi

Mr. Khondker Mahbub Hossain, learned Counsel appearing on behalf of the appellant drew our attention to the issues of some newspapers dated 08.11.1971 , 11.11.1971, 23.11.1971, 8.12.1971 and 11.12.1971 and submitted that the appellant was in Dhaka and communication between Chittagong and Dhaka was in fact collapsed from the month of November 1971 to 16 December, 1971. Learned Counsel failed to show any evidence that the communication was totally disrupted at the relevant time and that all the ways of movement from Dhaka to Chittagong were disconnected. His submission is unacceptable in view of the documentary evidence published in "The Dainik Azadi" on 04.12.1971. Contents of which were: "আজ পূর্ব পাকিস্তানের ইসলাম ছাত্রসংঘের সভাপতির চট্টগ্রামে আগমন" বার্তা পরিবেশক, "পাকিস্তান ইসলামী

ছাত্র সংঘের পূর্ব পাকিস্তানের শাখার সভাপতি জনাব আলী আহসান মোহাম্মদ মুজাহীদের ৩ দিনের সফরে আজ ঢাকা থেকে আসিয়া পৌঁছাবেন। এখানে অবস্থান কালে তিনি দলীয় কর্মীদের এবং রাজনৈতিক নেতৃবৃন্দের সহিত দেশের বর্তমান পরিস্থিতি সম্পর্কে আলোচনা করবেন এবং সুধী সমাবেশে বক্তৃতা করিবেন বলিয়া এক প্রেস রিলিজে বলা হইয়াছে”।

From the aforesaid news item, the submission of Mr. Khandaker Mahbub Hossain is devoid of substance. It is quite natural that since the President of EP ICS went to Chittagong on 25.11.1971 after taking decision on 24.11.1971, the appellant, who was in Charge of Chittagong Division, ICS and former leader of Chittagong town unit, ICS and local commander of Al-Badar Bahini would go and stay in Chittagong between 19th November, 1971 and 15 December, 1971. So the alibi, plea taken by the appellant does not carry any force.

Inherent lacuna in conducting the prosecution case

Learned Attorney General in the opening of his argument produced a paper and submitted that the appellant Mir Quashem Ali was not only Islami Chatra Sangha Leader and Al-Badar Chief, Chittagong chapter, but also the chief financier of a big political party, which wants to frustrate the trial of offenders of crimes against humanity, war crimes and genocide and

engaged a lobbyist firm on payment of US\$ 25 million to influence the government of the United States with a view to postponing the trial process. The letter reads as under:

Cassidy & Associates
700 thirteenth Street, NW, Suite 400
Washington, DC 20005

RECEIPT OF PAYMENT

October 6, 2010

Confirmation of receipt of the Amount of Twenty Five Million U.S. Dollars from Mr. Mir Kashem Ali for Professional Services to be Provided.

Cassidy & Associates Inc.

Robert G. Owners C.P.A.
Executive Vice President of
Finance and administration

Cassidy & Associates
Robert G. Owners
SENIOR VICE PRESIDENT
CHIEF FINANCIAL OFFICER

700 THIRTEENTH STREET, N.W.
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WASHINGTON, D.C. 20005
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TEL: (202) 585-2080 FAX: (202) 347-0785

It is submitted on behalf of the defence that there is no basis in support of the contention of the learned Attorney General and this allegation has not

been established. The fact of engaging a lobbyist firm may or may not be true, but fact remains that learned Attorney General has collected a receipt of payment of US\$ 25 million from which it can be inferred that the appellant is a very resourceful person. This is evident from the materials on record as well. Accused-appellant prayed for bail on 19th June, 2012 and in support of his prayer, he made statements supported by documents about his financial solvency. The tribunal recorded an order to the effect that "it was stated in the petition that the accused petitioner is a successful and respectable businessman of this country. He is the Chairman and Director of Keari Limited, Chairman and Director of Diganta Corporation Limited, Founding Trustee and member of Administration Ibne Sina Trust, Member Security of Islami Bank foundation, Director of Ibn Sina Pharmaceutical Industries and Chairman of Agro Industrial Trust, Member-Secretary of Fouad Al-Khateeb Charity Foundation, Member of Society for

International Development (SID), Chairman of the association of Multipurpose Welfare Agency and Vice-Chairman of Industrialists and Businessmen Welfare Foundation." So, from the above it can be inferred that he has set up business conglomerate from which it can be inferred that he is capable of engaging lobbyist firm by spending US\$ 25 million to frustrate the trial of offences of crimes against humanity.

In the Act of 1973, the offences of crimes against humanity, crimes against peace, genocide, war crimes and other offences have been described in section 3(2) which includes, amongst others, attempt, abetment or conspiracy to commit any of the above crimes. It is also an offence if one has "complicity in or failure to prevent commission of any such crimes.' A plain reading of section 4(1) of the Act, 1973 suggests that for commission of any offence by more than one person will be deemed that each of such person is liable for the offence. This section 4(1) and section 34 of the Penal Code are cognate in

nature. Where a criminal offence is committed by several persons in furtherance of common intention of all, each of such person is liable for that offence in the same manner as if it were done by him alone.

Sub-section (2) is altogether different and if any commander or superior officer under whose command any one of his force commits any of the crimes described in section 3 or is connected with any plans or fails to discharge his duty to maintain discipline or who fails to control or supervise the actions of his persons under his command and if the subordinates or any one of them commits any such crime, he will be guilty of such crimes. If the superior officer participates in any of the crimes mentioned above, he cannot escape from superior responsibility because of the fact that his responsibility is to prevent his subordinates to commit crimes. The commander is responsible for failure to perform an act required by law. This omission is culpable because law imposes a responsibility to prevent and punish crimes committed

by his subordinates. Even if it is proved that he did not participate but his subordinates committed the offence within his knowledge or that he has prepared a plan to commit any of the offences, in that case also, he cannot avoid the responsibility because law imposes a responsibility on the part of a commander or superior officer to shoulder the responsibility for commission of any crimes committed by his subordinates.

From the above, sub-Section (1) relates to joint liability and sub-Section(2) relates to superior responsibility. In this connection, we have elaborately discussed the case of Muhammad Kamaruzzaman Vs. The Chief Prosecutor, International Crimes Tribunal, Dhaka, Bangladesh (Criminal Appeal No. 62 of 2003). The proceedings before a tribunal commence on the basis of submission of a formal charge against an offender as provided in section 9 of the Act.

Though Section 16 provides that the offender should be confronted with the particulars of the crimes sufficient to give him notice of the matter with which he is charged for, defect in framing charge will not vitiate the conviction if the offender is not prejudiced thereby, that is to say, if he is afforded sufficient opportunity to cross-examine the witnesses and the evidence is recorded in his presence.

Taking into consideration the above position of law, let us consider how the case has been conducted by the prosecutor/prosecutors. The formal charge has been framed on 5th September, 2013, on which date, Mr. Sultan Mahmud and Mr. Tapash Kranti Paul appeared and made brief account of the initiation of the proceeding against the offender and suggested as under:

" It has been alleged in the Formal Charge that during the war of Liberation 1971, the accused as the leader and President of Islami Chhatra

Sangha, Chittagong Town Unit, had committed crimes against humanity, including, abetting, aiding, participating and providing moral support to commit such crimes in different places of Chittagong district."

So it is found from the above that the accused has been portrayed as offender who had directly participated in the commission of crimes as well as superior commander within the meaning of Section 4(2) along with Section 3(2)(g) of the Act. Later on, on the same day, Mr. Zead-Al- Malum entered appearance and made submissions in support of framing formal charge and the tribunal recorded the order as under:

"The learned Prosecutor, before drawing our attention to the facts set out in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, portrayed the context in brief to substantiate the organizational plan and policy in execution of which the local pro-Pakistani

persons belonging to fundamentalist Islamic Political groups, Al-Badar Bahini and auxiliary force took part in committing the offences and also substantially aided and abetted the Pakistani occupation force in committing horrific atrocities."

Mr. Zead-Al-Malum later on appeared and made submissions to the effect that the accused 'abetted the Pakistani occupation force in horrific atrocities.' Then the tribunal reproduced his submissions that the accused "substantially aided and abetted the Pakistani occupation force in committing horrific atrocities." Some of the witnesses stated that the accused helped or facilitated the Pak Army in the commission of some crimes but in respect of charge No.11, the witnesses testified that the accused had direct involvement in the killing of Jasim. Thereafter, 14 charges have been framed on the suggestion of the prosecutors. In twelve charges, the accused appellant has been arraigned for

'abetting and facilitating' the commission of offences of abduction, confinement and torture and in two other charges, he has been arraigned to have tortured to death as crimes against humanity specified in Section 3(2)(a)(g)(h) of the International Crimes Tribunal Act of 1973, which are punishable under Section 20(2) of the Act. He was also charged under Section 4(1) and 4(2) of the Act.

When the learned Counsel for appellant placed the charges, the Court had the impression that the accused appellant had been charged with for abetment of the offences, but when he placed the evidence of the witnesses, the court was bewildered to notice that in fact, the prosecution led evidence portraying the appellant as the principal offender in respect of charge No.11. The main allegation against him is that the accused appellant was the influential leader of the Islamic Chhatra Sangha, who organized Al-Badar force in Chittagong chapter and carried out, perpetrated and committed atrocities like crimes

against humanity by setting up an Al-Badars torture centre at Dalim Hotel in Chittagong town in which he was the commander and no army or other forces were in command. It is also on record that the army had established a torture centre at Circuit House and Salauddin Quader Chowdhury had established another torture centre at Goodshill. In these three torture centres, all atrocities of killing and other inhuman acts were perpetrated.

The defence wanted to make out a case that Dalim Hotel was under the control of a Razakar Matiur Rahman alias Moitta Gunda and also wanted to establish that in the ground floor the army had established a camp, but could not substantiate the same.

The tribunal started recording the evidence from 11th December, 2013, on which date, Mr. Sultan Mahmud conducted the case for the prosecution and on that date P.W.1's evidence in the chief was recorded. The same prosecutor led the prosecution and the tribunal

recorded the evidence of P.W.2 on 23.01.2014 and P.W. 3 on 2nd February, 2014. On 17th February, 2014 Mr. Zead-Al-Malum led the prosecution and the evidence of P.W.4 was recorded. On the following day, he has examined P.W.5, on 19th February he has examined P.W.6, on 23rd February he has examined P.W.8, on 24th February, he has examined P.Ws.9 and 10, on 25th February he has examined P.Ws. 11 and 12, on 3rd March, he has examined P.Ws. 13 and 14 and on the following, he has examined P.W. 15, on 18th March, he has examined P.W. 16 and on 19th March, he has examined P.W. 17. On 23rd March, Mr. Sultan Mahmud has examined P.W. 18, on 24th March, Mr. Sultan Mahmud has examined P.W. 19, on 31st March, he has examined P.W. 20. On 6th April, Mr. Zead-Al-Malum has examined P.Ws. 21 and 22 and on 8th April he also examined P.W. 23 and the last witness P.W. 24 was examined by Mr. Sultan Mahmud on 10th April.

So, the prosecution was conducted by two prosecutors and on none of those dates, as mentioned

above, the said two prosecutors jointly conducted the case. The trial was conducted in piecemeal basis by two prosecutors. When a prosecutor conducts a case, he chalks out a plan to prove the charge with the available witnesses by examination and re-examination. It is like performance of a theatre with interval scenes but there must be sequence from the first scene to the last scene. If two directors direct scenes separately, there must be defect in continuity of events. This has happened in this case.

There is no defect in conducting the case by two prosecutors; rather it is better if more than one prosecutor conducts the case, but when more prosecutors are engaged, they should jointly conduct the case through consultation and discussion. The mistake committed by the prosecutors in conducting the case is that both the prosecutors did not jointly conduct the case. One prosecutor examined some witnesses and other prosecutor examined some other witnesses, resulting in lack of sequence. For

example, in support of charge No.2, the prosecution has examined P.Ws. 20, 21 and 22. Mr. Sultan Mahmud examined P.W. 20 and the other two witnesses were examined by Mr. Zead-Al-Malum. In support of charge No.3, the prosecution has examined P.Ws. 1, 2, 3, 14 and 16, of them, Mr. Sultan Mahmud examined P.Ws. 1-3, Mr. Malum examined P.Ws. 14 and 16. In support of charge No.4, the prosecution has examined only P.W.14; in support of charge No.5, the prosecution has examined only P.W. 15; in support of charge No.6, the prosecution has examined only P.W. 15; in support of charge No.7, the prosecution has examined P.Ws.1, 2, 13 and 16; in support of charge No.9, the prosecution has examined P.Ws. 1, 12, 14, 16, 18 and 19; in support of charge No.10, the prosecution has examined P.Ws.1, 8, 9, 10 and 11; in support of charge No.11, the prosecution has examined P.Ws. 1, 2, 3, 16, 17 and 19; in support of charge No.12, the prosecution has examined P.Ws. 2, 3, 4, 5, 6 and 7; in support of charge No.13, the prosecution has

examined P.Ws. 4 and 14 and in support of charge No.14, the prosecution has examined P.Ws. 1, 3 and 14.

Both the prosecutors together were not present in the tribunal in course of examination in-chief and cross-examination of the witnesses. Naturally they could not concentrate their minds so far as regards incriminating part of evidence. Besides these witnesses, the prosecution has examined P.Ws. 20, 21, 22 and 23 to prove circumstantial and documentary evidence. P.W. 24 is the investigation officer. One witness also deposed in support of different charges and under such circumstances, how could the prosecutors concentrate their minds is not clear to us.

Examining a witness by the prosecution is a very difficult task. The prosecutor should not only make himself thoroughly acquainted with the entire facts of the case, but also with the particular fact which the witness has come to depose, the nature and

character of the witness and the degree of his intelligence. It is his duty to bring out clearly and in chronological order every relevant fact to which the witness can depose. The prosecutor must be careful in handling the witnesses. The prosecutor must be careful and put such question to the witnesses to prove the charge beyond reasonable doubt. On a perusal of the evidence of the witnesses we have no hesitation to hold that there was no co-ordination between them. It is the witnesses who of their own accord disclosed facts.

We learnt from the learned Attorney General that the government has appointed a Chief Prosecutor and under him there are some prosecutors. Of them, two prosecutors are very experienced and competent to conduct such cases. But mysteriously they were not entrusted with this case. This accused was one of the most powerful persons during the relevant time and one of the most dreaded offender and a commander of a force which was commonly known as 'killing squad'. So

the prosecution should have been more careful in handling this case. This country has been liberated at the cost of three million martyrs and two hundred thousand women and girls lost their chastity. No nation has sacrificed the lives similar to our country in achieving independence. These trials should not have been taken so lightly because the sentiments and the emotions of the near ones of the victims as well as the people of the whole country are involved. They want justice, not retaliation.

We were surprised to note that in respect of charge No.11, the accusation was torture and killing of Jasim and other 5 persons, but we do not find sufficient evidence on record to convict and sentence him for charge relating to those 5 persons. The prosecution was totally silent about them. In respect of all the charges the positive version of the prosecution is that the accused set up Dalim Hotel as the torture centre of Al-Badar forces and perpetrated crimes against humanity in the said

centre with his force. In respect of charge No.12, the prosecution introduced a new story that at the time of abduction of the victims, the accused 'along with Al-Badar, Razakar and Al-Shams Bahinis and Pakistani Army plundered many shops and about 250/300 houses were burnt and compelled hundreds of families to go to India. We have drawn the attention of the Learned Attorney General regarding the manner of conducting the case on behalf of the prosecution. Realising the above defects he kept silent. We hope that these trials should not have been lightly taken because we achieved independence by sacrificing three million martyrs and the emotions of victims' nearones as well as whole of the people are involved in these trials.

Conclusion

This Court has given the sentencing guide lines in the case of Abdul Qader Mollah and three other cases. The prosecutors must have read the principles of awarding a death sentence. It is beyond our

comprehension why the prosecutors have portrayed the accused as abettor at least in respect of charge No.11. There are legal evidence to prove that the accused has directly participated in respect of the said charge. Sub-Section (2) of Section 20 provides that the tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime appears to the tribunal to be just and proper. The offences of crimes against humanity or genocides are by nature serious and heinous type of offences because the perpetrators committed those offences against unarmed innocent civilians. These crimes cannot be compared with ordinary crimes. They are of incomparable scale and seriousness. The Bangladesh perspective with regard to the perpetration is quite distinct with other crimes of similar nature. The butchers suddenly attacked the innocent citizens, university teachers and intellectuals in the dead of night, the night following 25th March, 1971. The brutality and

butchery were so serious that shocked the world's conscience. After a bit of recovery from the trauma of brutality, the people of this country resisted the occupation army and started fighting to liberate the country. It is at this stage that the local collaborators sided with the butchers and formed paramilitary forces. The accused appellant was one of the organizers of Al-Badar force at Chittagong, which was raised with the aim and object of killing the pro-liberation forces and minority community- the force is known as 'killing squad'. The accused not only organized the force at Chittagong, he had commanded the force and directly participated in the perpetration of most barbarous acts unknown to human civilization. He does not deserve any leniency on the question of sentence on consideration of the nature and gravity of offence. The tribunal awarded the sentence of death in respect of charge No.11 which according to us was 'proportionate to the gravity of the crime.'

This appeal is thus allowed in part. Accused Mir Quashem Ali is found not guilty in respect of charge Nos. 4 and 12 and he is acquitted of those charges. His conviction and sentence in respect of charge Nos. 2, 3, 7, 9, 10 and 11 is maintained.

CJ.

J.

J.

J.

J.

The 8th March, 2016
Md. Mahbub Hossain.
Approved For Reporting.