

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha, Chief Justice

Ms. Justice Nazmun Ara Sultana

Mr. Justice Syed Mahmud Hossain

Mr. Justice Hasan Foez Siddique

CRIMINAL APPEAL NO.122 OF 2013.

(From the judgment and order dated 1.10.2013 passed by the International Crimes Tribunal No.1 (ICT-1), Dhaka in ICT-BD Case No.02 of 2011.)

Salauddin Qader Chowdhury:

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 Alam, Attorney General
(with Mr. Murad Reza, Additional
Attorney General, Mr. Momtazuddin Fakir,
Additional Attorney General, Mr.
Biswajit Debnath, D.A.G., Mr. Ekramul
Hoque, D.A.G., Mr. Masud Hasan
Chowdhury, D.A.G., Mr. Khondaker
Diliruzzaman, D.A.G. and Mr. Bashir
Ahmed, A.A.G., instructed by Mrs.
Mahmuda Parveen, Advocate-on-Record.

**Date of hearing: 16th, 17th, 21st, 22nd, 23rd, 24th, 28th, 29th, 30th
June, 2015, 1st, 5th, 6th, 7th and 29th July, 2015.**

Date of Judgment: 29th July, 2015.

J U D G M E N T

Surendra Kumar Sinha, CJ. : This appeal at the instance of convict Salauddin Qader Chowdhury is from a judgment of International Crimes Tribunal No.1 finding him guilty in respect of charge Nos.2, 3, 4, 5, 6, 7, 8, 17 and 18 and sentencing him to 20 years,

death, 20 years, death, death, death, 5 years and 5 years respectively. In respect of charge No.2 it found the appellant guilty under section 3(2) (c) (i) (ii); in respect of charge No.3 under section 3(2) (a); in respect of charge No.4 under section 3(2) (a) and 3(2) (c) (i) and (ii) and 3(2) (g) (h); in respect of charge No.5 under section 3(2) (c) (i); in respect of charge No.6 under section 3(2) (c) (i) and (ii) and 3(2) (a); in respect of charge No.7 under section 3(2) (a); in respect of charge No.8 under section 3(2) (a) (h); in respect of charge No.17 under section 3(2) (a) and in respect of charge No.18 under section 3(2) (a) of the International Crimes (Tribunals) Act, 1973.

Facts relevant for the disposal of the appeal are as under:

The investigation agency conducted a preliminary inquiry over incidents of deportation and forceful transfer of Hindu community, persecution against Awami League leaders, pro-liberation citizens and Hindu community, mass killing of Hindu community on

political and religious grounds, torture, arsoning and other inhuman acts at Maddhaya Gohira Hindu Para, Gohira, JogotmolloPara, Banik Para, Sultanpur, Unashattarpara under Rawjan police station, Rawjan Pourashava area, Khagrachari-Rangamati conjoining point of three roads (teen rasthar mor), Hajari Galli, Mohra Village, Goods Hill, Chittagong town and other places of Chittagong during the war of liberation against the convict Salauddin Qader Chowdhury. It submitted a preliminary report to the Chief Prosecutor appointed under the Act of 1973. The Chief Prosecutor submitted formal charges with documents before the tribunal for taking cognizance of the offences against Salauddin Qader Chowdhury. The tribunal on perusal of the formal charges and other documents having satisfied that offences alleged against the accused are punishable under section 3(2) of the Act of 1973 took cognizance of the offences and issued process for prosecution of the accused. Ultimately 23 (twenty three) counts of charges were framed against him. Of them, the

following charges are relevant for our consideration, which are as under:

"On 13th April, 1971 at about 6.30/8.00 a.m. accused Salauddin Qader Chowdhury along with his accomplices and Pakistani Army went to Madhaya Gohira Hindu Para under P.S. Rawjan, District-Chittagong and brought the unarmed Hindu people in the courtyard of the house of Dr. Makhon Lal Sharma and then Pakistani Army opened fire on them, and as a result Poncha Bala Sharma, Sunil Sharma, Joti Lal Sharma and Dulal Sharma were killed at the spot and Dr. Makhon Lal Sharma died after 3/4 days, and Jayonto Kumar Sharma was seriously injured. Thus the accused has been charged for commission of offences as specified in section 3(2) (c) (i) and (ii) of the Act.

"On 13th April, 1971 around 9.00 a.m. to 10.00 a.m. accused Salauddin Qader Chowdhury led the Pakistani Army to Kundeshwari Owsadalay of Gohira and entered into the household of Sree Nuton Chandra Singha who was performing his

prayer at that time in the temple, a Hindu religious prayer place, accused Salauddin Qader Chowdhury expressed his view to the Pakistani invading force that he had instruction from his father to kill Nuton Chandra Singha. Upon hearing the same, the army opened fire at him who fell down sustaining bullet injuries. While Nuton Chandra Singha was trembling, at the same time Salauddin Qader Chowdhury shot him again to confirm his death and thereafter, all of them left the place of occurrence. Upon such allegation accused Salauddin Qader Chowdhury has been charged for physical participation and also for substantially contributing to the actual commission of offence of crimes against humanity as specified in section 3(2)(a) of the Act.

“On 13th April, 1971 at about 10.30 to 11.00 a.m. accused Salauddin Qader Chowdhury along with his accomplices and Pakistani Army raided the area of Jogotmollo Para belonging to Hindu

community and then one of the military man opened fire to the innocent village people assembled in the courtyard of Kiron Bikash Chowdhury, and as a result 32 Hindu people were killed and 3 persons were seriously injured. Besides, the houses were looted and destroyed by fire and some people had to deport to India as refugees to take shelter there. Thus, the accused has been charged for commission of offences as specified in section 3(2)(a), 3(2)(c)(i) and (ii), 3(2)(g) and (h) of the Act.

"On 13th April 1971 around 1.00 p.m. accused and his accomplices led the Pakistani invading force entered Bonikpara at Sultanpur and opened fire upon unarmed civilian Hindu people pursuant to pre-arranged plan and thereby killed (1) Nepal Chandra Dhar, (2) Monindra Lal Dhar, (3) Opendra Lal Dhar, and (4) Anil Baran Dhar. The houses of Bonikpara were set on fire by the accused who left the scene thereafter and thereby the accused has been charged for

physical participation and also for substantially contributing to the commission of offence of genocide specified in section 3(2)(c)(i) and persecution as crimes against humanity under section 3(2)(a) of the Act.

"On 13th April, 1971 at about 4.00 to 5.00 p.m. accused Salauddin Qader Chowdhury along with some of his accomplices led the Pakistani Army and attacked Unsattur para, a Hindu populated area, under P.S. Rawjan and brought the local Hindu people to the bank of the pond behind the house of Shatish Mohajan telling them to attend a peace meeting, and after that in presence of the accused, they brush fired upon them and thereby killed Chandra Kumar Paul and 49 others and also unknown 19/20 unarmed civilian persons. Besides, from the said occurrence Januti Bala Paul got gunshot injuries in her waist and the general Hindu people took shelter in India as refugees. Thus, the accused has been charged for commission of offences as

specified in section 3(2) (c) (i) and d (ii) and 3(2) (a) of the Act.

"On 14th April, 1971 at about 12.00 noon accused along with Pakistani Army entered the house of Sotish Chandra Palit who came out of the house at that time. While he was talking to the Pakistani army accused identified him as a dangerous man asking the Pakistani Army to kill him and accordingly the Pakistani Army shot him down and burnt the dead body along with his house. Thereafter, the other members of Sotish Chandra Palit deported to India for their safety and as such the accused has been charged for the physical participation and also for substantially contributing to the actual commission of offence of crimes against humanity as specified in section 3(2) (a) and 3(2) (h) of the Act.

"On 17th April, 1971 at about 11.00 a.m. the founder of Chittagong Awami League, Sheikh Mozaffor Ahmed along with his family members

while they were coming from Rawjan to Chittagong town, reached Khagrachory, Rangamati corner of 3 roads (teen rasthar mor) and on the showing of the accused the Army persons present there surrounded the private car of Sheikh Mozaffor Ahmed and brought down him and his son Sheikh Alamgir from the car and took them to the near by Army camp and they were subsequently killed. Thus, the accused has been charged for commission of offences as specified in section 3(2) (a) and 3(2) (h) of the Act.

"On 5th July, 1971 at about 7.00/7.30 pm. accused Salauddin Qader Chowdhury along with 2/3 accomplices and Pakistani Army abducted Nizamuddin Ahmed, Siraj and Wahidul Alam Junu from the house of Jahangir Alam Chowdhury situated at Hajari Lane under Kotwali police station and then took them to Goods Hill torture centre and then they tortured them there and then they were kept there up to 9.00 p.m. and thereafter they were taken to the Army camp at

Chittagong Stadium. Victim Wahidul Alam Junu was released at one time and the remaining Nizamuddin Ahmed and Siraj were kept till Liberation. Thus, the accused has been charged under section 3(2) (a) of the Act for commission of offences of crimes against humanity.

"In the 3rd week of July, 1971 in one morning around 5.30 a.m. a close associate of the father of accused and Chairman of Shekarpur Union Parishad Shamsu Mia (now late) with three accomplices went to the house of Abdul Motaleb Chowdhury at village Mohara and kidnapped Md. Saleh Uddin and took him to Goods Hill torture center by a Pakistani army car. In presence of the accused he was brought down from the car and taken to the first floor of the garage of the adjacent house where he was interrogated and tortured and thereby he became senseless and he was thrown out by a wooden shelf and fell in front of the accused who told the Pakistani army that no water came out from his eyes what type

of torture was made and then accused tortured him and kept him in a room where other tortured people were also seen there. One of them told that he would be taken out soon for murder. Then the accused told that he would now get the result asking the Pakistani army to take him out for killing and he was taken out. Later, by giving bond he was released. Thereby the accused has been charged for the physical participation and also for the substantially contributing to the actual commission of an offence of confinement, abduction and torture as crimes against humanity as specified in section 3(2)(a) of the Act."

In support of the charges besides ocular evidence, the prosecution has also relied upon circumstantial as well as documentary evidence. In support of charge No.2 it has examined Serajul Islam @ Seru Bangalee (P.W.3), Nirmal Chandra Sharma (P.W.6), Subal (P.W.29); in support of charge No.3 it has examined Anisuzzaman (P.W.1), Serajul Islam @

Seru Bangalee (P.W.3), Gouranga Singha (P.W.4), Profulla Ranjan Singha (P.W.5), Ashish Chowdhury (P.W.13), Gopal Chandra Das (P.W.14) and Debabrata Sarkar (P.W.18). In support of charge No.4 it has examined Serajul Islam @ Seru Bangalee (P.W.3), Arunangshu Bimal Chowdhury (P.W.12), Ashish Chowdhury (P.W.13), Gopal Chandra Das (P.W.14) and Dijoy Krishna Chowdhury (P.W.34). In support of charge No.5 it has examined Serajul Islam @ Seru Bangalee (P.W.3) and Anil Baron Dhar (P.W.22). In support of charge No.6 it has examined Serajul Islam @ Seru Bangalee (P.W.3), Abbas Uddin Ahmed (P.W.7), Sujit Mohajon (P.W.31), Basanti Ghosh (P.W.33), Chapala Rani (P.W.37) and the statement of Janoti Bala Pal, exhibit 96. In support of charge No.7 it has examined Serajul Islam @ Seru Bangalee (P.W.3) and Paritosh Kumar Palit (P.W.28). In support of charge No.8 it has examined Serajul Islam @ Seru Bangalee (P.W.3), S.M. Mahbub-ul-Alam (P.W.11), Umme Habiba Sultana (P.W.17) and Sheikh Morshed Anwar (P.W.20). In support of charge No.17 it has examined Nizam Uddin

Ahmed (P.W.15), Syed Ohidul Junu (P.W.19) and Dr. A.K.M. Shafiullah (P.W.27). In support of charge No.18 it has relied upon Anisuzzaman (P.W.1), Md. Salehuddin (P.W.8), Abu Taher Chowdhury (P.W.25), Md. Solaiman (P.W.26), Md. Ezab Uddin Mia (P.W.36), Md. Ershadul Haq (P.W.38), Molla Abdul Hai (P.W.39), Md. Kowser Sheikh (P.W.40) and Md. Nurul Islam (P.W.41).

Besides them, the prosecution has also examined Md. Ersadul Haque (P.W.38), a Police Officer to prove the seizure of some documents and alamats, exts 31 series, 32 series and 33 series; Mollah Abdul Hye, another police officer, to prove ext. 35 series; Md. Kawsar Shaikh (P.W.40) book-sorter of Chittagong Divisional Government Library to prove exts.36 series, 37 series, 38 series, 39 series and Md. Nurul Islam (P.W.41), a police officer and the investigation officer. He also proved the seizure of exts 40 series to 98 series.

Defence has totally denied the complicity of the accused in the alleged commission of offences and took a plea of alibi that the accused was not present

at the scene of incidents-he went West Pakistan on the beginning of the liberation struggle and underwent education and then went to London in October where he stayed till 1974. In support of its case it has examined four witnesses. Of them, Salauddin Qader Chowdhury (D.W.1) is accused himself, Nizam Ahmed (D.W.2), Quayyum Reza Chowdhury (D.W.3) and Abdul Momen Chowdhury (D.W.4). It has also relied upon some documentary evidence, affidavits sworn by Mohammedmian, Swmroo, Muneeb Arjamand Khan, Mohammed Usman Siddique, Ishaq Khan Khakwani, Reaz Ahmed Noon, Ms. Zinat Ara Begum and some other persons, and also relied upon some documentary evidence, exts. A, B, C, D.

Evaluation of evidence.

Charge No.2 :

P.W.3 is a local witness. He stated that he worked for professor Nurul Islam Chowdhury, an Awami League candidate in the National Assembly Election held in 1970 and participated in the election process. After the massacre on the night following

25th March, 1971, he took shelter at Patiya and joined the liberation forces, who were then resisting the military junta. Major Mir Sakhawat Ali was the officer of Bengal Regiment and under his command EPR, Police, Ansar and the local Awami League; Chatra League participated in the process of resistance. On 12th April, Mir Sakhawat's force approached towards Bandarban via Patiya. On 12th April evening a rumor spread out that Salauddin Qader Chowdhury along with Pakistani force was approaching towards Hathajari, Rawjan. On hearing the news Bibhuti Bhushan, another freedom fighter, was telling about breathtaking incident at Gahira Rawjan. On hearing the news Bibhuti Bhushan left for the locality on 13th morning. The military junta with the help of Salauddin Qader Chowdhury attacked and massacred Gohira, neighbouring villages of Sultanpur, Jogotmollopara, Unashattarpara, which were Hindu populated areas and created reign of terror in those areas on religious ground and they torched the houses and killed the innocent Hindus, looted away

valuable goods and abducted young girls. He has also narrated the atrocities committed by Salauddin Qader Chowdhury in the Hindu populated areas in respect of other charges. He also heard from Captain Karim, a freedom fighter, who was then fighting against the military junta regarding the role of Salauddin Qader Chowdhury and his involvement in those atrocities. Karim told him the cause for Salauddin Qader Chowdhury's grudge towards Hindu community. Fazlul Qader Chowdhury, father of Salauddin Qader Chowdhury, was defeated by a young worker of Awami League in the National Assembly Election of 1970. He and his father were of the impression that because of Hindus, Fazlul Qader Chowdhury lost the election. That was the root cause for the accused to commit the atrocities in the areas with an object to driving away the Hindus from the locality so that any candidate from his family is not defeated in future elections.

In course of cross-examination he stated that Captain Karim died in September, 1971. He expressed his ignorance as to how Captain Karim died. He

further stated that he had some altercations with Captain Karim at Rahamatgonj centre and then he left for India. He stated that on 13th June, 1971, he attacked A.K.M. Fazlur Kabir Chowdhury, elder brother of Fazlul Qader Chowdhury with grenade. He also denied the defence suggestion that he did not know Captain Karim or that Captain Karim knew him. He denied the defence suggestion that as Karim died during the war of liberation, he was deposing falsely by referring Captain Karim's version. This suggestion of defence proves that a freedom fighter by the name Captain Karim was alive who fought in those areas died during the war of liberation. He denied the defence suggestion that the views of Captain Karim were that Salauddin Qader Chowdhury committed the heinous crimes at Unashattarpara or that he was not involved in the mass killing of Hindu community people.

P.W.6 is an advocate and an eye witness of the incident. He stated that on hearing the news that the Pakistani junta crossed the the defence array of the

freedom fighters on 12th April, 1971, they were perturbed. On 12th April, they could not decide in which direction they would leave the locality. On 13th in the morning, he came out of the house along with his brother Sunil Sharma and Bhagina (nephew) Dulal Sharma, father Jayanta Kumar Sharma and while crossing the locality they heard an announcement from Hanif Khandaker's Mosque asking the people of the locality mainly the Hindus not to leave their houses stating that Shanti Committee has been formed and that if they would leave the houses, all valuable goods would be looted away. It was assured that if they would remain in their houses, they would not face any difficulty. Hearing the assurance, they returned to their houses and sat for taking meal at home. Soon thereafter, they noticed that Salauddin Qader Chowdhury with armed army was standing on their door. One army personnel told them to come out of the house by giving assurance that they need not be worried. As soon as they came out of the house, one army ordered them saying 'hands up'. At that time,

three army personnel approached towards them and two of them aimed their arms towards them. On realizing the seriousness of the situation, he did not take any step forward. Under such situation, the members of his family started screaming and made entreaties by touching their legs to save their lives. The soldiers ordered them to go inside the house. Then Salauddin and the soldiers dragged his uncle Dr. Makhan Lal Sharma on the courtyard, when all other members also came out with him and requested the soldiers to spare their lives. At that time, the army asked them to stand in a line facing west. At that time, Salauddin along with army personnel stood in the courtyard facing east. Soon thereafter, the army opened fire towards them. He heard sounds of groaning. The moment the army opened brush firing, he tilted and as a result he survived. Thereafter, Salauddin and the soldiers approached towards east. After their departure, he found his mother Pancha Bala Sharma, nephew Dulal Sharma, younger brother Sunil Sharma and Uncle Jyoti Lal Sharma were lying dead while his

uncle Makhan Lal Sharma sustained grievous injury who died a few days thereafter. His father Jayanta Kumar Sharma was seriously injured. His another brother Bimal Sharma on hearing sounds of firing became dumb and left the village to take shelter in Guru Duwara village. He returned back to their house in the evening and found that his brother and uncle were still alive and groaning. They were asking for water and at that time his father was telling to him to leave the place to save his life. He along with his brother thereupon took shelter in the house of Danu Chacha, a neighbour who helped them to leave the area at dawn masquerading as Muslims by wearing caps on their heads and pronouncing Kalema so that they could not be identified as Hindus. They left the country for India and took shelter in the refugee camp in India.

In course of cross-examination, he stated that the army stayed at their house for about 15/20 minutes. There was no raining on that day and he supplied water to his father for drinking. At about

7/7.30 p.m., his brother returned home after an hour. He denied the defence suggestion that his brother was not at home on the date of occurrence. He vividly narrated the location of the Mosque where from they heard the announcement. He denied the defence suggestion that his nephew Dulal and brother Sunil left for India before 13th incident. By this suggestion the defence has admitted the killing of five members of Nirmal's family. He denied the defence suggestion that he did not see Salauddin Qader Chowdhury on 13th April at his house or that he implicated him at the instance of conspirators. The defence also suggested to him that his father, uncle, mother and other members met natural death. By this suggestion the defence has practically admitted the killing of the members of his (Nirmal) family. He reaffirmed his statement in chief and stated that his uncle Jyoti Lal Sharma sustained injury on chest. He stated that nobody came to help his injured father because there was none present in nearby houses. He stated that after their departure his elder sister

Dulal's mother took care of his father. He reaffirmed his statement in cross and stated that when they were standing in line his Kaka (Uncle) was standing towards left and then they sat down as per their order, his uncle was towards left of his father and then his nephew Dulal and towards south Sunil. The army was standing 7/8 yards west from them and that they fired twice.

P.W.29 corroborated P.W.6 so far as relates to the killing of the family members of P.W.6 on 13th April. He stated that he along with his parents was approaching towards Binajuri for shelter and at that time they heard gun firing. Hearing the gun shots, they took shelter in the nearby bush and waited there for an hour. At that time his father told him to see what had happened and thereafter, they returned home and saw the dead-bodies of four persons lying on the courtyard and two injured persons- the injured persons were Jayanta and Makhon Lal and the dead persons were Pancha Bala, Sunil, Dulal and Jyoti Lal. They left their house thereafter and after

liberation, they returned back and heard that Kazi Farid buried the dead-bodies on the bank of the pond. In cross he stated that the light house is situated at Hathajari Thana and he was staying at his maternal uncle's house at Gohira. The incident took place on his compound and he was nine years old at that time. After half-an-hour of the incident, he reached the place of occurrence. He denied the defence suggestion that no incident took place on that day, the time and in the manner as stated by the witnesses.

Charge No.3:

The incident took place on 13th April, 1971 at about 9.30-10 a.m. in which Nutan Chandra Singha, the founder of Kundeswari Uwshadhalaya was brutally killed. P.W.1 Dr. Anisuzzaman was a Reader in Bengali department at Chittagong University. He stated that on night following 25th March, when the atrocities started, he along with his colleagues left Chittagong University Campus on the apprehension that the army might attack the University Campus and took shelter at Kundeshwari Complex. On 2nd April, they took

shelter at Hathajari, Katherhat village and on 10th April, they went to Ramgarh and took shelter at Ramgarh police station. He further stated that sometimes in April 20, he met Profulla Singha at Ramgarh when he told him that his father was no longer alive. On query, Profulla told him that the army entered into Kundeshwari, talked to his father and at the time of **returning**, at the instigation of Salauddin Qader Chowdhury, Nutan Chandra Singha was shot to death. After liberation, he returned in the country and visited Kundeshwari and met Profulla Chandra Singha and heard about the incident of killing Nutan Chandra Singha. Profulla told him that Gopal Das, Principal of Kundeshwari Girls High School told him that on 13th April, Pakistani Army entered into Kundeshwari accompanied by Salauddin Qader Chowdhury. The army talked with Nutan Chandra Singha and on their way back at the instance of Salauddin Qader Chowdhury, they returned and pulled Nutan Chandra Singha out from the temple, who was then worshipping and shot him and then Salauddin Qader

Chowdhury shot him with his pistol twice when Nutan Chandra Singh was on dying condition with a view to ensuring his death. He reasserted that Profulla Chandra Singha narrated the incident to him. He further stated that Salauddin Qader Chowdhury supported the political agenda of Pakistan government and Professor Gulam Azam, Matiur Rahman Nizami, Fazlul Qader Chowdhury formed a Peace Committee and that Salauddin Qader Chowdhury played the same role. His (Salauddin Qader Chowdhury's) activities of crimes against humanity are confined to the vicinity of Chittagong.

In course of cross-examination, he reaffirmed his statement in-chief as regards the manner, the place and the time of killing Nutan Chandra Singha and stated that when Nutan Chandra Singha was on critical condition, Salauddin Qader Chowdhury shot him twice with his pistol and that Profulla Chandra told him twice the said story in 1972. He denied the defence suggestion that Profulla did not narrate the said incident to him in 1972 or that he did not visit

Kundeshwari after returning from India. He denied the defence suggestion that Nutan Chandra Singha died on 7th April, not on 13th April. This suggestion supported the prosecution case that Nutan Chandra Singha was brutally killed by Pak army and Salauddin Qader Chowdhury. He reaffirmed his statement in-chief that he expressed his gratefulness to Nutan Chandra Singha as the latter gave them shelter at Kundeshwari. He expressed his ignorance as to whether on the night following 17th April, 1971, Fazlul Qader Chowdhury with his family was returning home at Goods Hill from Gohira and while crossing below the Goods Hill, he was attacked by Pak army at which Fazlul Qader's driver Ahmed Ali died and the vehicle was destroyed. This suggestion also supported the prosecution version to some extent, inasmuch as, according to the prosecution, the freedom fighters planned to kill Salauddin Qader Chowdhury because of his involvement in mass killing and while Salauddin Qader Chowdhury was returning with the driver Ahmed Ali, the freedom fighters' attacked him near Dr.

Somiruddin's house with sten guns and grenade, and in the brush firing and grenade charging, the driver died on the spot and that Salauddin Qader Chowdhury sustained grievous injury on 20th September at 6.30 p.m. He reasserted his statement that the killing of Nutan Chandra Singha was true.

P.W.3 is a freedom fighter who stated that in the National Assembly election held in 1970, out of 169 seats, 167 seats were won by the Awami League in East Pakistan and in the Provincial Assembly also, Awami League secured 289 seats out of 300 seats. During the relevant time the military bureaucracy and Pakistani politicians did not morally accept the election result and to handover power to Awami League, and with a view to thwarting the formation of the government by Awami League, they started conspiracy with some politicians and political parties. The political parties were Convention Muslim League, Council Muslim League, Jamat-e-Islami, Nizam-e-Islami, PDP etc., and the politicians were Fazlul Qader Chowdhury, Gulam Azam, Abbas Ali Khan, Moulana

Yousuf Ali, Khan Abdus Subur Khan, Abdul Monayem Khan, Khwaza Khair Uddin, Khwaza Sahab Uddin, Shah Azizur Rahman, Nurul Amin, S.M. Sulaiman, Sharafat Ullah, Sultan Ahmed, advocate Md. Yahiya etc. Jamat-e-Islami's affiliated student front was Islami Chhatra Sangh and the leaders of that student front were Abu Nasar Mohammad Abdul Zahor, Mohammad Ibrahim, Mir Kashem Ali, A.N.M Munir Ahmed, Moulana Abu Taher and M.A. Taher. Motiur Rahman Nizami and Ali Ahsan Mohammad Mujahid were central leaders. Muslim League's student front was NSF, and these student fronts carried out the political agendas as per instructions of Muslim League leaders. In Chittagong chapter, Salauddin Qader Chowdhury, Syed Wahidul Alam, Hamidul Kabir @ Khoka and Enamul Hoque Monju were student leaders. Hamidul Kabir @ Khoka was the Secretary of Muslim Chatra Parishad. These student leaders were performing anti liberation activities as per direction of political leaders. The Pakistan central government was vacillating over the handing over of power to Bangabandhu Sheikh Mujibur

Rahman against which Bangabandhu called the people to participate in the non-cooperation movement on 1st March, 1971, and on that day, Bangabandhu declared that the next political agenda would be declared on 7th March, at Race Course public meeting. The Pakistani establishment hatched up conspiracy how to frustrate the handing over of power to the political party which secured the highest number of seats in connivance with Zulfikar Ali Bhutto, the leader of Pakistan People's Party and as a sequel, General Tikka Khan for implementing the central government's policy, created reign of terror similar to one of orgy upon the civilian population killing millions on the night following 25th March, under the name 'Operation Search Light'.

He further stated that at dawn of 26th March, the news spread in the Chittagong City that local politicians with the help of East Pakistan Rules (EPR), Police and Ansar resisted the Pak junta. In 1970 election Fazlul Qader Chowdhury was defeated by a young activist of Awami League by huge margin of

votes and his family was unhappy towards Hindu community because they thought that Fazlul Qader Chowdhury was defeated because of Hindu voters, who did not cast votes in his favour. In retaliation, Fazlul Qader Chowdhury and his followers started mass killing, looting, driving out the minority community from the locality to India so that in the next elections none of his family could not be defeated. Captain Karim, a veteran freedom fighter determined to finish Salauddin Qader Chowdhury and his acolyte Syed Waliul Alam. On 12th April, there were rumors in Rawjan-Hathajari area that Salauddin Qader Chowdhury with the help of army would perpetrate mass killing. On 13th morning, the Hindu community decided to leave the locality. P.W.3 stated that Bibhuti Bhushan told him that on 13th morning, he would approach towards Joggarhat-Fatikchari and after approaching a bit, he noticed a military convoy which was approaching towards Kundeshwari Owshadalaya and on sensing imminent danger, he ambushed at a nearby jungle and noticed that the convoy stopped at the gate of

Kundeshwari. The Pakistani army entered into Kundeshwari compound and one army officer and Salauddin Qader Chowdhury approached towards the temple where Nutan Chandra Singha was worshiping. The officer pulled Nutan Chandra Singha out of the temple and at that time, Salauddin Qader Chowdhury told the army officer pointing fingers at Nutan Babu to finish him. The army officer abused Nutan Babu at which Nutan Babu replied to him, but as his voice was too low, he could not follow the utterance of Nutan Babu. The army officer told "কিউ চৌধুরী সাহাব আপনে বুল্যাথা ইয়ে হিন্দুস্থানি হ্যায় ইয়ে হিন্দুস্থানমে ভাগনেওয়ালাথা লেকিন বড় তাজ্জবকা বাত হ্যায় ইনছনে বোল রাহা হ্যায় ও হিন্দুস্থানি নেহি হ্যায় উচকা ওয়াতান ইয়ে হ্যায় ইয়ে মুলক ইয়ে হ্যায় উনছনে ইহামে জনম লিয়া হ্যায় উনকা মাউথবি ইয়া হোগা বড়ি তাজ্জবকা বাত হ্যায় এ হিন্দুস্থানি মালোয়ান শির উচা কে বোল রাহা হ্যায় এ ওয়াতান ইনকা হ্যায় পাকিস্তান উনকা মুলখায় এইছা এক পাকিস্তানিকে পায়বান্দিকো কেইছে হ্যাম খতম করে ন্যাহি হারগিচ ন্যাহি বলে তিনি সেখান থেকে চলে গেলেন।" The army officer then returned when Salauddin Qader Chowdhury realized that his plan would be frustrated and sometimes thereafter, he came back with some army personnel and ordered them to shoot at him. Thereafter, he himself shot twice at Nutan Babu. This witness also made

statements with regard to other charges which will be narrated later on.

In course of cross-examination, he stated that Captain Karim died in September, 1971. He narrated the location of Kundeshwari in reply to a query made to him. He denied the defence suggestion that he did not know Captain Karim. He stated that he queried to Captain Karim on Fazlul Qader Chowdhury and Salauddin Qader Chowdhury's grudge towards Hindu community. Karim repeated the same story as stated in his chief stating that because of the defeat in 1970 election, which according to them was due to the minority voters, who voted in favour of Awami League candidate. He denied the defence suggestion that he was falsely deposing against the accused at the instance of the political opponents or that he was picked up by his political opponents to depose against the accused Salauddin Qader Chowdhury.

P.W.4 is the nephew of victim Nutan Chandra Singha. He stated that as Hindu joint family they were living at village Gohira 'Kundeshwari'. He was

closely attached to Nutan Chandra Singha and looked after the household affairs. His uncle Nutan Chandra Singha established Kundeshwari Owshadalaya and its factory, a primary school, girls' school, women's college, dormitory and acquired large chunk of agricultural land. He was also a social worker. In 1971 during the liberation struggle on 30th Chatra, he, Hemangshu Baidya, Brajahari Karmakar, Gopal Das were staying with Nutan Chandra. They wanted to shift Nutan Chandra Singha where else for security reasons but his uncle did not listen to their request. In the morning at 9 a.m., when they were talking, a military jeep entered into their compound and noticed that Salauddin Qader Chowdhury with some acolytes and army personnel got down from the vehicle. He along with Himangshu & Monoranjan ambushed in nearby jungle. The army and Salauddin with his followers after talking to Nutan Chandra Singha left the place and 10/15 minutes thereafter, they came back and soon thereafter, they heard sounds of firing and having realised sensing of somewhat serious nature, they

thought not to stay there - they went to neighbour Ahmed Basar's house and requested him to collect information regarding the fate of his uncle. Ahmed Basar told them that the dead body of Nutan Chandra Singha was lying in front of Mondir. Hearing the news, they came back and covered the dead body with a tripal (canvas covered with tar) and then left the place. They noticed bullet injuries on the face and chest of his uncle and on the following day, he crossed the border and 8/10 days after the liberation returned home. One day thereafter, he stated, Brajahari Karmakar came to meet him from whom he heard that on the day of occurrence, he along with Gopal Das was on the first floor of the building. They saw from there that Salauddin Qader Chowdhury with some of his Bangalee acolytes and Punjabi military returned after talking with his uncle Nutan Chandra Singha. They pulled his uncle out of the Mondir and the military brushed fire and then Salauddin Qader Chowdhury shot at him. On seeing the incident, they left the place. Brajahari told him

that the dead body of his uncle was lying for 2/3 days and the chairman Amanat Kha arranged for funeral ceremony of his uncle with the help of people from Barua Para and after returning home, Satya Ranjan lodged a case with the Rawjan Police Station being Case No.41 (1)72 for killing Nutan Chandra Singha and Rawjan Police Station Case No.42 (1)72 for looting.

He admitted that Fazlul Qader Chowdhury had friendship with his uncle and Salauddin Qader Chowdhury used to call him uncle. He reaffirmed that in 1971, 30th Chaitra, he, Hemangshu Baidya, Brajahari Karmakar, Gopal Das and Nutan Chandra Singha jointly stayed at home. In reply to a query, he stated that due to bullet injuries his uncle's left side head's flesh with skin was torn apart. He stated that the army did not enter into the first floor of the building. This statement proved that he was with Nutan Chandra Singha and that he saw the dead body. He denied the defence suggestion that he was deposing falsely at the instance of enemies and that the enemies of Nutan Chandra Singha brought army

for killing with a view to grab the property of Kundeshwari. This suggestion also proved that Nutan Chandra Singha was killed by the army on the day and in the manner as stated. The defence has practically admitted the killing of Nutan Chandra Singha by the army with the exception that Salauddin Qader Chowdhury was not present there. The defence, however, failed to identify the persons who were inimical towards Nutan Chandra Singha at whose instance, the army came and killed Nutan Chandra Singha.

P.W.5 corroborated P.W.4 in material particulars. He is the son of victim Nutan Chandra Singha. In order to avoid repetition, I refrain from reiterating the facts relating to the establishment of Kundeshwari organizations and the relationship of their family with the elite people of Chittagong town. While corroborating P.W.4, he stated that before the election Fazlul Qader Chowdhury came to their village and told the minority community that he would believe that if they did not go to the polling

station, he would get their votes; that the voters who went to the polling centers defying his direction were tortured by people of Fazlul Qader Chowdhury and as a result, Bangabandhu came to Rawjan for expressing his solidarity with the minority community. Bangabandhu met his father and sought blessings and in reply, his father told him that God would bless him. On the previous night of 1970 election, Fazlul Qader Chowdhury came to meet his father and at that time he was with his father. Fazlur Qader told "অ-নতুন বও, পোলাতো আঁরে মনে হজে আঁরে হারায় দিব। বাবা বললেন অ চৌধুরী অনে যদি হারি অনওই তইলে কি অন আর জমিদারি যাইবো গইনা"। তখন চৌধুরী সাহেব বলেন "অ- নতুন বও আপনি তো সাদা সিধে মানুষ আপনি বুঝতে পারছেন না ।" এর পর চৌধুরী সাহেব দলবল সহ চল গেলেন ।" and after such conversation he left and at 11 p.m., Fazlul Qader Chowdhury came again and talked to his father, and again he came at 12 at night and his father told him "ও চৌধুরী অহনে কি ফয়ল হই গেইয়না ।", Fazlur Qader chowdhury told Nutan Chandra Singha that he was apprehending that the boy would defeat him and in reply Nutan Chandra told him that Chowdhury if you were defeated that you would not lose your Zaminary;

that in reply Chowdhury stated to Nutan Babu that he (Nutan) being a simple minded person did not comprehend the impact of losing the election.

He further stated that in the election Fazlul Qader Chowdhury lost and Dr. Alam also lost with Abdullah-Al-Haroon Chowdhury. Thereafter, he started persecution of the members of the Hindu Community. He stated that Dr. Anisuzzaman and Dr. A.R. Mallik of Chittagong University sent message to his uncle that they wanted to take shelter at Kundeshwari complex and thereafter 27 families consisting of 50 members took shelter in their school. Abdullah Al-Haroon Chowdhury, Dr. Abu Zafar, and M.A. Hannan used to come with the University teachers and chalked out plan on how to resist the army. A.R. Siddique, Al-Haj Zohur Ahmed Chowdhury, Aatur Rahman Kaiser came to their house on 30th March for discussing on how to leave for India avoiding mass arrest. At that time, his elder brother Chitta Singha came from Kolkata with a friend who had friendship with then Chief Minister Sachin Singha of Tripura and assured them

that he would render them assistance whenever the Indian support would be necessary. Bajahari told him that when army came to Kundeshwari, he also saw Salauddin Qader Chowdhury with them. Gouranga, Himangshu, Monoranjan, Brajahari, Gopal tried to convince his father to take shelter at a secured place. His father refused to leave Kundeshwari complex. On seeing the arrival of army, they went into hiding in a nearby jungle and two others went to the first floor of the building. Brajahari told them that he saw Salauddin Qader Chowdhury and the army, who demanded valuables from his father and the latter gave them all the valuables and then they left the place. About 15/20 minutes later, they came back again and pulled his father out of the temple and kept him standing in front of the temple and at that time, they shot him. His father was trembling when Salauddin Qader Chowdhury shot him again. His father's dead body was lying there for three days and subsequently the dead body was cremated with the help of Amanat Kha and Burua Babu. Thereafter, his brother

Satya Ranjan lodged Rawjan P.S. Case No.41(1)72 for the killing of his father and the Rawjan police submitted charge sheet against Salauddin Qader Chowdhury and others in that case. The record was ultimately sent to Dhaka but he did not know the fate of the case. He met Dr. Anisuzzaman (P.W.1) and asked him about his father's fate. He told him the news of killing of his father by Salauddin Qader Chowdhury and others.

He was thoroughly cross-examined about the topography of Kundeshwari complex. He gave a vivid picture of the complex and also the relationship of his father with the politicians and Fazlul Qader's family. He denied the defence suggestion that he lodged the case against Salauddin Qader Chowdhury and others on the influence of Haroon through his brother. He did not resile from his statements made in chief in course of lengthy cross-examination. He showed the room to the investigation officer on the first floor wherefrom he saw the incident and that the investigation officer prepared a sketch map and

noted down the topography. He stated that his father used to live in the ground floor and other members in the first floor of the complex. He was asked irrelevant questions for days together and denied the defence suggestion that Salauddin Qader Chowdhury was not involved in the incident.

P.W.14 Gopal Chandra Das is another eye witness. He stated that he was the principal of Kundeshwari Women's College. He joined the college in 1970. The College was established by Nutan Chandra Singha. In 1971, the barbaric killing was perpetrated at the Kundeshwari complex. The incident took place on 13th April, 1971, and he witnessed the incident. Some Pakistani military personnel came at the Kundeshwari complex knowing that 30 families of Chittagong University took shelter in the complex. Syed Ali Ahsan, Dr. Anisuzzaman, Dr. Rashidul Huq, Dr. Mahmud Shah Quarishi were among them. Professor Syed Ali Ahsan having realised that the country was heading towards severe critical condition, they took shelter in the Kundeshwari complex. On 10th April, all of

them left the complex leaving Nutan Chandra Singh there. They requested him but Nutan Babu was determined to his views and stated that he preferred to die in his mother land, where he established Kundeshwari Deity and that he would not leave the bhiti (land). After departure of the families, he again returned to the complex and at that time, Nutan Babu was driven by emotion and that he asked him whether he would leave, and requested him to stay with him. Being seized by emotion, he assured him that he would not leave. Sometimes thereafter, he saw Gouranga who was staying there for cooking and on the following day, at noon he went to Jogotmollopara where his sister-in-law was staying. After taking lunch there, he returned Kundeshwari complex and on seeing him Nutan Chandra Singha relieved from anxiety. On 13th April at about 9 a.m., a Pakistani army jeep entered into the Kundeshwari complex and stopped at the compound. Some army personnel got down from the vehicle and at that time, all the persons present there identified Salauddin Qader Chowdhury

and Mabud. Soon thereafter, he along with Brajahari went into hiding on the first floor of the Kundeshwari complex and others took shelter to a nearby bush. He and Brajahari saw the whole incident through the window of Brajahari's room. Salauddin Qader Chowdhury and army personnel talked to Nutan Babu and sometimes thereafter, they left with the vehicle when they thought that they were out of danger. About 8/10 minutes later they again heard the sounds of a vehicle and they went to hiding in the same room. Then they saw from there that the Pakistani force along with Salauddin Qader Chowdhury entered into the temple of the Kundeshwari complex and dragged Nutan Babu out of the temple on the courtyard. They opened fire at him and soon thereafter, Salauddin Qader Chowdhury shot 2/3 rounds with his fire arms. The perpetrators thereupon left the complex. Nutan Babu died on the spot. In course of cross-examination, he reaffirmed his statements in chief. The defence failed to bring out anything inconsistent with his previous statements. He denied

the defence suggestion that no incident took place in the manner alleged by him.

P.W.1 Anisuzzaman has also narrated the fact of his taking shelter with other professors and their families at Kundeshwari complex. Thereafter, he stated, all of them left Kundeshwari on 2nd April. He stated that from 10th April to 26th April, they were at Ramgarh and sometimes in mid April, he met Profulla Singha at Ramgarh, who told him that his father was not alive. On query, Profulla told him that Pakistani army entered into the Kundeshwari complex and talked to his father and at that time, at the instigation of Salauddin Qader Chowdhury, the army shot his father to death. He stated that the dead body was lying for three days and the local people cremated the dead body. He further stated that when Nutan Chandra Singha was on critical condition, Salauddin Qader Chowdhury shot at him twice with his pistol for ensuring his death. In cross-examination, he reaffirmed his statements in chief. He said that Nutan Babu's two sons joined the liberation struggle

activities. He denied the defence suggestion that he was deposing falsely which he heard from P.W.8 regarding his (P.W8) torture at the Chittagong University Senate meeting.

Besides the oral evidence, the prosecutor has also relied upon exhibit 16, the issue of the Dainik Bangla dated 13th April, 1972. The contents of the report read thus:

“১৩ ই এপ্রিল পাকিস্তান বাহিনী কুন্ডেশ্বরী ভবনে প্রবেশ করে। তাদের পথ দেখিয়ে এনেছিল কুখ্যাত ফজলুল কাদের চৌধুরীর বড় ছেলে সালাউদ্দিন (এখন লন্ডনে)। সে পাক হানাদারদের বলে যে বাবার নির্দেশ আছে নতুন চন্দ্র সিং ও তার ছেলেদের মারতে হবে।

ছেলেরা পালিয়ে গিয়েছিল আগেই বাবু নতুন চন্দ্র সিং তখন মন্দিরে প্রার্থনা করছিলেন। সালাউদ্দিন তাকে সেখান থেকে টেনে হেঁচড়ে বাহিরে নিয়ে এসেছিল। তার চোখের সামনে মন্দির উড়িয়ে দিয়েছিল। তারপর তাকে হত্যা করা হয়েছিল নৃশংসভাবে। মেজর ৩টি গুলি করার পরও সালাউদ্দিন রিভলবারের গুলি ছুঁড়েছিল নতুন বাবুর দিকে। তিনি লুটিয়ে পড়েছিলেন তেমনি মুখ খুবরে পড়েছিলেন ৩(তিন) দিন। সেখানে এখনও কালচে রক্তের দাগ চোখে পড়ে।”

This report was published just after liberation of the country. In this news paper reporting, it was clearly mentioned that Salauddin with Pak army

entered into the Kundeswari Complex on 13th April and told the Pak army that there was direction from his father to eliminate Nutan Chandra and his sons. Nutan Babu's sons left the complex earlier and while Nutan Chandra was worshipping, Salauddin pulled him out of the Mondir and Major fired three shots and despite that Salauddin shot at him and by this way he was brutally killed. It was also mentioned in the report that Salauddin was in London in April 1972. This report supported the prosecution version as regards the manner of killing, as well as the defence version that Salauddin Qader Chowdhury was in England when the report was published. Similar version was written regarding the involvement of Salauddin Qader Chowdhury in "বাংলাদেশের স্বাধীনতার যুদ্ধ দলিল, ৮ম খণ্ড" at page 465, in the issues of Daily Azadi dated 8th December, 1970, 9th December, 14th December, and 15th December, ext- E-series. It has been reported that the government failed to give protection to the minority voters at Rawjan and that the terrorist activities were being perpetrated by the Conventionists at Rawjan-Hathazari

areas. These reports corroborate the news item reported in ext-16.

Exhibit 32 is the G.R. Register and in the said Register, Rawjan P.S. Case No.41 dated 29th January, 1972, was entered showing the date of occurrence as on 13th April, 1971 at 6.30 a.m. as regards killing of Nutan Singha. The informant was Satya Ranjan Singha and the case was registered under sections 302/120B/298 of the Penal Code. Accused Salauddin Qader Chowdhury was arrayed as accused No.2 showing as absconding. Exhibit 38 is the issue of Dainik Azadi dated 8th December, 1970, paper book Part-III, page 663; exhibit 38/1 is the issue of the same news paper at page 665, Part-III; exhibit 38/2 is the issue of Daily Azadi dated 9th December, 1970 at page 667 Part-III; exhibit 38/4 is the issue of Daily Azadi dated 14 December, 1970 page 675, Part-III, exhibit 38/5 the issue of Daily Azadi dated 15th December, 1970 page 676, Part-III. These news papers it was reported that Salauddin Qader Chowdhury and

his father persecuted the minority community at Rawjan after the election.

Charge No.4 :

In support of charge No.4, the prosecution has relied upon the evidence of P.Ws.3, 12, 13, 14 and 35. P.W.3 stated that on 13th April to 16th June, he participated in different operations with Captain Karim. During those days, he learnt about important informations regarding the killing of octogenarian Principal Nutan Chandra Singha by Salauddin Qader Chowdhury with the help of Pakistani force. As a sequel, on 13th April from morning to dusk, the villages of Sultanpur, Jogotmollopara, Unashattarpara and other neighbouring Hindu populated areas were attacked by Salauddin Qader Chowdhury with the help of Pakistani army and created reign of terror. Under his leadership, the army torched the houses and brutally killed the members of Hindu community and looted away valuables. In course of cross-examination, he stated that Karim was killed in September, 1971. He denied the defence suggestion

that he did not know Karim or that he was deposing falsely. He reaffirmed his statement in - chief and stated that Karim saw the incidents physically and he narrated those incidents to him and hearing the thrilling incidents from Karim, he wanted to know from him why Fazlul Qader Chowdhury's family had grudge towards Hindu community. In reply Karim told him that Fazlul Qader's family was angry towards the Hindu community on the assumption that the defeat of Fazlul Qader Chowdhury in 1970 election to a young and nobish worker of Awami League was due to minority voters. According to them, as the minority voters did not support him, he was defeated. When the first opportunity came to them, they started killing, looting and persecuting the members of Hindu community with the object to compelling them to leave the locality so that his family would face no difficulty in winning the future elections.

P.W.12 stated that he is a resident of Sultanpur and an allopathic doctor. On the day of occurrence Kaikobad Chowdhury, Chairman of Raj Nagar Union came

in front of his shop and requested him to leave the area with his family immediately. On sensing seriousness of the prevailing situation, he along with his family went to his father-in-law's house at Binajuri. About two hours later, he heard the news of mass killing at Jogotmollopara. On hearing the news, he decided to see the incident and on his way he saw his elder brother's wife Jyotsna Bala Chowdhury who was lying with bullet injuries. He picked up her and brought to Binajuri. At that time Binajuri was also attacked by the miscreants. He concealed inside the paddy field at the time of looting at Binajuri. At 9 p.m. he left for India with his family and on his way he met Sadhan Dhar, Abdullah-Al Haroon and Khalek and with their help, he crossed the border and that after the liberation, he returned home and found everything destroyed. His elder brother Himangshu Bimal Chowdhury, sister-in-law Nilu Bala Chowdhury, mother's brother Premangshu Bimal Chowdhury, his wife Jyotsna Bala Chowdhury, another brother Sitangshu Bimal Chowdhury, uncle Surendra Bimal Chowdhury and

his wife Charu Bala Chowdhury, another brother Kiron Chandra Chowdhry and many persons of his village were killed in the incident. Over the said killing a mausoleum in the memory of martyrs was erected and the names of the martyrs were engraved on it. The defence did not cross-examine this witness and therefore, it had admitted the mass killing of the people.

P.W.13 stated that his father sent him along with other members to Binajuri village at his Pishi (aunt) Kuti Rani's house. On that day at noon his uncle Arabinda Singha intimated the sad news stating that accused Salauddin Qader Chowdhury with the support of local Muslim League followers and Pak army attacked their village and killed 30/35 persons including his father Pramangshu Bimal Chowdhury, brother Ashok Kumar Chowdhury, aunt Monorama Chowdhury, uncle Sitangshu Bimal Chowdhury, cousin Samir Chowdhury and many others. He also learnt that another aunt Jyotsna, neighbour Amalendu Chowdhury and others sustained severe injuries. He with his

maternal uncle, sisters and mother took shelter at Borua Para and thereafter they went to India as refugees. After liberation they came back to their village and found their house destroyed and heard from Jyotsna Bala and other neighbours that accused Salauddin Qader Chowdhury along with Muslim League followers and Pakistani army killed 30/40 persons and caused injuries to Jyotsna Bala and others. After one month of the first incident, Salauddin Qader Chowdhury came again in their house and abducted Bijoy Krishna Chowdhury, Bibhuti Chowdhury, Birendra Chowdhury and killed them near Dabua Khal. In memory of those martyrs, a Mausoleum was erected at Jogotmollopara. In course of cross-examination, he reaffirmed his statements in - chief and stated that he heard in detail about the incident from Dr. Arunangshu (P.W.12). He denied the defence suggestion that he deposed falsely as per dictation of Profulla and that those persons who were allegedly killed are staying in India.

Besides the above oral testimonies, exhibit 29, is a news paper reporting of the Suprovat in its issue dated 4th July, 2008. The clipping of the news was 'সাতত্রিশ বছর পর রাউজানের জগৎমূলা পাড়া বধ্য ভূমিতে স্মৃতিসৌধ হচ্ছে'. In the said report the story behind the killing has been narrated to the effect that on 13 April, 1971, 47 people were lined up and shot to death. In the said killing, Jyotsna Bala Chowdhury who survived, aged about 87 years told that on 13th April, 1971, at noon with the assistance of Salauddin Qader Chowdhury, a contingent of army brought women and men in front of her house and shot at them. Forty seven people died on the spot of this para. After the departure of the butchers, Jyotsna Bala Chowdhury and Amalendu Bikash Chowdhury regained senses and fled away with their injuries. The dead bodies were later on buried.

The prosecution has also relied upon the statement of Jyotsna Bala Chowdhury, exhibit 95. Her statement was admitted into evidence under Section 19(2) of the Act. She stated that on 13th April, 1971, at about 10.30/11 a.m., the army came to her

village. Sometimes before the incident, two Bangalees came to their house and took her and her husband Kiron Chowdhury on the compound on the plea for attending at a peace meeting. They lined them up with other villagers. After arrival of the army they fired at them. In the firing her husband along with 30/38 persons died. She sustained bullet injury on her chest and fell down. The neighbour Arunangshu Bimal Chowdhury took her and Amalendu at Binajuri village and arranged for their treatment. As her condition became critical, she was removed to Barua Para. She was then taken to India. Thereafter, she learnt that the dead bodies were buried beside their house. After the liberation struggle, the skeletons of the deceaseds were disinterred and cremated with the help of others. At the time of the incident Fazlul Qader Chowdhury's son Salauddin Qader Chowdhury accompanied the army. They also damaged their house by fire.

P.W.41 Mohammad Nurul Islam stated that he had recorded the statement of Jyotsna Bala Chowdhury on 24th September, 2010, in course of investigation of

the case and that she died on 10th February, 2013. He exhibited her statement. In course of cross-examination, he stated that Jyotsna Bala was an eye witness of Jogatmollapara's incident. He could not bring her in court from 14th April, 2012 to 10th February, 2013 as she was sick. He denied the defence suggestion that he recorded the statement of Jyotsna Bala according to his whims. He stated that he recorded her statement at her house and that she was very sick at that time and died thereafter. She corroborated the statements of P.Ws.3, 12 and 13 in material particulars.

Charge No.5:

In this incident four persons namely, Napal Chandra Dhar, Monindra Lal Dhar, Upendra Lal Dhar and Anil Boron Dhar were killed at Sultanpur Bonikpara on 13th April, 1971 at 1 P.M. The prosecution has examined three witnesses and exhibited some documents. P.W.3, a freedom fighter stated about the incident from what he heard from Captain Karim. He stated that on 13th April, 1971, the Pakistani army

headed by Salauddin Qader Chowdhury committed the mass killing from morning to dusk at villages Gohira, Sultanpur, Jogotmollopara, Unashattarpara and neighbouring locality out of religious hatred. On that day, they torched their houses, killed the members of Hindu community indiscriminately and looted away valuable goods. They handed over young girls to the army as gifts. The children, elderly people and women were also not spared. The killing spree was deliberate. It was out and out genocide. According to Captain Karim, one of the Salauddin Qader's brutal acts was that of the killing at Unashattarpara. Salauddin Qader himself killed 15/16 persons which Karim saw with his own eyes at that time. He was ambushing in a bush beside the Kaptai road for safety and on query, Captain Karim told that the cause for the hatred of Salauddin Qader Chowdhury's family towards Hindus was the defeat of his father in 1970 election as stated earlier. In course of cross-examination, he reaffirmed his statements in chief and stated that he heard

everything from Karim. The genocide of Rawjan, Sultanpur, Jogotmollopara, Unashattarpara and Kundeshwari complex could not be compared with anything other than orgy.

P.W.22 is an eye witness of the incident. He stated that on 13th April at about 1/1.30 P.M, Salauddin Qader Chowdhury with his followers and Pakistani army entered into Banik Para chanting slogans. They dragged him and others on the courtyard. His Uncle Monindra Lal Dhar and Nepal Chandra Dhar were kept there from before. They lined them up and opened fire towards them. All of them fell down on the ground but fortunately, he survived. After regaining senses he noticed injuries on his left hand and left side of his leg and also noticed that his father and two others were lying dead on the ground. He managed to go to his maternal uncle's house at Fatikchari and got himself admitted to Chittagong Medical College hospital with the help of Dr. Zafar. The lower part of his elbow was amputated upon and a bullet was recovered from his back. As a

result he is leading the life of a crippled person. In course of cross-examination, he stated that he lodged Rawjan Police Station Case No.5 dated 5th April, 1972 over the said killing against 16 persons including Salauddin Qader Chowdhury. He reaffirmed his statement in - chief and stated that Monindra Lal Dhar was beside him among the four persons on the road. He, however, could not say meticulously on which part of their bodies the other three persons hit the bullets because he was then on senseless condition. He stated that those three persons died on the spot and that he regained senses at 4 p.m. He denied the defence suggestion that he did not receive bullet injury on 13th April or that he did not see the accused at the time of occurrence. He stated that after release from the hospital he took shelter at his maternal uncle's house. He denied the defence suggestion that he sustained injury due to car accident. Rather, he stated that due to bullet injury gangrene spread over his hand and it was due to the delay of the treatment. He denied the defence

suggestion that his hand was amputated at Kolkata. The defence has admitted the amputation of his one hand at the relevant time.

Prosecution has also relied upon the statement of Badal Biswas, ext. 98, recorded on 19th January, 2011 and his statement was admitted into evidence under section 19(2) of the Act. In his statement Badal stated that on 13th April around 1 p.m., Salauddin Qader Chowdhury, Fazlul Qader Chowdhury and others including Pak soldiers entered into their area chanting slogans 'পাকিস্তান জিন্দাবাদ, ফজলুর কাদের জিন্দাবাদ' etc. They brought Upendra Dhar, Monirdra Dhar, Nepal Dhar and Anil Dhar out of their house on the compound and shot them. Anil sustained severe injury while the others died instantaneously. On seeing the incident, he along with his brother hide themselves inside the bush behind their house. The miscreants entered into their house, killed their ailing father Umesh Chandra Biswas and set ablaze of their house. After the departure of the miscreants, they took shelter with his brother, wife Shabi Biswas, nephew Shilpi Biswas

who survived luckily at Daguvar village. On the following day he came back with Sanatan Biswas in the morning and saw the dead bodies lying on the ground. He along with his brother buried the dead bodies on the bank of the pond and then left for India. P.W.41 stated that in course of investigation, he recorded the statement of Badal Biswas as per his version; that he obtained his signature and that at present, he is staying in India and accordingly, he could not produce him in the tribunal.

Charge No.6:

In respect of charge No.6 - the incident took place at village Unashattarpara - it was relating to killing of 50 Hindus on 13th April, 1971, at 4/5 p.m. In support of the charge the prosecution has examined P.Ws.3, 7, 31, 32 and 37 and relied upon the statement of Janoti Bala Paul, exhibit 97 and material exhibit 54, the mausoleum of martyrs.

P.W.3 narrated the incident, which he heard from Captain Karim. Captain Karim vividly narrated the incident to the effect that accused Salauddin Qader

Chowdhury with the help of Pakistani army attacked and massacred the Hindu villages of Gohira, Sultanpur, Jogotmollopara, Unashattarpara and neighbouring areas out of vengeance. They burnt houses and looted away valuables and handed over young girls to Pak army for satisfying their lust. In course of cross-examination, he stated that Captain Karim vividly narrated the incident when he was with him at different operations as freedom fighter. He had denied the defence suggestion that Captain Karim did not tell him about the incident as narrated by him. He also denied the defence suggestion that he deposed falsely at the instance of political rivals of accused.

P.W.7 Abbas Uddin Ahmed is a freedom fighter. He stated that towards mid May, he went to India for training and in the end of June, he returned and joined the Solaiman group at Baulkhali. The commanders of the Muktiyuddah decided to attack the Rajakars' camps. He was a student of college at that time and on being inspired by the gallantry fighting

of the freedom fighters, he joined the elders who supplied money, materials and cooked food to the freedom fighters. They set up a check post under the banyan tree towards the southern side of Gouri Shankar hat and checked the vehicles which were plying on the road. Unashattarpara was a Hindu populated area and only 5/6 Muslim families resided in that village in 1971. Accordingly, the Muslims resided with the Hindus in a cordial atmosphere. On 11th April at about 3 p.m., Fazlul Qader Chowdhury was passing through the road with his family. They stopped his vehicle at which Salauddin Qader Chowdhury screamed and then they left. On that evening the army took control of the Engineering College and as a result, the people left the area. On the following day on 12th, the Chairman of Pahartali Union came to their village and told Dr. Niranjana Dutta to return to their houses and on such assurance, the Hindu community people returned to their homes. On the following day at about 4 p.m., Motkul Hossain, Pearu, Burma Yusuf came to their

village and assembling them at one place they were told that their leader would talk to them. At that time his friend Babul Mali informed him that Pakistani army had already arrived and directed all the Hindus to assemble near the house of Khitish Mohajon. Coming out of the house he noticed that 2/3 army vehicles were approaching towards them. They started running towards their respective houses. Sometime thereafter he heard indiscriminate firing and noticed Babul Mali was lying on the road and soon thereafter, he noticed indiscriminate firing towards the south. Some villagers were running towards west. On the following day at about 10 a.m., he heard that Dr. Niranjon Dutta had committed suicide because the Hindus returned to their village on his advice and as a result, they were killed. On 15th April, he along with his friend came to his village and found the dead bodies of Babul Mali, his father and 60/70 others. They also found two dead bodies of pregnant women and half of their babies were emerging from their wombs. Thereafter, they buried all the dead

bodies by digging a big hole. In the armies' vehicle two civilians were sitting and the local people were telling that Salauddin Qader Chowdhury was involved in the said killing.

P.W.31 Sujit Mohajon stated that he was sitting on the verandah along with his father and elder brother and at that time, Pakistani army along with some Bangalees entered into their house and forcibly took his father, brother, mother Horilata Mohajon, aunt Menota Mohajon and sister-in-law Minoti Mohajon towards the bank of the pond of Khitish Mohajan. They assembled many other people there. Thereafter, he heard sound of brush firing and 10/15 minutes later, the situation calmed down. He went near the pond and found his father's dead body, brother's dead body lying beside the tube well and more 60/62 dead bodies over there. His mother was lying with gun shot injuries. He brought her at Shilpara. After 2/3 days their neighbours buried all the dead bodies near the pond. His mother luckily survived and he heard from her that Salauddin Qader Chowdhury and his

accomplices carried out that massacre. In the memory of the martyrs a Mausoleum was built at Unashattarpara and the names of the martyrs were engraved on the said monument. In course of cross-examination, he denied the defence suggestion that he was deposing falsely or that he did not see Abbas Uddin Chairman at Unashattarpara.

P.W.32 Basanti Ghosh stated that during the liberation war, one day when her husband was coming from Bazar one military and a Bangalee came to their house and took her husband to the house of Khitish Mohajon. He was lined up along with many other people and killed. Two days thereafter, her husband's brother brought her husband's dead body to their house. Her husband's name was engraved in the mausoleum. The defence declined to cross-examine her.

P.W.37 Chapala Rani stated that before the day of Chaitra Shangkranti in 1971 at about 5 p.m., Pakistani army attacked their village Unashattarpara surrounding the entire village. They were inside the house. They took all the members of the family and

assembled them on the bank of the pond of Satish Mohajon, brother of Khitish Mohajon. They started crying sensing seriousness of the situation. Her brother-in-law Beni Madhab told them not to cry stating that Chairman Moqbul and Salauddin Qader Chowdhury were present with the Pak army. Just thereafter Pakistani army opened fire towards them. She lost her senses and rolled down on the ground. Her brother-in-law Beni Madhab, Tarapada, father Satish died on the spot. Hearing hue and cry from the people who were searching the dead bodies by turning upside the dead bodies of their near ones, she regained her senses at about 7 P.M. She searched her husband and finally one Muslim traced him out, who was then lying on unconscious condition. She moved him to home. She stayed at the house of a neighbour who was a Muslim neighbour for four days. At the time of occurrence she saw Salauddin Qader Chowdhury, who was then young. She recognized the accused in the dock.

The statement of Jyoti Bala Paul was recorded by the investigation officer, exhibit 96, who is now dead and whose statement was admitted in evidence under section 19(2) of the Act. She stated that on 13th April, 1971, at about 4/5 p.m., she was at home with other members of her family. The army along with some Bangalees came to their village and took the villagers to the northern bank of the pond of Khitish Mohajon. They shot at them and at such firing, her brother, father-in-law and her sister-in-law fell on the ground. About 60/70 persons were killed in the incident. Her brother Hemanta's left hand was severed. She herself sustained an injury on her waist. Her brother Hemonta's left hand was detached from the body who died soon thereafter. She bandaged his injury with her wearing petticoat. And when he wanted to drink water she brought water from the nearby pond and pured into his mouth. Her husband fled away. She passed three nights altogether in the forest. The Bangalees who brought the Pak army to their village showed the Hindus. Fazlur Qader's Son

Salaluddin was with the Panjabees. After 3/4 days of the incident, the villagers buried the dead bodies in the western bank of the pond.

P.W.41 stated that he recorded the statement of Janati Bala Paul in course of investigation of the case. He proved her statement and his signature as exhibit 96. He stated that Janati died on 31st July, 2012. In cross-examination he stated that Janati Bala Paul made her statement at Rawjan Palli Biddut Office and he recorded her statement according to her version. He denied the defence suggestion that he did not take care of her during the period between 14th April, 2012 and 31st July, 2012. The defence has practically admitted the death of this witness. Exhibit 52 is the sketch map of the mausoleum erected at village Unashattarpara in the memory of martyrs. P.W.41 proved the sketch map.

Charge No.7:

As regards Charge No.7 - the incident took place on 14th April, 1971 at about 12 P.M. In the said incident Satish Chandra Paul was killed at Rawjan

Pourashava area. In support of the charge, the prosecution has examined two witnesses, P.Ws.3 and P.Ws.28. P.W.3's statement has been discussed earlier. He vividly narrated the role of the accused and his father preceding to the incidents of killing, looting etc. He made general statement in respect of this incident. P.W.28 stated that in 1971, he was 27 years old and he was then a teacher of ABM High School. Hearing the killing of Nutan Chandra Singha, he went to his house on 14th April to see his father's condition. He requested his father to leave the house but his father was adamant not to leave. On the contrary his father advised him to move carefully. His father was trying to lodge G.D. Entries and FIRs with the local police station of the incidents of killing, looting and persecution of the Hindu community. As per advice of his father on 10/11th April, 1971, he shifted his family members to his uncle Khetra Mohan Biswas's house. On reaching home, he noticed that Salauddin Qader Chowdhury along with Pakistani army was approaching towards their

house. Being frightened, he went on hiding in a nearby bush and noticed Salauddin Qader Chowdhury was standing on the bank of their pond under a tree and an army was talking to his father. They had verbal altercations and then Salauddin Qader Chowdhury loudly ordered the army that this man was dangerous and ordered to kill him. The army men then told his father to go inside the house and when his father turned back the army shot him twice. His father rolled down on the ground. The army men then brought blankets from their house and covered his dead body with the blankets and set fire to the dead body with the help of chemical. He went to his relatives' house after the departure of the army. Later on, he told his brother about the killing of his father. After one day of the incident his brother Priyotosh Palit (now dead) went to their house and took the skeletons of his father and subsequently they left for India. He identified the accused in the dock. In course of cross-examination, he stated that the Pakistani army stayed for about half - an hour. There was no

shouting or human cry when the army came to their village since most of the people left the area. He showed the bush to the investigating officer where he was hiding. He also showed the place where his father was shot to death. He stated that his father was exchanging words in English with the army but he could not hear their conversation. He denied the defence suggestion that he did not see the accused at the place of occurrence. He denied the defence suggestion that no incident took place in the manner and at the place as stated by him.

Charge No.8 :

In respect of charge No.8 - the incident took place on 17th April, 1971 at about 11 a.m. The incident was relating to the abduction and killing of Sheikh Mozaffar Ahmed and his son Sheikh Alamgir and the place of occurrence is Khagrachari teen rasta mor (three roads conjoining point). The prosecution in support of the charge has examined four witnesses, P.Ws.3, 11, 17 and 20 and exhibited series of documentary evidence. Besides the role of accused and

his father preceding to the date of occurrence, P.W.3 stated that Karim told him about the incident in mid April, 1971. Sheikh Mozaffar Ahmed and his family were returning home and when they reached at the point near Hathajari police station, accused Salauddin Qader Chowdhury and his accomplices abducted them. Subsequently, they could not be traced out by the family members. In course of cross-examination, he denied the defence suggestion that Captain Karim did not tell him that Sheikh Mozaffar Ahmed and his son Alamgir had been abducted by accused Salauddin Qader Chowdhury or that they killed them subsequently. He also denied the defence suggestion that he had been deposing falsely on being tutored by the investigation officer. He expressed his ignorance of whether the situation of Chittagong town having been improved a bit, Sheikh Mozaffar and his elder son Alamgir were caught at Cantonment area while they were returning to Chittagong. He also expressed his ignorance as to whether the photographs of these two persons were already with the army or

that the army killed them later on. He, however, admitted that he did not see the incident of taking away Mozaffar and his son. By the above suggestion, the defence has admitted the abduction and killing of Mozaffar and his son but according to them, they were killed by the army. There is a positive statement that the accused and his accomplices abducted them and thereupon, they were killed and though the defence has admitted the abduction and killing, it has denied the place of occurrence and the complicity of the accused. The defence failed to substantiate its claim. In presence of the consistent evidence about the complicity of the accused, the defence cannot avoid the complicity of the accused in the charge.

Next witness is P.W.11 S.A. Mahbub-ul-Alam who is a freedom fighter. He stated that in course of operations at the different places of Chittagong town, they got secret information that the army and their accomplices perpetrated mass killing, rape, arsoning and looting. Some Bangalees including

Salauddin Qader Chowdhury supported the pak regime and eventually perpetrated those inhuman acts. Another son of Sheikh Mozaffar complained to them that the Pak army abducted his father and brother at the instigation of Salauddin Qader Chowdhury and that they could not trace them out. Hearing the said news, the freedom fighter deputed informers to trace out the whereabouts of Mozaffar Ahmed and his son but they could not provide any clue. In course of cross-examination, he denied the defence suggestion that Salauddin Qader Chowdhury was not among those, who helped the army in the abduction and killing of Mozaffar Ahmed and his son.

P.W.17 Umme Habiba Sultana is the wife of victim Alamgir and a witness of abduction. She stated that she was 19 years old at the time of the incident. After the army started mass killing at Chittagong, her father-in-law and husband along with other relatives took shelter at her father's village home at Yasin Nagar. After staying a few days on 17th April, 1971, in the morning she along with her

father-in-law Sheikh Mozaffar Ahmed, husband Sheikh Alamgir and some other relatives were returning home at Chittagong town. On the way at the teen rasta mor (conjoining point of three roads) of Hathajari bus stand, their vehicle created trouble and stopped. At that time few armies came there with a vehicle and pushed their vehicle from the back and soon after, the engine of their vehicle got started. When they approached a bit, the army stopped their vehicle and at that time accused Salauddin Qader Chowdhury with his accomplices arrived at the scene with a jeep and as per showing of the accused, the army compelled Sheikh Mozaffar Ahmed and his son to follow them. The army took them to the nearby camp. They did not release them. Subsequently she sent her brother-in-law Sheikh Fazlur Huq to the army camp, who informed her that the victims were arrested by the army. Sheikh Fazlur Huq also told her that if they do not leave the place, the army threatened to arrest them as well. Knowing about the threat, she along with other family members left the place leaving her

husband and father-in-law and took shelter at the house of Mazeda Begum. Subsequently, they returned to Rahamatgonj at their own house and came to know that her mother Umme Barkat Chowdhury was related to the accused and elder brother of her husband A.K.M. Haider Mia Chowdhury met Fazlul Qader Chowdhury at his Goods Hill house and requested him to release Sheikh Mozaffar Ahmed and his son. Fazlul Qader Chowdhury replied to them that he would ask his son Salauddin Qader Chowdhury about the matter when Salauddin Qader Chowdhury would return to their home. She stated that during that period, Fazlul Qader Chowdhury and his son Salauddin Qader Chowdhury played pivotal role by committing genocide at Chittagong, which was the certain accomplishment of the armies. Her mother and brother went to Goods Hill several times and requested Fazlur Qader Chowdhury to release her husband and father-in-law. After about one month of the incident, Fazlul Qader Chowdhury told them that he would look into the matter since Salauddin was dealing about them. She was convinced

that since her father in-law was a renowned leader of Awami League, the accused killed them. Sheikh Mozaffar Ahmed was the founding president of Awami League, Chittagong chapter and he was also member of the Provincial Assembly. She further stated that when Pak army was taking her husband and father in-law, Salauddin Qader Chowdhury was with them (the army). She identified the accused in dock.

In course of cross-examination, she stated that their car stopped functioning at the corner of Rangamati, Nazir hat in Chittagong City roads and the army camp was set up in a bank's building. She denied the defence suggestion that her husband and father in-law were not in the same car. She also denied the defence suggestion that after a few days, she handed over her husband to army with the help of Ismail. She denied the defence suggestion that as per showing of Salauddin Qader Chowdhury, her husband and father in-law were not taken by the army or that she was deposing falsely as tutored version of the prosecution.

P.W.20 Sheikh Morshed Anwar is the son of martyr Sheikh Mozaffar Ahmed. He was 20 years old at the time of occurrence. He stated that on 1st April, 1971, his father Sheikh Mozaffar Ahmed, brother Sheikh Alamgir, sister-in-law Habiba Sultana and 2/3 relatives took shelter in the house of his brother's father-in-law's house at Rawjan and, he along with his another brother Morshed and uncle went to their granary at Koygram village. After some days his cousin Anwar and Uncle Ali came to their house and stated that his father and brother were abducted by the army while they were returning to Chittagong town at Hathajari road corner point. As the engine of the vehicle was stopped, the army pushed their vehicle from back and then it started and at that point, Salauddin Qader Chowdhury with Pak army and his accomplices came there with a jeep and abducted his father and brother and took them to a nearby camp. His brother's father-in-law Fazlur Huq went to the army camp for their release but he could not release them and he was told that they were arrested by the

army. Umme Barkat Chowdhury, mother of P.W.17, met Fazlul Qader Chowdhury several times at his Goods Hill house and requested him to release them who were related to him. He assured her stating that Salauddin Qader Chowdhury was dealing with the matter. Subsequently, Fazlul Qader Chowdhury informed her that Sheikh Mozaffar Ahmed and Sheikh Alamgir might have been killed. He also identified the accused Salauddin Qader Chowdhury in the dock. He positively asserted that unless Salauddin Qader Chowdhury identified and showed to the army about the identities of his father and brother, they would have been survived because the army did not know them. It was only Salauddin Qader Chowdhury who knew them and because he showed them to the army, the latter took them to the camp and later on they killed them.

In course of cross-examination, he denied the defence suggestion that his father and other members of his family did not go to Rawjan and stayed there from 26th March to 17th April, 1971. He denied the defence suggestion that the facts narrated by him

were false or that he was deposing the tutored version of the prosecution. He replied from a query of the defence that Salauddin Qader Chowdhury was even known to the housewives of Chittagong because of his anti liberation acts and deeds.

The prosecution has also relied upon the news paper clippings, in the issues of the 'Daily Azadi' dated 17th April, 1996 exhibit-2; Weekly Chattala dated 1st May, 1998, exhibit-2/2; 'Daily Azadi' dated 17th April, 1989, exhibit 2/3; Daily Azadi dated 26th March, 1998, exhibit 2/3 and Prothom Alo dated 21st March, 2002 exhibit 2/4. In these news papers the incident of abduction of Sheikh Mozaffar Ahmed and his son Alamgir were published in the similar manner as stated by P.Ws.11, 17 and 20. It is specially mentioned that accused Salauddin Qader Chowdhury with his accomplices abducted the victims and handed them over to the army who took them at the army camp and subsequently killed them. These newspapers published the news long before the case was instituted and the investigation of the case was started against accused

Salauddin Qader Chowdhury over the abduction of the victims.

Charge No.17 :

This charge relates to an incident which took place on 5th July, 1971, at about 7/7.30 P.M. at Hajari Lane, Chittagong town and Goods Hill, the residential house of the accused. It was relating to abduction, confinement and torture of Nizam Uddin Ahmed (P.W.15), a renowned journalist. P.W.15 stated that he was a student of second year HSC, Chittagong Government College at that time. He along with Syed Wahidul Alam and Siraj made a group to fight against Pakistani army at Nandan Kanon area. They selected a half burnt house at Hajari Lane as their secret camp. Almost all houses of Hajari Lane were almost burnt by the Pakistani army. They used the said house for the purpose of rekey and chalked out plan to select their next targets. At the same time they were trying to contact the pro-liberation people for help and assistance. Suddenly on 5th July, when they were waiting at their camp their common friend Siddique

could not be contacted. At that time they heard sound of arrival of a vehicle and noticed that they were surrounded by Pakistani army with 3/4 young boys in civil dress. They ordered saying 'hands up' and then they tied up them and took them in an army jeep to the Goods Hill. After reaching Goods Hill, one member in civil dress raised his hands with joy and said that their mission was successful. At that time 15/20 young boys were found in the lawn of Goods Hill. Thereafter, they were taken to Fazlul Qader Chowdhury who was in his drawing room and when he was told about them, Fazlul Qader Chowdhury expressed anger. Fazlul Qader Chowdhury hit P.W.15 and instructed others to torture him and thereafter, P.W.15 and others were separated. He was tortured for 2/3 hours and then he was kept in a small room beside the drawing room. He was again tortured by the people in civil dress from 4.30 P.M. to mid night. He came to know from the conversations of the persons torturing them that one son of Fazlul Qader Chowdhury was one of the abductors and later on, he was certain that it

was Salauddin Qader Chowdhury who abducted him. At mid night he was shifted to Goods Hill's garage where he found his two friends, who were seriously injured. On the next day, he was taken to the torture centre and he was tortured by the young boys in civil dress. He along with the said two friends was taken to the army camp at Chittagong Stadium where they were tortured till 13th July. Syed Wahidul Alam was released from the army camp and he along with his friend Siraj was taken to the Cantonment in the evening, where Major Goznafar tortured him. They were then sent to jail at night and on 18th November he was released. He identified the accused in the dock.

This witness was thoroughly cross-examined by the defence but it failed to elicit anything to discredit his testimony. He denied the defence suggestion that he did not identify Salauddin Qader Chowdhury or that he was disclosing his name as tutored by the prosecution. By giving the suggestion, the defence has practically admitted his abduction and taking him to Goods Hill for torture. The defence

wanted to say that the accused was not involved in the abduction and torture. He denied the defence suggestion that Fazlul Qader Chowdhury gave him fists and blows. He reaffirmed his statement in - chief that he was tortured every day in the Goods Hill and that he was taken to Cantonment and kept there from 6th to 13th July. He has denied the defence suggestion that he was not taken to the Goods Hill and that he was deposing falsely.

P.W.19 Syed Wahidul Alam Zunu is also a freedom fighter. He has corroborated P.W.15 in material particulars. He stated that during the relevant time he was 17 years old and a regular enlisted singer of Chittagong Radio Station. In July 1971, he along with one Siddique, a freedom fighter, used a half burnt house situated at Hajari Lane belonging to his brother-in-law Zahangir Alam Chowdhury as temporary camp. Some days thereafter Sirajul Islam Nuru and Nizam Uddin (P.W.15) participated in the training as freedom fighters. On 5th July, 1971, he along with Nizam Uddin and Sirajul Islam was waiting in the said

secret house for Siddique. At about 7.30 P.M., they heard sound of a vehicle and soon thereafter few Pakistani armies with some local Bangalees entered into the house and ordered saying 'hands up'. They tied them up and took them to Goods Hill of Fazlul Qader Chowdhury. After reaching Goods Hill, they were taken to the drawing room where Fazlul Qader Chowdhury was sitting. He abused them with offensive words. The civilian people started torturing them and at that time Salauddin Qader Chowdhury was also present in the drawing room. Thereafter, Sirajul Islam and Nizamuddin were taken inside the house and Salauddin Qader Chowdhury also followed them. They tortured him till mid night. Thereafter, he was taken to Goods Hill garage where all of them were tortured. On the following afternoon the army took them to the Chittagong Stadium where they again tortured them. Thereafter, he was released from the Stadium but his friends were sent to the Chittagong Cantonment. Later on he came to know that Sirajul Islam and Nizamuddin

were sent to jail from the Cantonment. He identified the accused in the dock.

He was thoroughly cross-examined by the defence. In reply to a query he stated that his associate Siddique was killed by Rajakars. He stated that his waist bone was fractured and one tooth was broken due to torture. He vividly narrated the location of Fazlul Qader Chowdhury's drawing room, number of doors and connectivity of the rooms so meticulously that unless one is acquainted with those facts could not have been able to disclose in detail. Even he said that Fazlul Qader Chowdhury was sitting in his drawing room facing towards west. He stated to his friends' circle that Salauddin Qader Chowdhury tortured him at his Goods Hill residence. He denied the defence suggestion that during the relevant time he was not abducted or taken to Goods Hill and that he was deposing falsely the tutored version of the prosecution. As regards the reason for his release by the army, he stated that one Major of Beluch Regiment asked his name and when he replied that he was 'Syed

Wahidul Alam' the said Major being very much repentent slapped his cheek and replied in Urdu 'আপকিয়া সাজিহো' that means, you were offspring of "Syed". In reply he said in Urdu that his fore fathers came from Arab. Thereafter, the said Major segregated him from other captives and sent all other detainees to Cantonment and served a cup of tea to him and thereafter, told him 'সাজিসাব আপকে ঘর চলে যাইয়ে' i.e. 'you go to your home'. He further stated that Fazlul Qader Chowdhury maintained a camp of Al-Shams and Al-Badar at Goods Hill and he also established another Al-Badar camp at Dalim Hotel. Accused Salauddin Qader Chowdhury, Zahangir, Syed Wahidul Alam were the leaders of Al-Shams of the camp established at Fazlul Qader Chowdhury's Bungalow.

P.W.18 Debabrata Sarkar is a diploma engineer and an employee of Civil Aviation. He stated that on April 4/5, 1971, his father Arabinda Sarkar, uncle Arun Bikash Chowdhury, Jogesh Day, Shanti Kushal Chowdhury, and Paritosh Das went to Khatungonj for bringing his uncle Mati Lal Chowdhury. On that day

they did not return. On the following day Yakub, Salim returned being injured. He heard from Sunil that the day his father and others went to Khatungonj was Saturday. On that night Abdus Sobhan came and asked them whether they were hatching up conspiracy and by saying the same he left. After 15/20 minutes, a military vehicle picked them up and took them at Fazlul Qader Chowdhury's Goods Hill. They released Sunil but Sobhan assaulted him with sharp weapon. He further stated that Salauddin Qader Chowdhury directed his followers that none would be saved unless he left his village, which he heard from two villagers. Though this witness did not say anything about P.Ws.15 and 19's abduction and torture, this statement corroborated their statements that Fazlul Qader Chowdhury's Goods Hill was used as torture centre of Al-shams. His statement that after 15/20 minutes Pakistan Army picked up his father, father's elder brother, father's companions, seven in total, and took them Salauddin Qader's hilly house has not been denied by the defence. In cross he re-affirmed

his statement. In reply to a query by the defence he stated that all facts he narrated against Salauddin Qader Chowdhury is known to Rawjanians.

Charge No.18 :

As regards this incident which took place in the third week of July 1971 at 5.30 p.m. at village Mohora and Goods Hill of Chittatong City. It was relating to abduction, confinement and torture of Md. Salauddin (P.W.8), who was former Vice Chancellor of Shahjalal University of Science and Technology, Sylhet. P.W.8 stated that he was 19 years old - he was a student of Chittagong University attached to Ala-Ul Hall. During mid March the classes of the University were closed and accordingly he went to his lodging house of Raja Khan Chowdhury of Mohora village. One day towards the end of July at about 5.30 P.M., Shamsu Mia of Burir Char Union knocked his door with his three accomplices. He was scared and noticed that one of Shamsu Mia's henchmen was keeping a weapon in his pocket. Shamsu Mia told him to come out and being puzzled he followed him. He noticed a

military jeep was standing nearby. He was picked up in the military jeep which took him to Goods Hill. He saw Fazlul Qader Chowdhury sitting on a chair and his elder son Salauddin Qader Chowdhury was also present there. Fazlul Qader Chowdhury wanted to know in local language whether he was Sala Uddin Ahmed or not, when he replied in positive. Fazlul Qader Chowdhury directed to give him a piece of wood meaning thereby to beat him mercilessly. Soon thereafter, he was taken to upstairs of a garage. Then two civil dressed henchmen entered into the room, who were known to him. One was Hamidul Kabir and other was Sekandar. Hamidul @ Khoka was notoriously known as Chief of Al-Shams bahini. They started beating him mercilessly. He sustained severe injuries on his lips, face and eventually fell down on the ground. The army also started beating him with a stand (part of wooden cot) and thereby he became senseless. He was asked to tell the names of freedom fighters and places where they were staying. After sometime the soldiers dragged him to the ground floor through the stairs and kept him

standing. Salauddin Qader Chowdhury was also standing at the staircase. He was not satisfied with the mode of torture and approached towards him and started slapping him and directed others to take him away. Thereafter he was taken to the ground floor and beaten by hosepipe continuously. He thought that he would not survive. Thereafter, one Nurul Islam known to him before came in the room, who was senior to him and a student of Chittagong University. He asked him whether any Muslim League member or any well known person of Mohara village could recommend in his favour. On listening the advice he regained senses that if someone had requested Fazlul Qader Chowdhury, he might have been spared. He then told the names of Nurul Huda Kaderi @ Mazza Mia and Badsha Mia Sowdagar respectively, who were Muslim League leaders and known to him from before. Nurul Islam assured him of talking to Salauddin Qader Chowdhury about his release. In the afternoon Mazza Mia, Badsha Mia Sowdagar and Harun-or-Rashid Chowdhry came to Goods Hill and recommended him to Salauddin Qader Chowdhury

stating that Saleh Uddin was a brilliant student and he was living in the locality for a long time. As per their assurance and certification, he was taken to downstairs when Salauddin Qader Chowdhury allowed him to go home with specific direction that he should not leave the village without his permission.

P.W.25 Abu Taher Chowdhury is a freedom fighter. He corroborated P.W.8 in material particulars. He stated that towards the end of July, he came to know that Abdul Motaleb Chowdhury's lodging master Saleh Uddin was taken by chairman Shamsu and his men. On query he came to know that he was taken to Fazlul Qader Chowdhury's Goods Hill house. He was thinking on how to release him. He consulted with Muslim League leaders Badsha Mia Swadaghar and Nurul Huda Khan and requested them to rescue Saleh Uddin. On the following day at about 10.11 A.M., they went to Fazlul Qader's house. In the evening they took Saleh Uddin in a jeep. On getting the news he went there and noticed that Saleh Uddin's condition was critical-he was not able to talk. On query Saleh

Uddin told that Fazlul Qader Chowdhury asked his name and wanted to know about the freedom fighters whereabouts. As he was unable to give information, Salauddin Qader Chowdhury and his echelons beat him mercilessly. Salehuddin was wearing an over sized Punjabi and showed the marks of injuries on his body. He identified the accused in the dock.

In course of cross-examination, he said that Saleh Uddin was a resident student of Ala-ul Hall of Chittagong University; that he was teaching three children of Motaleb as lodging master; that he was also teaching Harunur Rashid, Humayan Kabir and another. He denied the defence suggestion that Saleh Uddin was caught by army from Jamal Khan and took him to circuit house or that Saleh Uddin had quarreled with Shamsu chairman for which he was taken by Shamsu chairman. By these suggestions, the defence has practically admitted the abduction, confinement and torture by the Pak army at Goods Hill and Al-Shams comrades during the war of liberation in July. The defence only suggested that Salauddin Qader Chowdhury

was not involved in the incident but it failed to discredit the positive statements of these two witnesses.

P.W.26 Md. Solaiman stated that in mid July he came to know that Shamsu chairman along with Rajakars and military took Saleh Uddin to the Goods Hill. Saleh Uddin was a lodging master. Badsha Mia Swadagar and Shamsul Huda got him released from Goods Hill. In course of cross-examination, he stated that the army went to Motaleb's house where Saleh Uddin was staying as house tutor. He re-affirmed his statement in - chief that it was in mid July, 1971. He denied the defence suggestion that Saleh Uddin was not taken to Goods Hill and that he was not tortured by Salauddin Qader Chowdhury.

P.W.1 Dr. Anisuzzaman in course of examination in chief also stated that it is worth mentioning that Saleh Uddin of Chittagong University was taken by Rajakar to Fazlul Qader's Goods Hill in 1971 - he was detained there and Salauddin Qader Chowdhury and other tortured him; that Saleh Uddin was elected

Senator of Chittagong University and at that time, in the proceedings of the Senate, this incident was disclosed to him (P.W.1) and that the marks of violence on his body were shown to Senate members.

The tribunal on an elaborate evaluation of the evidence of the witnesses held that P.Ws.3 and 29 corroborated the evidence of P.W.6 in respect of charge No.2 observing that just immediately after the occurrence, P.W.6 along with his father went to the place of occurrence and found there Pancha Bala, Sunil, Dulal, Jyoti Lal, Jayanta, Makhan Lal who were found in injured condition. It is evident from the evidence that on 13th April, 1971, in the morning Salauddin Qader Chowdhury along with his henchmen accompanied by Pak army went to Modhya Gohira, Rawjan ; that the army shot at unarmed Hindu civilians in the courtyard of Dr. Makhan Lal Sharma in a planned manner and as a result, Pancha Bala Sharma, Sunil Sharma, Dulal Sharma, and Jyoti Lal Sharma died on the spot; that Makhan Lal Sharma and Jayanta Kumar

Sharma sustained severe injuries. Of them, Makhan Lal Sharma died after few days.

After considering the evidence adduced mentioned hereinabove, the tribunal held that the prosecution proved beyond reasonable doubt that accused Salauddin Qader Chowdhury along with Pak army committed the said atrocities with intent to destroy - in whole or in part - the Hindu community, which is an act of genocide and that the accused Salauddin Qader Chowdhury was guilty under section 4(1) of the Act of 1972 for substantially contributing to the actual commission of the offence for genocide specified in section 3(2)(c)(i) and (ii) of the said Act.

In respect of charge No.3, the tribunal held that due to long passage of time human memory might be faded, but it has been proved from the evidence that Nutan Chandra Singha was a popular figure of the country especially in Chittagong. He established many institutions like schools, colleges, Kundeshwari Owsadalay etc. His enormous contribution to the Hindu community made him even more popular and in the event

of any political or social or election matter. His opinion to the community was a vital factor, which might had reflection in defeating Fazlur Qader Chowdhury, (father of the accused Salauddin Qader Chowdhury) in the National Election held in 1970. The killing of Nutan Chandra Singha by the accused Salauddin Qader Chowdhury with the help of the army was very ferocious and it was absolutely a calculation of revenge for the defeat in the said election. It was further held that after 25th March, 1971, many pro-liberation minded people, including 50 University teachers with their family members took shelter in the Kundeshwari complex at the behest of Nutan Chandra Singha and, that was one of the causes to target him by the accused Salauddin Qader Chowdhury; that in 'বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র, ভলিয়াম-৮' it has clearly mentioned about the complicity of the accused Salauddin Qader Chowdhury in the killing of Nutan Chandra Singha; that Salauddin Qader Chowdhury being the elder son of Fazlul Qader Chowdhury was known to everybody in Chittagong and thus, his identification

in the crime site by the witnesses was not improbable or unbelievable; that it is also very important to mention here that immediately after the occurrence; a criminal case was also instituted against him, which further proves his complicity in the killing and therefore, the evidence on record proved beyond reasonable doubt that accused Salauddin Qader Chowdhury with the help of Pakistani army in a pre-planned manner killed Nutan Chandra Singha on 13th April, 1971 at Kundeshwari complex.

In respect of charge No.4, the tribunal after evaluation of the evidence of P.Ws.3, 12 and 13, the statement of Jyotsna Bala Chowdhury and exhibit-29 held that though P.Ws.3, 12 and 13 made hearsay evidence, such evidence is admissible and their evidence is corroborated by other evidence; that it has been proved beyond doubt that on 13th April, the accused Salauddin Qader Chowdhury along with his accomplices and Pak army opened fire on unarmed Hindu civilian people in the courtyard of Kiron Bikash Chowdhury of Jogotmollopara killing 30/35 persons;

that accused and his allies destroyed the houses by setting them on fire and looted away valuables; that many of them had left for India as refugees; that the accused committed worst atrocities with intent to destroy in whole or in part the members of Hindu religious group which is genocide; that the acts of looting and destroying the houses by fire are considered persecution which falls under the category of crimes against humanity; that the accused conspired to commit the said offence and he has also complicity in those offences and therefore, he was criminally liable under section 4(1) of the Act for substantial contribution to the commission of offence of genocide and persecution of the Hindu community on religious ground.

In respect of the charge No.5, the tribunal on assessment of the evidence of P.Ws.3, 22 and circumstantial evidence including the statement of Badal Biswas, exhibit-98, held that the prosecution has been able to prove the charge beyond reasonable doubt; that accused with intent to destroy the whole

or in part of the members of Hindu community actively participated in the killing of unarmed civilians of Sultanpur village and therefore, he has substantially contributed to the commission of genocide.

In respect of charge No.6, the tribunal upon analysing the evidence of P.Ws.3, 7, 31, 32 and 37, the statement of Janati Bala Paul, exhibit-96, held that there were corroborating evidence about accused Salauddin Qader Chowdhury's direct participation in the atrocities; that there are eye witnesses and their evidence have not been tainted by absurdities; that it has been proved beyond doubt that on 13th April, at about 4-5 P.M., Salauddin Qader Chowdhury along with his accomplices being accompanied by the Pakistani army with a common plan attacked Unashattarpara, a Hindu populated area, killing 60/70 unarmed Hindu civilian people on the bank of the pond behind the house of Khitish Mohajon and also caused injury to some others; that some civilians were deported to India as refugees; that these acts were committed with intent to destroy the whole or in part

by killing members of Hindu religious group which amounts to genocide by killing and causing serious bodily harm to the members of the said community and therefore, the accused was guilty under section 4(1) of Act of 1972 for substantially contributing to the commission of the offence of genocide.

In respect of this charge No.7, the tribunal had assessed the evidence of P.Ws.3, 28 and held that deceased Satish Chandra Palit had admitted enmity with the accused from before the incident; that P.W.28 is an eye witness could not be disbelieved about his claim that Salauddin Qader Chowdhury participated in the killing of Satish Chandra Palit as his testimony has not been shaken by the defence; that Salauddin Qader Chowdhury has substantially contributed to the commission of murder which is a crime against humanity; that his presence in the crime site and active participation in the killing are sufficient to hold that the accused was guilty under section 3(1) of the said Act.

In respect of charge No.8, the tribunal on assessment of evidence of P.Ws.3, 11, 17, 20 and documentary evidence, exhibit-2 series, has held that it has been proved beyond reasonable doubt that on 17th April, 1971, at about 11 a.m., when Awami League leader Sheikh Mozaffar Ahmed along with his family members was returning home from Rawjan to Chittagong town in his car and reached the corner of Hathajari road, as per showing of the accused, the army abducted Muzaffar Ahmed and his son Sheikh Alamgir; that they took them to the nearby army camp and subsequently killed them; that the accused has direct complicity in the abduction and murder, which are crimes against humanity and that the accused was guilty under section 4(1) of the Act for substantially contributing to the commission of the offence.

In respect of this charge No.17, the tribunal upon evaluating the evidence of P.Ws.3, 15, 18 and 19 has held that the prosecution has been able to prove beyond reasonable doubt that on 5th July, 1971, in the evening accused Salauddin Qader Chowdhury along

with his accomplices and Pakistani army abducted Nizamuddin Ahmed, Syed Wahidul Alam and Siraj from a half burnt house of Zahangir Alam Chowdhury, Hazari Lane and took them to Goods Hill; that they were tortured there and thereafter, they were taken to the army camp at Chittagong Stadium; that Sayed Wahidur Alam was released from the Stadium and the other two victims were taken to Cantonment and then they were sent to the jail; that these victims were persecuted by the accused and his accomplices with a common plan to commit those atrocities; that the accused participated in the plan and thereby, he was criminally liable under section 4(1) of the Act for substantially contributing to the commission of the offence of abduction, confinement and torture which are crimes against humanity.

Finally, in respect of charge No.18, the tribunal after evaluating the evidence of P.Ws.1, 3, 8, 18, 25 and 26 has held that the witnesses have corroborated in material particulars about the date, the time and the place; that there was no earthly

reason to disbelieve them; that the prosecution has been able to prove the charge beyond reasonable doubt and that the accused Salauddin Qader Chowdhury by his participation has substantially contributed to the commission of the offence of abduction, confinement and torture which are crimes against humanity.

On behalf of the convict the learned Counsel has made the following submissions:

(i) a) the tribunal erred in law in believing P.W.3 in failing to notice that he being a tutored witness should not be believed, inasmuch as, in the one hand this witness said that he could not remember the incident of 41 years ago, but on the other breath he narrated what he had heard from Captain Karim.

b) in his book "বঙ্গাল কেন যুদ্ধে গেল" P.W.3 having admitted that he did not mention the incidents of Mozaffar Ahmed's abduction, Kundeshwari complex and Jogotmollo Para, the tribunal erred in law in believing him.

c) the tribunal erred in law in believing P.w.6, inasmuch as, he made material contradiction with his earlier statement.

d) the evidence on record reveal that Sunil Sharma is still alive, the tribunal erred in law in believing P.W.6 in failing to consider that P.W.9 has stated that he has seen Sunil in India about three years ago.

e) P.W.6 could not remember the year of passing law examination but he could recollect important events in 1971 which reduces the probative value of his testimony.

f) P.W.6's claim of giving shelter by Danu Chacha is unbelievable and that from his statement, it is proved that he is involved in Awami League politics and therefore, he has closed links with the government.

g) the affidavit sworn by Danu and Kabir Ahmed proved that P.W.6 was not present at the scene of occurrence.

h) P.W.29 did not implicate the accused in respect of this charge and therefore, the tribunal erred in law in convicting the accused of the charge.

(ii) a) in respect of charge No.3, it is contended that the tribunal erred in law in believing P.W.1, inasmuch as, he has made material omission in his earlier statement and that his evidence is not admissible on the doctrine of hearsay evidence, inasmuch as, he has stated a fact which he has heard from P.W.5, who is also not an eye witness.

b) P.W.3 is a procured witness which is apparent from his statement and that in his book, he has not mentioned the incident of killing of Nutan Chandra Singha implicating the accused and that in his book he also has not written anything about Bibhuti

c) it is not believable story that P.W.4 would be able to see the incident of killing from a distance of 400/500 cubits.

d) the tribunal erred in law in believing P.W.4 in failing to consider that he made inconsistent

statement with his earlier statement made to the investigation officer.

e) P.W.5 is not a reliable witness, inasmuch as, he has heard from Jyoti Dhar, the headmaster of Rawjan High School.

f) P.W.14 made material contradictions with his earlier statement made to the investigation officer and that his claim of witnessing the incident from the first floor of the building was improbable.

g) in view of the reports in 'Dainik Bangla' exhibit-16, it was not probable on P.W.14's part to witness of the incident.

h) P.W.18 cannot be relied upon, inasmuch as, he has not stated about the source from whom he has heard.

i) the tribunal erred in law in relying upon exhibit-32, which negated the complicity of the accused and that mere appearance of the name of the accused in the G.R. Register does not prove that the accused was involved in the incident.

(iii) a) in respect of charge No.4, it is submitted that the tribunal erred in law in relying upon P.Ws.3, 12 and 13, exhibit 95, the statement of Jyotsna Bala in failing to notice that material witnesses like Amalendu Bikash Chowdhury and Bisheshwar Chowdhury were intentionally withheld by the prosecution.

b) P.W.3 is a tutored witness - P.Ws.12 did not implicate the accused - P.W.13 was not present in Bangladesh on the date of occurrence and that Swapan Kanti Chowdhury in his affidavit confirmed that he saw P.W.13 along with others while they were approaching towards India.

c) P.W.13 is a tutored witness-the statement of Jyotsna Bala is not believable, inasmuch as, she filed G.D. Entry No.417 dated 16.4.2012 before the Chief Judicial Magistrate stating that the investigation officer did not read over the statement to her.

(iv) a) in respect of charge No.5, it is submitted that besides P.W.3, who is a tutored

witness, P.W.22 did not say anything against the accused.

b) there is no medical evidence in support of the death or injury caused to the victims; that the tribunal erred in law in believing the incident in failing to notice that in view of the specific defence suggestion that the victims left for India and never returned and that Nirmal Kranti Das admitted in his affidavit that Anil Baran Dhar was with him in April 1971 in Ramgarh, the tribunal erred in believing P.W.22.

c) exhibit-32/4, copy of G.R. Case No.5 dated 5.4.1972 proved that the accused was not sent for trial which negated his complicity in the said incident.

d) Sanatan Biswas, a listed witness not examined having admitted that the accused was not involved in Rawjan, P.S. Case No.4 dated 5.4.1972, the tribunal erred in law in believing P.W.22.

(v) a) in respect of Charge No.6, it is submitted that the tribunal erred in law in relying upon P.Ws.3, 7, 31, 32 and 37 and exhibit 96.

b) P.W.7 could not be relied upon in view of the statement of P.W.31, who stated that P.W.7 was not at all present at Unshattarpara.

c) P.W.31 having admitted that he did not know the accused at the time of occurrence and in view of his inconsistent statements, he was not a reliable witness.

d) Dulan Chowdhury and Gopal Chowdhury in their affidavits confirmed that P.W.31 left for India before the incident and that P.W.37 made material contradiction with his earlier statements.

e) Laila Begum in her statement having confirmed that P.W.37 left for India, and Nurul Alam in his affidavit having confirmed that the said witness left for India, the tribunal erred in law in relying them.

f) the tribunal erred in law in admitting the statement of Janati Bala Paul in evidence, inasmuch

as, the investigation officer had admitted that she was alive till 14.5.2012.

(vi) a) in respect of charge No.7, it is contended that the tribunal erred in law in convicting the accused relying upon the sole witness P.W.28 who also made inconsistent statements with his earlier statements made to the investigation officer.

b) Idris Mia in his affidavit had confirmed that P.W.8 left for India on 7/8th April, 1971.

(vii) a) in respect of charge No.8, it is contended that besides P.W.3 who being a tutored witness, the tribunal erred in law in relying upon P.Ws.11, 17, 20 and exhibit 2 series, inasmuch as, P.W.17 suppressed material facts of her 2nd marriage and that she also made inconsistent statements with her earlier statements made to the investigation officer.

b) P.W.20 having admitted that P.W.17 had a son aged about two years at the relevant time, it was not probable on her part to accompany the victim leaving her minor baby.

c) the tribunal erred in law in believing exhibit-2 series, which have not been proved and that these news being based on hearsay statements of unknown persons, could not be relied upon.

(viii)a) in respect of charge No.17, it is contended that the tribunal erred in law in relying upon P.Ws.15 and 19, inasmuch as, P.W.15 did not know the accused and also did not disclose from whom he heard and that he made inconsistent statement with his earlier statement.

b) P.W.15 made inconsistent statement with P.W.19; that P.W.19 also made inconsistent statement with those made before the investigation officer and that P.W.19 having admitted that he stayed 2/3 days in the safe home, he was a tutored witness.

(ix) a) in respect of charge No.18, it is contended that the tribunal erred in law in relying upon P.W.1 who made hearsay statement from P.W.8, whereas P.W.8 did not claim as such.

b) P.W.8 made inconsistent statement with his earlier statement made to the investigation officer

and that his presence as lodging master was an unbelievable story;

c) P.W.25 made inconsistent statement to the investigation officer and that there was material contradiction of his statement with P.W.8.

d) P.W.26 did not make material statement to the investigation officer and he also made inconsistent statement with P.W.8 - the tribunal erred in law in believing the charge No.18 in failing to notice that the material witnesses of Goods Hill who were allegedly present at the time of incident were not examined by the prosecution.

(x) a) Accused Salauddin Qader Chowdhury (D.W.1), Quayyum Reza Chowdhury (D.W.2), Nizam Uddin Ahmed (D.W.3) and Abdul Momen Chowdhury (D.W.4) and the affidavits sworn by Mohammedmian Soomro, Muneeb Arjmand Khan, Mohammed Usmal Siddique, Ishaq Khan, Khakwani, Riaz Ahmed Noon, Ms. Zinat Ara Begum, the certificate issued from Panjub University and the envelop containing the address of the accused from

Lahore proved that the accused was not present in Bangladesh during the relevant time of occurrences.

b) the tribunal illegally considered exhibit-10, the issue of 'Daily Pakistan' dated 29th September, 1971 and exhibit-94, Fortnightly Report dated 2nd October, 1971.

Defence Version

Let us now consider whether the plea of alibi has been established by the defence, inasmuch as, if this plea is believed there is no need to analyse the evidence to arrive at the conclusion that the appellant is guilty of the charges.

D.W.1 narrated his genealogy in detail and his father's political background, his family tradition and his family's link with renowned personalities like Bangabandhu Sheikh Mujibur Rahman, Mati Lal Nehru, Sir Zafarullah Khan, AK Fazlul Haque, Hossain Shahid Surhwardy and others. He also praised the role of Sheikh Mujibur Rahman, the Bangalee intellectuals like M.N. Roy, Chitta Ranjan Das, Jatindra Mohan Sen Gupta, Rabindranath Tagore, Micheal Modhu Sudhan

Datta, Kazi Nazrul Islam and at one stage he said, he along with his spouse spent considerable time - had social links with Jaswant Singh and his wife. He swaggered by saying "I am a Bangladeshi by choice and not by birth. When I was in my honours final year in political science at Panjab University in 1971 at a seminar in the political science department the chief guest was Justice Sir Zafarullah Khan who was a Judge of international Court of justice". He claimed that he left Dhaka on 29th March, 1971 and then he went to London on 16th December, 1971 from West Pakistan and returned to Bangladesh in April, 1974. His father and Sheikh Mujibur Rahman had cordial relationship. He was put on trial in the case for political victimization and persecution which according to him is a novel phenomenon in South Asia. Being the son of Fazlul Qader Chowdhury he had the privilege to sit in the grandstand of the arena of national politics since his birth in 1949. His father Fazlul Qader Chowdhury was expelled from Muslim League in 1954 for contesting election in the East Pakistan Legislative

Assembly as an independent candidate and in the said election, he defeated both Jukta Front and Muslim League candidates. In 1965 or 1966, his father was expelled from Muslim League and his father served as an independent member of National Assembly till the end of 1969 and was in close association with anti Ayub movement. His father was the lawyer of Bangabandhu Sheikh Mujibur Rahman in Agartala conspiracy case.

He further stated that after the general election, which held in 1970, his father made a public statement requesting Yahya Khan to handover power to Bangabandhu Sheikh Mujibur Rahman as leader of majority party in the newly elected National Assembly. During that period, he acted as caretaker of his father's house at Dhanmondi till he left for Karachi on 29th March, 1971. He was accompanied by Ambassador Usman Siddique. He was never involved in any student political organization. His cousin and friend Quayyum Reza Chowdhury took him at Tejgaon Airport and he reached Karachi on the same evening.

At the Airport he was received by Muneeb Arjumand Khan, and the private secretary of Mahmoud Haroon. He stayed at the family home of Haroon's Seafield, Victoria Road, Karachi. During his stay in Karachi, he had friendly relationship with Muneeb Arjumand Khan and Mohammed Mian Soomro. Soomro served as caretaker Prime Minister of Pakistan in 2008. Mr. Khan and Soomro both sent affidavits before this tribunal and expressed to become defence witnesses. In June, July and August, 1971, he was in Lahore as his final examinations were in August. He spent a lot of time at University Library, Punjab with Justice Shamim Hasnain. At the end of examination in August 1971, a group of friends including Ishaq Khan Khakwani, Reaz Noon, Naeem Akhoond, Salman Rahman, Siddique Khan Kanju, Muneeb Arjumand Khan and he went to Murree and spent about three weeks in the mountainous region of the northern areas. They returned to Lahore and left for UK around 25th September, 1971. He was not present during the war of liberation in Chittagong and so, not to speak of his

participation in the alleged incidents. He was thoroughly cross-examined by the prosecution.

Nizam Ahmed (D.W.2) stated that he had acquaintance with Salauddin Qader Chowdhury when he was studying at Notre Dame College in 1967. Salman, Fazlur Rahman were Quayyum Reza's cousins. All of them jointly roamed around Dhaka as friends. Salauddin used to reside at Dhanmondi area. After the break down on the night following 25th March, he and Quayyum took shelter at a Swedish family at Dhanmondi near the house of Salauddin Qader Chowdhury. After the departure of the Swedish family, they maintained links with Sheikh Kamal. Towards the first part of April, 1971, he (D.W.2) along with Quayyum and Salman left for Karachi and 2/1 days thereafter, Salauddin Qader Chowdhury came to meet them. Thereafter in April, 1974 or May, he met Salauddin at Hotel Purbani. In course of cross-examination, he stated that after 25th March, 1971, he seldom read newspapers. He expressed his ignorance of whether after the break down on March 25, 1971, Fazlul Qader

Chowdhury along with other right wing religious minded political leaders met General Tikka Khan or expressed their solidarity. He denied the prosecution suggestion that he was deposing falsely on taking financial benefits from Salauddin Qader Chowdhury.

Quayyum Reza Chowdhury (D.W.3) stated that his father late Murtuza Reza Chowdhury was the member of Legislative Assembly and he was related to Salauddin Qader Chowdhury. He studied at Saint Xavier High School and College. He passed SSC examination from Shaheen School and then admitted to Notre Dame College, where he was known to Nizam Ahmed, Sheikh Kamal, Salman F Rahman and Salauddin Qader Chowdhury. Salauddin Qader Chowdhury was staying at Eskaton alone, when he was staying at Notre Dame College and they jointly went to his house. On 28th March, he went to Salauddin Qader's Dhanmondi residence, where the latter told him that he was going to Karachi on the following night and requested him to give a lift at the airport. Accordingly, he took him to the Tejgaon International Airport. On 8th April, 1971, he

along with Salman F Rahman and Nizam went to Karachi and stayed with Salman F Rahman. After two days of reaching Karachi Salauddin Qader Chowdhury came to Salman F Rahman's residence and met him. They also met Ashiqur Rahman at his office. Later on, he along with Nizam Ahmed reached Islamabad with a view to going to Germany and he was arrested from Islamabad on the following day.

In course of cross-examination he (Quayyum Reza Chowdhury) expressed his ignorance of whether Fazlul Qader Chowdhury was Ayub Khan's Minister, then speaker and later on became president of convention of Muslim League after Ayub Khan. He, however, admitted that Ayub Khan and his government and party caused repression, persecution, killing and torture those who supported Bangalee's self determination movement. He denied the defence suggestion that he was deposing falsely as tutored by Salauddin Qader Chowdhury's lawyer as he was cousin of Salauddin Qader Chowdhury or that he had knowledge about the

case instituted against Salauddin Qader Chowdhury on the charge of crimes against humanity.

Abdul Momen Chowdhury (D.W.4) stated that he was a career diplomat. In 1971, he sent his wife to Dhaka. In February, 1971, he was transferred to Tanzania and towards April, 1971, he came to Karachi with a view to coming to Dhaka to see his wife's condition but he could not come due to non-availability of ticket. He went to Ashiqur Rahman's office to meet him (Ashiqur Rahman) and at that time, he found a gentleman sitting there. Ashiqur Rahman introduced him as Salauddin Qader Chowdhury, who was not known to him (D.W-4) before. Ashiqur Rahman also could not contact with his wife and in course of conversation with them, he (D.W-4) came to know that Quayyum Reza Chowdhury was staying at Karachi. He also did not know him although he was related to his mother-in-law. About one week thereafter, Quayyum Reza Chowdhury came to his residence and told him that his family was safe and thereafter, he left for Tanzania. He admitted that from 1963 to 16th

December, 1971, he was serving continuously under Pakistan government. Though he admitted that in 1970 election Awami League secured highest number of seats, he had no idea whether the Pakistani Junta without transferring power perpetrated mass killing in Bangladesh. He admitted that Quayyum Reza Chowdhury is his brother-in-law and that Quayyum Reza and Salauddin were related to each other. He admitted that Salauddin Qader Chowdhury is also distantly related to him. He denied the defence suggestion that during the liberation struggle, he was a collaborator of Pakistani regime or that he was deposing falsely with a view to saving Salauddin Qader Chowdhury.

On appraisal of the above defence evidence we noticed sharp contradictions. D.W.1 did not claim that during his short stay in Karachi, he went to meet D.W.2 at Salman's house. D.W.2 stated that on 8th or 9th April he went to meet him at Salman's house 2/1 days after his arrival in Karachi. D.W.3 stated that he was related to Salauddin Qader Chowdhury through his maternal grand father and ultimately

while he was studying at Notre Dame College, Salauddin Qader Chowdhury, Salman F Rahman and Nizam Ahmed became close friends and used to move and play together, but when Salauddin Qader Chowdhury came to Salman's house in Karachi they did not meet. According to him, Abdul Momen Chowdhury (D.W.4) intimated D.W.3 that he met Salauddin Qader Chowdhury. But in nowhere D.W.3 claimed that he met Salauddin Qader Chowdhury in Karachi, whereas D.W.1 stated that 'I also socialised with my friends from Dhaka, Mr. Qayyum Reza Chowdhury of whom taken shelter in Karachi....' D.W.1 did not claim that he was introduced with D.W.4 by Ashiqur Rahman at his office in Karachi in 2nd or 3rd week of April, 1971, but D.W.4 claimed that Ashiqur Rahman introduced him to Salauddin Qader Chowdhury. He also stated that he was not acquainted with D.W.3 although he was related to him. About one week thereafter D.W.3 came to his residence on Garden Room where he asked about his wife. On the other hand D.W.3 claimed

that two days after his arrival in Karachi that is on 10th April, he met D.W.4 at Ashiqur Rahman's office.

The defence has also relied upon the books namely 'বঙ্গাল কেন যুদ্ধে গেল'; আমার যুদ্ধ আমার একান্তর' written by Siru Bangalee, exts. D and C; রাজাকারদের তালিকা, বৃহত্তর ছটগ্রাম জেলা written by A.S.M. Samshul Arefin ext.A, and 'যুদ্ধাপরাধীর তালিকা ও বিচার প্রসঙ্গ' written by ডাঃ এম এ হাসান, ext. B respectively.

In বাঙ্গাল কেন যুদ্ধে গেল, (in chapter) under the heading 'ছটগ্রামে প্রতিরোধ যুদ্ধ - ক্যাপটেন করিমের গেরিলা দলের কার্যক্রম এবং আমার আপতিক আবির্ভাব', at page 151 in ext 'D', the author stated regarding Captain Karim, a freedom fighter, who organized a guerilla force in Chittagong for fighting against occupation army in 1971. At pages 166-7, he mentioned '১৩ জুন রবিবার করিম আমাকে বলল, পাথরঘাটায় অবস্থিত ফজলুল কাদের চৌধুরীর ভাই ফজলুল কবির চৌধুরীর বাড়ীতে একটা গ্রেনেড চার্জ করতে। কিন্তু আমি এটার বিরোধিতা করলাম। বললাম, ফজলুল কবির চৌধুরী কি দেশের শত্রু? তার উপর হামলা চালিয়ে লাভ কী? করিম যুক্তি দেখালো ফজলুল কাদের চৌধুরীর ভাই বেরাদার সবাই দেশের শত্রু। তদুপরি একটা গ্রেনেডই তো চার্জ করছে। এর বেশী কিছু তো নয়। আমি বললাম তথ্যসূত্র।' The substance of the narration is that all relations of Fazlul Qader Chowdhury were enemies

of Bangalee community. In 'আমার যুদ্ধ আমার একাত্তর' in chapter 'ক্যাপটেন করিমের যোদ্ধা দলে রিক্সাওয়ালার দুঃসাহস' ext-C, the author disclosed the identity of Captain Karim at page 86-87. The translation of which comes thus: Kamim was serving in the Air Force. A pilot of that force is decorated with the title Captain, but Karim was not a pilot and then why Karim was called as 'Captain'. The author explained the reasons stating that after 25 years of liberation, one person from the locality of Captain Karim told him in Middle East that Karim was a General Corporal in the Air Force. As Commander of Freedom Fighter, he desired to address him 'Captain'. In the chapter under the heading "জালালাবাদ এ্যাম্বুশ ব্যর্থ করিমের সাথে মতবিরোধ" at page 109, it is stated that "১৪ জুন সোমবার ক্যাপটেন করিম আমাকে নির্দেশ দিল ছট্‌গ্রাম বিশ্ববিদ্যালয়ের ছাত্র ফজলুল কাদের চৌধুরীর ছাত্র বাহিনীর নেতা হাটহাজারী লালিয়ার হাটের সৈয়দ ওয়াহিদুল আলম ও সালাউদ্দীন কাদের চৌধুরীকে এ্যাম্বুশ করে খতম করার জন্য" | He stated that Karim directed the author to finish Syed Wahidul Alam and Salauddin Qader Chowdhury. Again at page 111, he stated that "চারটা হতে ছয়টার মধ্যেই সৈয়দ ওয়াহিদুল আলম ও ফজলুল কাদের চৌধুরীর বড় ছেলে সালাউদ্দীন কাদের চৌধুরী জীপ নিয়ে শহরে তাদের নির্যাতন কেন্দ্র গুডস হিলের দিকে যাবে - এ খবর নিয়ে যে ছেলেটি এসেছিল,

ছয়টা বাজার আগেই দেখলাম সে ছেলেটি দ্বিধাগ্রস্ত হয়ে পড়েছে। তার ইনফরমেশন ঠিক ছিল কিনা, এ ব্যাপারে সে সিঁহর নিশ্চিত হতে পারছিল না। শেষ পর্যন্ত আমি প্রগ্রাম বাতিল করতে বাধ্য হলাম। কেননা সেনানীবাস এলাকার এত কাছে এভাবে বেশিক্ষণ দাড়িয়ে থাকা ছিল প্রায় অসম্ভব ব্যাপার।”

In the above quotation, it was clearly mentioned that Salauddin Qader Chowdhury was conducting a torture centre at Goods Hill and accordingly Captain Karim directed to kill Fazlul Qader Chowdhury. In যুদ্ধাপরাধীর তালিকা ও বিচার প্রসঙ্গ, ext –‘B’ the author mentioned in detail the names of political members involved in ‘War Crimes’, Crimes against humanity and Crimes of Genocide in division wise and in Chittagong Division, against Sl. No.95, the name is late ‘Fazlul Qader Chowdhury’, President of Muslim League, Chittagong and the name against serial No.98 is ‘Salauddin Qader Chowdhury’, member of Muslim League, Chittagong at page 166. These books instead of supporting the defence, supports prosecution case. Ext-‘C’ proved beyond doubt that accused Salauddin Qader Chowdhury was present in Chittagong and that he was conducting a torture centre at Goods Hill, for which, Captain Karim wanted to kill him. He further stated that

there was existence of one Captain Karim at Chittagong who was a veteran freedom fighter. Ext-'D' also supports the prosecution case.

The defence suggested to the prosecution witnesses that there was no existence of Captain Karim in Chittagong and that P.W.3 was deposing falsely. Two vital points from the defence documentary evidence prove beyond doubt regarding the presence of Salauddin Qader Chowdhury at Chittagong during the period of liberation till August 1971, and the existence of Captain Karim. Or in the alternative, the defence has admitted the presence of Salauddin Qader Chowdhury and existence of Captain Karim in Chittagong during the liberation period. As regards 'রাজাকারদের তালিকা' ext.'A', Salauddin Qader Chowdhury's name has not been mentioned in the book. The prosecution did not claim that accused Salauddin Qader Chowdhury was a member of Razakars. It's definite case is that being the elder son of Fazlul Qader Chowdhury, a renowned leader of Muslim League, who supported the Pakistani Junta, Salauddin Qader

Chowdhury was involved in crimes against humanity like persecution of pro-liberation people, torture, looting and killing of civilian Hindu community for religious and political grounds; that he organised Al-Shams force, a killing squad at his paternal residence Goods Hill and perpetrated torture to pro-liberation activists. Naturally, Salauddin Qader Chowdhury's name has not been included in the Razakars list of Rawjan, Hathazari or larger Chittagong district.

Besides the above evidence, the defence has also relied upon some affidavits. Ishaq Khan Khakwani, a resident of Lahore, sworn an affidavit on 26th June, 2013 stating that he arranged for getting Salauddin Qader's admission in the Punjab University new campus, Lahore in April, 1971 and forced Salauddin to stay there with him till he left for London in October, 1971 with Salauddin.

Ms. Amber Haroon Saigol in her affidavit dated 8th July, 2013, stated that Salauddin Qader Chowdhury could not continue his study at Dhaka University and

that he wanted to join Punjab University at Lahore; that her father took special care of Salauddin Qader Chowdhury as guardian while he was in Karachi and that she kept in touch with him even after she moved to Lahore towards the end of April 1971.

Muhammedmian Soomro in his affidavit dated 17th June, 2005, stated that Salauddin Qader Chowdhury was staying in Karachi in Shefiled, the family home of Haroons towards the end of March till 2nd or 3rd week of April, 1971; that Salauddin was seeking admission at Karachi University and subsequently he decided to join the Punjab University and left for Lahore in the 2nd or 3rd week of April, 1971; that Salauddin Qader Chowdhury gained admission at the Punjab University new campus and he did not return to East Pakistan after sitting for the final exam in August 1971. At that time, Salauddin stayed with a close friend Ishaq Khan Khakwani at his residence.

Mohammed Usman Siddique in his affidavit stated that he stayed in Karachi till August 1971; that Salauddin stayed for a couple of weeks in Karachi and

then left for Lahore to join Punjab University. They both had telephonic conversations during his stay in Karachi and Lahore.

Muneeb Arjamand Khan in his affidavit stated that after spending three weeks in Karachi in late March, 1971, Salauddin Qader Chowdhury went to Lahore to complete his graduation course at Punjab University; that he along with his other friends went to the Karachi Airport to see him off; that in Lahore Salauddin was staying at the family house of Ishaq Khan Khakwani and that they used to speak each other frequently.

Reaz Ahmed Noon in his affidavit sworn on 8th July, 2013, stated that during the political turmoil period in East Pakistan, Salauddin shifted to Lahore in April 1971 to complete his graduation at Punjab University new campus, Lahore; that he was staying at the residence of Ishaq Khan Khakwani and that they used to meet regularly after college classes.

The defence has also submitted some other affidavits sworn by Muhammed Nizam Uddin of College

Road, Chittagong; Mohammad Islam of Chandanapur, Chittagong; Md. Golap Khan of Chandanapur, Chittagong; Manik Paul of Goods Hill, Chittagong; Salamat Ali, Chandanapur, Chittagong; Monorajan Chakraborty, Gohira Biswas Para, Chittagong; Swapan Kranti Chowdhury, Sultanpur, Chittagong; Mridul Kranti Das, Sultanpur, Chittagong; Mohammad Kala Mia, Gohira Dewan Talukder Bari, Chittagong; Md. Farid Mia, Gohira, Fatey Ali Talukder Bari, Chittagong; Mridul Day, Kulur Ramer Bari, Purba Gohira, Chittagong; Md. Zarip Ali, Sultanpur, Dewan Ali Talukder Bari, Chittagong; Ashalata Chowdhury, Haripada Chowdhury Bari, Purba Gohira, Chittagong; Abul Kashem Talukder, Mohila College; Pakiar Tila Road; Gouranga Chandra Das, Nemai Doctor-er-Bari, Chittatong; Sonjit Kumar Day, Bacharamer Bari, Sultanpur, Chittagong; Md. Danu Mia Chowdhury, Ali Chowdhury Bari, Gohira, Chittagong; Al-Haj Kamal Master, Modyha Gohira, Mukter Bari, Chittagong; Md. Kabir Ahmed, Modyha Gohira, Mukter Bari, Chittagong; Dulan Chandra Chowdhury, Chowdhury Bari,

Unashattarpara, Chittagong; Bhupal Chowdhury,
 Unashattarpara, Chittagong; Eajhar Mia, Nura Gazir
 Bari, Unashattarpara, Chittagong; Al-Haj Laila Begum,
 Habibur Rahman Chowdhury Bari, Unashattarpara,
 Chittagong; Md. Nurul Alam, Gulam Hossain Sowadgar
 Bari, Pahartali, Chittagong; Nurul Huda, Bashir Md.
 Seepahir Bari, Gorduara, Chittagong; Md. Ishaq, Sona
 Mia Mistirir Bari, Fatika, Chittagong; Abdur Razzaq,
 Yasin Nagar, Chittagong; Mohammad Yunus Saleh Ahmed,
 Talukder Bari, Chittagong; Abdul Khalek, Bharanchari,
 Chittagong; Mohammad Idris Mia, Tilar Para,
 Chittagong; Md. Nurul Alam Chowdhury, Abdul Jalil
 Chowdhury Bari, Chittagong; Md. Solaiman, Bucha Gazir
 Bari, Chittagong; A.K.M. Shafiullah, Bibarly Hill,
 Abashik Alaka, Chittagong; Bimal Chandra Das, Gohira
 Chittagong; Abdul Quader, Quader Member-er Bari
 Chittagong; Ms. Maleka Begum, Chandanpura, Aysha
 Khatun Lane, Chittagong; Md. Dastagir Alam,
 Chandanpura, Emdat Villa, Chittagong and Md. Siddique
 Khan, Chandanpura, Paschim Gali, Gani Bakari,
 Chittagong.

In all these affidavits, the deponents stated that they know the accused Salauddin Qader Chowdhury from before the liberation struggle; that some of them took shelter at Goods Hill for saving their lives; that none of the children of Fazlul Qader Chowdhury was involved in Crimes against humanity; that Gouranga Singha, Profullah Singha, Gopal Chandra Das and Nirmal Chandra Das went to India; that Dr. Suchindra Lal Chowdhury, Gopal Chowdhury, Himangshu Bimal Chowdhury, Sagar Paul, Janati Bala Paul, Chapala Rani and Prova Rani left for India during the liberation struggle; that Sheikh Mozaffar and his son were taken to Cantonment by army and that Salauddin Qader Chowdhury was not involved in any of the atrocities of killing or persecution of the Hindu community at Rawjan or Hathajari etc.

Evaluation of defence evidence

According to defence, Salauddin Qader Chowdhury left for Pakistan on 29th March 1971, for higher studies at Punjab University, appeared in the honours examination in August 1971, and then went to London

in October, 1971. The affidavit of Muhammed Usman Siddique was affirmed on 25 June, 2013, before Mr. Michael S. McCleary, Notary Public District of Columbia, Washington containing a seal with the following words "my commission expires on 6/30/2013". So just a few days before expiry of the tenure as Notary Public, the affidavit was affirmed. It is surprising to note that on the following day on 26th June, 2013, One Mr. Toby M. Cadman, countersigned the said affidavit at his London office at International Chamber of Anthony Berry QC, 9 Bedford Row London WC1R 4AZ and the same was again countersigned by Mr. Michael S. Mccheary on the same day.

Learned Attorney General submitted that this Mr. Toby M. Cadman was an engaged lawyer for the War Crimes offenders and he wanted to defend the offenders but when it was detected that he obtained visa by making false statement, he was compelled to leave the country and then, he was making propogandas and wrote many articles against the trial process being held by the International Crimes Tribunals. So,

according to him, this gentleman manufactured all these affidavits. The affidavit of Mr. Siddique has been sworn on a white paper and it has not been authenticated by any officer of the State Department, USA and not having been authenticated by the Counselor or any officer of the Bangladesh Embassy in USA, no reliance can be given to it, inasmuch as, it is a false affidavit which has no sanctity at all. No stamp paper has been affixed or charged in accordance with the Stamp Act, 1899 and therefore, a bare looking of this affidavit appears as a collusive one created by the defence to mislead the tribunal and the same is also legally not admissible in law.

Geoffrey Robertson QC, a former Judge of the UN Special Court for Sierra Leone in an article under the caption 'Bangladesh War Crimes Tribunal' published in his blog (<http://bangladeshwarcrimes.blogspot.com/2015/02/geoffrey-robertson-qc-report-1-question.html>) on 19th February, 2015, stated that "...I was approached in March 2014 by Toby Cadman, one of the English barristers who had been advising

the defence (necessarily, from abroad) and asked to review all the cases concluded so far and to provide an independent opinion of their fairness and on the tribunal's proceedings and conduct. To this end I have been provided with several thousand pages of court transcripts and have acquainted myself with the historical background both to the 1971 massacres and to prosecute collaborators in 1972-73. I make no findings as to the guilt or innocence of the men who have already been convicted by this tribunal, as I have not attended their trials-my concern is with the procedures adopted by the court and the pressure brought upon it by the government, which might conduce to miscarriages of justice."

He then went on "The Report was not commissioned by the Jammal, but by an NGO called the International Forum for Democracy and Human Rights, with which Toby Cadman and 9 Bedford Row (a rival chambers to mine) are connected-it was their concern at being unable to represent the Jammal, and their desire to have the Court analysed by an expert of recognized

independence that they approached me. I accepted their invitation on condition that the Report would be entirely my work and no-one else would play any part in writing it or on preparing it for publication. That agreement has been honoured. I would hardly sacrifice my reputation for independence for the Jamaat, an organization with whose policies and beliefs I have no sympathy at all. Moreover, I am an English Queens Counsel, bound by the strict ethics of the bar to write honest opinions, without fear of favour, no matter how much it might distress the party."

In another report published in <http://www.prnewswire.com/news-releases/hrdb-summit-british-attorney-toby-cadman-worries-of-mistrust-and-division-among-bangladesh-people-over> ... under the caption 'HRDB Summit: British Attorney Toby Cadman Worries of Mistrust and Division among Bangladesh People Over flawed War Crimes Trial' it was observed:

"Toby Cadman, who was appointed by the Jamaat-i-Islami party, to defend a number of its'

leaders, who are facing charges of committing crimes against humanity in 1971, had been to Bangladesh a number of times, but at one stage his entry to the country was banned and he was thrown out from the Dhaka Airport. He said Bangladesh needed international attention in the trial of so called war criminals. But the government of Bangladesh has chosen to act unilaterally to carry on trial without the assistance of international organizations, which are established to try for crimes of international nature. The way the Bangladesh government wants the International Crimes Tribunal to function has already created sharp division among the Bangladeshi people that will continue to hurt the country in future."

Mr. Shah Ali Farhad, an English barrister wrote an article expressing his opinion in bdnews24.com on 3rd December, 2012 under the caption 'Toby Cadman: A crusader for rights or devil's advocate' expressed his opinion as under:

"I noticed Mr. Cadman is not only the principal author of material on the ICT, but also a principal subject of news reports himself in this area. This struck me as somewhat strange, as being a barrister myself. I know for a fact that barristers are not much media savvy and rarely would one find the name of any barrister frequently in media reports, notwithstanding his professional fame or prowess. This is not due to any social handicap that we barristers suffer from, but because it is part of our professional etiquette not to express personal views in the media about any case. Thus, I decided to follow the trail of materials and news reports. What I found was not only astonishing but frankly shocking."

"Firstly, it is important to address the primary question. Who is Mr. Toby Cadman? Mr. Cadman is a barrister specializing in international criminal law, with particular knack for such areas as war crimes, international terrorism,

extradition, judicial review, prison law and human rights law. Thus, when someone with his skills and expertise writes and speaks on a war crimes tribunal, there is never any doubt as to his credentials. However, credentials and credibility is not one and the same thing, and the former on its own cannot establish the latter, and therein lays the predicament. Regarding Mr. Cadman vis-a-vis the Bangladesh ICT, his other role is that, as of October 2010, he has been instructed with Steven Kay QC and John Cammegh (his colleagues at 9 Bedford Row International, a barristers chambers in London, UK) by Jammata-e-Islami to represent their high ranking members currently being prosecuted by the ICT for war crimes committed in 1971. Hence, he is in layman's terms, the paid attorney for the defendants being prosecuted by the very Tribunal he is seen criticising in every conceivable forum at every possible opportunity. It does not take a rocket scientist to come to

the conclusion that there is a very strong case for conflict of interest whenever Mr. Cadman would try to portray a perception of neutrality, having us believe that he is somehow an independent expert in this matter with no interests in its outcome."

"Mr. Cadman has also demonstrated that he is somewhat of a prophet too, particularly one who makes grave and dire prophecies. Speaking to the Saudi Gazette Mr. Cadman made some interesting predictions regarding the fate of his clients. He said that some of his clients would be executed before the 16th of December, and the others before 25th of March the year after. 16th December and 26th March are symbolic dates for Bangladesh as they celebrate their 'Victory Day and Independence Day respectively on these dates. I am curious to know how Mr. Cadman comes up with such precise predictions. Whether these prophecies hold true or not only time can tell, but for the time being his predictions stand

thus a) All his clients are bound to be convicted, b) Death penalty would be imposed in respect of each and every one of them, and c) The dates of their executions are confirmed. Unless Mr. Cadman has figured out a way to see into the future, or has been confirmed of the future convictions and sentences of his clients by the ICT itself, I find it difficult to pay any heed to such unsupported claims. The problem is, whether or not these predictions have any substance, they nonetheless contribute towards generating an overall negative perception against a justice process which a whole nation holds dear."

These opinions sufficiently prove beyond doubt that Mr. Toby Cadman has been propagating against the trials by the International Crimes Tribunals as a Overseas lawyer for the offenders of War Crimes and crimes against humanity and he has manufactured all these affidavits to save his client Salauddin Qader Chowdhury.

The affidavit of Reaz Ahmed Noon was affirmed before an advocate, Oath Commissioner, Lahore, and though it was attested by Assistant Protocol Officer, Ministry of Foreign Affairs, Camp Office, Lahore on 8th July, 2013, it was also not authenticated by the High Commission of Bangladesh in Pakistan. It is also worthy noting that the affidavit was affirmed on 8th July on non-judicial stamp of one hundred rupees and on the same day, it was attested by an officer of the Ministry of Foreign Affairs. In paragraph 4 it is stated that in October 1971, Salauddin, Ishaq Khakuani and Naeem-ur Rahman Akhond had a journey to London by road and they arrived on the 2nd week of November. Since he was in Bolton, he went to meet them in the 3rd week of November. Mr. Ishaq Khakuani and Salauddin stayed back in England because of the deteriorating security situation in East Pakistan and his family had advised him to stay back and so on.

Affidavit of Amber Haroon Saigol was also affirmed on the same day on 8th July, 2013 and it was also attested by the same Protocol Officer of the

Ministry of Foreign Affairs, Lahore on the same day. This affidavit was also not authenticated by the High Commission Office of Bangladesh in Pakistan. These two affidavits were not also stamped under the Stamp Act in Bangladesh.

In the affidavit of Muneeb Arjmand Khan, which was affirmed on 12th July, 2013, and the Foreign Ministry's Officer counter signed it on the same day. It was also not authenticated by any officer of the High Commission in Pakistan. In the affidavit affirmed by Ishaq Khan Khakwani on 26th June, 2013 none identified the signature of the deponent. Similarly the signature of Muneeb Arjmand Khan was not also identified by a lawyer. This affidavit is not also authenticated by the Bangladesh High Commission Office in Pakistan.

These affidavits were sworn before Mr. Saifullah Khan Khalek, an Advocate and Oath Commissioner though the deponents were staying at different places. Another affidavit of Mohmmedmian Soomro which was affirmed in Karachi on 25th June, 2013, but not

affirmed before a Notary Public. It was simply attested by an officer of Ministry of Foreign Affairs, Islamabad. I fail to understand how an officer of the Foreign Ministry can attest it in the absence of its being sworn before a Notary Public. It is also interesting to note that the affidavit of Muneeb Arjmand Khan was affirmed on a stamp paper of fifty rupees, whereas the one of Mohammedmian Soomro was typed on a stamp paper of hundred rupees. In the affidavit of Muneeb Arjamand Khan, an adhesive stamp of sixty rupees has been affixed and it is to be mentioned that both these affidavits were allegedly affirmed in Karachi. This shows that these affidavits are unauthentic documents, which have been created by the defence for oblique purposes and so, no reliance can be placed upon them.

The tribunal has given discretionary power under rule 44 of the Rules to admit any evidence oral or documentary, print or electronic including books, reports and photographs published in news papers, periodical and magazines, films and tape recording

and other materials as may be tendered before it and it may exclude any evidence which does not inspire any confidence in it. In exercise of this discretionary power, the tribunal has discarded these affidavits as having no reliability. Rule 51(2) provides that the defence shall prove the documents and materials to be produced by it in accordance with law, that is to say, under the Act of 1973. In order to prove any documentary evidence by the defence, it is required to prove the same in accordance with section 9(5) of the Act which provides that a list of witnesses for the defence, if any along with documents or copies thereof, which the defence intends to rely upon, shall be furnished to the tribunal at the time of the commencement of the trial. The defence did not at all produce these affidavits as documentary evidence before the commencement of the trial or at the stage of framing formal charge. It has produced these affidavits only on 18th July, 2013, after examination of D.W.2 and in the midst of cross-examination of D.W.3 by the

prosecution. Till that date, the defence did not file those affidavits or even stated anything regarding the existence of these affidavits. The tribunal, in the premises, has rightly ignored these affidavits as not admissible in evidence.

More so, under the Act of 1973, though there is provision that the Code of Criminal Procedure and the Evidence Act may not be applicable to the trial of offences punishable under section 3 of the Act, the Act or the Rules are totally silent as regards the applicability of the affidavits sworn abroad and also the mode of proving the same. In the absence of any procedure, the general laws and procedures for admissibility of an affidavit sworn abroad may be taken as guidance in the interest of justice. There is no exclusion of this law either by the Act of 1973. Rule 3 of Order 19 of the Code of Civil Procedure read as under:

"3(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on

interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the court otherwise directs) be paid by the party filing the same."

Under this provision it is open to a tribunal to permit a fact to be proved by an affidavit on sufficient grounds. Admission of affidavit in proof of facts is subject to the condition that in case the opposite party controverts the allegations by filing a counter affidavit or demands the attendance of the deponent for his cross-examination, the affidavit shall lose all its force and cannot be acted upon.

The governing principle for affidavit evidence as provided in rule 3 Order 19 is that a deponent shall state facts, which he is able to prove of his

own knowledge, and in interlocutory matter, the deponent can make statements of his belief, and they may be admitted provided the grounds thereof are stated. This rule has been further elaborated in rules 27 and 28 of Chapter IV of High Court Rules, which say that when the declarant speaks of any fact within his own knowledge, he shall do so by using words: "I affirm or make oath and say" and when facts are stated from information obtained from others, the declarant shall use the expression, "I am informed" and should add, "and verily believe it to be true" and he must also state the source from which he received the information. When the statement of documents procured from Court of justice, or other source, the deponent shall state what the source from which they were procured is, and his information, or belief as to the truth of fact disclosed in such documents.

Section 3(3) of the General Clauses Act says, affidavit shall include affirmation and declaration in cases of persons by law allowed to affirm or

declare instead of swearing. Affidavit is a statement or declaration in writing on oath before a person authorised to administer oath or affirmation. Sub-rule (3) of Order 19 of the Code does permit a tribunal to act upon affidavit evidence made by deponent on received information provided grounds of information or belief are disclosed. Proviso to rule I, order 19 authorises the tribunal, if the adverse party bonafide desires, to call the deponent for cross-examination.

Affidavit has been excluded from the operation of the Evidence Act. The proper approach is to say that affidavit must conform to the verification rule contained in Order 19 of the Code and also the provisions of special rule, if there be any. If the source of information is not disclosed, or grounds not supplied, the tribunal shall not act on such affidavit evidence. The reason for conforming to the provisions of verification rule is very weighty, because the purpose of verification of affidavit enables the tribunal to find out which of the facts

can be said to be proved by affidavit evidence of rival parties. The compliance with verification rule is mandatory, and its breach in substance will make so much of the statement in the affidavit as is not in compliance with verification rule, inadmissible.

Reference in this connection is Vice Chairman V. Golam Nabi, 27 DLR (SC) 156.

What's more, under the Common Law, which is source of law being followed in this subcontinent, a document in a foreign country may be proved by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public or of a Bangladesh Consul or Diplomatic Agent that the copy is duly certified by the officer having the legal custody of the original, and upon proof the corrector of the document according to the law of the said foreign country. In this case, the defence did not obtain the alleged affidavits with a certificate with a seal of Bangladesh Consul or diplomatic agent that the copy is genuine. In the absence of such certification, those affidavits

cannot be admitted in evidence. More so, these affidavits have not been stamped under section 18 of the Stamp Act.

The affidavits are said to have been notarized by Notary Publics except the one allegedly affirmed by Muneeb Arjmand Khan. The defence did not furnish any materials whether notarial acts in United States, United Kingdom and Pakistan have reciprocal arrangement with Bangladesh. Section 14 of the Notaries Ordinance, 1961 provides that if the government is satisfied that by the law or practice of any country or place outside Bangladesh, the notarial acts done by notaries within Bangladesh are recognised for all or any limited purposes in that country or place, the government may, by notification in the *official Gazette*, declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within Bangladesh for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

There is no evidence to show that the person before whom the notarial acts were done, were Notary Publics and that the States in which the notarial acts were done authorized him by law to do the notarial acts. If notarial acts take place in a foreign country, the person asking the tribunal to accept the notarial acts done in a foreign notary can do so by showing that the law of that country authorized notarial acts to be done by notaries as they are so done in Bangladesh and by proving the authentication made by the Notary Public. Reference in this connection is the case of Nurunnessa V. Babar Ali, 33 DLR(AD) 124.

According to the defence, Salauddin Qader Chowdhury went to Lahore towards the end of March, 1971, for undergoing education in Punjab University. Salauddin Qader Chowdhury stated that he had to wait for his papers to be transferred from Dhaka University and ultimately with the help of Mr. Ishak Khan Khakwani, he was admitted to Punjab University in May 1971; that he studied till July and in August

he sat for the final examination and that he along with Mr. Justice Hasnain spent a lot of time at the library of the University of Punjab. It is interesting to note that though the accused could file a duplicate copy of his Higher Secondary Examination Certificate, he did file neither the original nor any duplicate copy of the certificate from the Punjab University. He claimed that he had successfully completed his graduation from the Punjab University and then had his higher education from Lincoln's Inn. He filed a testimonial alleged to have been issued by Dr. Umbreen Javid of the department of political science, University of Punjab on 24th January, 2013. No explanation has been given why the accused could not bring any duplicate certificate from the University. If he could collect the affidavits, a testimonial from a teacher, what prevented him to collect a duplicate certificate from the University is not clear to us. The testimonial shows that he appeared BA honours final examination

in August 1971 and that he scored 233/500 for the academic session 1970-71.

It is to be noted that if there are oral and documentary evidence on the same subject, the documentary evidence will prevail over the oral evidence. Accused Salauddin Qader Chowdhury's basis of alibi plea is that he had studied at Punjab University, where he had completed his Bachelors of Arts (Honours).

Considering the above facts, we are of the view that the plea of accused's undergoing educational study in West Pakistan during the relevant times in 1971 being the sheet anchor of the case must be proved beyond doubt. The accused has utterly failed to prove the same. As regards non-examination of Mr. Shamim Hasnain, who had also allegedly underwent higher education in West Pakistan with the accused, it was claimed that Mr. Shamim Hasnain sought permission from the Chief Justice to depose before the tribunal but as no permission was given, he could not depose in support of the accused. In course of

hearing of the matter, the Court queried to the learned Counsel as to under what provision Mr. Hasnain sought permission from the Chief Justice. The learned Counsel submitted that as he was a sitting Judge of the High Court Division, he sought permission.

There is no provision either under the Constitution or under any provisions of law that for deposing in a case, a sitting Judge of the Supreme Court is required permission from the Chief Justice. If any Judge considers it expedient to depose before a court or tribunal, it is his decision as to whether as a sitting Judge he should depose on oath before a tribunal maintaining his dignity and status. It is none of the business of the Chief Justice to permit a sitting Judge to accord permission to depose in a tribunal. There are instances that a sitting Judge of the Supreme Court has filed a writ petition over his tax matter. So, there is no legal bar for a sitting Judge to prosecute litigation in any court of law or to depose before a tribunal. The defence failed to

examine Mr. Shamim Hasnain and for this, it will not get any benefit.

A close look into the affidavits submitted by some deponents (Muhammed Nizam Uddin & others from Chittagong region) would appear that the stamp papers were purchased from one Priyotosh Borua on 12th June, 2013, and 16th June, 2013 and some of them were purchased from another stamp Vendor. All the stamps were purchased almost within 3/4 days and the affidavits were affirmed before M Anwar Chowdhury, Notary Public on 16th June and 17th June and Mr. Md. Riduanul Haq and Mr. Taohidul Islam Parvez, advocates identified them. The contents of all the statements are almost same. In these affidavits except the affidavit of Dr. A.K.M. Shafiullah, over which I would make observations later on, they claimed that they took shelter in Goods Hill meaning thereby that the accused or his father was not involved in the acts of Crimes against humanity, killing and persecution of the Hindu community, rather they protected them. In some affidavits, they stated that

the witnesses and some of the victims left for India before the incidents and that the killing and the atrocities were committed by the Pak army. The defence did not explain why it did not affirm those affidavits before the Registrar of the tribunal or that why it did not seek tribunal's permission. These affidavits apparently proved that they were prepared in the same sitting, by the same persons and created with a view to confusing the prosecution case but from the perspective of the contents, the stamps, the identifier and the Notary Public, there cannot be any doubt that these are all collusive affidavits. And this will be evident from the documentary evidence produced by the prosecution which will be discussed later on.

P.W.27 Dr. A.K.M. Shafiullah deposed on oath before the tribunal on 21st April, 2013 and stated that on the night of 27th July, 1971, he got an emergency call and attended Salauddin Qader Chowdhury who was then lying with severe injuries. He gave him treatment and then he was shifted to Dhaka for better

treatment. The specific defence case as suggested to him was that Salauddin Qader Chowdhury was Health Minister sometimes in 1985, who removed 1800 doctors including him (Dr. A.K.M Shafiullah) as they withdrew salaries while in abroad on deputation, so he was deposing falsely out of grudge. No suggestion was given to him that due to the pressure by the prosecution he was deposing falsely.

In the affidavit filed by the defence allegedly sworn by Dr. A.K.M. Shafiullah, it is stated that he was compelled to depose against Salauddin Qader Chowdhury by pressure; that he had no evening shift duty in September, 1971 at the hospital and that he did not give any treatment to Salauddin Qader Chowdhury while he was undergoing internship training. He did not claim that he was not attached on surgical unit 1 of the hospital. He did not claim before the tribunal that he had evening shift duty at the hospital on that night, rather stated that due to an emergency call as directed by the authority, under compulsion he attended the patient. It is to be noted

that the entire country was at war during that period. There was dearth of specialised doctors in hospitals. The country was running in unusual situation. The duties of the doctors in shift had not been followed at that time due to shortage of doctors and nurses. His claim of compelling to depose by the prosecution against Salauddin Qader Chowdhury on 21st April is not believable because he was not in service. He was under no obligation to depose out of pressure.

More so, no suggestion was given to that effect that he deposed out of pressure rather it was the defence suggestion that as Salauddin Qader Chowdhury removed him from the government job, he deposed against him out of grudge. Therefore, the story introduced by the defence is imaginary one. Besides, this affidavit was affirmed on 27th June, 2013, although it was entered in the Register of the affidavit Commissioner on 30th June but later on, it was over written by giving the digit '27' over the digit '30' which can be detected with bare eyes.

More so, after examination of P.W.27 on 21st April, 2013, the defence examined its witnesses till 24th July, 2013. The gap between the last examination of witness and the date of affidavit was one month. Before the examination of D.W.4, the affidavit of P.W.27 was allegedly affirmed on 27th June, 2013. There was no prayer on behalf of the defence to re-examine P.W.27. The deposition of a witness made on oath and his evidence having been tested by cross-examination cannot be negated by a disputed affidavit as the evidence has already been closed.

Furthermore, the same principle is applicable in respect of other affidavits. If the defence wanted to affirm any such affidavits, it could have obtained permission from the tribunal and affirmed affidavits before the tribunal before the closure of the defence case. It did not bring those papers to the knowledge of the tribunal. The first sets of affidavits were sworn on 16th June, 2013 and the last one was affirmed on 27th June, 2013. The first defence witness was examined partly on 18th June, 2013 and

the last witness was examined on 24th July, 2013. None of the witnesses including P.W.27 said anything about these affidavits. Even no suggestion was given to the witnesses about the existence of these affidavits. These facts sufficiently indicate that these affidavits have been created subsequently by giving antedate by the defence and these affidavits have no probative value at all.

Besides, the prosecution has also produced a good number of documentary evidence to prove Salauddin Qader Chowdhury's physical presence at the crime sites and his participation in the commission of mass killing and genocide. P.W.11 asserted that on 20th September, 1971, while Salauddin Qader Chowdhury was returning home at night with his driver, Fazlur Hoque shot aiming at the vehicle with stengun, Soumendra detonated grenade and he shot with revolver and left the place. Later on at night he heard from BBC news that the driver died on the spot and Salauddin Qader Chowdhury was injured. P.W.27 corroborated him as regards the treatment given to

Salauddin Qader Chowdhury at night in the Chittagong Medical College Hospital in the surgical ward. P.Ws.4, 6, 8, 11, 14, 17, 19, 22, 31, 37 including Jyotsna Bala Chowdhury, Badal Biswas, Janati Bala Paul saw accused at the crime sites and they deposed on oath in that regard. Their direct evidence cannot be negated by the disputed affidavits.

The Prosecution has also produced ext.10, the issue of Dainik Pakistan dated 29th September, 1971, wherein it was reported that 'বোমার আঘাতে ফজলুল কাদেরের ছেলে আহত, গুলিতে ড্রাইভার নিহত'. The Fortnightly Secret Report on Political Situation for the first half of November, 1971 from the Special Branch, East Pakistan Dacca, in which in paragraph 45 under the heading 'Activities of Rebels' it was reported:

(iii) On 20.9.71 evening, rebels fired at the car of Salauddin Qader Chowdhury, son of Mr. Fazlul Qader Chowdhury, President, PML, at Chandanpur, Chittagong. They also threw a hand-grenade in front of the car. Salauddin was injured and his driver was killed.

This report has been admitted into evidence and marked as ext.94. On behalf of the defence it has been submitted that this police report is not admissible in law, inasmuch as, a police report cannot be taken as evidence.

This submission is devoid of substance and this report along with the seizure list has been exhibited as exhibits 93 and 94 respectively without any objection. Over and above, rule 44 of the Rules authorises the tribunal to exercise its discretionary power to admit oral or documentary evidence that may be tendered before it, and the tribunal's decision is final regarding the admissibility or non-admissibility of evidence and cannot be challenged. So, under this rule once documentary evidence is admitted into evidence, it cannot be challenged subsequently. Adding to this provision, rule 55 says that once the document is marked as exhibit, the content of such document may be admissible. Section 19(1) provides that the tribunal shall not be bound by "technical rules of evidence; and it shall adopt

and apply to the greatest possible extent expeditious and non-technical procedure, and may admit any evidence, including reports and photographs

(Emphasis supplied). So a report either it is police report or any other report is produced by the parties for admitting it into evidence, if the tribunal is satisfied that the said report inspire confidence and relevant for the purpose of determining the point in controversy may at its discretion admit such document or report into evidence and once a document is admitted into evidence, it cannot be challenged by the parties about its admissibility.

As Rule 56 says, the tribunal shall give due weight to the primary and secondary evidence and direct and circumstantial evidence of any fact since the peculiarity of the facts and circumstances of the case demand to consider the time and place of the occurrence. The evidence of the aforesaid witnesses are direct evidence and the defence has submitted some documents which have also corroborated the prosecution case. The tribunal gave due weight to the

direct evidence and discarded the affidavits. The direct evidence prevails over inadmissible evidence.

Conclusion

According to the prosecution, accused Salauddin Qader Chowdhury committed war crimes, genocide and crimes against humanity. According to the defence, he was in Pakistan and he was not involved in those incidents. The evidence of P.Ws. 4, 6, 8, 14, 17, 19, 27, 28, 31, 37 and the documentary evidence, exts 2 series, 10, 16, 29, 31, 94, 95, 96, 98, B, C and D proved beyond doubt that the accused Salauddin Qader Chowdhury was present at the crime sites in Chittagong till August, 1971. Besides, though the defence has taken a plea of alibi, it has admitted the presence of accused at the crime sites, exts B, C and D which negated the defence plea. It is based on the rule *incumbit probatio qui decit, non qui negat*-the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof. The documentary

evidence proved the presence of the accused in Chittagong at the crime sites, the prosecution's burden of proving the presence of accused in Chittagong becomes lighter or loses its importance so far the prosecution is concerned. In presence of the above strong admission being corroborated by documentary evidence, it can be inferred beyond reasonable doubt that the accused was present in Chittagong during the relevant time of occurrences and hence, the plea of alibi taken by the defence is concocted, false and not believable. Since the defence admitted the presence of accused at the crime sites, the prosecution has been able to prove as to whether the accused was involved in those incidents.

In যুদ্ধাপরাধীর তালিকা ও বিচার প্রসঙ্গ, ext -'B' the author mentioned that accused Salauddin Qader Chowdhury was one of the enlisted war criminals. Ext -'C' ('আমার যুদ্ধ আমার একান্তর') written by Siru Bangalee) which proved that accused Salauddin Qader Chowdhury was present in Chittagong and that he was conducting a torture centre at Goods Hill, for which, Captain Karim wanted to kill him. Ext

—‘D’ (‘বঙ্গাল কেন যুদ্ধে গেল’) written by Siru Bangalee, also supports the prosecution case that all relations of Fazlul Qader Chowdhury were enemies of the country as they supported the occupation army. We are rather surprised when we find that the defence has relied upon exts.B, C & D. We find that these books instead of supporting the defence case supports the prosecution case altogether.

Exhibit 3 series are issues of different news papers published in 1971. In the issue of Daily Pakistan dated 28th April, 1971, exhibit 8, Fazlul Qader Chowdhury met Tikka Khan, popularly known as Butchar of East Pakistan. In exhibit 9, Daily Ittefaq issue dated 13th July, 1971 in the meeting of Convention Muslim League, Fazlul Qader Chowdhury appealed to the people to protect the country and this appeal was made at a time when the military junta in collaboration with local aberrated right wing politicians were killing the innocent people and committing atrocities. He made similar appeal which was published in the issue of 13th July, 1971. In the

issue of the Dainik Bangla dated 8th January, 1972, it was reported that Fazlul Qader Chowdhury was arrested with one and half mound gold and Rs.7,00,000.00 in cash. In the issue of 25th December, 1971, it was reported that Fazlul Qader Chowdhury with twenty one Bangalees was arrested. In the issue of 13th April, 1972 of Danik Bangla, it was reported that Salauddin Qader Chowdhury was involved in the brutal killing of Nutan Chandra Singha. These news papers have been seized by the seizure list, ext.3. Though exts 3, 8, 9 had not been implicated the accused directly, these documents had impact about his complicity in the incidents since being the eldest son, he was materialising his father's political agenda.

The appellant in his deposition stated that his father was killed on 18th July, 1973, in Dhaka Central Jail. He did not explain why his father was in jail in July, 1973. If Fazlul Qader Chowdhury had sympathy towards the liberation struggle and was not involved in the atrocities as claimed, 'my father was

totally committed to the cause of East Pakistan represented in the person of Bangabandhu Sheikh Mujibur Rahman as Prime Minister elect of Pakistan', why his father was arrested on 25th December, 1971 and detained in jail had not been clarified by him.

P.W.41 stated that accused Salauddin Qader Chowdhury was in Chittagong and lived there and in support of his claim, he filed corroborating documentary evidence such as ; (a) G.R. Register and two FIRs; (b) exhibit 32, certified copy of the G.R. Register of Rawjan P.S. Case No.41 dated 29th January, 1972 filed by Satya Ranjan Singha son of Nutan Chandra Singha; (c) exhibit 32/2, the G.R. Register in respect of Rawjan P.S. Case No.9 dated 3rd March, 1972 instituted by Modasel Ahmed Chowdhury over the killing of Mozaffar Ahmed Chowdhury, in which this accused was accused no.22 and his father A.K.M. Fazlul Qader Chowdhury was accused No.23; (d) exhibit 32/3, Rawjan P.S. Case No.4 dated 5th April, 1972, in which the accused Salauddin Qader Chowdhury and his father were charge sheeted accused. These are

old documentary evidence, which not only proved the complicity of the accused in killing but also proved his presence in Chittagong. If the accused was not present at Chittagong in 1971, the incidents of mass killing of the members of Hindu community including Nutan Chandra Singha would not have happened and it was not expected to file cases against him just after the independence of the country.

Accused Salauddin Qader Chowdhury stated that he was implicated in this case for political victimisation which commenced from his 'arbitrary detention since December 19, 2010, with a view to securing a confession from him. If he was apprehended for political victimization in 2010, he was totally silent as to which the above murder cases were filed against him in 1972 just immediately after the liberation of the country. He did not give any explanation in this regard. He had admitted the filing of those cases against him. These documentary evidence are sufficient to negate his claim that he

was in Chittagong from 29th March, 1971 to August, 1971 and involved in all atrocities.

What's more, the defence has not challenged the presence of the accused on April 11, 1971. P.W.7 stated that on 11th April, at about 3 p.m., Fazlul Qader Chowdhury, the chief of East Pakistan Muslim League along with his family and his son Salauddin Qader Chowdhury were returning home with a Volkswagen car and while they were crossing the barricade created by the freedom fighters towards the southern side of Gouri Sangkar Hat, they stopped the car and asked them to get down from the car. Salauddin Qader Chowdhury and his brother angrily shouted and drove the car defying the order. From the above discussion, there is no doubt to come to the conclusion that accused Salauddin Qader Chowdhury was very much present in Chittagong ; that he was involved in the killing of minority community people at Rawjan, Hathajari and that the defence has failed to prove the plea of alibi.

The positive case of the prosecution case is that during the war of liberation the right wing politicians like Muslim League, Convention Muslim League, Jamet-e-Islami etc, who supported the Pak occupation army organised the anti liberation forces namely Rajakars, Al-Shams, Shanti Bahani and other forces and perpetrated mass killing particularly the minority people. It is common knowledge that this anti liberation forces recruited young boys to form Rajakars and Al-Shams and involved in the mass killing of civilian population, Hindus and the supporters of Awami League etc. It is claimed that without collaboration by the local politicians, it was not possible for the Pak Military junta to perpetrate the killing, persecution and other offences of crimes against humanity. Fazlul Qader Chowdhury was admittedly one of the prominent leaders of Convention Muslim League. At one point of time, he occupied the office of the President of Convention Muslim League after fall of Ayub Khan. He was a Minister of Central Government, Speaker of the

National Assembly and also became the acting President of Pakistan. The news paper reporting during the liberation struggle period corroborated the prosecution version that Fazlul Qader Chowdhury, father of the accused played a pivotal role to fight against the liberation forces in East Pakistan.

Salauddin Qader Chowdhury was the only major son of Fazlul Qader Chowdhury in 1971 and he was a University student. He was aged about 22 years at that time. He being the political follower of his father directly participated in the incidents of mass killing, genocide and other inhuman activities is evident from the evidence. Besides ocular evidence, there are strong documentary evidence to corroborate the charges brought against him. It is the claim of the prosecution that Salauddin Qader Chowdhury used their residential house 'Goods Hill' to operate anti liberation activities and it was used as torturing centre of Hindus and pro-liberation people. In this regard P.W.2 made positive statement that Goods Hill was used as the headquarters of Al-Shams Bahini and

that after torture at Good Hills, nobody dared to make any complaint against them. He was corroborated by P.W.8, who stated that Hamidul Huq known as Khoka, Sekandar known as Gyana Sekandar, of them, Khoka was known as Al-Shams leader and was operating from Goods Hill. P.W.11 also stated that there were informations from Unashattarpara and Rawjan about massacres; that those incidents were perpetrated by Al-Badar, Razakars and Al-Shams under the leadership of Salauddin Qader Chowdhury; that there were more informations that innocent people from different localities were brought to Goods Hill and they were killed and the dead bodies were hided; that Salauddin Qader Chowdhury was the ring leader and that Goods Hill was used as a torture centre.

P.W.16 stated that after 25th March, Syed Wahidul Alam joined Convention Muslim League organized by Salauddin Qader Chowdhury at Goods Hill and at that time he, in collusion with army, used Goods Hill as torture centre and some of them were killed. P.W.19 stated that he came to know that Fazlul Qader

Chowdhury's Bungalow was used as Al-Shams and Al-Badar Centre and that in that centre the operations were conducted under the leadership of Khoka, Jahangir, Salauddin Qader Chowdhury and Syed Wahidul Alam. P.W.26 Saleh Uddin stated that he was taken Fazlul Qader Chowdhury's Goods Hill and as per order of Fazlul Qader Chowdhury, Salauddin Qader Chowdhury and others tortured him. Though P.W.41 stated nothing in his chief in this regard, on a question put by the defence, he replied that before 26th March, 1971, Salauddin Qader Chowdhury was a student and after 26th March till 20th September, 1971, during the liberation struggle period before he was attacked with grenade, Salauddin Qader Chowdhury was involved in crimes against humanity and conducted those incidents from Goods Hill. P.W.15 also made similar statements. Therefore, there are strong corroborating evidence that the accused Salauddin Qader Chowdhury operated the Al-Shams force from Goods Hill and the planning, perpetration of all atrocities, crimes against humanity and genocide were operated from

Goods Hill, which is the residential house of his father.

As discussed above, in respect of charge No.2, the prosecution has examined three witnesses over the killing of five Hindus at Madhya Gohira. P.w.6 is an eye witness. He has vividly narrated the incident and his testimony has been corroborated by P.Ws.3 and 29. P.W.6 was cross-examined by defence on 9th July, 2012, 10th July, 2012 and 11th July, 2012. He explained the horrific incident of brush firing at which his mother Pancha Bala Sharma, nephew Dulal Sharma, brother Sunil Sharma and uncle Jyoti Lal Sharma died on the spot and Dr. Makhan Lal Sharma succumbed to the injuries a few days thereafter. His father Jayanta Kumar Sharma also sustained injuries but luckily survived. The defence could not elicit any inconsistency from his testimony. He narrated the incident of dragging his uncle Dr. Makhan Lal Sharma by Salauddin Qader Chowdhury from home to the courtyard. P.W.6 was narrowly survived because at the spur of firing, he fell down bending his head.

The tribunal observed that P.W.6 vividly narrated the occurrence as to how accused Salauddin Qader Chowdhury along with Pakistani army brutally killed his mother, brother, nephew and uncle and injured his father and uncle. It was further observed that P.W.29 corroborated P.W.6 stating that immediately after the occurrence, he along with his father went to the place of occurrence and found Pancha Bala, Sunil, Dulal and Joti Lal dead, and Jayanta and Makhan Lal injured.

It was argued on behalf of the defence that since P.W.9 saw Sunil in India about three years back, P.W.6 could not be relied upon. This witness stated in cross that he went to India; that he could not recollect whether he saw Sunil there and then said, it might be that he saw him. He did not claim that he saw him in India. He made a confused statement in reply to a query. This statement cannot negate the positive claim of P.W.6 who is an eye witness, and as regards the other victims the defence has taken no exception. On an analysis of the

evidence we find no cogent ground to disbelieve the prosecution version. The witnesses proved beyond doubt that the killing was perpetrated in active participation of accused Salauddin Qader Chowdhury and this killing was a prearranged one and as a result, civilian Pancha Bala, Sunil, Jyoti, Dulal died on the spot and Makhan Lal died a few days thereafter and that accused Salauddin Qader Chowdhury committed the said atrocities with intent to destroy Hindu religious people and thereby he is criminally liable under section 4(1) of Act 1973. Therefore, we fully endorse the views taken by the tribunal.

In respect of charge No.3, we noticed that P.W.1, a renowned educationalist did not claim that he witnessed the incident. He was a teacher of Chittagong University in 1971. Though he made general statements as to what he heard from Profulla Ranjan Singha (P.W.5) about the killing of his father by Salauddin Qader Chowdhury, he corroborated Saleh Uddin's (P.W.8) persecution and torture, which he claimed that in the Senate meeting the victim

disclosed the incident. Though he (P.W.1) did not say anything about the attack on Salauddin Qader Chowdhury on 20th September evening in which the driver was killed , in course of cross-examination, the defence has admitted the said incident in a distorted manner by giving suggestion to this witness that on 7th April, 1971, in the evening Fazlul Qader Chowdhury with his family was returning from Gohira to Goods Hill and when his car was crossing the slopes of Goods Hill and reached in front of Gani Bakery, the Pakistani army attacked them and on the firing of army, his driver Ali Ahmed was killed.

The positive prosecution case is that the driver Ali Ahmed was killed by the freedom fighters on 20th September in the evening and Salauddin was severely injured and with a view to confusing the prosecution version, the defence introduced this story. However, the defence has admitted the killing of the driver by gun shot. It is absurd story to believe that the driver of Salauddin Qader Chowdhury was killed by the Pakistani army, inasmuch as, Salauddin Qader

Chowdhury was all along with the military and led the military to the crime sites to perpetrate killing. By giving this suggestion, the defence has substantially admitted the prosecution's case that in the said attack Salauddin Qader Chowdhury had sustained severe injury and his driver Ali Ahmed was killed. If this witness has any ill motive to implicate the accused falsely in the killing of Nutan Chandra Singha, he could have stated to have witnessed the incident. He stated that profulla stated to him that Salauddin Qader Chowdhury who was known as Major was with the army; that when the army personnel were about to return after interrogation, at the instigation of Salauddin Qader Chowdhury, they returned and pulled out Nutan Chandra Singha from the temple and shot him and that when the victim was on critical condition, Salauddin Qader Chowdhury shot him twice. He reconfirmed his statement in cross. Though P.W.1 did not say anything regarding Rawjan P.S. Case No.41 (1)72, in course of cross-examination

he had admitted about the filing of the said case against the accused.

According to the defence, the accused was acquitted of the said case but it failed to produce any documentary evidence in support of its case. Satya Ranjan Singha, elder brother of P.W.5 filed Rawjan Police Station Case No.41 (1)72 against the accused and other. P.W.5 stated that charge sheet was submitted against the accused and his father in that case. He is an eye witness of the incident of killing. He corroborated P.W.4 in material particulars. He was cross-examined for four days but the defence failed to discard his testimony in any manner. The defence did not deny that Satya Ranjan Singha, the brother of P.W.5 did not file any case over the killing of Nutan Chandra Singha against the accused. The filing of a criminal case against the accused over the killing is a very strong circumstantial evidence to corroborate the ocular evidence. P.W.14 is another eye witness who claimed that he witnessed the incident of killing. He

positively asserted that accused Salauddin Qader Chowdhury led the army team at Kundeshwari complex and he opened fire with a pistol or revolver. In course of cross-examination, he was confronted about the case instituted against Salauddin Qader Chowdhury and in reply, he stated that he knew that the case was instituted against him. He reasserted his claim that accused Salauddin Qader Chowdhury was with the Pakistani army and he saw that the Pakistani army brush fired Nutan Chandra Singha and when he was on critical condition, Salauddin Qader Chowdhury himself fired him by using his pistol/revolver.

Besides the direct evidence, the prosecution has also adduced documentary evidence to corroborate the oral evidence. Ext.16 is a news reporting in Dainik Bangla dated 13th April, 1972, published immediately after the independence of the country, in which, there is similar reporting that the accused led the army at Kundeswari and that he shot at Nutan Babu. In this report, the taking shelter of the teachers of Chittagong University including P.W.1 has been

vividly narrated. This newspaper reporting and the filing of murder case just after the liberation of the country strongly supports the accused's direct complicity in the killing of Nutan Chandra Singha, a renowned social worker. The tribunal on a thorough assessment of the evidence of both oral and documentary evidence held that Nutan Chandra Singha was a popular man of the Hindu Community especially in Chittagong, who established many institutions like schools, college and Kundeshwari Owsadalay; that his contribution towards the Hindu community made him more popular; that in the event of any political or social or any other issue, his opinion was a vital factor; that he played vital role in the defeat of the father of Salauddin Qader Chowdhury in the national election held in 1970 and that the revenge taken against Nutan Chandra Singha was ferocious. It has further held that in the eighth issue of 'বাংলাদেশের স্বাধীনতা যুদ্ধের দলিলপত্র' published in 1984 also corroborates the news reporting published in exhibit 16. We fully endorse the views taken by the tribunal that the oral

evidence coupled with documentary evidence proved beyond doubt that the accused Salauddin Qader Chowdhury with the help of Pakistani army in a pre planned manner killed Nutan Chandra Singha on 13th April, 1971 at Kundeshwari, Chittagong.

In respect of Charge No.4, besides P.Ws.3, 12, 13, the prosecution has relied upon exhibits 29 and 95, the statements of Jyotsna Bala Chowdhury. P.W.3 stated that on 13th April, the massacre continued at Gohira, Sultanpur, Jogotmollopara, Unashattarpara and other neighbouring places from morning till dusk by the army with active participation of Salauddin Qader Chowdhury and his men and they created a reign of terror out of religious hatred. According to him (P.W.5), Captain Karim told him that the barbaric incident of killing took place at Unashattarpara. The Pakistani hyenas killed huge number of Hindu civilians. P.W.12 is a member of the victim's family, who stated that while he was staying at Binajuri, he heard that most of the people of Jogotmollopara were killed and on his way, he found his sister-in-law

Jyotsna Bala Chowdhury with bullet injuries and then he left for India with his family. After liberation he came to the village and found everything destroyed and his elder brother Himangshu Bimal Chowdhury, sister-in-law Nuru Bala Chowdhury, another brother Premangshu Bimal Chowdhury, Kiron Chandra Chowdhury and Sitangshu Bimal Chowdhury, uncle Surendra Bijoy Chowdhury and his wife Charu Bala Chowdhury were among those who were killed in their houses.

P.W.13 stated that on the day of occurrence he heard from his maternal uncle Arabinda Singha that the accused Salauddin Qader Chowdhury along with Muslim League followers and Pak army had attacked their house and killed about 30/35 persons including his father Premangshu Bimal Chowdhury, Ashok Kumar Chowdhury, Samir Chowdhury, aunt Monorama Chowdhury, uncle Sitangshu Bimal Chowdhury and many others of his village. His aunt Jyotsna Bala Chowdhury and others were injured. He then left for India and when he returned home after liberation he found their house destroyed by fire. He heard from Jyotsna Bala,

Amalendu Chowdhury and Sontsosh Ranjan Chakrabarty about the atrocities in their house.

Jyotsna Bala Chowdhury stated in unison with P.Ws.12 and 13. She is an eye witness and a victim of the incident. She saw the accused in the company of the army at the time of perpetration of killing. Exhibit 29 corroborates the statement of Jyotsna Bala in material particulars. P.W.12 stated that he saw his brother's wife with bullet injuries about one mile away south of his house whose name was Jyotsna Bala Chowdhury. His statement has not been controverted by the defence and therefore, the statement may be taken as admitted by the defence. Similarly, P.W.13 stated that after the liberation his uncle Santosh Chowdhury with the help of the villagers of Baroipara and Baruapara disintered the skeletons of the victims and cremated them in their family cremation ground. In the memory of the deceased, a mausoleum was built on 18th July, 2008 by Shariful Islam Chowdhury, Mayor Rawjan Pourashava and Zahangir Alam Chowdhury, Councilor of the Ward and

that in the said mausoleum the names of the martyrs have been engraved. The defence has not controverted these statements. These are strong circumstantial corroborative evidence.

The tribunal after analysing the evidence rightly found that the prosecution has proved beyond reasonable doubt that on 13th April, 1971, accused Salauddin Qader Chowdhury along with his accomplices and Pakistani army opened fire on the unarmed members of Hindu community in the courtyard of Kiron Bikash Chowdhury killing 30/35 people and many unknown persons. Besides, the houses were looted and destroyed by fire and some people had been deported to India as refugees. They committed the said atrocities with intent to destroy the members of Hindu religious community which is an offence of genocide and the act of destroying the houses is an offence of crimes against humanity. We find no reason to differ from the same.

We find that the prosecution has relied upon P.Ws.3 and 22 and the statement of Badal Biswas,

exhibit 98 supports Charge no.5. We have reiterated the statements of P.W.3 earlier and analysed his evidence and held that there was no reason to disbelieve this witness. P.W.22 himself is a victim of the incident in which three persons Nepal Chandra Dhar, Monindra Lal Dhar and Upendra Lal Dhar were brutally killed. This witness stated that accused Salauddin Qader Chowdhury with his followers and Pakistani army attacked Banik Para and lined up his father Upendra Lal Dhar, Uncle Monindra Lal Dhar and Nepal Chandra Dhar in their compound and brush fired towards them. On sustaining injuries, they fell down on the ground and he became senseless. He luckily survived but three others died on the spot. His hand from elbow was amputated and a bullet was removed from his back side and as a result, he has been suffering a crippled life. After the liberation, he filed a case narrating the said incident against accused Salauddin Qader Chowdhury and others. In course of cross-examination this witness gave the particulars of the case bearing Rawjan P.S. Case No.5

dated 5th April, 1972 under sections 148/149/302/34 of Penal Code, ext. 32/1. The amputation of the hand of P.W.22 has not been denied by the defence but according to him, his hand was amputated at Kolkata. It failed to substantiate its claim. By this suggestion the defence has admitted his claim. In course of cross-examination, he reaffirmed his statement in chief and stated that before going to Chittagong Medical College Hospital for treatment, he stayed one and half months at his maternal uncle's house at Fatikchari and that after release from the hospital he went to his maternal uncle's house. The tribunal noticed the amputated hand and the bullet injury on the back side.

Badal Biswas corroborated the statement of P.W.22 in material particulars. He is an eye witness who was also at home. The evidence of P.W.22 and the statement of Badal Biswas are so natural that none can harbor any doubt about their witnessing the incident. More so, P.W.22 has also filed a criminal case against the accused just immediately after the

independence of the country, which proved beyond doubt that the accused was not only present in Chittagong but also involved in the killing. The defence also did not deny the said fact, which proved beyond reasonable doubt that the accused was very much involved in the said killing. More so, the defence has also admitted the incident by cross-examining P.W.22. In the premises, the tribunal was justified in finding the accused guilty of the charge.

The incident of charge 6 relates to mass killing of unarmed civilians at Unashattarpara. In support of the charge, the prosecution has examined five witnesses and relied upon the statement of Janati Bala Paul, exhibit 96. It also relied upon ext 52, the mausoleum erected on the crime site in memory of the martyrs. The defence has not denied the killing of the unarmed civilians and the erection of the mausoleum in the memory of the martyrs. As noticed above, Salauddin Qader Chowdhury was although present in Chittagong and under his leadership this

mass killing has been perpetrated. Beside the statement of P.W.3, which has been discussed earlier, P.W.37 is an eye witness and the victim of the incident. She has vividly narrated the incident stating that the Pakistani Army accompanied by Moqbul Chairman and Salauddin Qader Chowdhury took all of them on the bank of the pond of Satish Mohajon, they lined up Khitish Mohajon, Beni Madhab, Tarapada, Satish and others and shot them indiscriminately. She specifically stated that accused Salauddin Qader Chowdhury was young at that time and she saw him at the place of occurrence. She identified him in the dock.

P.W.31 is also an eye witness and he has corroborated P.W.37 in material particulars. On hearing about the gun shot, he approached there and found the dead bodies of his father and younger brother along with 60/62 other dead bodies which were lying on the ground. His mother Hari Lata Mohajon sustained bullet injuries. P.W.7 is another witness who rushed to the place of occurrence on hearing

sounds of firing and noticed 60/70 dead bodies lying at the place of occurrence. He also noticed two pregnant women who were among the victims. He with the help of others buried the dead bodies. He stated that Dr. Niranjana Dutta Gupta committed suicide on the following morning at 10 a.m. due to mental shock because as per his advice the Hindus returned to their homes, who were subsequently killed by the army. The defence did not at all controvert his statement particularly the incriminate part of killing of the said persons at the place and time and also committing suicide of Dr. Niranjana Dutta.

The tribunal was perfectly justified in holding that the prosecution has proved beyond reasonable doubt that Salauddin Qader Chowdhury along with his accomplices and Pakistani army with a common design attacked Unashattarpara, a Hindu populated area killing 60/70 unarmed civilians on the bank of the pond behind the house of Khitish Mohajon and causing severe injuries to some others and also compelling other Hindus to leave the locality. According to it,

this act was committed intentionally to eliminate the members of the Hindu religious community which amounts to genocide. The incident of killing was brutal and inhuman. The perpetrators compelled the unarmed civilians to assemble and killed them due to religious hatred. Three witnesses saw the incident and they corroborated each other. We find no cogent ground to disagree with the views expressed by the tribunal.

In respect of the killing of Satish Chandra Paul and burning of his house in respect of Charge no.7, two witnesses have been examined by the prosecution, of them, P.W.28 is an eye witness and P.W.3 corroborated him so far as it relates to what he had heard from Captain Karim. P.W.28 narrated how his father was killed by the accused with the help of Pak army. He identified the accused on the spot when the Pak army raided their house and according to him, it was at the instigation of the accused himself. He also heard the altercations between Pak army and his father and at one stage, Salauddin Qader Chowdhury

told the Pak Army that the victim was a dangerous man and the army officer told his father to turn back and soon he turned back, one army shot at him twice. His father rolled down on the ground on sustaining the shots. His dead body was then burnt. He was thoroughly cross-examined. Though the defence has failed to shake his credibility in any manner, his claim of witnessing the incident in the manner does not inspire our confidence. He stated in chief that on seeing the army, he approached towards their house and kept hiding in a nearby bush and witnessed the incident. He did not explain the location of the bush. In cross he stated that despite seeing the approaching of the army, he could not recollect whether or not he requested his father to accompany him. It is natural that as soon as he sensed the approach of army, he would take his father with him for hiding, because on previous day, there was mass killing in the same area in which the army and the accused were involved. Under such circumstances it is improbable story to believe that he would not tell

his father to go to a safe place for hiding. Admittedly all members of his family including himself took shelter at Mohan Biswas's house about 3/4 miles away. It is also absurd story to believe that his father would involve in the altercation with the army under the prevailing situation. There is no other corroborative evidence on record. Therefore, as the prosecution has not been able to produce any witness other than P.W.3, who is also not an eye witness, we inspire no confidence so far as it relates to his claim of witnessing the incident.

On a close look at the evidence of P.W.28 who seems to us not a reliable witness, it creates doubt as to whether P.W.28 has witnessed at all the incident in the manner he has narrated. The defence has not denied the killing of Satish Chandra Paul it is not a legal ground to convict the accused in the absence of reliable evidence. Under such circumstances, the tribunal was not justified in finding Salauddin Qader Chowdhury guilty relying upon P.W. 28 as eye witness of the incident, inasmuch as,

it is not safe to convict the accused on the basis of such evidence in the absence of corroboration. Considering that aspect of the matter, we are unable to maintain the conviction of the accused in respect of this charge.

Charge No.8 is relating to the abduction Sheikh Mozaffar, an Awami League leader and his son Sheikh Alamgir and killing them subsequently. The prosecution has relied upon the evidence of P.Ws.3, 11, 17 and 20 and documentary evidence, exhibit 2 series. P.W.17 is an eye witness of the incident of abduction and P.W.11 is a freedom fighter. P.W.20 is the son of the victim Sheikh Mozaffar Ahmed. He rushed to the place of occurrence on hearing the news of abduction from his cousin Anwar and Ali. He stated that Salauddin Qader Chowdhury, his followers and the army took his father and brother to the army camp. Momtaz Begum, his aunt who was in the car queried to Salauddin Qader Chowdhury why he was taking them. The latter replied that they would be released after interrogation. Admittedly Sheikh Mozaffar was a top

leader of Awami League and a former member of Legislative Assembly. P.W.20 sent his brother-in-law Fazlul Huq to bring his father and brother back from the army camp. He was told by the army that they were arrested. He saw them at the army camp on fastened condition keeping their hands folding back side. Thereafter, they tried to bring them back by sending his sister-in-law and other people but all their attempts failed.

P.W.17 had accompanied her husband and father-in-law. According to her, their vehicle created trouble and at one stage the engine stopped functioning on their way back home at teen rastar mor (the conjoining point of three roads) near Hathajari bus stand. An army jeep pushed their vehicle from the back side and their vehicle started moving. The army then overpowered their vehicle and soon thereafter, Salauddin Qader Chowdhury arrived at the scene with an another jeep. They compelled Sheikh Mozaffar and his son Sheikh Alamgir to get down from the vehicle and took them at the nearby army camp. As they did

not return in 40/45 minutes, she sent her brother-in-law Sheikh Fazlur Huq to the army camp who failed to bring them. But in the meantime, it is reported to her that they were arrested by the army. She then sent her aunt Majeda Begum, who was related to Salauddin Qader Chowdhury, her mother Umme Balkan Chowdhurany and brother Haider Mia Chowdhury to Fazlul Qader Chowdhury at Goods Hill and requested him to arrange for the release of the victims at which Fazlul Qader Chowdhury replied that his son Salauddin Qader Chowdhury was involved in the matter and that he would let them know after his son's return. She believed that as her father-in-law was a top Awami League leader, the accused killed her husband and father-in-law with the help of army and concealed their dead bodies.

She was thoroughly cross-examined but the defence could not discredit her testimony in any manner. She was describing the incident so meticulously and in course of cross-examination also, she answered each and every question so clearly that

there was no reason to discard her evidence. She is a natural and trustworthy witness. Her statement has been corroborated by P.Ws.11 and 20 in material particulars. P.W.11 is a veteran freedom fighter. Exhibit 2 series are newspaper clippings of Daily Azadi, Weekly Chattala and Prothom Alo. These newspapers reported the incident of abduction and killing of the victims in the similar manner disclosing the name of Salauddin Qader Chowdhury as narrated by P.W.17.

The tribunal had meticulously assessed the oral and documentary evidence. The defence has also admitted that Sheikh Mozaffer Ahmed was a renowned Awami League Leader and that the accused and his father were involved in the politics of Convention Muslim League which supported the military junta. The defence has also admitted the killing but according to it they were killed by army. They failed to substantiate their claim. Therefore, the tribunal was perfectly justified in holding the view that when the Awami League leader Sheikh Mozaffar Ahmed and his

family were returning from Rawjan to Chittagong town with his car and and when they reached at the meeting point of Hathajari, an army jeep intercepted and abducted them and took them to the nearby army camp and they were subsequently killed. We find no reason to depart from the views taken by the tribunal that the accused has direct complicity in the abduction and murder of the victims.

The charge is relating to the abduction of Nizam Uddin Ahmed, confining and torturing him at Goods Hill - the prosecution has relied upon the evidence of P.Ws.15, 16 and 19 to prove the charge. We have narrated their evidence in detail earlier. Admittedly Nizam Uddin Ahmed was a veteran journalist and a freedom fighter. While he along with other freedom fighters was at a secret camp at Hathajari Lane, they were abducted by the army and taken to Goods Hill. He was mercilessly assaulted throughout the night by the henchmen of Salauddin Qader Chowdhury. His statement has been corroborated by P.W.19, who is another freedom fighter. He was tortured the whole night by

Al-Shams force who were staying at Goods Hill residence. One of his waist bones was fractured and one tooth was broken due to torture. P.Ws.15 and 19 have been thoroughly cross-examined by the defence but it failed to discredit their testimonies in any manner as regards the time and the place of abduction, the place of torture, the persons who tortured them and the identification of the accused. They narrated the incident vividly. P.W.19 clearly stated that the persons who tortured them are the members of Al-Shams. He also vividly described the location of the rooms and the number of doors and windows of Goods Hill. We find no reason to discard his testimony in any manner. P.W.18 has corroborated P.Ws.15 and 19 so far as it relates to their evidence that the Goods Hill was used as torture center by accused.

The tribunal on evaluation of their evidence has rightly found that the prosecution has been able to prove its case beyond reasonable doubt and that during the liberation period on 5th July, in the

evening, the accused along with his accomplices and Pakistani army abducted P.Ws.15 and 19 with their friend Siraj from the secret freedom fighter's camp at Hajari Lane and tortured them at Goods Hill. They were confined there and on the following day they were taken to the army camp at Chittagong Stadium. P.W.19 was released and two others were sent to jail from Cantonment. They suffered in jail till the independence of the country. It was held that the accused and his accomplices and the Pakistani army had a common objective, organised plan and well designed method to commit those atrocities and persecution with their common intention and thereby, they were liable to an offence punishable under section 4(1) of the Act. We find no reason to depart from the same.

The incident relating to the abduction of Saleh Uddin (P.W.8) and his torture at Goods Hill in the 3rd week of July, 1971, at 5.30 a.m, the prosecution has relied on the evidence of P.Ws.1, 8, 18, 25 and 26. As observed above, P.W.1 is a renowned

educationalist and highly respectable person in the society. He has not made any statement in exaggeration. P.W.8 is the victim of the incident. He was the Vice-Chancellor of a Public University. He saw the accused at Goods Hill and stated that the notorious Al-Shams members Hamidul Kabir Khoka and Sekandar tortured them throughout the night. He stated that Nurul Islam came to take him back and talked to Salauddin Qader Chowdhury, and left the place on being assured to release him. And then in the late afternoon Maijya Mia, Sowdagar and Harun-or-Rashid came to Goods Hill. He was then released with them. He further stated that when he was going with them, Salauddin directed him not to leave the place unless all informations regarding him were collected. These statements sufficiently proved that Salauddin Qader Chowdhury was the main architect in the episode of abduction, torture and release. He has been thoroughly cross-examined by the defence but it failed to discredit his testimony in any manner. There is no reason to discard his testimony. His

statement has been corroborated by P.W.25, who is also a freedom fighter. The defence has practically admitted the incident of abduction by giving suggestion to P.W.25 that P.W.8 has been abducted by army from Jamal Khan with arms. If he was apprehended with arms by the army, he would not have been released later on. The defence has also suggested him that because of rivalry between Saleh Uddin and Shamsu Chairman, he was taken by the latter. This defence suggestion proves the abduction and torture of Saleh Uddin at Goods Hill by the accused and his henchmen. P.W.8 has specifically mentioned the name of Shamsu Chairman, who with his three henchmen abducted him. The defence has also admitted this fact by giving suggestion to P.W.25. In that view of the matter, the tribunal is perfectly justified in finding the accused guilty of the charge. We find no infirmity in the judgment of the tribunal and finding the accused guilty of the charge.

It has been contended by the learned Counsel that the tribunal acted illegally in believing the

prosecution witnesses, particularly P.Ws.3, 4, 5, 6, 7, 8, 13, 14, 17, 18, 19, 20, 25, 26, 27, 31, 32 and 37, inasmuch as, they made material contradiction with their earlier statements made to the investigation officer and on that ground, their evidence should be discarded and that the accused is entitled to get the benefit of doubt in respect of charge Nos.2, 3, 4, 5, 6, 7, 8, 17 and 18.

As regards police contradiction, this Division held that in view of sub-rule (ii) of rule 53 of the Rules, there is no scope to infer any contradiction between the evidence of the witness and his earlier statement made before the police. Or in the alternative, a contradiction between the statements of a witness and his evidence cannot be taken or perceived in any manner. There is no scope under the rules of evidence to infer contradiction of the statement of a witness with those stated to the investigation officer. The Rules provide that the cross-examination of a witness shall be strictly confined to the subject matter of the statement made

in chief. The party, however, is at liberty to cross examine such witness on his credibility and to take contradiction of the evidence given by him. That is, the credibility of the witness can be inferred and taken from the evidence in Chief and not otherwise.

Martin Witteveen, investigation Judge for International Crimes in the District Court in The Hague, the Netherlands, wrote, "The retrieval of the information from the witness is a vulnerable process and full of pitfalls. Investigators, prosecutors and Judges alike always want a chronological narrative of an event by the witness with sufficient focus on time, place, persons, who did, what -when, et cetera. And that is hardly ever the result of witness statement or testimony. Always the information needs to be aroused or triggered by what is called "retrieval cues". As the psychology of a human works, this can be done by any means that arouses the sense organs. Giving pieces of information to the witness or bringing a person to the crime scene or the place

where the event took place can trigger the memory; even a specific scent can do that."

Martin Witteveen gave a very interesting description of an event from his own experience. This experience will vividly show how naturally and essentially a description of a witness can vary time to time depending on the question asked to. He stated, "I remember when asking a witness in the Rwanda case, the question is: "Can you tell me what happened during the attack on April 16th 1994? ", the witness just responded by saying: "The Hutus came and attacked us. They killed all of us." Obviously, further questioning is necessary to retrieve the information. How these questions are asked is critical. The most common pitfall in questioning witness is to ask suggestive questions, commonly known as leading questions. Leading questions are not only suggestive because the answer is included, but witnesses are also inclined to affirm the leading questions."

The investigation officer in reply to a query by the defence said that this kind of variations in description of events are not fundamentally deviating factor, inasmuch as, the witness disclosed those facts in other manner. The witnesses who survive from the act of genocide or who marginally or miraculously save their lives essentially go through hyper traumatic experiences. Due to that traumatic experiences their memories reproduces description of past events in variant ways. Now the question is whether these variant ways of reproduction of memories can be said to be contradictory of the actual happening of the event. As a matter of fact, it is not contradictory, rather under different circumstances when the witnesses were called to describe their experiences, than their narration of the same event comes as a result of different retrieval cues that were posed to them by the officer at the time of question.

The trial of this case has taken place after 42 years. Most of the material evidence are lost due to

death of the witnesses and some of them left the country to avoid similar brutal eventuality. Many surviving witnesses are not tended to disclose the actual incident because of the harrowing incidents of brutalities perpetrated against unarmed innocent people of the locality. More so, the accused is a powerful political leader of the locality and therefore, the living witnesses are not dared to depose against him.

Andrew Cayley, an International Co-prosecutor of Khmer Rouge Tribunal in Cambodia in an article 'Prosecuting and Defending in Core International Crimes Cases using Old Evidence' stated:

"Indeed, one victim who filed a complaint at the Khmer Rouge Tribunal accidentally learned the fate of her disappeared father when, after the regime fell, she bought some food from a street vendor, only to discover that the food was wrapped in a page from her father's forced confession. This led to the discovery that he had been executed at S-21 as an 'enemy of the

people'. This incident highlights the fact that for many societies in which the oral tradition is still strong, and appreciation for the written word is not widespread, documents may not be seen as significant in and of themselves, and instead may be much more valued as, for example, something in which to wrap fish, or to roll tobacco for a cigarette.'

Individuals engaged in mass atrocity crimes often go to great lengths to destroy evidence of their culpability. They can do this by operating in extreme secrecy, so that the existence of evidence is minimized from the start. They burn or otherwise destroy documents and other traces of their acts. They kill and intimidate witnesses. They even made efforts to destroy entire crime scenes. Because of the very nature of systematic mass killing, it sometimes difficult on the part of the prosecution to collect direct evidence satisfactorily, since

who would be prepared to provide such evidence were the objects of the executions and other witnesses, if available were unlikely to incriminate them. In this case, the prosecution has been able to establish those charges by satisfactorily examining direct, circumstantial and documentary evidence.

What is more, P.W.41 has explained that though the witness does not meticulously state the manner they stated in chief, they stated those facts in other manner. He used the language 'identical manner.' It is to be noted that the investigation officer recorded the statements of the witnesses at his own volition, but in course of the trial, the prosecutor conducted the case and the witnesses disclosed the incidents in that manner in which the statements of a witness ought to have been made to prove a charge. So the witnesses disclosed the incidents meticulously. Naturally there may be some variations but if they substantially tally implicating the accused and the incidents, it cannot

be said that the witnesses contradicted with the earlier statements. In view of what stated above, we find no substance in the submission of the learned Counsel.

On consideration of the materials on record, we are convinced that prosecution has been able to prove charge Nos.2, 3, 4, 5, 6, 8, 17 and 18 to the hilt of the case beyond any shadow of doubt. There are strong oral, documentary and circumstantial evidence to find the accused appellant guilty of those charges. More so, the defence has admitted the incidents and also admitted Salauddin Qader Chowdhury's complicity in respect of some of them by way of suggestions. The plea taken by the defence has no basis at all and its plea has been negated by its documentary evidence. The documentary evidence proved by the prosecution regarding the presence of the accused appellant at the crime sites and his involvement in two vital charges. The tribunal has rightly found the accused appellant guilty of those charges. The tribunal has, however, erred in law in finding the accused guilty

of charge No.7. Though we find that Satish Chandra Paul was killed on 14th April, 1971, at noon and his house was also burnt, the prosecution has failed to adduce reliable evidence to connect the accused in the said charge by corroborative evidence and therefore, the accused is entitled to get the benefit of doubt.

As regards sentence, the tribunal has taken lenient view in respect of charge Nos.2 and 4, the killing of five innocent people although the prosecution has been able to prove the said charges beyond reasonable doubt. As regards other charges particularly charge Nos.3, 5, 6 and 8, the incidents were brutal and diabolical. There are strong evidence on record that the accused was not only physically present in those incidents, he had also actively participated in those killing. He showed no repentance or remorse for his conduct at any point of time rather he neglected the process of trial. The tribunal recorded his demeanour observing that he was arrogant and violated the decorum of the tribunal by

shouting off and continued to such conduct throughout the process of the trial despite warnings. He did not show any respect to the members of the tribunal and disregarded the authority of the tribunal. In view of his conduct and behavior, and also in view of his direct participation, and the brutality exerted in those incidents, awarding of death sentences was proportionate to the gravity of those crimes. The awarding to death sentences were adequate and no leniency should be shown to him. He was directly involved in those heinous crimes and his participation was intentional with motive to eliminate a religious community as a whole for political vengeance.

Crimes against humanity and genocides are heinous form of crime that could possibly exist in the human civilization. Throughout the ages in every civilization these crimes are considered as the most atrocious, appalling and terrible acts and extremely hated by each and every one. Accused Salauddin Qader Chowdhury has committed crimes with highest

ruthlessness and extreme atrocity. He persecuted civilian and unarmed people, tortured them to death, caused disappearance of innocent people and helped in disappearing people in collaboration with the occupier Pakistani Army. He rampantly looted and assisted to plunder people's property. The offences were not the one envisaged in the penal laws of any country, the accused in committing those crimes in the synchronised plan and design that were developed and put into execution with cool blood. Salauddin Qader Chowdhury persecuted, killed and caused disappearance of civilian people solely on religious and political grounds. He had direct involvement in the killing of innocent people. The prosecution has been able to establish clearly that he had thoroughly designed plan and common objectives to commit those crimes, especially he had done all these brutal offences with specific intention to exterminate the Hindu religious community and his political opponents from that locality. And he eventually accomplished his killing mission of mass people, a very rarest of atrocities

so far committed with the collaboration of occupying army forces and local allies. Accordingly, it is one of the fittest cases to award such sentences. We find no cogent ground to interfere with the sentences of death.

The appeal is allowed in part. The appellant Salauddin Qader Chowdhury is found not guilty of charge No.7 and he is acquitted of the said charge. The conviction and sentences in respect of charge Nos.2, 3, 4, 5, 6, 8, 17 and 18 are hereby maintained.

CJ.

J.

J.

J.

The 29th July, 2015

APPROVED FOR REPORTING