

Justice Prevails on Mohammad Aftab Alam Case

May 2024



SUMMARY OF THE CASE

On April 25, 2024, the District Court of Rautahat found Mohammad Aftab Alam and his brother Mahtab Alam guilty of murder and sentenced them to life imprisonment. Additionally, Shekh Saroj and Badri Sahani, identified as their abettors, were also convicted and sentenced to life imprisonment. However, six other suspected abettors – Mohammad Mobin, Shekh Fajale, Shekh Bhadi, Shahil Alam, Gauri Shankar Sah, and Shekh Jumai – remain fugitives, with their case pending until their arrest.

This verdict brings great relief to families and human rights defenders who fought for justice over the span of 16 long years.

Mohammad Aftab Alam, also known as Alam, a former Minister of Labour and Transport Management from the Nepali Congress Party (NC) and a candidate in the constituent assembly election from Rautahat, election constituency number 2, was accused of committing mass murder. Alam allegedly disposed of injured and deceased workers in a brick kiln to eliminate evidence of his involvement in producing bombs, with the aim of disrupting the 2008 Constituent Assembly election and gaining personal advantages.

While it was suspected that more than 20 people may have been killed, Advocacy Forum Nepal (AF) could only confirm the deaths of two Nepali residents from the Rautahat district. Some individuals killed in the incident were reported to be from India and were called to make bombs, but their identities remained unverified. Despite repeated pleas from the victims' families to initiate an investigation, no immediate action was taken by the authorities. Eventually, after considerable effort, a First Information Report (FIR) was filed, but no further investigation ensued, and the police put the case on hold, resulting in no progress.

With support from AF, the victims' families represented the case to the Supreme Court, utilizing the court's writ jurisdiction to challenge the lack of investigation. On May 29, 2012, after a four-year period since the FIR was filed, AF's legal team obtained a court order from the Supreme Court instructing the police to initiate an investigation. However, despite the ruling, no investigation was actually carried out. Thanks to the persistent efforts of the victims' families and lawyers, the police were eventually compelled to commence an investigation, leading to the arrest and prosecution of Mohammad Aftab Alam on charges of murder and attempted murder. On October 15, 2019, Alam was sent to prison, where he awaited trial.

Despite numerous obstacles and uncertainties regarding whether the accused would be successfully convicted, given the prevailing difficulty in holding perpetrators with political affiliations accountable for their actions, justice prevailed on April 25, 2024, when the District Court of Rautahat rendered its verdict, pronouncing Mohammad Aftab Alam and his brother Mahtab Alam guilty in the case and sentencing them to life imprisonment.

This case has instilled hope not only among the victims but also among human rights defenders striving to combat impunity in the country. The briefing below provides an update on the case, outlines key facts, and offers critical insights into our criminal justice system, which has long-awaited reforms.

FACTS OF THE CASE

On April 9, 2008, at around 7 pm, an explosion occurred while manufacturing explosives in the cattle shed of the late Sheikh Idris. The blast resulted in injuries to an estimated 20 individuals from India and three individuals from Nepal. Allegedly, all the injured, except for one person, were administered anesthesia by a local doctor and subsequently taken to Alam's brick kiln. It was claimed that they were thrown into the kiln while some of them being still alive. The injured Nepali victims were identified as Trilok Pratap Singh (Alias

Pintu), 22 years old, the son of Shree Narayan Singh Rajput. He was taken from his home in Saruatha-02 to manufacture explosives. Oshi Akhtar Miya, 23 years old, the son of Rokshana Khatun, from Saruatha-09, and Safi Ahmed Rajput, who managed to escape to India subsequently.

Allegedly, due to Alam's candidacy in the election, the explosives were intended to instill fear among election commission staff and voters, aiming to capture the booths to ensure his victory. There were also allegations against the then-chief of police, SP Laxman Neupane. While it is confirmed that he provided fabricated information about the incident to the public, it is not clear whether it was him to provide the tractor for the escort to the brick kiln.

As people became aware of the bomb blast, the injured victims, and the potential police cover-up, candidates from various political parties, excluding those from the Nepali Congress, spoke about this. On April 12, 2008, these candidates, including Shailendra Shah from the Communist Party of Nepal – Unified Marxist-Leninist (CPN-UML), jointly filed a petition at the Constituent Assembly Court. Their petition demanded a comprehensive investigation into the incident and the prosecution of the individuals responsible and demanded to invalidate the candidacy of Alam. Furthermore, on April 16, 2008, Shailendra Shah individually complained to the National Human Rights Commission (NHRC) and urged them to investigate the case. The NHRC opened investigation including on-site investigations from April 27 to May 2, 2008. The NHRC in its report demanded the government to conduct a fair investigation by forming an independent Judicial Commission.

VICTIMS' REQUEST TO REGISTER FIR AND OPEN INVESTIGATION

Despite the family members of Trilok Pratap Singh and Oshi Akhtar Miya approaching the police and requesting an investigation into the incident, their pleas were ignored, and no action was taken. Frustrated by the lack of response, on April 24, 2008, Rokshana Khatun (Oshi Akhtar Miya's mother) filed a complaint with the National Human Rights Commission (NHRC). Alongside her, Shree Narayan Singh Rajput (Trilok Pratap Singh, also known as Pintu's father) also registered a complaint. On the same day, they jointly issued a press statement alleging that their children, along with other unidentified individuals, had been burned alive in the brick kiln.

On April 26, 2008, the police visited the site of the incident for investigation and reporting. However, human rights defenders alleged that the investigation conducted by Inspector Rajiv Basnet's team lacked thoroughness, independence, and impartiality. They observed that new bamboo bars had been installed on the walls, the roof had been recently repaired, and the floor was covered with freshly stored mulch in the brick kiln. They suspected that these actions were taken to conceal and destroy evidence at the crime scene. They demanded that the floor be investigated by removing the newly stored mulch. Despite their efforts, the human rights defenders encountered harassment from the police. They were not granted permission by the police to conduct their own investigation and document the crime scene.

On April 21, 2008, Shree Narayan Singh Rajput and Rokshana Khatun visited the District Police Office (DPO) in Rautahat to file a First Information Report (FIR) against Mohammad Aftab Alam and others, namely Mohatab Alam, Sheikh Bhadai, Mobin Alam, and Shesh Saraj, alleging their involvement in the incident. However, the DPO in Rautahat refused to register their FIR. With the assistance of human rights organizations, the family members decided to send the FIR by post to maintain a record of their complaint. After nine days, the victims were called to the DPO, where their FIR was verified and officially registered on April 30, 2008.

On June 23, 2008, Aftab Alam's statement was recorded, and on the same day, the police forwarded the case file to the District Government Attorney's Office (DGAO) in Rautahat. The police recommended that Alam be sentenced to life imprisonment and that his property be confiscated. However, it should be noted that this recommendation was made without any supporting evidence attached. It appeared to be a superficial attempt to give the impression that the police were pursuing murder charges against Alam, but in reality, it was done merely as a formality to acquit him. As expected, on the same day, the DGAO in Rautahat decided not to prosecute Alam due to a lack of sufficient evidence and submitted the case file to the Office of the Attorney General for approval. On July 14, 2008, after reviewing the investigation report from the DGAO, the Office of the Attorney General upheld the decision not to prosecute Alam. This highlights the common trend in the system where cases do not progress quickly unless there is a specific intent to do so.

VICTIMS' MOVE TO THE SUPREME COURT

On August 5, 2008, Rokshana Khatun and Narayan Singh Rajput, with the support of AF, filed a writ of Mandamus at the Supreme Court (Registration No. WO-0038) challenging the decision of the Office of the Attorney General not to prosecute the case. They argued that the Office of the Attorney General based its decision solely on the statements provided by the accused, without considering the requests made by the National Human Rights Commission, Nepal Bar Association, and other human rights organizations to conduct a judicial investigation into the case.

In response to the Court, the Office of the Attorney General, the Office of the Appellate Court Government Attorney in Hetauda, and the District Government Attorney's Office (DGAO) in Rautahat presented similar arguments. They claimed uncertainty regarding whether those reported as deceased were indeed dead and asserted that it could not be proven that the individuals who died were victims of murder. They also stated that if sufficient evidence of homicide emerged, the case could be prosecuted at a later stage.

On May 29, 2012, a joint bench consisting of Honorable Justice Sushila Karki and Bharat Bahadur Karki dismissed the decision made by the District Government Attorney's Office (DGAO). The court argued that there appeared to be some evidence of the incident based on the complaints identifying the perpetrators, as well as the recovery of Oshi Akhtar Miya's sweater, high-neck clothing, black socks, and black shoes at the site. Statements from Sarajul Miya and field reports from the National Human Rights Commission, Nepal Bar Association, and other human rights organizations also provided evidence regarding the incident. However, the investigating authority had failed to pay attention to this evidence.

Consequently, the Court ordered a thorough investigation into the incident and instructed the authorities to carry out prosecution following existing laws. Furthermore, the Court mandated that updates on the progress of the case be provided to the Supreme Court.

On July 6, 2012, the Office of the Attorney General lodged a request with the Supreme Court seeking a review of its previous decision. However, on July 26, 2013, the Court rejected this request.

Considering the various pieces of evidence presented, such as the presence of Sarajul Miya as a direct witness and the recovery of specific items like a high-neck sweater, black socks, and shoes belonging to the victim Oshi Akhtar, the Court concluded that the identification of individuals involved in the incident and the prevailing legal provisions warranted the responsibility falls upon the government of Nepal to file a formal accusation and seek appropriate legal action.

AF continued to monitor the progress of the case and requested the Judgment Execution Directorate of the Supreme Court to ensure the implementation of its decision. However, unfortunately, there was no communication or updates provided by the Office of the Attorney General regarding the status of the case, nor was there any notable progress made in the investigation.

CONTEMPT OF COURT: TRIGGER ACTION

On June 1, 2015, Pushparaj Poudel, a lawyer from Advocacy Forum-Nepal (AF), filed a contempt of court case against the Office of the Public Prosecutor and the District Police Office in Rautahat for their failure to comply with the decision of the Supreme Court. In response, the Court issued a show cause order to the defendants on June 11, 2015.

Despite being listed in the cause list, the hearing of the case was postponed a total of 13 times. Finally, on July 15, 2015, the District Police Office in Rautahat responded to the case through an appointed representative. They stated that they had initiated an ongoing investigation into the case after receiving a letter from the District Government Attorney's Office on July 13, 2012, along with the original case files. The investigation was stated to still be in progress.

However, on June 21, 2019, in response to the writ, a joint bench comprising Honorable Justice Anil Kumar Sinha and Kumar Regmi directed the Office of the Attorney General to submit a confidential report on the current status of the case within 30 days. The Court noted that it had not received any progress report on the investigation since July 14, 2008, when the court had instructed the Office of the Attorney General to conduct a thorough investigation and provide updates to the Court.

Finally, on October 13, 2019, Mohammad Aftab Alam was detained, and an investigation was initiated. Despite Alam's denial of the allegations, the investigating officer, Inspector Pappu Nayak, presented a report stating that a bomb explosion had occurred and that the defendants had taken the injured individuals and burnt them alive in a brick kiln. The report recommended that Alam should be prosecuted and held accountable under the provisions of the Explosives Act of 1961.

Deputy Superintendent of Police Indra Prasad Subedi, stationed in Rautahat during the Constituent Assembly election in 2008, provided a statement regarding the events of April 9, 2008. He stated that around 6:30 pm, he heard a loud explosion and observed a black cloud of smoke in the northern part approximately 1.5 km away from the Area Police Office. While Subedi and his mobile team were en route to the location, he received a call from Superintendent of Police Laxman Neupane, instructing him to return to the District Police Office (DPO). Despite informing Neupane that he was heading towards the incident site, he was directed to the DPO and was assured that another team would be dispatched there. This statement suggests the potential involvement of the then-chief of police in attempts to conceal the case.

Eyewitness Sarajul Miya and brick kiln worker Rajesh Prasad Sahani confirmed the occurrence of the incident. Sahani stated that he observed Mohammad Aftab Alam and a group of 12 individuals arrive at the brick kiln around 12:30 am on April 10, 2008, with a tractor. They brought bodies in jute sacks and proceeded to remove them one by one, throwing them into the kiln. Sahani couldn't confirm the exact number of individuals thrown into the kiln, but he noticed movement in some of the sacks, indicating the possibility that some were still alive. Sarajul Miya claimed that the tractor used to transport the bodies was accompanied by police vans, with one positioned in front and another trailing behind.

Victims Safi Ahmed and Gauri Shankar Ram, both injured in the explosion, have now disclosed their experiences. They revealed seeking treatment in India for their injuries and expressed fear during the incident, which prevented them from speaking out earlier. Safi Ahmed stated that two individuals lost their lives, and multiple others were wounded, while Gauri Shankar Ram recalled witnessing the deaths of two or three people and observing over a dozen individuals sustain injuries.

THE CHARGE SHEET

On November 4, 2019, the prosecutor officially filed the chargesheet with the District Court in Rautahat. The chargesheet presented a compelling argument supported by various forms of evidence, including statements from both direct and other witnesses, reports from human rights organizations, the Supreme Court's order from July 26, 2012, as well as medical reports concerning the injured victims. These pieces of evidence were utilized to establish the occurrence of a bomb explosion and the subsequent act of the defendants throwing the wounded victims into the brick kiln.

The chargesheet argued that Mohammad Aftab Alam and other defendants were involved in the importation, storage, and use of explosives, specifically bombs, which constitutes an offense under Section 4 of the Explosives Act of 1961. Consequently, the prosecutor emphasized that they should be subject to punishment as prescribed under Section 10(a) of the same Act. Furthermore, Alam and the others were accused of attempting to murder Safi Ahmed and Gauri Shankar Ram Chamar, an offense encompassed by No. 1 and 15 of the homicide chapter in the existing General Code of 1963. Additionally, the chargesheet invoked Section 183(1) of the Criminal Code of 2017, proposing that they be punished in accordance with No. 15 of the General Code and Section 183(2) of the Criminal Code.

Regarding the mass murder of the wounded victims by burning and the subsequent destruction of evidence, the chargesheet called for the prosecution of Alam and other defendants based on No. 1 and 13(1) of the General Code, as well as Section 177(1) of the Criminal Code. The requested punishment was to be administered in accordance with No. 13(1) of the General Code and Section 177(2) of the Criminal Code.

THREATS TO VICTIMS, WITNESSES AND LAWYERS INVOLVED

Rokshana Khatun was shot dead and her tragic death paints a grim picture of the challenges facing victims, witnesses, and advocates in seeking justice. Rokshana Khatun, a petitioner in the writ petition, was fatally shot, with suspicions of her murder being orchestrated by individuals linked to Mohammad Aftab Alam. The incident's location presents formidable obstacles to access, compounded by Alam's influence and the pervasive fear it instills, hindering open discussion of the case.

To address security concerns, the government assigned round-the-clock protection to Shree Narayan Singh Rajput, recognizing the potential risks he faces. However, Rokshana Khatun's youngest son and journalists covering the case also expressed fear of reprisals, with threats received being explicit and including death threats. Victims and witnesses were hesitant to involve the police, fearing repercussions and doubting the force's credibility, particularly given Alam's political ties and perceived impunity.

Alam's arrest did not quell tensions; he openly intimidated police officers, creating an unsafe environment for those involved in the case, prompting their flight from the district. Alam's extensive political career, alleged criminal associations, and reported financial support for criminal activities exacerbated concerns about the case's vulnerability, casting doubt on the court's ability to convict him.

Furthermore, witnesses, coerced and threatened, had already altered their testimonies, further complicating proceedings. The absence of a state witness protection program left them vulnerable, perpetuating silence and hindering justice. Lawyers representing the victims, notably Advocate Pushparaj Paudel, faced targeted threats, with no security provided by the state.

Amid these challenges, legal representatives were mobilizing strategies to safeguard themselves, including involving multiple lawyers to mitigate pressure and threats.

UNSUCCESSFUL ATTEMPTS TO TRANSFER THE CASE

Efforts to transfer the case from Rautahat to minimize risks encountered several obstacles. Pursuant to the Penal Code, the High Court holds the authority to transfer cases between District Courts within its jurisdiction. Subsequently, on December 17, 2019, the police and prosecutor submitted an application to the Janakpur High Court Birgunj Bench, seeking the case's transfer to the Parsa District Court. Legal experts and advocates from the High Court Bar Association in Birgunj were convened by the High Court to deliberate on the matter.

Sri Narayan Singh Rajput, alarmed by Alam's influence and threats, advocated for the case's transfer to the Parsa District Court. Rajput's plea followed instances of witness abduction and coercion into providing false testimony favoring Alam. Moreover, Alam's threats against police officials involved in his arrest, leading to the departure of Rautahat's district judge and attorney, further emphasized the need for relocation.

Rajput contended that Alam's sway could impede a fair trial in Rautahat, prompting his call for a shift in jurisdiction. Chief Judge Dilli Raj Acharya solicited input from the amicus curiae of the High Court Bar Association in Birgunj to gather their perspectives. However, limitations imposed by the Penal Code prohibit transferring the case to locations like Kathmandu, where victims' and witnesses' security might be better safeguarded.

The case faced many challenges in investigation process, including reliance on statements without adequate technology, delayed issuance of arrest warrants, and mistreatment of arrested individuals and their families, insufficient witness security and inadequate infrastructure for statement recording further hinder the justice system's efficacy, dissuading witness cooperation, the case continued in the Rautahat District Court, underscoring the challenges encountered in seeking fair adjudication amidst threats and influence in such cases.

POLITICISATION OF THE CRIME

This case starkly illustrates the criminalization of politics and the politicization of crimes. Following Alam's arrest, supporters of the Nepali Congress staged protests in Rautahat, burning tires and obstructing roads in various areas. During a public program the party's president and former Prime Minister, Sher Bahadur Deuba, accused Alam's arrest of being a conspiracy against the Nepali Congress party. This underscores how Alam's political backing instills terror and fear among witnesses and victims.

The delayed investigation of the bomb explosion site, which occurred 15 days after the incident, reflects the police's nexus with the politicians and lack of independent and impartiality of the police. This delay resulted in the loss of crucial evidence, as the cattle shed where the bomb exploded was completely renovated, and the brick kiln where the injured were burned alive was entirely demolished.

Another significant concern in this case is the security of the plaintiffs and witnesses if Alam is released. Witnesses have expressed fear of retaliation from Alam, which has kept them silent until now.

AFTAB CHALLENGES HIS DETENTION

On November 15, 2019, the Rautahat District Court ordered Alam's imprisonment pending trial. Dissatisfied with this ruling, Alam challenged it by filing an application at the Janakpur High Court on December 17, 2019. In his application, Alam claimed the Rautahat District Court's order was illegal and requested its revocation.

After reviewing the case, on February 7, 2020, the Janakpur High Court upheld the District Court's order. The High Court concluded that the gathered evidence and statements provided sufficient grounds to believe a bomb explosion had occurred, resulting in fatalities. It also found evidence indicating Alam's involvement. Additionally, the High Court considered an application by Gauri Shankar Ram Chamar, seeking security due to potential threats and abduction from the defendants. The court also took into account a leaked video showing Alam threatening police officials who apprehended him.

Given the circumstances, the Janakpur High Court deemed it necessary and appropriate for Alam to remain in prison. The court believed his continued detention was essential to ensure the safety and security of all involved parties.

Unsatisfied with the order, Alam once again challenged it in the Supreme Court on September 6, 2020. In the application, Alam reiterated his claim that the alleged bomb explosion never occurred and alleged a conspiracy against him. On August 13, 2021, a Division Bench of Justices Prakash Man Singh Raut and Kumar Regmi recused themselves from the hearing, citing a conflict of interest, as Justice Kumar Regmi had ruled in a previous petition related to the case. On August 27, 2021, the scheduled hearing was postponed. Finally, on May 6, 2022, a division bench comprising Justice Sushmalata Mathema and Nahakul Subedi upheld the verdict of the Birgunj bench under the High Court in Janakpur, denying Alam bail for trial and ordering the government to provide all documents, from the FIR to the court.

THE DISTRICT CASE FOUND ALAM AND OTHER GUILTY OF MURDER

Finally, on April 25, 2024, the District Court Rautahat delivered its verdict, finding Mohammad Aftab Alam and his brother Mahtab Alam guilty in the case and sentencing them to life imprisonment. Additionally, Shekh Saroj and Badri Sahani were convicted and received the same sentence. Notably, the cases against six other fugitive suspects – Mohammad Mobin, Shekh Fajale, Shekh Bhadi, Shahil Alam, Gauri Shankar Sah, and Shekh Jumai – have been suspended. Furthermore, Mukti Shah was acquitted. Presiding over a single bench, the honorable Judge Matrika Prasad Acharya issued the verdict. District Attorney Badri Bahadur Karki, government attorney and lawyers Pushpa Raj Poudel and Bikash Basnet from Advocacy Forum-Nepal advocated on behalf of Plaintiff Narayan Singh Rajput during the final hearing. Mohammad Aftab Alam has been held in Nakkhu jail in Lalitpur, while his brother Mahtab is confined in Gaur Prison, Rautahat.



Advocacy Forum-Nepal (AF) is a leading non-profit, non-governmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Since its establishment in 2001, AF has been at the forefront of human rights advocacy and actively confronting the deeply entrenched culture of impunity in Nepal.

AF's contribution in the human rights advocacy in Nepal has been recognized by Human Rights Watch (HRW) in terms of "One of Asia's most respected and effective Human Rights Organization". AF is a recipient of a number of awards including "Women In Leadership Award" (conferred by Swiss Agency for Development and Cooperation).



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