

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

CRIMINAL APPEAL NOS.112 AND 113 OF 2014 WITH CRIMINAL PETITION FOR LEAVE TO APPEAL NO.924 OF 2021 & JAIL PETITION NO.20 OF 2014.

(From the judgment and order dated 04.05.2014 passed by the High Court Division in Death Reference No.125 of 2008 with Criminal Appeal No.8229 of 2008 with J.A.Nos.1126, 1127 and 1128 of 2008.)

Md. Raju, son of Md. Abdur Rouf	:	Appellant. (Crl.A.No.112/14)
Md. Younus Ali @ Yousuf	:	Appellant. (Crl.A.No.113/14)
Md. Raju, son of Khorshed Ali Mistry @ Khorshed Ali	:	Petitioner (In Crl.P.No.924/21)
	:	
Md. Younus Ali @ Yousuf and others	:	Petitioners. (In J.P.No.20/14)

=Versus=

The State and others	:	Respondents. (In Crl.A.Nos.112-113/14, Crl.P.No. 924 of 2021 & J.P.No.20/14)
For the Appellant (In Crl.A.No.112/14)	:	Mr. S.M. Shahjahan, Advocate instructed by Ms. Sufia Khatun, Advocate-on-Record.
For the Appellant (In Crl.A.No.113/14)	:	Mr. Joinul Abedin, Senior Advocate (with Mr. Sagir Hossain Leon, Advocate) instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
For the Petitioner (In Crl.P.No.924/21)	:	Mr. Md. Zahirul Islam, Advocate-on-Record.
For the Respondents (In Crl.A.No.112/14)	:	Mr. Md. Aminul Islam, Deputy Attorney General instructed by Ms. Shirin Afroz, Advocate-on-Record.
For the Respondents (In Crl.A.No.113/14)	:	Mr. Md. Aminul Islam, Deputy Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Respondent (In Crl.P.No.924/21)	:	Not represented.

Date of hearing : 24.11.2021 and 30.11.2021.

Date of judgment : 01.12.2021.

J U D G M E N T

Hasan Foez Siddique, J: Delay in filing the Criminal Petition for Leave to Appeal No.924 of 2021 is condoned.

Sessions Judge, Thakurgoan convicted the appellant Md. Younus @ Yousuf finding him guilty for commission of offence under section 302 of the Penal Code for committing murder of victims Sujan and Alamgir and sentenced him to death and to pay a fine of Tk.50,000/-. Petitioner Md. Raju (brother Raju), son of Md. Khorsed Ali and appellant Md. Raju (friend Raju) son of Md. Abdur Rouf were convicted for commission of offence punishable under section 302/34 of the Penal Code for committing murder of Nur Nabi alias Nabin. They were sentenced to death and to pay a fine of Tk.25,000/- each by a judgment and order dated 24.11.2008 in Sessions Case No.57 of 2006 arising out of G.R. Case No.47 of 2004 corresponding to Thakurgoan P.S. Case No.04 dated 05.02.2004.

Learned Sessions Judge transmitted the case record in the High Court Division, which was registered as Death Reference No.125 of 2008. The convicts preferred Criminal Appeal No.8229 of 2008 and Jail Appeal Nos.1126, 1127, and 1128 of 2008. The High Court Division heard all the matters together and by a judgment and order dated 04.05.2014 accepted the death reference in part affirming the sentence of death awarded to appellant Md. Younus @ Yousuf and Raju (friend Raju) son of Md. Abdur Rouf. However, it commuted the sentence of brother Raju from death to one of imprisonment of life and to a fine of Tk.5,000/-, in default, to suffer rigorous imprisonment for one year more. Then the appellant Md. Younus @ Yousuf preferred Criminal Appeal No.113 of 2004, appellant Md. Raju (friend Ruju) preferred Criminal Appeal No.112 of 2014 and Md. Raju (brother Raju) preferred Criminal Petition for Leave to Appeal No.924 of 2021 in this Division.

The prosecution case arose out of a woeful incident in which 3(three) persons were brutally killed by inflicting indiscriminate dagger blows. The aforesaid incident occurred as a sequel to an eve-teasing matter.

Prosecution case was that before the occurrence, accused Younus and his friend Raju and others used to taunting P.W.10 Hamida Khatun Rumi and P.W.12 Nazneen Tultuli on their way to and from school. Knowing about the matter, witnesses Labu (P.W.6), Arfan (P.W.3), Anwar (P.W.4), Sonahar (P.W.8) and victim Sujan raised protest and asked accused persons not to do such obnoxious incident in future. Centering round the above issue, there was an altercation between two groups. On being enraged thereby, on 05.02.2004, before magrib prayer, accused Younus, brother Raju, friend Raju and others went to the place of occurrence armed with deadly weapons like iron rod, dagger etc. and encircled P.Ws.3,4,6,8 and victim Sujan. At one stage of altercation between the above two groups, accused Mostofa dealt a 'shabol' blow on the head of victim Arfan who fell down on ground. Seeing this when the informant party, being frightened, was leaving the place, accused Younus assaulted victim Sujan with a dagger. Accused Nazrul Islam Babu dealt a 'shabol' blow on the head of victim Sujan. Sujan raised alarm. Then Alamgir went to rescue Sujan and requested Younus to stop assaulting him but accused Younus and friend Raju threw sand towards the eyes of Alamgir. Thereafter, Younus dealt a dagger blow on the back side of victim Alamgir. Accused Razu, brother of Younus, dealt 'shabol' blow on the head of Alamgir who fell down on the ground. Victim Nur Nabi went there to rescue Alamgir. Then Razu, friend of Younus, taking dagger from him, dealt a blow towards abdomen of Nur Nabi causing severe bleeding injury.

Thereafter, the accused persons left the place. With the help of the local people, the informant shifted her injured husband Alamgir and Sujan to hospital for treatment where the doctors declared them dead. Victim Nur Nabi was also taken to Rangpur Medical College Hospital, who succumbed to his injuries on 06.02.2004.

Following the incident, P.W.1 Rukshana Bewa set the ball in motion by making a formal FIR naming 5(five) accused persons including the convict-appellants along with 5/6 others unknown accused with Thakurgaon Police Station which was registered as Thakurgaon Police Station Case No.4 dated 05.02.2004 under Sections 147/148/323/326/307/302/34 of the Penal Code.

Initially, police, holding investigation, submitted charge-sheet being No.193 dated 15.08.2004 against 7(seven) accused persons including the 3(three) convict-appellants. Against which, the informant filed a Narazi petition whereupon a further investigation was directed. Thereafter, P.W.16 A.S.P. Subrato Kumar Halder conducted further investigation and submitted supplementary charge-sheet being No.110 dated 30.06.2005 against 10(ten) accused persons including the 3 (three) convict-appellants under Sections 147/148/323/326/307/302/34 of the Penal Code. However, accused No. 9 in the charge sheet, namely, Md. Mosharof Hossain died due to illness during investigation.

The case record was transmitted to the Court of Sessions Judge, Thakurgaon for holding trial wherein it was registered as Sessions Case No.57/2006.

Sessions Judge framed charge against 9 accused persons under Sections 302 & 302/34 of the Penal Code and the charge was read over and explained to the accused persons who pleaded not guilty and claimed to be tried. The prosecution examined as many as 17 witnesses who were cross-examined by the defence. The defence version of the case as it appears from the trend of cross-examination of the prosecution witnesses was that of innocence and that they were implicated in the case falsely.

The trial Court, upon consideration of the evidence and hearing the parties, convicted the appellants as stated earlier. The High Court Division maintained the order of conviction. However, it commuted the sentence of petitioner brother Raju son of Khorshed Mistry from death to imprisonment for life.

Thus, the instant appeals and petition have been preferred.

Mr. S.M. Shahjahan, learned Advocate appearing for the friend Raju in Criminal Appeal No.112 of 2014 submits that the High Court Division erred in law in upholding the conviction and sentence of appellant Raju son of Md. Abdur Rouf, without scanning the evidence inasmuch as the prosecution has hopelessly failed to prove the ingredients of section 302 of the Penal Code against him. He submits that the P.W.1 said that friend Raju had iron rod in his hand but some of the alleged eye witnesses said that he carried a 'shabol' and some of them said he had dagger in hand, the learned Courts below failed to consider those contradictions and discrepancies of the evidence, thereby, erroneously convicted and sentenced this appellant. He submits that the charge against Raju son of Abdur Rouf was that he inflicted dagger blow on the person of victim Nur Nabi but such charge

being not proved by acceptable evidence, the learned Courts below ought to have acquitted the appellant friend Raju.

Mr. Joinul Abedin, learned Senior Advocate appearing for the appellant Md. Younus @ Yousuf in Criminal Appeal No.113 of 2014 and Raju son of Khorshed Mistry submits that the instant occurrence is not a pre-planned, pre-concerted and cold blooded murder. The incident took place all of a sudden, and as such the learned Courts below committed error of law in convicting appellant Md. Younus @ Yousuf under section 302 of the Penal Code and brother Raju son of Khorshed Mistry under sections 302/34 of the Penal Code. He submits that there is no specific allegation against brother Raju that he had committed any murder or he had any active participation in the offence, therefore, the learned Courts below ought to have acquitted brother Raju. He lastly submits that since instant occurrence is not a preplanned and pre-concerted murder, learned Courts below ought to have commuted the sentence of appellant Md. Younus @ Yousuf from death to imprisonment for life.

On the other hand, Mr. Md. Aminul Islam, learned Deputy Attorney General, supported the judgment and order passed by the High Court Division submitting that upon proper appreciation of evidence the High Court Division confirmed the conviction and sentence of appellant Younus and friend Raju and commuted the death sentence of petitioner brother Raju to imprisonment for life and as such the judgment and order of the High Court Division does not call for any interference by this Division.

We have heard the learned Counsel for the appellants and petitioner and learned Deputy Attorney General for the respondents, perused the

impugned judgment of the High Court Division and other materials on record.

Out of 17 prosecution witnesses P.W.1 Most. Ruksana Bewa is the wife of victim Alamgir Hossain who in her testimony stated that the accused persons are previously known to her. Accused Younus, friend Raju, brother Raju, Rajjak, Mostafa, Sadekul, Sirajul, Intajul, Mosharaf and others used to tease Najneen Nahar Tultuli and Hamida Khatun Rumi on the way of going their school. In the evening of 05.02.2004 accused persons started quarrelling with Anwar, Labu and others near the Mosque of village Nischintapur. Victim Alamgir and this witness went to the place of occurrence and found that Mostafa dealt a shabol blow on the head of witness Arfan (P.W.3) who receiving injuries fell down on the ground. The people present there fled away out of fear. Then victim Alamgir and this witness also tried to leave the scene. At that time friend Raju, son of Abdur Rouf handed over a dagger to appellant Younus. Then Younus assaulted victim Sujon with that dagger. Brother Raju son of Khorsed handed over the said dagger to friend Raju and then friend Raju handed over the same to Younus. Accused Nazrul Islam dealt "shabol" blow on the head of victim Sujan. Sujan raised alarm. Then victim Alamgir went to rescue Sujan and requested Younus to stop assaulting. At that time appellant Younus and friend Raju threw sand towards the eyes of Alamgir. When Alamgir was trying to remove sand from his eyes, appellant Younus dealt a dagger blow on the back side of the victim Alamgir and brother Raju dealt a shabol blow on his head who receiving severe injuries fell down on the ground. At that time, victim Nur Nabi @ Nabin tried to rescue Alamgir. Appellant Younus handed over dagger to friend Raju who dealt dagger blow on the

abdomen of Nur Nabi and he fell down on the ground. Thereafter, accused persons including the appellants left the place. Victim Alamgir was shifted to Thakurgaon Sadar Hospital. Doctor, upon examination, declared him dead. Nur Nabi @ Nabin was shifted to Sadar Hospital Thakurgaon and, thereafter, to Rangpur Medical College and Hospital where he died on 06.02.2004. She proved the F.I.R. (exhibit-1) and identified appellant Younus and friend Raju and others on dock. Petitioner brother Raju was absconding. In cross-examination, she said that she saw the occurrence from near the place of occurrence. She denied the defence suggestion that she did not see the occurrence. P.W.2 Most. Razia Begum, in her testimony, stated that she was present at the place of occurrence. Friend Raju handed over a dagger to Younus who dealt a dagger blow on the chest and back side of victim Alamgir. Seeing such occurrence this witness became senseless. After recovery she heard that friend Raju had killed the victim Nur Nabi inflicting dagger blow. She was declared hostile. In her cross-examination by the prosecution she stated that appellant Younus dealt dagger blow to victim Sujan who raised alarm. Then victim Nur Nabi @ Nabin and Alamgir went there. Then accused persons threw sand towards eyes of Alamgir. Thereafter, Younus inflicted dagger blow on the person of victim Alamgir and assaulted Nur Nabi @ Nabin. In her cross-examination, she stated that Sujan was killed first. Thereafter, Alamgir was killed. P.W.3 Arfan, an injured witness, stated that appellant friend Raju dealt an iron rod blow on his right leg and he fell down on the ground. Then accused Younus dealt "shabol" blow on the head of this witness who receiving injuries became senseless. After recovery he found himself in Thakurgaon Sadar Hospital and later on heard that Sujan, Alamgir and Nur

Nabi @ Nabin had died. P.W.4 Md. Anwar Hossain, another eye witness of the occurrence, stated that brother Raju handed over a dagger to friend Raju who, in his turn, handed over the same to Younus. Then Younus inflicted dagger blow on the person of victim Sujan who receiving injuries fell down on the ground and raised alarm requesting Alamgir to save him. Then appellant Younus inflicted dagger blow on the abdomen and back side of victim Alamgir. Thereafter, Nur Nabi @ Nabin made an attempt to confine the accused persons. At the time friend Raju inflicted dagger blow to Nur Nabi @ Nabin and thereafter left the place. This witness and others shifted the victims Sujan, Alamgir and Nur Nabi to Thakurgaon Sadar Hospital. Doctor examining Sujan and Alamgir declared them dead. Nur Nabi was shifted to Rangpur Medical College and Hospital where he died. P.W.5 Md. Jamal Uddin is also an eye witness of the occurrence who stated that at first friend Raju dealt an iron rod blow on the leg of P.W.3 Arfan. Thereafter, appellant Younus inflicted dagger blow to victim Sujan. When victim Alamgir and Nur Nabi went to rescue Sujan, the appellant Younus threw sand to the eye of Alamgir. Thereafter, Younus inflicted dagger blow to victim Alamgir and friend Raju also inflicted dagger blow to victim Nur Nabi. In cross-examination, he denied that the statements made above are not true. P.W.6 Md. Labu Hossain, another eye witness of the occurrence, stated that the appellant friend Raju dealt an iron rod blow on the right leg of P.W.3 Arfan. Thereafter, appellant Younus dealt a shabol blow on the head of PW.3 Arfan. The accused persons confined victim Sujan when he was fleeing away. Then accused Nazrul Islam dealt a wooden stick blow to victim Sujan who fell down on the ground and raised alarm. Victim Alamgir went there to rescue Sujan. Then appellant Younus and friend

Raju threw sand targeting eyes of victim Alamgir. Accused Younus inflicted dagger blow to Sujan and friend Raju dealt a shabol blow to Sujan. When Alamgir was removing sand from his eyes as thrown by accused Younus, he (Younus) inflicted dagger blow on the person of victim Alamgir and friend Raju dealt a “shabol” blow targeting him. At that time victim Nur Nabi went there then friend Raju dealt a dagger blow, taking the same from Younus, to Nur Nabi. Many persons went to the place of occurrence. Then the accused persons left the place. In his cross examination, he stated that initially victim Alamgir and informant P.W.1 were not present at the place of occurrence. When accused persons were assaulting victim Sujan, they went there for saving Sujan. P.W.7 Md. Moinul Huq another eye witness of the occurrence, in his testimony, stated that friend Raju at first dealt an iron rod blow on the leg of victim Arfan (P.W.3) and Younus dealt a “shabol” blow on the head of Arfan who became senseless. Thereafter, accused Younus inflicted dagger blow on the back side of Sujan. Receiving injuries Sujan raised alarm, then accused Nazrul Islam dealt a wooden stick blow to victim Sujan who fell down on the ground. At that time victim Alamgir and his wife (P.W.1) went there. Appellant Younus and his friend Raju, taking sand from the earth, threw the same towards them. Thereafter, Younus inflicted dagger blow on the back side of victim Alamgir. Victim Nur Nabi went to rescue Alamgir then Younus gave his dagger to friend Raju who inflicted dagger blow on the abdomen of victim Nur Nabi. This witness and others shifted the victims to hospital where the doctors, examining Alamgir and Sujan, declared them dead. Nur Nabi was shifted to Rangpur Medical College and Hospital where he died on the next day. P.W.8 Sonahar, another witness of the

occurrence, in his testimony stated that appellant friend Raju dealt an iron rod blow on the leg of P.W.3 Arfan and Younus dealt a shabol blow on his head. This witness, seeing that occurrence, fled away. P.W.9 Monsur Ali another witness of the occurrence stated that accused Younus inflicted dagger blow on the back side of victim Sujan. At that time, victim Alamgir and his wife (P.W.1) went there to rescue Sujan. Then Younus threw sand towards the eyes of victim Alamgir. Thereafter, he (Younus) inflicted dagger blow and friend Raju dealt shabol blow to victim Alamgir. Friend Raju inflicted dagger blow to victim Nur Nabi. Thereafter, the accused persons left the place. P.W.10 Most. Hamida Khatun Rumi heard about the occurrence. P.W.11 Md. Matiur Rahman stated that accused friend Raju dealt a shabol blow on the right leg of P.W.3 Arfan and accused Younus dealt an iron rod blow on his head. This witness tried to resist the same. At that time accused Younus inflicted dagger blow on the person of victim Sujan. Victim Alamgir and Nur Nabi went there to rescue Sujon but Younus inflicted dagger blow to them. They were shifted to Thakurgaon Sadar Hospital where the doctor declared Alamgir and Sujan dead. Nur Nabi was shifted to Rangpur Medical College Hospital. He died on the next day. The Investigating Officer seizing some incriminating materials prepared a seizure list and this witness put his signature in the seizure list. P.W.12 Most. Nazneen Tultuli was declared hostile. P.W.13 Dr. Md. Abdus Samad of Rangpur Medical College and Hospital held autopsy of victim Nur Nabi @ Nabin and found following injuries on his person:

- 1) One stab wound is situated in Rt flanks $1\frac{1}{2}$ " above the Rt anterior superior illiac spine which is stitched up ($1\frac{1}{4}$ ") with 3(three) stitches ($\frac{1}{4}$ " X $\frac{1}{4}$ " X abdominal cavity.)
- 2) One large abrasion in left forearm on the posterior aspect extending from just below the Lt. elbow Joint to the wrist joint with $1\frac{1}{2}$ " to 2" breadth.
- 3) One bruise (1 " X $\frac{1}{2}$ ") over the Rt elbow joint (Posteriorly) with abrasion (measuring $1\frac{1}{2}$ " X $\frac{1}{2}$ ").
- 4) One surgical wound with 12 stitches extending from epigastrium to the Hypogastrium.

He opined that the cause of death of victim Nur Nabi @ Nabin was due to shock and haemorrhage which was antemortem in nature.

P.W.14 Dr. Md. Motaleb Mondal, is the Resident Medical Officer of Akkelpur Upazila Health Complex. At the relevant time he was the EMO of Thakurgaon Sadar Hospital. He, together with Dr. Md. Rustom Ali, RMO of the same hospital, held autopsy of victims Sujan and Alamgir. In his testimony he said that they found following injuries on the person of victim Alamgir:

- 1) One incised cut injury on the back of the left shoulder measuring 1 " X $\frac{1}{2}$ " X 1 ".
- 2) One incised cut injury on the lower part of the left lateral chest wall measuring 1 " X 1 " X up to chest cavity.

3) One incised cut injury on the lower part of the right lateral chest wall measuring 1" X ½" X 1".

4) One incised cut injury on the upper part of the left thigh measuring ¾" X ½" X ½".

On dissection: Thoracic cavity contains blood and blood clots. Spleen ruptured at the base measuring 1½" X 1" X 1½ ". Intra abdominal cavity contains blood and blood clots. Liver found congested. On opening the skull found intact stomach contains undigested food and food particles. Blood and Blood clots were ante mortem. On dissection of the injured area skin, muscles, vessels and nerve were injured.

They opined that the death of victim Alamgir was caused due to haemorrhage and shock as a result of the injuries stated above which were ante mortem and homicidal in nature. They also held autopsy of victim Sujan and found following injuries on her person:

1) One incised cut injury on the left lateral chest wall measuring 1¼" X ½" X chest cavity.

2) One incised cut injury on the right upper part of the thigh measuring ½" X ½" X ½"

On dissection: Blood and blood clots were present in the thoracic cavity. Left lunge lacerated measuring 4" X 1" X 1". On dissection of the injured area found skin, muscle, vessel, and nerve were injured. Blood and blood clots were present. Thoracic

cavity contains huge amount of ante mortem blood and blood clots. On dissection of the skull found intact.

They opined that the death of victim was due to haemorrhage and shock as a result of the injuries mentioned above which was ante mortem and homicidal in nature.

P.W.15 Din Mohammad investigated the case in part. P.W.17 Md. Akkas Ali Khan also investigated the case. P.W.16 Subrata Kumar Halder, Senior Assistant Police Super holding further investigation submitted supplementary charge sheet against the appellants and others.

Those are the evidences, in a nutshell, of the prosecution witnesses.

From the evidence as stated above, it appears that P.W.1 Most. Rukshana Bewa, P.W.2 Most. Razia Begum, injured witness P.W.3 Arfan, P.W.4 Md. Anwar Hossain, P.W.5 Md. Jamal Uddin, P.W.6 Md. Labu Hossain @ Ziauddin, P.W.7 Md. Moinul Huq, P.W.8 Md. Sonahar and P.W.9 Munsur Ali consistently, in their testimonies, stated that the appellant Younus at first inflicted dagger blow to victim Sujan and, thereafter, to victim Alamgir. Friend Raju inflicted dagger blow to victim Nur Nabi. We do not find any material contradictions and discrepancies in the testimonies of those eye witnesses of the occurrence. Post-mortem reports show that the victims died receiving the stated dagger and 'shabol' blows. A critical examination of the evidence of the P.Ws.1,2,3,4,5,6,7,8 and 9 shows that their presence at the time of incident cannot be doubted. The evidence of these eye witnesses has been broadly corroborated by the medical evidence in respect of the deceaseds as well as the injuries sustained by them.

The learned Advocates for the appellants failed to satisfy us showing any material contradictions and discrepancies of the testimonies of those eye witnesses. The eye witnesses in their testimonies stated that the accused persons were previously known to them and they inflicted dagger blows mercilessly towards the victims one after another. It further appears that appellant Md. Younus @ Yousuf ordered friend Raju to kill Nur Nabi @ Nabin so that he could not give evidence against them. Pursuant to that order, friend Raju dealt dagger blow on the person of victim Nur Nabi @ Nabin. Consequently, he died on 06.02.2004.

Learned Advocate for the petitioner brother Raju has submitted that there is no specific allegation against brother Raju that he had committed any murder or he had any active participation in the offence, therefore, the learned Courts below ought to have acquitted petitioner brother Raju. But scanning the evidence we find that PW-1 stated in her testimony that brother Raju had a dagger in his hand and he had given it to friend Raju who handed over that dagger to Younus and Younus inflicted fatal blows with that dagger to deceased Sujan and Alamgir. This statement was supported by PW-4. Again, PW-6, 8 and 9 stated that brother Raju had a dagger in his hand. Besides, PW-1 stated in her examination-in-chief that brother Raju had dealt a shabol blow to her husband victim Alamgir. In view of the evidence recorded above, we do not find any illegality or irregularity in the conclusion arrived at by the trial Court as well as the High Court Division.

So far sentence is concerned, it appears that the appellant Md. Younus @ Yousuf inflicted dagger blows to Sujan and thereafter, to Alamgir. He had killed those two victims mercilessly and, thereafter, he

ordered friend Raju to kill Nur Nabi and, accordingly, friend Raju inflicted dagger blow to Nur Nabi.

In the instant case it has been established that appellant Md. Younus @ Yousuf committed a cold blooded murder in broad day light where the victim Sujan and Alamgir were helpless and undefended. The fault of the victim Sujan was that he protested continuous taunting by the gang of the appellant Younus to two school going neighbor girls and that of victim Alamgir was trying to rescue Sujan from the grip of the killer gang when he was under fatal attack. The offence committed by the appellant Younus was of an exceptionally depraved and heinous character. We do not find any mitigating circumstances in favor of appellant Younus. In such a situation, appellant Md. Younus @ Yousuf does not deserve any leniency in awarding sentence. So far friend Raju is concerned, it appears that the appellant Md. Younus @ Yousuf, handing over the dagger, directed him to assault victim Nur Nabi @ Nabin. Accordingly, he (friend Raju), taking dagger from Younus, assaulted victim Nur Nabi @ Nabin who died on the next day at Rangpur Medical College and Hospital. From the aforesaid facts, it appears that the killing of Nur Nabi @ Nabin by friend Raju was not preplanned and premeditated murder. In carrying out the order of Md. Younus @ Yousuf friend Raju took dagger from him and inflicted blows to Nur Nabi @ Nabin. In such circumstances, we are of the view that his sentence may be commuted from death to imprisonment for life.

Accordingly, Criminal Appeal No.113 of 2014 preferred by Md. Younus @ Yousuf, Criminal Appeal No.112 of 2014 preferred by Md. Raju (friend Raju) and Criminal Petition for Leave to Appeal No.924 of 2021 filed by Md. Raju (brother Raju) are dismissed. The sentence of death

of Md. Younus @ Yousuf awarded by the trial Court and affirmed by the High Court Division is maintained. The sentence of imprisonment for life and fine awarded by the High Court Division to the petitioner Md. Raju (brother Raju) is also maintained. The sentence of Md. Raju (friend Raju) is commuted from death to imprisonment for life and to pay a fine of Tk.50,000/-, in default, to suffer rigorous imprisonment for 2(two) years more. Md. Raju (friend Raju) and Md. Raju (brother Raju) shall get benefit of section 35A of the Code of Criminal Procedure. The jail authority is directed to shift friend Razu and brother Raju from death cell to normal cell for serving out rest of their sentence.

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