

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1172 OF 2012

JASBIR @ NANHA

Appellant

VERSUS

STATE OF HARYANA
Respondent

ORDER

1. The appellant (Jasbir @ Nanha) along with one Kamal (since deceased) were convicted by the relevant Sessions Court *inter alia* for murder of two brothers, Rohtash and Daya Nand, and sentenced to life in prison.
2. Such conviction and sentence were carried in appeal by the appellant and Kamal before the High Court of Punjab and Haryana at Chandigarh under Section 374(2), Code of Criminal Procedure. By the impugned judgment and order dated 8th September, 2011, the High Court confirmed the conviction recorded and sentence imposed by the Sessions Court against the appellant and Kamal and dismissed the appeal.
3. Aggrieved by the appellate judgment and order, the appellant and Kamal preferred separate petitions before this Court seeking special leave to appeal thereagainst. Initially notice was issued on 26th March, 2012 and thereafter leave granted on 27th July, 2012. By a further order dated 6th May, 2014, the appellant was enlarged on bail pending the appeal. By then,

the appellant had suffered incarceration in excess of 7 (seven) years.

4. The appeal of Kamal bearing Criminal Appeal No. 1175 of 2012 was taken up for consideration by a learned Judge of this Court on 8th October, 2022. Since Kamal had passed away, the appeal was disposed of as having abated.

5. The appeal filed by the appellant is now placed before us for our consideration. We have heard learned counsel for the appellant and the learned counsel appearing for the State of Haryana at some length.

6. The prosecution version, as is revealed from First Information Report No. 193 dated 23rd June, 2004¹ registered at Police Station Chandhi Bagh, Panipat, is that on 22nd June, 2004, the complainant-Siromani (PW-1) along with 6 (six) of his brothers had left Shamli (U.P.) for a destination in Haryana in two tractors, to which 12 'buggies' were attached. In the wee hours of 23rd June, 2004, roughly around 03.20 a.m., two young boys riding a motor bike accosted the complainant and his brothers. At gunpoint, they snatched Rs.2,200/- from the pocket of Sanjay (PW-2) and Rs.2,500/- from the pocket of Rohtash (deceased). Thereafter, with an intention to kill all the brothers, the said two boys pushed all the brothers one after the other in a nearby canal. While Siromani (PW-1) and Sanjay (PW-2) survived, Rohtash and Daya Nand drowned and died. What happened to the other 3 (three) brothers is conspicuously absent in the FIR.

7. It is a matter of great significance that the FIR, which was registered at 11.05 p.m. on 23rd June, 2004, narrates that Siromani (PW-1) came to know that the two young boys who committed the crime were Kamal, s/o

1 FIR

Dharampal, and the appellant, s/o Om Prakash.

8. In course of hearing, it has been brought to our notice that Siromani (PW-1) and Sanjay (PW-2), during their cross-examination conducted on 15th September, 2005 completely resiled from the statements made by them in course of examination-in-chief on 20th May, 2005. This fact, having been brought to the notice of the trial court as well as the High Court, was not accepted on the ground that the appellant and Kamal might have won over Siromani (PW-1) and Sanjay (PW-2) in the meanwhile. The interval between their examination-in-chief and cross examination was about 4 (four) months and the High Court appears to have rightly taken exception to the repeated adjournments sought by defense counsel on behalf of the appellant and Kamal, which the trial court granted. The High Court felt that such long interval enabled the appellant and Kamal to use it to their advantage by exerting undue influence and pressure to win over Siromani (PW-1) and Sanjay (PW-2) and, therefore, their versions in cross examination seeking to exculpate the appellant and Kamal are totally unacceptable. So far, so good.

9. What perhaps escaped the notice of the trial court as well as the High Court is, however, the omission in the evidence of Siromani (PW-1) and Sanjay (PW-2) as to how they could ascertain the identity of the appellant and Kamal between 3.30 a.m. and 11.05 p.m. of 23rd June, 2004.

10. It is the undisputed case, as revealed from the FIR, that Siromani (PW-1) had no previous acquaintance with the appellant and Kamal before the alleged incident of crime. In fact, while Siromani (PW-1) and his 6 (six) brothers were on the way from Shamli (U.P.) to a destination in Haryana,

the incident occurred at 3.30 a.m., i.e., much before sunrise and when it was dark. Visibility at that hour would have been low and unclear considering that the incident happened on a highway/carriageway and no evidence was ever led of there being sufficient light enabling Siromani (PW-1) to look at the faces of the assailants. Not having any previous acquaintance with the appellant and Kamal, and without any disclosure in the FIR of Siromani (PW-1) as to how he got to know the identity of the assailants along with the names of their respective fathers prior to registration of the FIR, it is indeed very doubtful that he was aware of who the assailants were by the time he made the statement of complaint giving rise to the FIR being registered at 11.05 p.m.

11. No test identification parade of the appellant and Kamal was also conducted immediately after their arrest. It is only in court, in course of examination-in-chief, that Siromani (PW-1) and Sanjay (PW-2) identified the appellant and Kamal. The High Court held that identification of the appellant and Kamal in court by Siromani (PW-1) and Sanjay (PW-2) was sufficient and their testimony did not arouse any suspicion. However, the High Court in so holding missed the woods for the tree. Disclosure of the names of the appellant and Kamal with the names of their respective fathers in the complaint without any previous acquaintance and without anything more is what renders the prosecution story untrustworthy and vulnerable. We hold that there was absolutely no reliable material based whereon it could be inferred at the time of registration of the FIR that, indeed, it was the appellant and Kamal who were the assailants and none else. There was also no effort to throw light on this aspect when Siromani (PW-1) and Sanjay (PW-2) were examined.

12. Profitable reference may be made to the decision of this Court reported in **(2009) 6 SCC 748 : Hem Singh v. State of Haryana** where, in similar circumstances as the present, it was held that omission to conduct a test identification parade could become fatal for the prosecution case to be believed.

13. It is in view of such circumstances that we are constrained to hold the prosecution case, from its very inception, to be thoroughly suspect, there is real likelihood of the appellant and Kamal being falsely implicated and it is rather unsafe to convict the appellant based on the materials on record.

14. We have also noticed a contention raised on behalf of the appellant and Kamal before the High Court which, unfortunately, did not find its favour. It was the contention that even if the prosecution version were accepted in its entirety, it would at best be a case of culpable homicide not amounting to murder punishable under Section 304, IPC. The intention of the appellant and Kamal was to snatch money and not kill. The deceased were hit on the head with the butt of the pistol and not shot. Besides, they were pushed and not drowned by the appellant and Kamal with a concerted effort. We feel, the contention had substance and deserved acceptance, even if the High Court was not impressed by the other contentions.

15. Be that as it may, for the foregoing reason, we set aside the trial court's judgment of conviction and order on sentence. The impugned judgment and order of the High Court also stands set aside.

16. The appellant is set free, if he is not wanted in any other case. His bail bond stands discharged.

17. The appeal is, thus, **allowed**.

18. Pending application(s), if any, shall stand disposed of.

.....J.
[DIPANKAR DATTA]

.....J.
[UJJAL BHUYAN]

New Delhi;
August 28, 2024.

ITEM NO.104

COURT NO.17

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1172/2012

JASBIR @ NANHA

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

Date : 28-08-2024 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE UJJAL BHUYANFor Appellant(s) Mr. Mayank Dahiya, Adv.
Mr. Nikilesh Ramachandran, AORFor Respondent(s) Mr. R.K. Mudgal, AAG, State of Haryana
Mr. Akshay Amritanshu, AOR
Mr. Samyak Jain, Adv.
Ms. Drishti Saraf, Adv.
Ms. Pragya Upadhyay, Adv.
Mr. Manish Verma, Adv.

Dr. Monika Gusain, AOR

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal stands allowed in terms of the signed order.
2. Pending application(s), if any, shall stand disposed of.

(JATINDER KAUR)
P.S. to REGISTRAR

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)

[Signed order is placed on the file]