



THE INTERNATIONAL CRIMES TRIBUNAL OBSERVER

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Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center*

I. EXECUTIVE SUMMARY

THE KAMARUZZAMAN VERDICT

This special report provides a detailed summary of the International Crimes Tribunal's fourth verdict, the Judgment in *Chief Prosecutor vs. Mohammed Kamaruzzaman*.¹ The verdict was issued on 9 May 2013 and was the third verdict to be issued by Tribunal 2. We have attempted to distill the major conclusions expressed by the Tribunal into a digestible format. We have reported on the documentary and witness evidence used to support each distinct charge, general arguments made by both parties, and the conclusions reached by the Tribunal. For the sake of length we have focused this report on the factual and charge specific findings within the Judgment. We will be publishing a supplementary report regarding the legal conclusions made in the Judgment that have particular bearing on the ongoing proceedings. This report does not critically analyze the legal merits of the Judgment. It is presented simply in order to facilitate broader access to and understanding of the ICT's proceedings and conclusions.

Kamaruzzaman was found guilty on 5 of 7 Charges, specifically Charges 1, 2, 3, 4, and 7. He was acquitted of Charges 5 and 6. All of the Charges alleged direct commission of Crimes Against Humanity or, in the alternative, complicity in Crimes Against Humanity. The Prosecution additionally argued that Kamaruzzaman could be found liable under the doctrine of Command Responsibility under Section 4(2). However, he was convicted solely of complicity in Crimes Against Humanity under Section 4(1) of the Act. On the basis of Charges 3 and 4 he was sentenced to death. The Tribunal noted that charges 1 and 7 merited a life sentence, while Kamaruzzaman was sentenced to ten years imprisonment under charge 2. All lesser sentences were merged into the death sentence.

PROCEDURAL HISTORY

Investigation into Kamaruzzaman's involvement in the commission of Crimes against Humanity during the Liberation War began with a formal probe on 21 July 2011. He was

arrested in conjunction with the case on 2 October 2011, though he had previously been in police custody pursuant to another case. The Prosecution first submitted their proposed Formal Charge on 11 December 2011. However, the Tribunal subsequently directed the Prosecution to resubmit the Formal Charge in order to cure possible defects. The Formal Charge was resubmitted on 15 January 2012. It alleged that Kamaruzzaman was a member and organizer of the Al-Badr forces and a leader of the Jamaat-e-Islami student group Islami Chatra Sangha in Mymensingh. The Tribunal took cognizance of the charges on 31 January 2012. The case was transferred from Tribunal 1 to Tribunal 2 on 16 April 2012. The transfer of the case required that the hearing of arguments supporting and opposing indictment of Kamaruzzaman be started anew before Tribunal 2. The Tribunal finally issued the Charge Framing Order indicting Kamaruzzaman on 4 June 2012. The Accused pled not guilty to the 7 Charges of Crimes Against Humanity and complicity in Crimes Against Humanity. The Defense filed an application for review of the Charge Framing Order on 11 June 2012. Subsequent to the hearing of their arguments, the Tribunal amended the Charge Framing Order to specify that Kamaruzzaman was charged with direct commission of Crimes Against Humanity, or in the alternative, with complicity in Crimes Against Humanity.

The Prosecution began its Opening Statement on 7 July 2012 and began examination of their 18 witnesses on 15 July 2012. On 20 February 2013 the Tribunal passed an order limiting the Defense to 4 witnesses. After an application for reconsideration by the Defense, the Tribunal allowed a total of 5 Defense witnesses to be called. They reasoned that this limitation was reasonable because the Defense was not required to disprove the Prosecution case through submission of additional independent evidence. All witness testimony was completed on 24 March 2013. Closing Arguments were completed on 16 April 2013. The verdict was issued just over three weeks after the termination of proceedings.

THE CHARGESⁱⁱ:

1. **Murder, Torture and Other Inhumaneⁱⁱⁱ Acts as Crimes Against Humanity; or in the alternative Complicity in Such Crimes:** Found guilty of complicity to commit Murder as a Crime Against Humanity under Section 3(2)(a)(h) of the ICT Act for leading a group of Al-Badr in abducting civilian Badiuzzaman who was tortured and then killed. Sentenced to life imprisonment.
2. **Inhumane Acts as Crimes Against Humanity; or in the alternative Complicity in Such Crimes:** Found guilty of complicity in inhumane acts as Crimes Against Humanity under Section 3(2)(a)(h) of the ICT Act for attacking, forcibly shaving and whipping Syed Abdul Hannan, the Principal of Sherpur College. Sentenced to 10 years imprisonment.
3. **Murder as a Crime Against Humanity; or in the alternative Complicity in Such a Crime:** Found guilty of complicity in murder as a Crime Against Humanity under section 3(2)(a)(h) for advising and facilitating members of Al-Badr and Razakars in the massacre and rape of unarmed civilians in Shohagpur. Some media sources have stated that Kamaruzzaman was convicted of Genocide

- under Charge 3. This is incorrect, the Charge Framing Order alleges murder as a Crime Against Humanity and it was not amended to Genocide.
4. **Murder as a Crime against Humanity; or in the alternative Complicity in Such a Crime:** Found guilty of complicity in murder as a Crime Against Humanity under Section 3(2)(a)(h) of the ICT Act for the shooting of Golam Mostafa and Abul Kasem at Serih Bridge, causing the death of Golam Mostafa. Sentenced to death.
 5. **Murder as a Crime against Humanity; or in the alternative Complicity in Such a Crime:** Acquitted for the abduction and torture of Md. Liakat Ali and Mujibur Rahman Janu, and their ultimate murder behind the Ahammad Nagar UP office.
 6. **Murder as a Crime against Humanity; or in the alternative Complicity in Such a Crime:** Acquitted for the abduction of Tunu and Jahangir and subsequent torture and death of Tunu.
 7. **Murder as a Crime against Humanity; or in the alternative Complicity in Such a Crime:** Found guilty of murder as a Crime Against Humanity under Section 3(2)(a)(h) of the ICT Act for accompanying members of Al-Badr on a raid of the house of Tapa Mia in Golpajan Road the ultimate killing of six other unarmed civilians with a bayonet. Sentenced to life imprisonment.

II. CASE OVERVIEW

THE PROSECUTION CASE

The Prosecution argued that the Al-Badr group based in the greater Mymensingh and Sherpur areas during the Liberation War played a critical role in the commission of atrocities by targeting and killing unarmed civilians for their pro-independence beliefs. The Prosecution alleged that Muhammad Kamaruzzaman was first engaged in student politics as a supporter of Islami Chatra Shangha (ICS), and became President of the Mymensingh division in 1970. He therefore worked closely with other defendants Motiur Rahman Nizami (the then acting President of ICS nationwide) and Ali Ahsan Mujahid (the Secretary of ICS). The Prosecution claimed that Kamaruzzaman was able to organize Al-Badr in the Mymensingh area by urging the student supporters of ICS to join the auxiliary force. Subsequently Kamaruzzaman instigated the auxiliary group to commit atrocities in Kishorganj, Netrokona, Sherpur, Jamalpur and Mymensingh. The Prosecution further argued that the Accused welcomed Pakistan's presence in the region and actively supported their commission of atrocities. While the Charge Framing Order does not allege Genocide, the Prosecution argued the Hindu community was a primary target alongside pro-independence Bengalis^{iv}. The Prosecution alleged that the Accused is liable for the commission of Crimes Against Humanity based on his direct involvement and his complicity in the commission of such crimes. Additionally, although he was not charged under the corresponding Section 4(2) of the ICT Act, the Prosecution argued that

Kamaruzzaman was liable for the actions of Al-Badr under the Doctrine of Command Responsibility because he was a superior leader in the force.

PROSECUTION SUPPORTING DOCUMENTS

Much of the documentary evidence submitted by the Prosecution was used to establish the general accusation that Kamaruzzaman was the chief organizer of Al-Badr forces in Sherpur and greater Mymensingh region. These documents further go towards proving a nexus between Kamaruzzaman, Islami Chatra Shangha and Al-Badr. Based on this nexus, the Prosecution alleged that Kamaruzzaman bore criminal liability for atrocities carried out by the auxiliary forces.

Exhibit-6:

The Daily Shongram, 16 August 1971. The Newspaper reported that Kamaruzzaman presided over a symposium held the eve of the 25th Independence Day of Pakistan, at the Muslim Institute of Mymensingh.

Material Exhibit-V:

Abu Sayeed, *Bangladesher Shadhinota: Juddher Araley Juddho*, Onnoproakash, March 1999. Page 162 of the book names 20 leaders of Al-Badr High Command. Kamaruzzaman's name is listed in Serial No. 5 as the Chief Organizer of Al-Badr Bahini.

Material Exhibit-I:

Muktijuddha Chetona Bikash Kendro, *Ekatturer Ghatok O Dalal Ra Ke Kothay*, Dhaka 1989. Page 111-112 of the book states that in 1971 Kamaruzzaman was the Chief of the Mymensingh District Islami Chatra Shangha (ICS) and directed the organizing activities for the formation of Al-Badr along with the other members of ICS. It additionally states that Kamaruzzaman provided other members with armed training. Page 190 reiterates the allegation that Kamaruzzaman was the chief organizer of Al-Badr Bahini.

Material Exhibit-III:

Mohiuddin Chowdhury, *Sunset at Midday*, Qirtas Publications, Karachi, Pakistan, 1998. The author Chowdhury was a leader of the local Peace Committee of Noakhali District during 1971 and is the current Head of the Department of Bengali at the University of Karachi in Pakistan. Page 97 of the book states that, in 1971, workers who were members of Islami Chatra Shangho were called Al-Badr. Additionally the book states that the general "patriotic" (pro-Pakistan) public, belonging to Jamaat-e-Islami, Muslim League, and Nizam-e-Islami etc., were called "Al-Shams." The book also refers to the "Al-Mujahid group," another name for the Urdu-speaking community within Bangladesh, also known as Biharis.

Exhibit 12:

Police Directorate, *List of Collaborators*, 12 February 1972, vide memo no. 18-72(1).608-Or, Dhaka (then spelled Dacca), attested photo copy. Signed by Assistant Inspector General of Police to the Ministry of Home Affairs, Government of Bangladesh. The document shows that Kamaruzzaman appeared as No. 287 on the list, and was arrested and detained in Dhaka's central jail on 29 December 1971.

Exhibit 4:

The Daily Azad, issue 31 December 1971. Reports that Kamaruzzaman was arrested as a member of Al-Badr in greater Mymensingh.

Exhibit 14:

The Daily Purbadesh, issue 31 December 1971 and *The Daily Doinik Bangla*, issue 31 December 1971. Report that Kamaruzzaman was arrested as a member of Al-Badr in greater Mymensingh.

Untitled Corroborative Source^v

Dulul Chandra Biswas (ed.), *Shongbadpotrey Muktijuddher Birodhita: Ekattur er Ghatak der Jabat Julum Shorojantra*, Bangladesh Press Institute, March 2013. Page 418 contains a report published in the *Daily Ittefaq*, issue 10 November 1971, noting that in a meeting of the provincial executive council of Islami Chatra Shangha over which President Ali Ahsan Muhammad Mujahid presided, a new working council had been formed which included Kamaruzzaman as 'Office Secretary.'

THE DEFENSE CASE

The Defense denied all accusations and argued that the Prosecution failed to prove any of the charges beyond a reasonable doubt. They asserted that the Charge Framing Order did not specify facts or actions on the part of the Accused showing direct or complicit participation in the alleged offences, but merely made vague allegations. The Defense argued that the Prosecution failed to prove each of the required elements of Crimes Against Humanity, including showing an alleged criminal act to be part of a widespread or systematic attack. Additionally, the Defense highlighted that the Prosecution's supporting witnesses gave contradictory testimony that undermined their assertions and made their statements unreliable. The Defense also noted that the majority of the witnesses provided testimony based on unattributed hearsay, thereby undermining the probative value of the evidence they gave. The Defense argued that the Prosecution had only shown that Kamaruzzaman held a position in Islami Chatra Shangha. They argued that proof of this position, in conjunction with mere verbal statements of support for the actions of another group, is insufficient to prove guilt on charges of Crimes Against Humanity.

DEFENSE SUPPORTING DOCUMENTS

The Defense submitted a number of documents into evidence to reflect the situation existing during the Liberation War. The key point of these documents was that they made no reference to Kamaruzzaman as being involved with the commission of atrocities or associated with auxiliary forces.

Exhibit-C, Volume-1, page 7:

Kamaruzzaman's certificate of Master of Arts (Journalism), issued by Dhaka University. He completed his masters in the year 1975 [].

Exhibit-C1, from Volume-1, page 11

Kamaruzzaman's HSC certificate. He was a candidate of 1971 batch.

Exhibit-D, from Volume-2, pages 1-66:

Ekattorer Juddhaporadhider Taalika (List of war criminals of 71) Dr S.M. Jahangir Alam, February 2009.

Exhibit-E, Volume-3, page 1-13

Juddhaporadh Gonohotta o Bichar er Onneshon, by Dr M.A. Hasan, May 2001.

Exhibit-E1, Volume-3, pages 38:

Sherpur Shomoy, Weekly digest published from Sherpur, dated 26 December 2008.

Exhibit-E2, Volume-3, pages 39:

Daily Amar Desh, issue of 17 September 2010.

Exhibit E3, pages 197, 305, 306:

Ronangoney Muktishena, by Khurshid Alim Shagor. These pages contain details of the death of MMajor Aiyub.

Exhibit E4, Volume 3, pages 321,322:

Ekatturer Bijoy Gatha, by Muntasir Mamun. Pages 30,31,54,55 of the book describe the war in Mymensingh and Sherpur region.

Exhibit E5:

Md Abdul Shukur's book regarding war in Mymensingh.

Exhibit-E6, Volume 3, pages 551, 552, 554:

Bangladesher Shaddhinota Juddho Dolipotro, Volume 10. Pages 457, 458, 462, 463 talks about the death of Major Aiyub and about Prosecution witness Jahurul Haque Munshi taking letters to the camps [].

Exhibit-F, Volume-4, pages 1-11:

Newspaper *Alo'r Michil ey*, issue of January 2005. Kamaruzzaman's presence in Jamalpur PTI camp is not discussed or mentioned.

Exhibit Number Unknown

The Pakistan Army 1966-1971, pages 160-162 contain information about Prosecution witness Jahurul Haque Munshi's hospitality to the Pakistan army and exchange of letters.

Exhibit-G1, Volume-4, page 95

Ekatturer Uttar Ronangon, by M Hamidullah Khan Bir Protik (Sector Commander of 1971), published in 2005, pages 264, 265.

Exhibit-G2, Volume-4, page-107:

Appointment Order of Nur Nobi Khan Nasim, the son of Prosecution witness Monowar Hossain Khan Mohon. Dated 29 October 2011.

Exhibit-G3, Volume-8, pages 140-151:

Gazetter notification dated 14 May 2005. The name of PW Ziaul Islam is not listed as a freedom fighter even though he claimed to be one.

Exhibit-G4, Volume-4, page-159

Photocopy of PW Mohon Munshi's Salary Sheet.

Exhibit G5, Volume-4, page 181:

Bangladesh at war, by Major General KM Shofiullah Bir Uttam, page 195 contains information of the war in Kamlapur from 31st July-1st August 1971.

III. DETAILED ACCOUNT OF THE CHARGES AND SUPPORTING EVIDENCE

LEGAL DEFINITION OF CRIMES AGAINST HUMANITY AND COMPLICITY IN CRIMES AGAINST HUMANITY UNDER THE ICT ACT :

Each of the charges against Kamaruzzaman alleges direct involvement in Crimes Against Humanity, or in the alternative, complicity in Crimes Against Humanity. Charge 2 alleges "other inhuman [sic] acts" as crimes against humanity. The legal definition of "other inhumane acts" is discussed under the heading of Charge 2.

Section 3(2)(a) of the ICT Act of 1973 provides that the Tribunal has jurisdiction over:

“The following acts or any of them are crimes within the jurisdiction of a Tribunal for which there shall be individual responsibility, namely:

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

In its Judgment in *Chief Prosecutor vs. Sayedee*, Tribunal 1 discussed at length the required legal elements for Crimes Against Humanity. The Tribunal held that the ICT Act of 1973 does not require proof of a “widespread or systematic attack,”^{vi} nor did the Court require that the Accused be proven to have knowledge of such a widespread or systematic attack. Despite their unwillingness to define “widespread and systematic attack” as a technical element of the crime, the Tribunal nevertheless stated in the *Sayedee* Judgment that the ICT Act’s requirement that crimes be carried out against the “civilian population” implies the presence of such an attack.^{vii} Therefore, by proving that an alleged crime was committed against the civilian population, they would simultaneously show that there had been a widespread and systematic attack. Additionally, the Tribunal has consistently stated that the context of the Liberation War in 1971 amounted to a widespread and systematic attack.^{viii} The Tribunal has held that there is no requirement that Crimes Against Humanity take place within the context of an armed conflict.^{ix} With the exception of the crime of persecution, the Tribunal concluded that the ICT Act does not require discriminatory intent.^x The same findings have been repeated in Tribunal 2’s Judgment in the case of *Chief Prosecutor v. Abdul Quader Molla*, as well as in the *Kamaruzzaman* Judgment, holding that ‘policy’ and ‘plan’ are not elements of Crimes Against Humanity.^{xi}

THE PROSECUTION POSITION ON THE NECESSARY ELEMENTS OF CRIMES AGAINST HUMANITY

The Prosecution did not lay out their interpretation of the specific elements of Crimes Against Humanity, but reasserted the arguments they made in *Chief Prosecutor v. Abdul Quader Molla* [ICT-BD Case No. 02 of 2012], regarding the legal elements of the crimes and noted that the Tribunal’s holding was in keeping with the definition of Crimes Against Humanity as defined under *Sayedee*. Therefore they asserted that the necessary elements of Crimes Against Humanity are 1) proof of commission of the specified offence: namely murder, extermination, abduction, rape, etc. under section 3(2)(a) of the 1973 Act; and 2) evidence that the crime was “committed against a civilian population.” They argued that fulfilling the latter element fulfills the implied requirement of a systematic or widespread attack as discussed above. However they also argued that proof

of a systematic or widespread attack is unnecessary because the Tribunal has taken judicial notice of the existence of such an attack.

The Prosecution argued that the Accused either directly participated in the crimes committed by participating in abduction, torture, murder or attack, or in the alternative, was complicit in the commission of such crimes. Where there was not evidence of direct involvement of Kamaruzzaman, the Prosecution argued that he must be held liable for offences committed by Al-Badr members under the doctrine of Command/Superior Liability. This was argued extensively, despite the fact that Kamaruzzaman was not charged under Section 4(2) of the ICT Act, which provides for command responsibility. The Accused instead was charged under Section 4(1), which provides for accomplice liability.

THE DEFENSE POSITION ON THE NECESSARY ELEMENTS OF CRIMES AGAINST HUMANITY

The Defense also adopted their arguments from *Chief Prosecutor v. Abdul Qader Molla* [ICT-BD Case No. 02 of 2012], arguing that the legal elements of Crimes Against Humanity are insufficiently defined under the ICT Act and that the Tribunal should borrow the elements and definition of crimes as contained under the Rome Statute and the jurisprudence developed in other ad-hoc tribunals. They argued that the crimes alleged must be shown to have been part of widespread or systematic attack.

CHARGE 1: THE TORTURE AND MURDER OF BADIUZZAMAN AS CRIMES AGAINST HUMANITY, OR IN THE ALTERNATIVE, COMPLICITY IN THOSE CRIMES

FACTUAL ALLEGATIONS:

The Prosecution alleged that on 29 June 1971 at about 11:00 pm Kamaruzzaman led a group of members of Al-Badr Bahini in the abduction of a civilian named Badiuzzaman, who was taken from the house of Ahammad in Ramnagar village of Sherpur district. The victim Badiuzzaman was taken to Ahammednagar Army Camp where he was subjected to torture by Al-Badr members throughout the night. The following day, he was taken into the street, shot and killed by Al-Badr members. His body was thrown into the water beneath a wooden bridge. The Prosecution alleged that Kamaruzzaman was the chief organizer of Al-Badr, and contributed to the entire series of events. They argued that he was therefore complicit in the offences of torture and murder. Additionally, because of his leadership position within Al-Badr, the Prosecution alleged he is also liable under the doctrine of Command/Superior Responsibility.

DOCUMENTARY EVIDENCE SUPPORTING THE CHARGE:

No documentary evidence specifically pertaining to the alleged events of Charge 1 was submitted by either side. However, the Prosecution relied on the general documentary evidence discussed above to show that Kamaruzzaman was the chief organizer of Al-Badr Bahini in Sherpur and the greater Mymensingh area. The Prosecution argued that such evidence corroborates the allegation that Kamaruzzaman lead the Al-Badr team that

abducted Badiuzzaman and that Kamaruzzaman was complicit in the subsequent torture and murder of the victim.

WITNESS EVIDENCE SUPPORTING THE CHARGE:

During trial, the Prosecution called two witnesses to testify in support of Charge 1: Prosecution witnesses 4, Mr Fakir Abdul Manna; and Prosecution witness 6, Mr. Mohammed Hasanuzzaman. Both witnesses provided hearsay testimony regarding the involvement of Kamaruzzaman in the torture and murder of Badiuzzaman. Prosecution witness 6 testified that he directly witnessed the initial abduction of the victim, but was not present during the torture or killing.

Prosecution Witness 4

Prosecution witness 4, Fakir Abdul Manna, who was the general secretary of Sherpur College Students' Union, as nominated by the Chatra League in 1971 (the student wing of Awami League) testified that he was present when Sayedur Rahman^{xiii}, the uncle of PW-6, reported to the local Awami League leaders that Badiuzzaman was abducted by a group of Al-Badr forces and taken to the Ahmednagar camp where he was tortured to death. Rahman reported the incident to the local Awami League office after the Liberation War and the witness was present when he made the report. However, Sayedur stated he first heard about the killing from Makbul Hossain who witnessed the event abduction and stated that the Al-Badr group was led by Kamaruzzaman.

Prosecution Witness 6

Prosecution witness 6, Mohammed Hasanuzzaman, is the brother of victim Badiuzzaman. He testified that he was present when Kamaruzzaman and the other Al-Badr members abducted his brother and took him to Army camp. He stated that he was also abducted. He claimed that Kamaruzzaman and his followers came to his father-in-law's house at 11p.m. and pretended that they were freedom fighters. Kamaruzzaman asked the victim to show them where the Pakistani Army camp at Ahmednagar was located. Allegedly the witness and his brother accompanied Kamaruzzaman to the camp. However, the witness stated that he became suspicious of the Al-Badr group (still posing as freedom fighters) and so managed to escape by pretending to need to use the bathroom and then running away. He did not see the subsequent torture or killing, but claimed he heard about it from other forced laborers working in the Ahmednagar Army Camp.

PROSECUTION ARGUMENTS

In closing statements, the Prosecution reiterated their factual allegations against Kamaruzzaman, stating that he had been proven to be the former chief organizer of Al-Badr forces in the greater Mymensingh area and thereby contributed to and facilitated the torture and killing of the victim Badiuzzaman, who was a pro-independence unarmed civilian. The Prosecution argued that this killing was part of a systematic and widespread attack directed against pro-independence civilians.

The Prosecution acknowledged some of the inconsistencies of the evidence and testimony submitted in support of the charge, but stated that given the situation prevailing during the War of Liberation in 1971 eye-witnesses may not be always available, particularly given the 40 year delay in prosecution. Given these limitations, the Prosecution argued that the Tribunal may rely on the context of the Liberation War, circumstantial evidence, and witness testimony to convict Kamaruzzaman for Charge 1. The Prosecution stated that mere inconsistencies in witness testimony should not be considered fatal for the Prosecution's case.

DEFENSE COUNTER ARGUMENTS:

The Defense closing arguments emphasized that both Prosecution witnesses testifying in support of Charge 1 had provided only hearsay evidence. In the absence of corroborating evidence, direct or circumstantial, the Defense argued that hearsay evidence has limited if any probative value and is insufficient as the basis of a conviction. Further, the Defense emphasized that the witnesses' testimony showed inconsistencies and discrepancies as to the description of why and how the victim was in Ahammad's house, whether or not the group abducting the witness was accompanied by the Pakistani Army or not, the original source of the hearsay information, as well as self-contradiction within the witness' statements or statements previously made to the Investigating Officer. The Defense argued that these inconsistencies undermine the reliability of the witnesses' accusations and raise doubts in the Prosecution's case. The Defense argued that the Prosecution failed to prove their allegations beyond a reasonable doubt and therefore the charge of complicity was not sufficiently established.

HOLDING OF THE TRIBUNAL:

In the Judgment the Tribunal acknowledged the testimony of Prosecution witnesses 4 and 6 favorably, holding that the Prosecution had successfully proven Charge 1 against the Accused. They noted that Manna's testimony was hearsay which was based on what the witness heard from Sayedur Rahman (who did not witness the event) and from Makbul Hossain (PW 6) who did witness the victim's abduction. Nevertheless, the Tribunal stated that the testimony of both witnesses remained "unshaken," and was not successfully discredited by the Defense. Because the Defense's primary argument against the charge is that hearsay evidence is unreliable in general, and in the instant case displays numerous inconsistencies to be relied upon, the Tribunal took time to address the question of the probative value of hearsay evidence. The Court stated that, "the relevance and probative value of hearsay evidence is to be weighed in light of context and circumstances related to material facts depicted from evidence led by the prosecution."^{xiii} They further asserted that "in a case like present one, hearsay evidence can thus be relied upon to prove the truth of its contents, and the fact that it is hearsay does not necessarily deprive the evidence of its probative value"^{xiv} Additionally they reasoned that, "any immaterial discrepancies [in the witness testimony] could be due to the fallibility of perception and memory and the operation of the passage of time."^{xv}

The Tribunal concluded that Kamaruzzaman led the Al-Badr group that attacked Badiuzzaman. “The act of ‘accompanying’ and ‘leading’ the gang who abducted Badiuzzaman is sufficient to infer accused’s [sic] complicity with the offence of his abduction followed by his murder.”^{xvi} Additionally, they concluded that the testimony of Prosecution witness 2, a guard at the Al-Badr camp, supported the allegation that Kamaruzzaman was a leader of Al-Badar in the town of Sherpur and thereby corroborated the reliability of the hearsay testimony of Prosecution witnesses 4 and 6 pertaining to this particular incident.

The Tribunal also dismissed the Defense’s contentions that 1) the conduct of the Accused had not been shown to ‘directly or substantially’ aid the commission of the crime so as to establish complicity; and 2) the required *mens rea* of the Accused had not been proven. “The Tribunal notes that *mens rea* or intent requirement is to be inferred from circumstances and relevant material facts,”^{xvii} and further stressed that the assessment of the evidence is to be made on the basis of the totality of the evidence presented in the case, without addressing all insignificant inconsistencies in witnesses’ testimony.^{xviii} The Court asserted that, within the context of the Liberation War, the acts of the Accused were part of a widespread and systematic attack and therefore qualify as Crimes Against Humanity. Even though the Accused was neither charged nor found to have perpetrated the actual commission of the offence of murder, the Court concluded that liability could follow by reason of his participation in the abduction, because “there can be several perpetrators in relation to the same crime where the conduct of each one of them fulfils the requisite elements of the definition of the substantive offence.”^{xix} The *mens rea* requirement may be inferred from circumstances and relevant material facts, including the mode of participation in the attack.^{xx}

Finally, the Tribunal also noted that, although Kamaruzzaman was not charged under the doctrine of Command Responsibility, his superior status “inevitably comes forward as an ‘aggravating factor’ in determination of the level of his culpability too.”^{xxi} Therefore, the Tribunal found Kamaruzzaman guilty of complicity in the murder of Badiuzzaman under sections 3(2)(a)(h) and individually liable under Section 4(1) of the ICT Act.

CHARGE 2: OTHER INHUMANE ACTS AS CRIMES AGAINST HUMANITY COMMITTED AGAINST ABDUL HANNAN, OR IN THE ALTERNATIVE, COMPLICITY IN SUCH ACTS

FACTUAL ALLEGATIONS:

The Prosecution alleged that Kamaruzzaman and other Al-Badr members, including one Kamran, detained Principal Abdul Hannan, and took him to Surendra Shaha’s house. The Al-Badr members tied a rope around the victim’s waist, shaved his head and put lime and ink on his face. He was then stripped and forced to walk around the town while being whipped. The Prosecution alleged that Kamaruzzaman directly participated in detaining and abusing the victim, and that he planned the entire incident in order to insult the victim.

DOCUMENTARY EVIDENCE:

No separate documentary evidence was submitted during trial for the charge. Exhibits relevant to show the general leadership position of the Accused in Al-Badr were likewise relevant here.

WITNESS EVIDENCE:

The Prosecution called three witnesses in support of Charge 2: Prosecution witness 2, Mr. Monowar Hossain Khan aka Mohon Munshi; Prosecution witness 3, Commander Johurul Hoque Munshi; and Prosecution witness 14, Mujibur Rahman Khan Panu. Prosecution witnesses 2 and 14 both testified as eyewitnesses, while Prosecution witness 3 provided hearsay testimony.

Prosecution Witness 2

Monowar Hossain Khan, aka Mohon Munshi, testified that he had been a guard at the Al-Badr camp for 7 months during the war. He claimed that two days after he joined the camp at Surenn Shaha's house he heard the Accused Kamaruzzaman, Kamran and other Al-Badr members planning to force Principal Hannan to walk through the town with lime and ink on his face and his head shaved. The witness stated that he also witnesses the Accused and his accomplices carrying out this plan. The victim was reportedly brought back to the camp where he lost consciousness. The witness testified that after the victim regained consciousness he was sent back to his home based on the order of one Major Riaz.

Prosecution Witness 3

Commander Johurul Hoque Munshi provided hearsay evidence. He claimed that he had heard about the attack on Principal Hannan when he visited the Al-Badr camp in Sherpur to collect information in disguise. He claimed it was either during late September or early November of 1971. He reportedly heard that the victim had been attacked by Kamaruzzaman and one Major Ayub because students were not attending his college, which was taken as a signal of the Principal's support of the liberation movement. He also testified that Kamaruzzaman and Major Ayub frequently visited the different Al-Badr training camps during the war and made public announcements using loud speakers warning that anyone who helped the freedom fighters would face severe consequences.

Prosecution Witness 14

Mujibur Rahman Khan Panu testified as an eyewitness. He stated that he saw the attack on Principal Hannan. He claimed that the victim had been picked up by Kamaruzzaman, Kamran, and others, and was taken to the Al-Badr's camp in Surenn Shaha's house. He was reportedly forced to walk from there through the Sherpur town with lime and ink on his face and his head shaved, tied with rope around his waist. The witness stated that the incident took place after his release from the camp, in May 1971.

PROSECUTION ARGUMENTS

The Prosecution submitted that the definition of ‘*other inhumane acts*’ for the purpose of Crime Against Humanity is not contained in the 1973 Act and therefore should be defined according to humanitarian law and principles of human rights as stipulated under the Universal Declaration on Human Rights 1948 (UDHR), the International Covenant on Economic, Social and Cultural Rights 1996 (ICESCR) and the International Covenant on Civil and Political Rights 1966 (ICCPR). As enumerated in Article 7(1)(k) of the Rome Statute, the Prosecution stated that “other inhumane acts” are those acts similar in character to other Crimes Against Humanity that involve the intentional causation of great suffering or serious injury to body or to mental or physical health. Sexual violence, forcible transfer of people, desecration of corpses, attempted murder, extensive destruction of property and the practice of forced marriage are all examples of acts that have been found to constitute “other inhumane acts” under law.

The Prosecution argued that the acts committed against the victim, Principal Abdul Hannan, are tantamount to a violation of Article-5 and 12 of UDHR because they constitute a serious attack on his “human dignity,” carried out with the purpose of degrading, dishonoring and slandering the reputation of the victim as the head of an educational institution. The Prosecution additionally argued that the acts committed against the victim were offensive to the community as a whole and led to ‘*Third Party Mental Suffering Syndrome*.’ They noted that the acts committed against the victim were particularly inhumane when considered within the socio-religious culture of Bangladesh in which teachers are highly respected by Muslims, Hindus, Buddhists and Christians alike.

DEFENSE COUNTER ARGUMENTS

The Defense countered that the “other inhumane acts” is not a catch-all category, and emphasized that the alleged inhumane act must be of the same gravity and seriousness as other Crimes Against Humanity. They contended that offenses of lesser gravity than murder, rape etc. should not be considered. Additionally, the Defense argued that an act must be carried out on the discriminatory basis of political, racial, ethnic or religious identity in order to amount to an “other inhumane act.” Furthermore, the Defense argued, the act must be carried out systematically and on a large scale in order to constitute a Crime Against Humanity.

The Defense argued that the inconsistencies in the witnesses’ testimony regarding the date of the incident show that their testimony is unreliable. They noted that the particulars of Charge 5 show that the killing of several detainees took place in the month of Ramadan (corresponding to November 1971), after which Prosecution witness 14 was released from the camp. This contradicts Prosecution witness 14’s testimony that the torture of Principal Hannan took place in May 1971, after his release from the camp. The Defense contended that these approximate dates cannot both be right, and accordingly either the charge is ill-framed or the witness’ testimony is incorrect and unreliable. The

Defense pointed out additional inconsistencies in the description of how the victim was tortured, as well as conflicting accounts of whether he was transported at one point by car. Lastly, the Defense emphasized that Prosecution witness 3's testimony had been based on unattributed hearsay, making his testimony even more unreliable.

HOLDING OF THE TRIBUNAL

The Tribunal concluded that Prosecution witnesses 2 and 14 were reliable eyewitnesses, and that the hearsay evidence provided by Prosecution witness 3 could be used to corroborate the narrative.^{xxii} They held that the cumulative evidence from the three witnesses not only proved that Kamaruzzaman had caused "other inhuman [sic] acts," but also illustrated "the position and authority of Accused Muhammad Kamaruzzaman from which it may be indisputably concluded that he had such a level of influencing even the Pakistani occupation army"^{xxiii} in addition to being the commander of Al-Badr in Mymensingh. The Tribunal held that it could be inferred that the Accused had full knowledge of the commission of these crimes.

The Court disagreed with the Defense's contention that the material inconsistencies between the statements of Prosecution witnesses showed that their allegations had been unreliable or that their statements had been coached by counsel.^{xxiv} The Judgment concluded that, "inconsistencies may naturally occur in evidence of a witness when he is on dock to narrate different events that took place long four decades ago."^{xxv}

The Tribunal also agreed with the Prosecution's approach to categorizing the specific acts committed against Principal Hannan as "other inhumane acts," given his respected position within Islamic socio-religious culture, and the humiliating nature of his treatment. The Court noted that the Principal Hannan had been targeted because he was a senior figure, working in a respected educational institution, who supported the independence of Bangladesh.^{xxvi} In deeming these acts to be of "similar seriousness" to other Crimes Against Humanity, the Tribunal considered the nature of the act, the context in which it occurred, the individual circumstances of the victim and the physical and mental effects on the victim. They found it unnecessary to show that the victim suffered long-term effects.

The Tribunal concluded that other inhumane acts had been committed "at the explicit instigation of, or with the approval or acquiescence of the Accused."^{xxvii} The Court noted that, even if Kamaruzzaman had merely failed to act to stop such acts, there was no bar to finding him guilty under section 4(1) (which provides for individual liability) and under the theory of Civilian Superior Liability, which is codified under Section 4(2), despite the fact that Section 4(2) is not alleged in the Charge Framing Order.^{xxviii} Nonetheless the Tribunal held that Kamaruzzaman was complicit in the commission of other inhumane acts as Crimes Against Humanity under section 3(2)(a)(h) and liable under section 4(1) of the ICT Act. The Judgment did not mention Section 4(2) in the concluding remarks on Charge 2.

CHARGE 3: MURDER AS CRIMES AGAINST HUMANITY, OR IN THE ALTERNATIVE, INCITEMENT TO COMMIT CRIMES AGAINST HUMANITY

FACTUAL ALLEGATIONS:

The Prosecution alleged that on 25 July 1971, Kamaruzzaman acted as the chief organizer of Al-Badr Bahini, and as a leader of ICS in advising the Al-Badr and Razakar forces accompanying the Pakistani Army to launch a raid and massacre on Shohagpur village. The attack allegedly resulted in the murder of 44 named victims, 120 unnamed civilians as well as rape against unnamed women.

SUPPORTING DOCUMENTARY EVIDENCE:

No separate documentary evidence was submitted during trial in support of this charge. Exhibits that were used to show the leadership position of the Accused within Al-Badr are relevant here.

SUPPORTING WITNESS TESTIMONY:

Charge 3 was supported at trial by the oral testimony of Prosecution witnesses 2, 10, 11, 12 and 13.

Prosecution Witness 2

Monowar Hossain Khan, aka Mohon Munshi, testified that he was a guard at the Al-Badr camp for 7 months during the war. He stated that while he was working he learned that Kamaruzzaman was holding an Al-Badr meeting on the upper floor of the camp building in which he told the members that freedom fighters had reached Shohagpur village. He told Al-Badr that they must blockade the village. After the meeting, Kamaruzzaman and the other Al-Badr members reportedly launched a siege against the village. The witness stated that on the following day he saw many dead bodies being brought back by the Al-Badr members in a truck to the Municipality Park. There, the witness heard Kamaruzzaman state that members of Al-Badr and the Razakars had killed these men during an operation.

Prosecution Witness 10

Jalal Uddin, a son of a victim of the massacre, testified that, on 25 July 1971, he heard the Pakistani Army, Al-Badr and Razakars arrive in Shohagpur village and begin shooting. He stated that he was hiding during the raid. After the shooting subsided, he emerged and saw many dead bodies in the area. After running back to his house, he found the bodies of his father, uncle, cousins and many others. He, his younger brother Alal, Rustam Ali, and some others helped to dig three mass graves in order to bury the dead. He testified that he had been told by some of elderly people who survived the massacre that about 245 civilians in

Shohagpur and Benupara villages were killed. They additionally told him that Razakars by the name of Boka Bura, Nasa, Siddik Member and Kadir Doctor brought the Pakistani Army to the village. They survivors told the witness said that Kamaruzzaman was the chief of the auxiliary forces that attacked.^{xxx}

Prosecution Witness 11

Hasen Banu, wife of one the victims, testified that she had heard gun fire from her house at about 9 am on the 10th Sravon of Bengali calendar (corresponding to last part of July). She stated that she went to hide with her child, father-in-law and mother-in-law. Afterwards, when they came out of hiding, she found the dead body of her husband in the yard of their home, along with the body of Zahurul Haque and another unidentified man. The witness testified that Kamaruzzaman was a big Razakar, and that he and Razakars Nasa, Boka Bura, and Mozaffar had planned to kill her husband and others. She also claimed that, on the preceding day, three perpetrators (army men and an Al-Badr member) had chased a girl into the witness' room. One of the army men then raped the girl, while the two others were standing at the door. The witness was inside the room during the incident. Soon after, the two men standing at the door entered the room and raped the witness.^{xxx}

Prosecution Witness 12

Hafiza Bewa, a wife of a victim of the massacre, testified that the Panjabees, Al-Badr, Razakars, and Kamaruzzaman killed her husband Ibrahim on 10 Sravon in 1971, at around 7 am. She testified that she had heard that Kamaruzzaman was involved from the elderly people who survived. She additionally testified that the Pakistani Army forcibly entered her home along with members of Al-Badr and Razakar forces. She stated that Kadir Doctor and Baka Bura raped her, and that Kamaruzzaman may have been with them. According to her testimony, this occurred on the same day that Prosecution witness 13, Korfula Bewa, and others were also raped while many others were killed.

Prosecution Witness 13

Korfuli Bewa, also a widow of a victim, testified that she had lost her husband in the Shohagpur massacre. On the day of the incident, she stated that she heard gun fire. Soon afterwards, two Panjabee Pakistani Army members accompanied by Boka Bura, Nasa, and the Accused Kamaruzzaman, reportedly came and shot her husband and brother in-law, after having asked if they were freedom fighters. The witness said she fled from the area. Three days later, she returned home and buried the remains of the dead. She testified that, upon her return home, the Pakistani Army came back to her house, and soldiers raped her. She testified that the Pakistani Army was accompanied by Boka Bura, Nasa, Muje, and Kamaruzzaman.

PROSECUTION ARGUMENTS

The Prosecution argued that the Accused provided advice and support to his fellow Al-Badr members by launching the attack against Shohagpur village. Many were killed in the attack, women were raped and others were forced to flee their homes abandoning their property.

In closing arguments, the Prosecution argued that, in light of the seriousness of the attack, the alleged crime should be categorized as Genocide instead of Crimes Against Humanity, as had originally been charged. They cited particularly to the three alleged instances of rape in arguing that such “indiscriminate sexual invasion” shows that the perpetrators acted “with the intent to destroy, either whole [sic] or in part, the women community or group of Sohagpur village which constituted the offence of ‘genocide.’”^{xxxii}

The Prosecution argued that Kamaruzzaman bears direct responsibility for his participation in the massacre at Sohagpur. In the alternative, they argued that he is liable for complicity in the crime. They further argued that Kamaruzzaman could be found liable under Section 4(2) Command Responsibility, as a superior officer of Al-Badr, despite the fact that Section 4(2) was not contained in the Charge Framing Order. The Prosecution submitted that their witnesses provided circumstantial evidence regarding the severity of the massacre. Prosecution witness 2 had testified about the role of the Accused in inciting the massacre. The Prosecution submitted that such evidence alone should be a sufficient basis for the conviction of the Accused.

DEFENSE COUNTER ARGUMENTS

The Defense argued that the Prosecution’s case relied on witnesses who were untrustworthy and have been coached by counsel. They noted that the testimony also displayed significant inconsistencies and discrepancies. For instance, they noted that Prosecution witness 12 claimed that she and Prosecution witness 13 were both raped on the same day, but Prosecution witness 13 claimed that she was assaulted days later after she had fled and then returned home. The Defense also pointed out that the witnesses had differing accounts of the transportation used by the Accused and did not consistently implicate Kamaruzzaman. For example, they stated that at the beginning of her examination Prosecution witness 12 stated unequivocally that Kamaruzzaman killed her husband. Later, she said that that she had only heard that he was involved. During his courtroom testimony Prosecution witness 10 also stated that Accused was the head of Al-Badr. However, he had not made the same accusation in his original statement to the Investigating Officer. The Defense argued that such inconsistencies between the original statements made during the investigation stage and the later testimony of witnesses points to the likelihood of witness tampering and coaching by the Prosecution. They noted that on a few topics the widows gave strikingly similar comments.

According to Defense submissions, those witnesses describing the massacre did not personally witness the Accused’s presence at the crime site, and their hearsay statements did not sufficiently link the Accused to the events. While the Defense did not deny that the Shohagpur massacre occurred, they argued that the alleged involvement of the

Accused in the planning and execution of the attack was fabricated and remained unproven.

The Defense countered the Prosecution's version of events by claiming that the Accused had stayed in his native home during the liberation war, and therefore could not have been involved with any of the alleged crimes. However, the Defense offered no evidence in support of this alibi. Defense witnesses 1 and 2 did offer some circumstantial evidence in favor of Kamaruzzaman when they described the condition of Sherpur area during the war of liberation. Both witnesses said that they had never heard the name of Kamaruzzaman as being affiliated with Al-Badr or Razakars in the area or elsewhere. Defense witness 3, the son of the Accused, offered documentary evidence describing the war in the Mysmensingh/Sherpur area, and noted that none of the accounts in the document referred to Kamaruzzaman as being an Al-Badr or Razakar member.

HOLDING OF THE TRIBUNAL

The Tribunal noted that the charge, as framed, did not allege that Kamaruzzaman directly physically participated in the commission of murder as a crime against humanity. Instead, he was charged with complicity in the commission of the offence. Therefore, the Tribunal determined that it was responsible for determining whether the Accused "acted and conducted to the accomplishment [sic] of the substantive horrific crime that took place at Shohagpur village."^{xxxii} The Judgment concluded that the testimony of Prosecution witnesses 11, 12 and 13 regarding the killing of their husbands and relatives and their own experience of rape remained "unshaken," and had not been successfully discredited by the Defense. Each of these witnesses incriminated the Kamaruzzaman and helped establish that he accompanied the Pakistani Army and Razakars during the raid operation.^{xxxiii} The allegations were further supported by the testimony of Prosecution witness 10, the Chamber ruled.

Based on testimonial evidence, the Judgment concluded that Kamaruzzaman had orchestrated the attack during the meeting held at the Al-Badr camp at Suren Saha's house in Sherpur. The Court noted that "proof of all forms of criminal responsibility, through participation in any manner can be given by direct or circumstantial evidence," and that "the acts of the accused [sic] do not always need to be committed in the midst of the attack provided that if [sic] they are sufficiently connected to the attack."^{xxxiv} They further defined that "the act of providing advice entails a person in a position of authority using that position to convince and approve another to commit an offence."^{xxxv} Therefore, the actions of Kamaruzzaman "had an effect on the commission of the crime of mass killing and rampant rape."^{xxxvi} The Tribunal found it unnecessary for the Prosecution to prove that Kamaruzzaman's actions were a "but-for" cause of the massacre.

In relation to the various discrepancies and inconsistencies in the witness testimonies, and the Defense's allegations that the statements were untrustworthy and coached, the Tribunal noted that mere omission in narrating precise details is not in itself contradiction, and does not therefore impair the value of the sworn testimony. Neither

does it render the evidence unreliable. Rather than discrediting the Witnesses who testified, the Court acknowledged that the trauma suffered by the victims likely impacted their ability to recount the events with clarity. According to the Court, an illiterate traumatized woman cannot be expected to narrate such events with full and accurate precision. “The totality of evidence of all these P.W.s shows a demonstrable link of the accused [sic] to the actual commission of [sic] Shohagpur massacre”^{xxxvii}

The Court was not persuaded by the Prosecution’s argument that the Sohagpur killings and rapes constitute Genocide. They stated that “mere multiplicity of victims of murder cannot term the event as genocide” and that the necessary elements of the crime had not been established.^{xxxviii}

Regarding the defense of alibi, the Tribunal found nothing in the testimonies of the defense witnesses to support the defendant’s alibi, nor any other affirmative defense. With respect to the exhibited books and documents submitted by the Defense to show absence of Kamaruzzaman’s name in paramilitary lists, the Court held that the mere absence of the Accused’s name “does not *ipso facto* help the defense to disprove the prosecution case.”^{xxxix} Similarly, they concluded that Defense witness 1’s testimony that Kamaruzzaman had not been present at the scene of the crime was not sufficient to exculpate him, because complicity through ‘advice’ does not require actual presence.

In summary, the Tribunal concluded that Kamaruzzaman was a significant leader of Al-Badr in the greater Mymensingh area, and that he had acted with full awareness in the role of ‘advisor’ in planning the operation resulting in the massacre at Sohagpur.^{xl} It should be noted that, despite the testimony regarding the commission of rape in conjunction with the attack on Sohagpur, Kamaruzzaman was neither charged with nor convicted of rape as a Crime Against Humanity under this charge.

CHARGE 4: MURDER AS A CRIME AGAINST HUMANITY, OR IN THE ALTERNATIVE, COMPLICITY IN THE COMMISSION OF SUCH CRIMES

FACTUAL ALLEGATIONS:

The Prosecution alleged that, on 23 August 1971 around the time of evening prayer, Kamaruzzaman, as the chief organizer of Al-Badr forces and leader of the Islami Chatra Shangho, instructed his followers to apprehend Golam Mostafa. The victim was then taken from College Morh in Sherpur sometime between 7:30 and 11:00 am. He was detained at the Al-Badr camp in Surendra Shaha’s house, and was later taken to the Serih Bridge where he was killed. The Prosecution alleged that Abul Kasem had been detained along with Golam Mostafa, but managed to survive by jumping from the bridge into the river.

SUPPORTING DOCUMENTARY EVIDENCE:

No separate documentary evidence was submitted for this charge during trial. Exhibits that were used to show the general leadership position of the Accused within Al-Badr are

relevant to the Prosecution's claim that Kamaruzzaman exercised command or accomplice responsibility by ordering Al-Badr members to commit crimes.

SUPPORTING WITNESS EVIDENCE:

Charge 4 was supported by the oral testimony of Prosecution witnesses 2, 5 and 14.

Prosecution Witness 2

Md Monwar Hossain Khan, also known as Mohan Munshi was a guard at the alleged Al-Badr camp during the period in question. He testified that Golam Mostafa had been brought to the camp blind-folded and tied-up, and was detained there until he was taken to Seri Bridge that night and killed. He said that a man from *Kajir Khamar* (he did not know his name) and an uncle of the victim from Kharkharia came to seek the release of the victim but were refused. Before dusk, a Pakistani Major by the name of Riaz reportedly came to the camp and was told by Kamaruzzaman that an Awami League supporter had been captured. After Major Riaz left that evening, a retired Pakistani army officer by the name of Nasir came to the camp and took the victim by rickshaw towards Seri Bridge. Nasir was armed with a Chinese rifle. The witness claimed that Kamaruzzaman had left five minutes before Riaz. After about an hour, Nasir returned, accompanied by Kamaruzzaman. The witness heard that Nasir had complimented Kamaruzzaman (whom Nasir referred to as 'Sir') by saying, "Sir's target/aim is now more accurate" and "now he has the courage and is able to operate a gun."^{xli}

Prosecution witness 5

Mosharaf Hossain Talukdar, the brother of the victim Golam Mostafa, provided hearsay evidence. He stated that he had heard after the liberation about the alleged abduction of his brother. He heard that Golam Mostafa was at the Sherpur College intersection when, on the instructions of Kamaruzzaman, some Al-Badr members detained him and took him to Suren Shaha's house where Al-Badr's camp was located. The witness stated that their uncle, Tofael Islam, a member of local Peace Committee, had visited the camp to request Golam's release, but was refused by Kamaruzzaman. Another Peace Committee leader, Samidul Haque, also unsuccessfully requested Golam's release. The witness testified that he had heard about the killing of the victim from Abul Kashem, who allegedly was taken to the bridge along with Golam Azam, but managed to escape death by jumping into the river. Abul Kashem told the witness that the victim had been taken to Seri Bridge where he was stabbed with a bayonet and then shot.

Prosecution witness 14

Mujibur Rahman Khan Panu testified that his brother, Ansar Ali, told him that Kamaruzzaman and his followers detained the victim and took him to Suren Shaha's house. Ansar Ali had reportedly told the witness that Kamaruzzaman and his accomplice picked up Mostafa, who was taken to Al-Badr camp at Suren Saha's house and was shot the following day. According to the witness, the

killing took place in the last part of May 1971, after PW-14's release from Ahammednagar Camp. The witness testified that he had encountered the victim on the day he was abducted. The victim reportedly had told him that he was going to appear in the Higher Secondary Certificate (HSC) examination.

PROSECUTION ARGUMENTS

The Prosecution alleged that Kamaruzzaman instructed his subordinates to abduct Golam Mostafa. Although the evidence indicates he was not personally present during the abduction, and there was no witness to his role in the ultimate killing of the victim, the Prosecution argued that he was complicit in the commission of the offence. The Prosecution submitted that the act of providing 'instruction' is not always concretely discernable, but may be inferred from the facts and circumstances surrounding the events.

DEFENSE COUNTER ARGUMENTS

The Defense argued that the witnesses testifying in support of this charge were unreliable and gave inconsistent statements. Defense reiterated the accusation that Prosecution witness 2's testimony had been coached by the Prosecution, and was contradictory as to key facts. They noted that during his courtroom testimony Prosecution witness 2 introduced new alleged facts, such as the victim being blind-folded and an attempt by the victim's uncle to solicit Golam's release. However, none of these statements had been told to the Investigating Officer during the witnesses' original interviews. The Defense asked the Court to dismiss Prosecution witness 5's testimony as uncorroborated hearsay evidence. Defense likewise rejected Prosecution witness 14's hearsay testimony, noting that it alleged that the event had occurred on a date that did not correspond to the month or date alleged by the Prosecution.

The Defense asserted that no specific information had been provided showing the involvement of the Accused in the ultimate murder of the victim. Based on these discrepancies and lack of specific evidence, the Defense argued the Prosecution had failed to meet its burden in proving the charge. The Defense also referenced the testimony of Defense witness 2 in order to support the Defense theory of the case, which posited that the victim had in fact been killed by the Pakistani Army, without the complicity of the Accused.

HOLDING OF THE TRIBUNAL

The Tribunal acknowledged that none of the Prosecution witnesses claimed to have witnessed the event of Golam Mostafa being killed, but the Court nevertheless agreed with the Prosecution that the act of providing instruction may be inferred from the relevant facts and circumstances.^{xlii} In response to the Defense's arguments about lack of corroborating evidence to support hearsay statements, the Tribunal ruled that corroboration is not a legal requirement for reliance on hearsay testimony. The Judgment further concluded that circumstantial evidence and relevant material facts could be reasonably considered as corroboration to hearsay evidence. Mere inconsistency in

witness' statements does not impair the entire testimony, the Court opined, particularly when it relates to material facts.^{xliii}

The Judgment determined that the testimony of Prosecution witness 2 was a fair indication that the Accused held a leadership position within Al-Badr and also had informal influence, even over Pakistani Army Major Riaz. The Court concluded that the conversation between Kamaruzzaman and Major Riaz, as quoted by Prosecution witness 2, evidenced the hostile attitude held by the Accused toward pro-liberation Bengali civilians. These circumstances led the Court to find that the forcible detention of Golam Mostafa at the camp had been carried out at the instruction of the Accused. The Judgment noted that, "the presence of a person in a position of authority at a place where a crime is being committed, or at which crimes are notoriously committed, may convey approval for those crimes which amounts to aiding and abetting."^{xliiv} Furthermore, the Tribunal ruled that the Defense was unable to refute the statements of Prosecution witness 5, who also asserted that the victim had been apprehended and brought to the Al-Badr camp at Kamaruzzaman's instruction.

The Tribunal did observe the "glaring and fatal inconsistency" between the alleged date of the incident and the date given in testimony by Prosecution witness 14. The Judgment acknowledged that such glaring inconsistency did create doubt about the witness' testimony. Nevertheless, the Tribunal found that the witness' own claim of abduction remained unquestioned, as did his experience relating to the acts and conduct of the Accused during the period of detention.^{xlv} The Court found that the Defense had failed to discredit the statement of Prosecution witness 14 alleging that Kamaruzzaman had instructed Major Riaz to "finish" the detainee. The Tribunal therefore found that a close association between Kamaruzzaman and the Pakistani Army at the Ahammednagar army camp had been established. They also noted that Defense witness 2's testimony also confirmed that Kamaruzzaman's known accomplice Kamran was among those who provided assistance to the Pakistani Army.

In conclusion, the Tribunal found that the Prosecution successfully proved that Kamaruzzaman participated in the accomplishment of the crimes under Charge 4. The Judgment concluded that the criminal act in question was not an isolated crime, but rather part of a systematic attack constituting a Crime Against Humanity. It was immaterial, according to the Court's findings, that Kamaruzzaman himself may not have physically participated in the commission of the crime, because he acted in a manner which eventually facilitated the actual carrying out of the criminal acts.^{xlvi} The Court concluded that it was established beyond a reasonable doubt that the relatives of the victim repeatedly appealed to Kamaruzzaman for the victim's release but were refused. Based on this finding, the Court concluded that Kamaruzzaman had failed to prevent the subsequent murder of the victim despite having the authority to do so.

CHARGE 5: MURDER AS A CRIME AGAINST HUMANITY, OR IN THE ALTERNATIVE, COMPLICITY IN SUCH A CRIME

FACTUAL ALLEGATIONS:

The Prosecution alleged that midway through the month of Ramadan in 1971 (corresponding to November), Kamaruzzaman and 4 or 5 members of his Al-Badr accomplices apprehended Md Liakat Ali and Mujibur Rahman Panu from their houses in Chakbazar, Sherpur and brought them to the Razakar camp at Ragunathpur Bazar. There the victims were allegedly tortured before being taken to the police station. After four days of detention in the police station, Kamaruzzaman allegedly ordered that they, along with 11 other detained civilians, be taken to Jhinaigati Ahammad Nagar Army Camp. Once at the camp, they were taken to a ditch beyond the local Ahammad Nagar Union Parishad office, where they were shot to death. Only three survived, having been separated from the rest before the shooting. The Prosecution alleged that Kamaruzzaman and his accomplice, Kamran, were present during the killings.

SUPPORTING DOCUMENTARY EVIDENCE:

No separate documentary evidence was submitted for this charge. Exhibits that were used to show the general leadership position of the Accused within Al-Badr are relevant to the Prosecution's claim that Kamaruzzaman exercised command or accomplice responsibility by ordering Al-Badr members to commit crimes.

SUPPORTING WITNESS EVIDENCE:

Charge 5 was supported by the oral testimony of Prosecution witnesses 7 and 14.

Prosecution Witness 7

Md. Liakat Ali, now 60 years old was a college student during the war of liberation in 1971, and tried to organize student organizations to resist the Pakistani army in March 1971. After failing to do so, he went to Dalu camp in Meghalaya, India and later returned to Nalitabari in Sherpur. Later sometime in November, the witness was apprehended by Al-Badr members, who took him from his home in Sherpur to the Banthia building camp. There he saw two other detained persons, namely Mujibur Rahman (PW-14) and Sattar. On the same night they were taken to the police station where they were detained for two days before being moved to Ahmed Nagar army camp. At about 12:00 noon, the witness and other detainees had been taken by the Pakistani Army from the Ahmed Nagar army camp to a large ditch behind the local Union Parishad Office. The witness testified that they were blindfolded. The soldiers ordered them to stand in a queue, and one Captain ordered them to recite *Kalima* (an Islamic prayer) following which they were to be shot. Just before the shooting, Major Riaz arrived suddenly and asked the Army to stop. He called three of the detainees, including Prosecution witnesses 7 and 14, by their names. These three individuals were allowed out of the ditch and released.

Prosecution Witness 14

Majibur Rahman Khan Panu testified that Kamaruzzaman, Mintu Khandker, Advocate Tara, Halu Mia and 4-5 other armed accomplices apprehended the witness in May 1971 at his home. They took him to the Banthia building camp in Sherpur. He testified that PW-7, Liakat, was also there, and that Abdus Sattar and Chana Master were later brought in. Later that night, Kamaruzzaman directed his accomplice Tara to take the four to Sherpur Police Station. They were transported there around midnight. Upon arrival, the witness found that seven others from Tikarchar village had already been detained there. Two days later, all eleven detainees, including the witness, were taken to Ahmed Nagar camp by 4 or 5 Pakistani Army men. They were reportedly forced to stand on the east road of Ahmed Nagar school. Soon after, they were taken to a deep ditch and asked to stand up in a line. The witness also corroborated PW 7's testimony that an army officer had asked all the detainees to start praying. Major Riaz arrived about 10 minutes later, accompanied by Kamaruzzaman, and reportedly asked the army men not to shoot. He then asked the names of all detainees. The witness testified that Kamaruzzaman told Major Riaz that all the detainees were freedom fighters, and that it would be detrimental to allow them to live. According to the witness, Major Riaz ordered the release of Prosecution witness 14 and 7 on the condition that they report to the Ahmednagar Army camp every morning. The witness stated that Kamaruzzaman and his accomplice Kamran left the site a bit later in the jeep.

PROSECUTION ARGUMENTS

The Prosecution emphasized that PW-7 and PW-14 corroborated one another's evidence well, and that this tended to prove the role of Kamaruzzaman in the killing at Ahammednagar camp. They argued that the act of apprehending the witnesses and ordering them to be taken to the police station, in conjunction with Kamaruzzaman's overall relationship with the Pakistani Army and authoritative position within the Al-Badr, clearly showed the complicity of the Accused in the killing of the detainees. Furthermore the Prosecution argued that Kamaruzzaman had advocated that the witnesses be killed with the other detainees rather than being released. Prosecution witness 14 positively identified the Accused in the Banthia building camp and later at the site of killing. He had been able to reliably identify Kamaruzzaman and Kamran because they had their clothes made at the witness' shop. The Prosecution argued that any inconsistencies in the witness' statement were minor and did not devalue his testimony in its entirety.

DEFENSE COUNTER ARGUMENTS

The Defense countered that inconsistencies in the relevant witness testimony gave rise to significant doubt about the truth of the charge. They noted that the Charge Framing Order alleged that the murders of those detained with Md Liakat Ali and Mujibur Rahman Panu took place in the month of Ramadan (late October/early November) but that Prosecution witness 14 testified that the incident took place in the month of May, 1971. Thus, similar to Charge-2, there was a substantial contradiction regarding the alleged date of the

killing. Defense further pointed out that Prosecution witness 7 made no reference to any killing whatsoever, let alone Kamaruzzaman's involvement in it. Although the Charge Framing Order alleged that Kamaruzzaman was complicit in the killing of the victims because he ordered their transfer to the Jhinaighati Army camp, Defense drew the Court's attention to the fact that no Prosecution witness had testified that the victims were transferred on the order of Kamaruzzaman. Therefore, the Defense argued, the Charge has not been sufficiently proven.

HOLDING OF THE TRIBUNAL

In its Judgment, the Tribunal acknowledged the discrepancy between dates in the Charge Framing Order and that given in witness testimony. Based on this, the Tribunal held that "the evidence of PW-7 and PW-14, on crucial fact relating to the event of murder of their co-detainees as narrated in Charge No. 5 inevitably becomes glaringly contradictory, not merely inconsistent,"^{xlvii} and therefore significantly impairs their testimony. The Tribunal allowed that a discrepancy of a few days might naturally occur due to the lapse of a long passage of time. However, the significant deviation of six months, as found in Prosecution witness 14's statement, could not be accepted as mere 'memory failure' due to the lapse of time.^{xlviii} Accordingly, the Tribunal viewed the evidence as incongruent with the narration of events as established in the Charge Framing Order. Therefore, they found that the charge had not been proven beyond a reasonable doubt. Even though the event of murder of detainees at the Ahammednagar camp remained undisputed, the Court found that the complicity of Kamaruzzaman in the events was not proven at trial.^{xlix}

CHARGE 6: MURDER AS A CRIME AGAINST HUMANITY, OR IN THE ALTERNATIVE, COMPLICITY IN SUCH A CRIME

FACTUAL ALLEGATIONS:

The Prosecution alleged that in November 1971, members of Al-Badr including one Didar abducted victims Tunu and Jahangir from Golki Bari and took them to the District Bungalow in Mymensingh. Tunu was tortured to death at the Al-Badr camp. Jahangir was detained in the camp but later released. The Prosecution claimed that Kamaruzzaman substantially participated in the operations that led to Tunu's murder.

SUPPORTING DOCUMENTARY EVIDENCE:

No separate documentary evidence was submitted for this charge. Exhibits that were used to show the general leadership position of the Accused within Al-Badr are relevant to the Prosecution's claim that Kamaruzzaman exercised command or accomplice responsibility by ordering Al-Badr members to commit crimes.

SUPPORTING WITNESS EVIDENCE:

Charge 6 is supported by the testimony of only one witness, Prosecution witness 1, who provided hearsay testimony.

Prosecution Witness 1

Md Hamidul Haque, who was the Student Vice President of Mymensingh Ananda Mohan College Student Council during the War of Liberation in 1971, testified that he was apprehended by Al-Badr in July 1971, and detained for 26 days, after which he managed to escape. During this period, he encountered Kamaruzzaman, whom he saw plan and design various anti-liberation operational plans as well as participate in such operations. The witness also claimed that during his detention Kamaruzzaman urged him to fight for Pakistan. After escaping from the camp, the witness found out that Al-Badr members had launched various operations to find him. He said that these Al-Badr members were under the impression that he was hiding in Gulki Bari of Mymensingh city. They therefore raided the house of the owner of ‘Mizan Arts.’ During the raid he stated that Al-Badr killed one person named Tunu. The witness stated that he had heard that the Accused Kamaruzzaman actively supervised the operations.

PROSECUTION ARGUMENTS

The Prosecution argued that the testimony of Prosecution witness 1, although hearsay, established that Tunu was killed during the Al-Badr operation, and that Kamaruzzaman, who had already been shown as a person of authority within the Al-Badr forces, supervised such operations.

DEFENSE COUNTER ARGUMENTS

The Defense argued that the Tribunal could not base a conviction on the evidence of a single hearsay witness. They asserted that Hamidul Haque’s testimony was unattributed hearsay that had not been corroborated through any other evidence. Additionally the witness’ testimony as to the date and site of the crime, as well as to the manner of killing, contradicted the allegations in the Charge Framing Order. The Defense also noted that the witness contradicted his own previous statement and the Charge Framing Order during cross-examination, by saying that the incident took place in July 1971. Further, the witness claimed the killing took place at the house of the owner of Mizan Arts in Golki Bari whereas the Charge Framing Order stated that the victim was tortured to death at the District Council Daak Bungalow. Finally, the Defense concluded that the evidence of the witness did not show the involvement of the Accused and could not support the conclusion that the victims were killed due to Kamaruzzaman’s instruction.

HOLDING OF THE TRIBUNAL

In the Judgment, the Tribunal held that “the charge itself offers no hint as to the mode of the contribution of the Accused or participation to the perpetration of the event of murder of Tunu.”¹ The Court observed that the testimony of Prosecution witness 1 in relation Charge 6 was not specific. He neither mentioned when or from whom he heard about the killing of Tunu.¹¹ In the absence of specific proof regarding Kamaruzzaman’s involvement in the abduction and torture of the victim the Court rejected Prosecution’s arguments, and held that the charge had not been proven.

CHARGE 7: MURDER AND TORTURE AS CRIMES AGAINST HUMANITY

FACTUAL ALLEGATIONS:

The Prosecution alleged that, on the night the 27th of the month of Ramadan, Kamaruzzaman and 15 or 20 armed Al-Badr members raided the house of Tapa Mia on Golapjan Road, police station-Kotwali, in Mymensingh district. They abducted him and his son Zahurul Islam Dara Mia. Tapa Mia and Zahurul Islam Dara were first detained in the Al-Badr camp at the District Council Daak Bungalow. On the following day, in early morning, they were allegedly taken by the Al-Badr members to the bank of River Brahmaputra along with 5 others. They were then lined up with their hands tied, and Al-Badr members charged at them with bayonets. Tapa Mia, who was reportedly the first to be charged at, jumped in the river to save his life. He was shot in his leg when the Al-Badr fired on him from the shore, but he survived. The remaining men on shore were reportedly bayoneted and killed.

SUPPORTING DOCUMENTARY EVIDENCE:

No separate documentary evidence was submitted for this charge. Exhibits that were used to show the general leadership position of Kamaruzzaman within Al-Badr are relevant to the Prosecution's claim that he exercised command or accomplice responsibility by ordering Al-Badr members to commit crimes or by being present during their commission.

SUPPORTING WITNESS EVIDENCE:

Charge 7 was supported by the testimony of Prosecution witnesses 1, 9 and 15. Of these three, Prosecution witnesses 1 and 15 claimed that they had been detained at the Al-Badr camp set up at Zilla Parishad Dak Bungalow, Mymensingh, and therefore knew first hand the types of crimes carried out at the camp and the role of Kamaruzzaman in such crimes.

Prosecution Witness 1

Md Hamidul Haque testified about his experience being confined in a room on the first floor of Zilla Parishad Daak Bungalow in Mymensingh after he had been abducted and brought to the camp in July 1971. He claimed to have witnessed the activities of the Accused during the period of detention. He stated that the Accused had a single room in the camp, where he generally remained. The witness testified that Kamaruzzaman was in-charge of the camp, and reportedly used to attend meetings with political figures for operational purpose. As many as twenty to thirty, and sometimes as many as forty, members of Al-Badr stayed in the Al-Badr camp. The witness further testified that Dara had been killed in this camp, but the witness did not implicate Kamaruzzaman in that killing specifically.

Prosecution Witness 9

In his testimony, Abul Kashem described having been abducted by armed Al-Badr member and brought to the Zilla Parishad Dak Bungalow, Mymensingh, on 4th December 1971. The witness recalled one specific incident where, one Mr.

Ashraf, who was a leader of Islami Chatra Shongho, had come to his room, accompanied by the Accused, Kamaruzzaman. That was the first time he saw the Accused. The witness reported that he learned Kamaruzzaman's name after Mr. Ashraf mentioned it. PW-9 further stated that Ashraf and Kamaruzzaman controlled Mymensingh during the war of liberation, and often killed detainees at night. The witness further testified that he had heard that victim Zahurul Islam Dara Mia had been brought to the camp and later killed. He provided no further information as to how the victim was apprehended or killed.

Prosecution Witness 15

Dabir Hossain Bhuiyan gave testimony about the detention of victim Dara and Tapa Miah, and directly implicated the Accused in their arrest and detention. The witness claimed to have been abducted, detained, and tortured at the Zilla Parishad Dak Bungalow, Mymensingh. He testified that he had been detained from the end of July till end of August in 1971, for about one month. During this period, he also found that the victim Dara, Dara's father Tapa Mia, PW-1 Hamidul, and one Rashid were detained therein until they were taken out of the camp upon the instruction of the Accused. PW-15 testified that he personally witnessed the Accused's carrying weapons. He noted that he had been able to recognize the Accused because Kamaruzzaman used to visit the book shop of the witness.

PROSECUTION ARGUMENTS

The Prosecution alleged that Kamaruzzaman was the founder of Al-Badr, and that he had led a raid on Tapa Mia's house. They asserted that he should be held liable under the Doctrine of Command Responsibility for the subsequent crimes that occurred. Although the Charge Framing Order did not allege liability under Section 4(2) of the International Crimes (Tribunal) Act 1973, the Prosecution argued that the Tribunal could still find Kamaruzzaman liable under the Doctrine of Command Responsibility (Section 4(2)) by its own volition. The Prosecution emphasized that the Defense did not dispute the fact that Dara (the victim named in Charge7) had in fact been killed. The Prosecution acknowledged that PW-9's evidence constituted hearsay, but they argued that it nonetheless carried probative value, particularly since it was corroborated by Prosecution witness 15's testimony. They submitted that the material facts, together with this evidence, proved beyond reasonable doubt that the Accused had 'complicity' in the abduction, detention and murder of Dara.

DEFENSE COUNTER ARGUMENTS

The Defense argued that there was no evidence that Kamaruzzaman had accompanied or led 15-20 Al-Badr members in the raid on Tapa Mia's house. Merely stating that the victim was killed does not connect the Accused to the crime. The Defense additionally argued that the witnesses had not identified from whom they had heard that Dara and his father Tapa Mia were detained, or how Dara was murdered. Accordingly, they argued the charge had not been sufficiently proven.

Defense refuted the Prosecution argument that the Court had discretion to find Kamaruzzaman liable under the Doctrine of Command Responsibility (Section 4(2)), notwithstanding the absence of this allegation in the Charge Framing Order. Defense Counsel argued that the Tribunal could not convict the Defendant under Section 4(2) without amending the Charge Framing Order, and such an amendment was no longer possible at such a late stage in the proceedings.

HOLDING OF THE TRIBUNAL

The Tribunal was convinced by the Defense arguments to exclude the statement of PW-15 that related to the detention of Dara and Tapa Mia at the same time and in the same room of the camp. The Court reasoned that glaring contradictions tainted the witness' version of the incidents pertaining to Charge 7, rendering his statement unreliable.^{lii} (

The Tribunal concluded that the complicity or participation of the Accused could be inferred from the relevant facts and circumstances, since it would be unrealistic to expect that people would personally witness the abduction, detention and the subsequent killing of the detainees. The Tribunal found that, despite lack of explicit evidence, there was no reasonable conclusion other than the guilt of the Accused.^{liii} With respect to Defense arguments about inconsistencies in testimony, the Court took the position that it was understandable that direct evidence might not be available after a lapse of forty years, and witnesses should not be expected to recall accurately what they heard and saw.

In respect to the testimony of Prosecution witness 9, the Tribunal acknowledged the witness had not testified about the abduction of Dara and his father Tapa Mia by the Al-Badr members. Nevertheless, the Court held that the witness' statement proved that victims Dara and Tapa Mia were kept detained at the camp, and that Dara was ultimately killed. The Judgment concludes that this inference of abduction may be drawn because there is no other explanation for why they would have been at the Al-Badr camp, as Prosecution witness 9 testified.^{liv} Compelled by the fact that Dara's killing remained unchallenged, and had not been factually disputed by the Defense, the Tribunal found that Kamaruzzaman, as a potential leader of the camp, contributed to the commission of crimes by the Al-Badr members at the camp. The Tribunal further accepted as fact that the victims Dara and Tapa had been abducted by the Al-Badr members (as stated by PW-9), that between twenty and forty members of Al-Badr regularly stayed at the Al-Badr camp at Zilla Parishad Daak Bungalow, Mymensingh (stated by PW-1), and that the Accused often brought unarmed civilians to the bank of the river adjacent to the camp where they were shot and killed (PW-9). The Judgment concluded that Kamaruzzaman was in charge of the Islami Chatra Shangha of greater Mymensingh, and that he regularly attended meetings with political leaders for operational purposes. The Court also accepted the allegation that the Accused had been seen carrying firearms while sitting in the camp office (as per PW-15).

The Tribunal concluded that Kamaruzzaman, as a leader with significant authority and control over the camp, knew the consequences of the acts of his fellow Al-Badr members, and approved or provided moral support in their execution. Therefore, they found Kamaruzzaman liable insofar as he either encouraged commission of the crimes or failed to prevent them.

IV. CONCLUSION AND SENTENCING

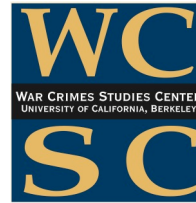
The Tribunal unanimously found Kamaruzzaman guilty on 5 of the 7 charges brought against him: Charges 1, 2, 3, 4, and 7. All convictions were for complicity in Crimes Against Humanity under Section 3(2)(a)(h) of the ICT Act.

In determining the sentence, the Tribunal stated that it considered “i) the position of the Accused, that is, his position of leadership, his level of influence and control in the context of his affiliation with the Al-Badar [sic] camp ii) the role of the Accused as fellow perpetrator, and the enthusiastic participation of a superior in the criminal acts of subordinates iii) the violent and humiliating nature of the acts and the vulnerability of the victims.”^{lv} While acknowledging that punishment reflects the “values and aspirations of a particular society at a given time,” the Tribunal noted that it may only consider “the legal nature of the offences committed, their scale, the role of the Accused played in their commission, and the shock sustained by the victims and their families together with the preamble of the Act of 1973.”^{lvi}

The Tribunal concluded that Kamaruzzaman’s conduct as an authority figure could be seen as an aggravating circumstance, further justifying the highest penalty. They referred to the severity of the attack in Charge 3, and the combination of mass killing and “indiscriminate sexual invasion committed on women” in defense of the conclusion that “justice would be met if for the crimes as listed in charge nos. 3 and 4 the Accused Muhammad Kamaruzzaman who has been found guilty beyond reasonable doubt is condemned to a ‘single sentence of death.’”^{lvii} For Charges 1 and 7 the Tribunal issued a sentence of imprisonment for life, and for the crimes listed in charge 2, the Tribunal issued a sentence of imprisonment for ten years.

* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, at the University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded through the East-West Center, thanks to generous grants from the Open Society Foundation and private donors.

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ⁱ See *Chief Prosecutor vs. Mohammed Kamaruzzaman*, Tribunal 2, Judgment, available at:

ⁱⁱ Each of the charges alleges complicity, which is codified under Section 3(2)(a)(h), while modes of liability are described in Section 4 but only include 4(1) - joint liability where a crime is committed by multiple persons and 4(2) – liability under the Doctrine of Command Responsibility. In the Judgment’s final section stating the outcome of each charge the Court does not specify the mode of liability beyond stating that Kamaruzzaman was found to be guilty of complicity in Crimes Against Humanity under 3(2)(a)(h). However, the Tribunal discusses Kamaruzzaman’s liability under Section 4(1) in its reasoning of each charge and states in paragraph 636 that “According to section 4(1) of the Act of 1973 [Kamaruzzaman], being equally responsible, has incurred individual criminal liability for the commission of crimes proved.”

ⁱⁱⁱ The crime of “other inhumane acts” as Crimes Against Humanity is codified under Section 3(2)(a) of the ICT Act. In the Statute it is spelled “inhumane,” whereas in the Charge Framing Order and Judgment it is frequently spelled “inhuman.” We have used “inhumane” in order to maintain consistency.

^{iv} We utilise the standardised American spelling “Bengalis” to describe the national group of Bengali speakers in former Eastern Pakistan, now Bangladesh. Throughout the Judgment the term is spelled “Bengalis.”

^v This source is cited in para 159 of the Kamaruzzaman Judgment as corroborating Material Exhibits I & V. It is unclear if the source itself was exhibited.

^{vi} The importance of the element of “widespread or systematic attack” has been solidified through the evolution of international jurisprudence before the ICTY, ICTR and other international crimes tribunals.

^{vii} In the Sayedee Judgment the Tribunal additionally cited to the ICTY case of *Tadic* in support of their assertion that an attack on the civilian population implies a widespread or systematic attack. *Chief Prosecutor vs. Sayedee*, Judgment, para 30(3).

^{viii} *Sayedee*, Judgment, para 30(3).

^{ix} *Ibid.*, para 32(1).

^x *Ibid.*, para 30(2).

^{xi} *Chief Prosecutor v. Muhammad Kamaruzzaman*, Judgment, para 132.

^{xii} While not stated within any of the Tribunal’s Judgments or orders, our researchers understood from courtroom testimony that Sayedur Rahman did not testify himself because of old age and ill health.

^{xiii} *Kamaruzzaman*, Judgement, para 203

^{xiv} *Ibid.*

^{xv} *Ibid.*, para 209.

^{xvi} *Ibid.*, para 219.

^{xvii} *Ibid.*, para 210.

^{xviii} *Ibid.*, para 229

^{xix} *Ibid.*, para 217. This appears to imply that the Court is finding liability under Section 4(1) of the Act, which provides that where a crime is committed by multiple actors each will be equally liable for the ultimate act. However, the Court does not cite this section when finding the Accused guilty of the charge.

^{xx} *Ibid.*, para 235.

^{xxi} *Ibid.*, para 249.

^{xxii} *Ibid.*, para 277-8

^{xxiii} *Ibid.*, para 279.

^{xxiv} *Ibid.*, para 267

^{xxv} *Ibid.*, para 270.

^{xxvi} *Ibid.*, para 288.

^{xxvii} *Ibid.*, para 287

^{xxviii} *Ibid.*, para 289

^{xxix} It is unclear whether the witness was told that Kamaruzzaman was the chief of Al-Badr or the chief of the Razakar forces. From the language in paragraph 587 of the Judgment it appears that the tribunal may consider Al-Badr to be a wing of the Razakar forces. A review of the Prosecution Witness 10 statement that our researchers obtained from the Defense does not contain any express reference to Kamaruzzaman. However, paragraph 498 of the Judgment states that the witness was told that Kamaruzzaman was their chief. Because neither the Prosecution nor the Tribunal itself has provided our researchers with certified copies of the witness statements we are unable to verify which is correct.

^{xxx} *Judgment*, para 308. The testimony is unclear as to whether the witness was raped only by Pakistani military members, or whether a member of Al-Badr assaulted her. The Judgment states that she was sexually assaulted by Pakistani Army members.

^{xxx}ⁱ Paragraph 308 of the Judgment states that Prosecutor Nurjahan Mukta submitted that the rape incidents amount to Genocide and cited the ICTR case of *Akayesu*. However, our researchers did not record this citation during live courtroom testimony. It is possible that this is contained in written submissions not provided to our team.

^{xxx}ⁱⁱ *Judgment*, Para 312

^{xxx}ⁱⁱⁱ *Ibid.*

^{xxx}^{iv} *Ibid.*, para 325.

^{xxx}^v *Ibid.*, para 337.

^{xxx}^{vi} *Ibid.*

^{xxx}^{vii} *Ibid.*, para 339.

^{xxx}^{viii} *Ibid.*, para 346.

^{xxx}^{ix} *Ibid.*, para 320.

^{xl} *Ibid.*, para 349.

^{xli} This translation was referred to on several occasions but nonetheless may be a paraphrasing.

^{xlii} *Judgment*, para 369

^{xliii} *Ibid.*, para 371.

^{xliiv} *Ibid.*, para 379.

^{xlv} *Ibid.*, para 384.

^{xlvi} *Ibid.*, para 389.

^{xlvii} *Ibid.*, para 409.

^{xlviii} *Ibid.*, para 410.

^{xlix} *Ibid.*, para 415.

^l *Ibid.*, para 423.

^{li} *Ibid.*, para 426.

^{lii} *Ibid.*, para 444.

^{liii} *Ibid.*, para 446.

^{liiv} *Ibid.*, para 449.

^{lv} *Ibid.*, para 643.

^{lvi} *Ibid.*, para 646.

^{lvii} *Ibid.*, para 651.