

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).324/2021

ARFAD ABDUL AZIZ PATEL & ANR.

Appellant(s)

VERSUS

NOOR AAMAD @ MOHMADNUR HUSEN SUBHEDAR & ANR.

Respondent(s)

WITH

CRIMINAL APPEAL NO(S).325/2021

CRIMINAL APPEAL NO(S).308/2021

O R D E R

Heard Mr. S. Nagamuthu, learned Senior Counsel for the appellant and also heard Mr. Atul Babasaheb Dakh, learned counsel for the complainant in all the three appeals.

2. The appeal being Appeal No.1314/2014 preferred by the accused has been partly allowed by the High Court and the case has been converted from 302 to that of culpable homicide not amounting to murder under Section 304 (II) IPC. The State's appeal and the complainant's appeal are against the said order of the High Court.

3. The brief facts of the case are that at about 10:30 PM on 06.05.2012 when the complainant, PW 1 Arfad Abdul Aziz Patel and his brother Ashpak Abdul Ajij (PW 3) were walking out side they saw Zahir on a black colour Pulser motorcycle which was being chased by a Silver colour Maruti Zen car and was

subsequently hit by the car. Zahir fell down from his motorcycle and the four persons viz (i) Husenmiya Alimiya Subhedar (ii) Noor Aamad @ Mohmadnur Husen Subhedar, (iii) Dastagir Husenmiya Subhedar and (iv) Mohd. Hanif Husenmiya Subhedar, came out of the Maruti Car. They all were armed with sharp edged weapons, with which they stabbed Zahir one by one. The two eye-witnesses to the incident PW 1 and PW 3 thereafter ran away as they were also threatened by the accused. And, when they returned they were told that the deceased was taken to the hospital by his brother, where he was declared dead. The post mortem was conducted where 17 ante mortem injuries were found on the body of the deceased, which are as follows:-

- 1) *Stab wound over manubrium sterni 1.5 cm. X 2 cm.*
- 2) *Fracture manubrium sterni.*
- 3) *Stab wound over left inframammary region 1 cm. open in visceral cavity.*
- 4) *Rupture left lung with collection of blood in cavity.*
- 5) *Stab wound below left costal margin 1 cm. x 7 cm.*
- 6) *Stab wound over abdomen below umbilicus 1 cm. X 5 cm.*
- 7) *Incised wound over left mammary region 2 cm. x 0.25 cm.*
- 8) *Incised wound below left cheek 8 cm. X 0.25 cm.*
- 9) *Stab wound over left side of neck 4 cm. x 8 cm. with cutting of large vessels under it; profuse bleeding noted*
- 10) *Laceration of skin over left shoulder joint 8 cm. x 3 cm.*
- 11) *Laceration of skin over left wrist joint 3 cm. x 2 cm.*
- 12) *Incised wound over right forearm 1 cm. x 0.25 cm. ventral aspect.*
- 13) *Incised wound over right wrist joint ulnar aspect 5 cm. x 2 cm.*
- 14) *Abrasion over right elbow joint 5 cm. in length.*
- 15) *Multiple abrasion over forehead 5 cm. maximum and 1 cm. minimum length.*
- 16) *Perforation of stomach at pyloric region blood clot seen at*

perforation.

17) Haematoma over occipital region with intra cranial haemorrhage"

4. We would not like to go or even describe or to even express any kind of opinion on the evidence which has been placed by the Prosecution before the Trial Court, but sufficient will it be to say that the Trial Court convicted Noor Aamad @ Mohmadnur Husen Subhedar (hereinafter referred to as "Noor") under Section 302 IPC, but the rest of the three accused were acquitted. Noor filed an appeal before the High Court. Where the High Court has converted the finding from that of murder under Section 302 to that culpable homicide not amounting to murder under Section 304 (II) and sentenced to him for six years of rigorous imprisonment.

5. Meanwhile, the complainant has filed appeal against acquittal of the remaining accused. We are told that the State has not filed any appeal (so much for the conduct of the State in this matter). Even here before this Court, there is no counsel representing the State to argue the case.

6. Having heard the matter in detail, we are of the opinion that the appeal against acquittal which is presently pending before the High Court ought to have been heard together with the present appeal in which the sentence of conviction has been changed from 302 to that of 304 (II) of one of the accused who was convicted under Section 302 of IPC. In fact, there is an order of the High Court dated 25.02.2014 in Criminal Appeal No.75 of 2014, which is handed over by the counsel in the Court

and the same is made part of the Court record. The order reads as under:-

1. *This is an appeal under section 372 of the Code of Criminal procedure filed by the appellants who challenge the part of the judgment of the Addl. Sessions Judge, Raigad, Alibad dated 10th December 2013 in Sessions Case No.105 of 2012 acquitting original accused nos.2 and 4 for offences punishable under Section 302, 506-II read with section 34 of Indian Penal Code.*

2. *We have heard Shri S.V. Kotwal, learned counsel for the appellants with whose assistance we have perused the findings recorded by the trial court. We have also perused the depositions of the witnesses.*

3. *We, accordingly, admit this Appeal. Mrs. S. D. Shinde learned APP accepts notice of admission of Appeal on behalf of the respondent No.1. Mr. Shantanu Phanse, counsel accepts notice of admission of Appeal on behalf of respondent No.2 to 4. This Appeal to be heard along with Criminal Appeal No.1314 of 2013."*

7. This is what was stated in the order in the Criminal Appeal No.75 of 2014 that "This Appeal to be heard along with Criminal Appeal No.1314 of 2013". For reasons, we are not aware this was not done and only the Criminal Appeal No.1314/2013 was decided separately and the Trial Court's finding was converted from Section 302 to 304 (II), which is now before us today.

8. Under these circumstances, we deem it fit and proper to set aside the order of the High Court, without expressing any opinion on the merit of the case and remand the matter back to the High Court for fresh appraisal along with the Criminal Appeal No.75/2014.

9. The Present appellant (Noor Aamad @ Mohmadnur Husen Subhedar) shall be present before the High Court and seek bail

afresh. We leave it to discretion of the High Court to grant him bail or refuse the bail. But we have been informed that the sentence imposed by the High Court has already been undergone. Under the circumstances, we also request the High Court to expedite the matter so that the both the appeals be heard together. Original records be sent back to the High Court. We also make it clear that Noor Aamad @ Mohmadnur Husen Subhedar shall be present on each and every date of hearing and so will the other accused. In case they are not present, appropriate action be taken.

10. The appeals are disposed of in terms of the above order along with other pending applications.

..... J.
[SUDHANSHU DHULIA]

..... J.
[AHSANUDDIN AMANULLAH]

NEW DELHI;
FEBRUARY 06, 2025.

ITEM NO.103

COURT NO.12

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s).324/2021

ARFAD ABDUL AZIZ PATEL & ANR.

Appellant(s)

VERSUS

NOOR AAMAD @ MOHMADNUR HUSEN SUBHEDAR & ANR.

Respondent(s)

COMMON ORIGINAL RECORD RECEIVED.

WITH

CrI.A. No. 325/2021 (II-A)

CrI.A. No. 308/2021 (II-A)

IA FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES
ON IA 5329/2020IA No. 5329/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURESDate : 06-02-2025 These appeals were called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s) :

Mr. Aaditya Aniruddha Pande, AOR
Mr. Siddharth Dharmadhikari, Adv.
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.Mr. Atul Babasaheb Dakh, AOR
Mr. Siddharth Shinde, Adv.
Mr. Bitu Kumar Singh, Adv.Mr. Shivaji M. Jadhav, AOR
Mr. S. Nagamuthu, Sr. Adv.
Mr. Shivaji M. Jadhav, Adv.
Mr. Brij Kishor Sah, Adv.
Mr. Adarsh Kumar Pandey, Adv.
Mr. Vignesh Singh, Adv.
Mr. Aditya S. Jadhav, Adv.

For Respondent(s) : M/S. S.M. Jadhav And Company, AOR

Mr. Aaditya Aniruddha Pande, AOR
Mr. Siddharth Dharmadhikari, Adv.
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.

UPON hearing the counsel, the Court made the following

O R D E R

The appeals are disposed of in terms of the signed order.

Pending application(s), if any, stand closed.

(DEEPAK JOSHI)
ASTT. REGISTRAR-cum-PS

(Signed Order is placed on the File)

(RENU BALA GAMBHIR)
ASSISTANT REGISTRAR