

Law and Our Rights

No Age of Innocence: Justice for Children

by Lisbet Palme

NO one can question the notion that children are entitled to the fundamental necessities of life: love and nurturance, food and shelter, health care and education. But the understanding and acceptance of another fundamental entitlement — due process of law — is harder to come by. Few countries take seriously a young person's right to fair treatment at the hands of the justice system; few adults even realize that juveniles have this right. When young people come into conflict with the law, instead of finding compassion

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and help, they often face harsh punishment, and without the legal protections that adults have.

Sometimes young offenders are penalized just as if they were adults, with the maturity and experience to distinguish between right and wrong on a grown-up level. Sometimes they face even worse: Adults must be accused of breaking the law before they can be legally detained, but in many countries a judge can put children in jail simply because of "irregular conduct" — they are dirty or are sleeping on the street or have lost their identity papers.

Sometimes the authorities put a benevolent face on the punishment, incarcerating children for their own protection. In India, for example, police can apprehend young people if they are "likely to be abused or exploited for immoral or illegal purposes or wrongful gain" — in other words, any child who is poor is liable to be victimized by the criminal system in the name of altruism.

And sometimes juveniles in detention are abused physically and sexually, in some cases even tortured, by those who are supposed to guard them. This treatment is inhumane,

and it is inconsistent with the Convention on the Rights of the Child, which was adopted by the United Nations General Assembly in 1989 and has been ratified by all but three countries on earth (Cook Islands, Somalia and the United States). When young people come into conflict with the law, they need help, not retribution.

I was only 20 years old when I started to work for and with children in detention. My experience over the years has only strengthened my conviction that we must develop juvenile justice systems that are compassionate and rational. Our children are entitled to fair treatment, and society as a whole will benefit when they receive it.

Injustice to juveniles
Let us be clear about this: Juveniles are being subjected to grave injustices at every moment in countries around the globe. In Jamaica, children as young as 10 are held for indefinite periods of time, often with adults, in dank detention cells. In Egypt, children who work as prostitutes are not only sexually exploited for commercial purposes but are criminalized and also face harsher penalties than adult sex workers. In Rwanda, youngsters below the country's age of criminal responsibility (14) are imprisoned in connection with the nation's recent genocide.

In Australia, aboriginal children are incarcerated at 18 times the rate of non-aboriginal children are incarcerated at 18 times the rate of non-aboriginals. In Sudan, children are subject to punishments that include flogging, amputation and execution. In Kenya, up to 120 children a week find themselves in Nairobi's juvenile court for the 'crime' of being homeless. The majority of children in the West Bank who are sentenced according to Israeli security laws have no legal right to a lawyer.

In just the past 15 years, nine countries are known to have put offenders to death for crimes they committed as juveniles. In the US, 137 juveniles have been sentenced to death since 1973, and nine of them have been executed for crimes committed when they were under 18. While China has outlawed capital punishment for children under 18, in practice 16-year-olds can be sentenced to death — although the sentence is suspended until they reach 18.

Young people accused of heinous crimes comprise a tiny percentage of the juveniles who come into contact with the criminal justice system. The tragedy is that the great majority of juvenile offenders have committed minor crimes or are

guilty of nothing at all. Many of those held in custody have not even been convicted — they are simply awaiting trial, sometimes for extremely long periods of time. In Lebanon, for instance, 90 per cent of incarcerated children are waiting to be tried, some for as long as two years.

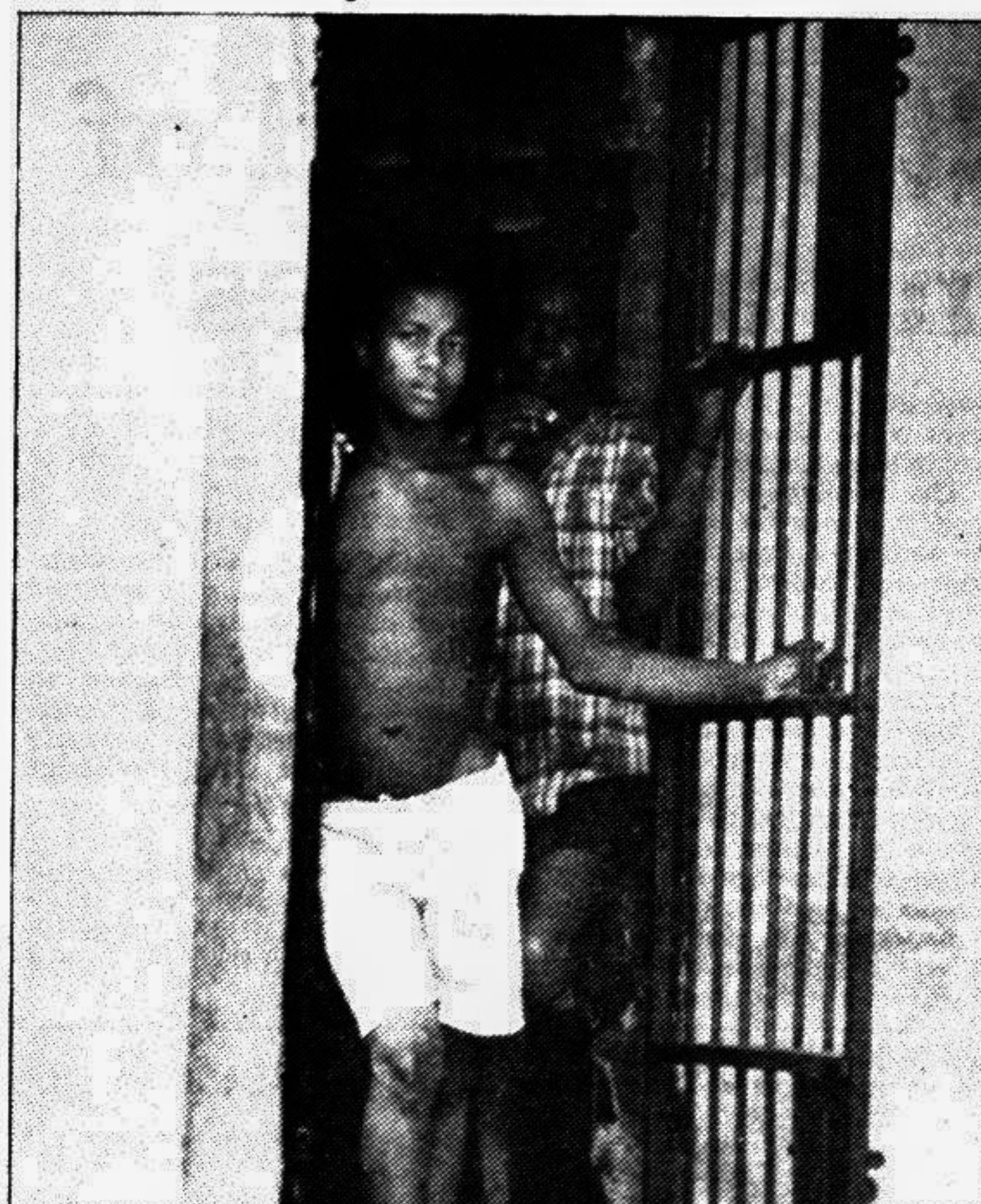
The percentage of children who are in custody is one indication of how effectively countries are dealing with young offenders. In Italy, with a population of 57 million, about 650 juveniles are being detained on a typical day. But in the US, with a population just 5 times greater than Italy's, 150 times more children are detained — almost 100,000 young people. This wholesale locking away of young people cannot be justified on any terms.

Most countries take a passive attitude towards juvenile justice, as evident from the lack of accountability. Very few governments even keep track of how many children are involved with the criminal justice system. Any country's national statistics office can tell you the percentage of children who were born underweight, have been immunized, are enrolled in school. But ask what percentage of children are incarcerated and in most cases you will receive no precise answer. How can we possibly be caring properly for our children if we lack such fundamental information?

Governments around the world have agreed to track statistics on child health and development as a way to support their children's progress. Governments must develop similar indicators about how their young people fare in the justice system. At a minimum, every country should know how many children are being held, for how long and why.

The roots of conflict
I believe fervently that youthful offenders are made, not born, and that the vast majority would not be made if troubled young people had the benefit of loving nurturance from supportive parents, schools (including pre-schools) and communities. When that support is wanting, they should come under the care of youth guidance authorities. Most children fall into conflict with the law because such assistance is simply not available or does not operate properly.

Impoverished young people experience society's linkage between poverty and crime from a very early age. Many of them come involved with the police and the justice system simply because they appear poor or socially undesirable, or because



they 'look' dangerous — not because they have broken any law.

You don't have to probe very far into the backgrounds of children who wind up in police stations and courtrooms to find a common denominator: poverty. In developing countries, poverty often forces children out of the house when they are as young as 10, sometimes even younger. They may never have had the opportunity to go to school, or may have attended irregularly or been 'pushed' out, their performance hindered by hunger or distance from the school. Civil unrest may have forced them to flee their rural home for the city, where they arrived without papers and became separated from family members or friends.

At any rate, these young people are probably living on the street, where destitution may lead them to steal from a shop, pick someone's pocket or barter the only thing they own — their bodies — for survival. In the industrialized countries, many young people are surrounded by wealth but live in deprivation, taunted by the unattainable riches of a consumer society. Growing up in neighbourhoods where every corner has its drug dealer, and

lacking the role model of grown-ups who go to legitimate jobs every morning, some find it impossible to resist the temptation of the drug trade's easy money.

Eventually the police catch up with them. That is often the start of a life in which they know their probation officers better than their teachers.

These children have been discarded by their families and their societies, and they hear that message loud and clear. With the gap between the rich and the poor continuing to grow, we can expect to see even

more 'discarded' children in the coming years.

A decision by a police officer or a judge to detain a child on the basis of some vague infraction like vagrancy or suspicion of misconduct can expose him or her to callous injustice or to a system that is overloaded, uncaring and often designed for adults. When poor children are accused of more serious crimes, they typically receive the inferior services of overworked lawyers — if they get any legal representation at all. Once stigmatized by a criminal record, these juveniles become scapegoats for the complex problems that adult society has been unable to solve.

On the other hand, some young people who should be handled by the justice system escape it altogether. In most societies, well-to-do parents can often make use of social connections to 'take care of' any charges brought against their children when they come into conflict with the law, even when the accusations are serious.

The first step towards ensuring fair justice for all juveniles is identifying the 'many' — those in need of social services — and separating them from the criminal justice system so it can function for the 'few' — the serious offenders. The involvement in the justice system of children whose only 'crime' is poverty also pads the juvenile crime statistics, which in turn inflame media accounts of maddening young offenders.

When responsibility begins
All countries have an age at which people become adults in the legal sense of the word — they can vote, sign legal contracts, marry. But the Convention on the Rights of the Child calls for countries to establish a minimum age below which young people "shall be presumed not to have the capacity to infringe the penal law" — in other words, an age below

which they are too young to be responsible for their actions and therefore too young to face criminal sanctions.

Young people must be held accountable for their offences in a manner appropriate to their level of maturity

But this age varies widely, and in many cases it is far too young: The age of criminal responsibility is 7 years in, for example, Bangladesh, India, Ireland, Jordan, Liechtenstein, Myanmar, Nigeria, Pakistan, South Africa, Sudan, Switzerland, Tanzania and Thailand. Under....

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Given that such young children can be subject to the penal code, it is all the more important that each country establish a humane and constructive juvenile justice system. Such a system is designed to deal with young offenders until they reach the age of adulthood. In an ideal world it serves as a safety net, catching children who commit petty offenses and, instead of locking them away, helping them learn a sense of responsibility for their actions. The system should be based on knowledge of child development. At the same time the juvenile justice system must protect society from potentially dangerous criminals.

In many countries, a few brutal highly publicized crimes by young people have led to public demands to lower the age at which children are held criminally responsible. Government leaders must resist the

temptation to reduce the juvenile justice system to a structure for retribution designed for the rare hardened child criminal. Glib slogans like 'Adult time for adult crime' betray the very people that society has failed and encourage 'warehousing' of juveniles — in prisons that in reality serve as training grounds for criminals.

Preventing juvenile crime
There is no question that preventing crime is preferable to punishing it. Never is that more true than in the case of juvenile delinquency, so often a cry for help from a troubled youngster.

The UN Guidelines for the Prevention of Juvenile Delinquency, known as the Riyadh Guidelines, recognize the importance of preventing young people from being stigmatized by the justice system. The Guidelines call for the development of measures that "avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others." This statement sends a profound message: Preventing juvenile delinquency or crime is not just a matter of protecting society — its aim is

In at least 15 countries, 7-year-old children can be held responsible for criminal actions.

to help children overcome their misdeeds and fulfill their potential. It is also less costly and more efficient for society to prevent young people from starting on criminal careers than to pay for the outcome of criminal behaviour.

To be continued
The writer, a psychologist specializing in children, is a member of the Swedish Child and Youth Advisory Committee and International Negotiation Network of the Carter Center's Conflict Resolution Program. She is the Chairperson of the Swedish Committee for UNICEF.

BANGABANDHU MURDER CASE

Verbatim Text of Cross Examination of Seventh Prosecution Witness

Cross-examination of prosecution witness-7 Lt Col (LPR) Abul Bashar in Bangabandhu murder case began at the trial court on August 13, 1997.

Following are excerpts from his cross-examination by Advocate Mahbubur Rahman, state defence counsel for absconding accused Major (ret'd) Bazul Huda.

Q: Who did order you for duty at Ganobhaban and the residence of Bangabandhu?

A: My commanding officer Lt Col Syed Ali Anwar.

Q: Who did distribute the duty of 105 security personnel at Ganobhaban and Bangabandhu's house?

A: According to my permission, Subedar Kabir.

Q: Who were in charge of security at the two places?

A: Subedar Kabir at Ganobhaban and Subedar Motaleb at the residence.

Q: Where was your duty?

A: I was in over all charge.

Q: Did you see the security duty at Bangabandhu's house being discharged properly?

A: I looked after it.

Q: Whom did you phone at Ganobhaban on August 15 morning?

A: Duty clerk.

Q: What was his reply?

A: He said the situation is not clear. We heard firing. When I asked him to send a car, he replied that at this moment no car is available. The clerk also said he will send a car later.

Q: What was the time then?

A: About 6 to 6:30 in the morning.

Q: You did not go to the place of occurrence although you were informed of the incident.

A: This is not correct.

Q: Do you know that Bazul Huda was sent to England for higher training before the incident?

A: No.

Q: When did he take training in England?

A: He took part in a basic training abroad in 1972 or 73. I can't recall the date and time.

Q: Huda was promoted to major after the training.

A: This is not correct.

Q: He was transferred to G-2 (general staff officer-2) after the promotion.

A: This is not correct.

Q: Huda was not at the place where his service was.

A: Your statement is not correct.

Q: You did not witness the incidents of August 15, 1975.

A: I reached the place of occurrence at about noon. I saw the bodies of Bangabandhu and others. I also saw Bazul Huda of my unit and others. Major Dalim came in the afternoon.

Q: You are the main culprit of the killings.

A: Not true.

Q: You gave a false statement as directed by prosecution to save yourself.

A: Not correct.

Q: When did you come to know that you are a witness of the case?

A: Sometime in the third week of last November, I was asked from DGFI headquarters. An officer of CID interrogated me there.

Q: Under whose permission you went to Comilla on August 16?

A: I went of my own as my senior officers were there.

Q: To whom you handed over your duty charge at Ganobhaban?

A: The second person was supposed to be Subedar Kabir in absence of me. But the charge automatically went to his senior Subedar Major Wahab Joardar as he came there.

Advocate Abdur Razzaq Khan, defence counsel of Joardar, raised objection.

Q: In fact, you went to Comilla directly from your uncle's house.

A: Not correct.

Examination by advocate Belayet Hossain, state defence counsel for absconding accused Captain (ret'd) M A Majed:

Q: Did you join Bangladesh Army directly after returning from Pakistan?

A: Yes.

Q: When did you come to Dhaka in July, 1975?

A: On 27th or 28th July.

Q: When did you return to your uncle's house on August 14 night?

A: I returned in the afternoon on the day.

Q: When was your duty on August 15?

A: Usually, I worked at Ganobhaban in the office time from 7:30 am to 2 pm. I would have stayed more if it was necessary. Sometimes I also would have come later to check guards, meals etc.

Q: How far is Bangabandhu's house from the China building?

A: Approximately three to four kilometres.

Q: Did you hear firing on August 15 early morning?

A: No.

Q: When did you reach Bangabandhu's house after listening to radio bulletin?

A: In between 12:30 pm and 1 pm.

Q: Did you see any soldier doing duty at Bangabandhu's house at that time?

A: Yes, I saw.

Q: What is the name of the havildar who told you about the incident?

A: As far as I could remember, he was Havildar Qudus or Havildar Gani.

Q: You did not go anywhere after listening to radio bulletin at China building. You did not see anything. You gave a false statement.

A: Your comment is not correct.

Examination by advocate Gazi Zillur Rahman, state defence counsel for absconding Lt Col (dismissed) Khandaker Abdur Rashid:

Q: How many soldiers comprise a platoon?

A: 30 to 37.

Q: One platoon was at Bangabandhu's house. Were the rest of the 105 at Ganobhaban?

A: Yes, at Ganobhaban.

Q: What your uncle used to do at the house of whom you stayed?

A: He was an officer of Bangladesh Shilpa Rin Sangstha.

Q: Was there any personal security for you?

A: No.

Q: Did you ask the army personnel whom you saw in army cars on way to Bangabandhu's house?

A: No, I didn't ask.

Q: Were you in civil dressed at that time?

A: I was in army uniform.

Q: Did you know Sheikh Naser, brother of Bangabandhu?

A: I didn't know him. However, I was seen his body and told that he was Sheikh Naser.

Q: Did you know the family members of Bangabandhu?

A: I knew most of them.

Q: How many security personnel did you find at that house after coming there?

A: I can't recall the accurate number. I found a number of them.

Q: None of them gave you any written statement. You also didn't take from them.

A: I didn't take.

Q: Were the salaries of army forces provided in cheque or cash?

A: The salaries of soldiers were always provided in cash.

Q: When the salaries were given usually?

A: Usually in the first week of month.

Q: Did they take salaries by written?

A: They used to sign while receiving the salaries.

Q: Who was in charge of distributing the salaries?

A: Usually, a senior JCO. He was Subedar Kabir.

Q: You didn't report anything after going to Bangabandhu's house?

A: I didn't report in written. But I told the entire episode to my CO Lt Col Syed Ali Anwar.

Q: Does an army man need to take permission if he wants to leave station?

A: If he wants to leave his permanent station.

Q: Did you take permission when you went to Comilla on August 16?

A: Dhaka was not my permanent station, it was rather Comilla.

Q: When did you return from Comilla?

A: On the same day.

Q: Who was the President after the death of Bangabandhu?

A: Khandaker Mushtaque.

Q: Were you given security duty then?

A: No.

Q: When did you discharge your duty at Bangabandhu's house and Ganobhaban for the last time?

A: We left Ganobhaban on August 17.

Q: Did you have any official order to go to Comilla?

A: I received order from CO Syed Ali Anwar.

Q: Did you ask about the matter anyone at the patrol pump where you went to take fuel for your car?

A: I heard from the people at the pump.

Q: There are some patrol pumps for army vehicles.

A: Army vehicles do not take fuel from patrol pumps. They take fuel from the Army supply.

I went to the civil patrol pump as I could not collect fuel from army supply in that circumstances.

Q: When did you go to take fuel?

A: I can't recall the exact time, probably in the morning.

Q: You did not go to Bangabandhu's house at that time.

A: I can't remember.

Q: Did you come out from your uncle's house after a car

came there?

A: Yes. However, earlier Subedar Major Joardar had come to me.

Q: When did you go to Comilla on August 16?

A: In the morning.

Q: When did you return?

A: In the afternoon on the same day.

Q: Did you further enquire about Bangabandhu's house on the night of August 14?

A: Yes.

Q: You knew that the killings would take place?

A: Not true.

Q: As you knew about the killings, you didn't enquire about the house since August 14 afternoon to August 15 noon?

A: This is not correct.

Q: You along with your force went to Comilla after killing Bangabandhu.

A: This is not true. (Razzaq Khan again raised objection).

Q: You have given false statement to save yourself.

A: Not true.

Q: Col Rashid was not involved in this so-called incident.

A: Not true.

Q: You mentioned some names to sidetrack your responsibility.

A: Not true.

Examination by advocate Mohammad Hanif, state defence counsel for absconding Lt Col (dismissed) Khandaker Abdur Rashid:

Q: What was the Ganobhaban during the incident in 1975?

A: It was the office of the then President.

Q: Who was the President at that time?

A: Bangabandhu Sheikh Mujibur Rahman.

Q: Isn't it correct that cautious measures are taken for security of the President?

A: Correct.

Q: So, efficient officers and jawans are given for the President's security duty.

A: Yes.

Q: Did ask your jawans after coming to Bangabandhu's house whether they discharged their duties properly?

A: I asked them.

Q: How long did you stay there on the day?

A: Till 4 to 4:30 pm.

Q: Your people did not discharge their security duties properly. You also didn't supervise them properly. You have given false statement.

A: They could not discharge