

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1201 OF 2010

NAND KISHORE @ BALLI. & ORS.

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

**JUDGMENT**

1. Learned counsel appearing for the respondent-State after taking instructions, has pointed out that the appellant No. 5 Shiv Kumar son of Bhola Ram, was granted the concession of premature release and was indeed released on 28.03.2022, after having served actual term of imprisonment over 20 years. It has also been pointed out that two of the other accused persons, namely, Lal Chand son of Bhola Ram and Har Chand son of Ram Narain (proforma respondent Nos. 4 and 2 herein) were also released prematurely. However, in the case of appellant No. 4 Rajpal son of Bhola Ram, the prayer for premature release was declined by the Government on 26.08.2022.

2. It has further been pointed out that cases of appellant No. 1 Nand Kishore @ Balli son of Durga Prasad and appellant No. 2 Naval Kishore son of Durga Prasad for premature release have not been considered yet, for they have not served actual term of imprisonment, as required under the policy of the Government.

3. It is noticed that so far as the appellant No. 3 of this appeal is concerned, raising the question of juvenility, a separate appeal has been filed on his behalf and that has been processed

along with the present appeal. The question relating to the said appellant being considered in Criminal Appeal No. 1210 of 2010, we find no reason to consider his case in the present appeal. His name is ordered to be deleted from the present appeal.

4. The genesis of this case is in FIR No. 242 registered on 11.12.1999 at P.S. Kanina by Gopi Ram son of Data Ram. The case of the prosecution has been that on 10.12.1999, the accused persons, with common object and armed with deadly weapons like *daav*, *kulharis* and *lathis*, attacked and killed four sons of the complainant in a brutal manner due to prior enmity between the parties. The appellants, along with co-accused persons, were charged of the offences under Section 148, 149, 323, 506, 302 and 201 IPC. In the trial, the prosecution examined, amongst other witnesses, PW-10 Gopi Ram, the complainant and PW-11 Bhupender Singh, the injured brother of the deceased, as eye-witnesses to the incident.

5. By judgment and order dated 23.11.2002 in Sessions Trial No. 42 of 2000/2001, the Additional Sessions Judge, Narnaul, convicted the appellants and the co-accused persons of the offences aforesaid based on the consistent testimony of eye-witness PW-10 Gopi Ram and PW-11 Bhupender Singh, while disregarding, among other things, minor inconsistencies in their testimony and want of other corroborative evidence. Then, by the order dated 26.11.2002, they were awarded varying punishments, including that of life imprisonment for the offence under Section 302/149 IPC.

6. The High Court, by its impugned common judgment and order dated 25.04.2008, dismissed the appeals filed by the appellants and co-accused persons, by noting that the four persons were murdered in a brutal and gruesome manner on account of rivalry; and that the involvement of the accused persons was fully established by direct evidence of the father and brother of the deceased. The High Court observed and held, *inter alia*, as under: -

"21. The appellants have committed brutal and gruesome murder of four brothers on account of rivalry and their involvement is fully established by direct evidence of father and brother of the deceased. Even after close scrutiny, their evidence is found to be fully acceptable. It is well settled that relationship is not a factor which affects credibility of a witness. ...Evidence of PW10 Gopi Ram is consistent with the version given at the earliest and the same has also been corroborated by Bhupender Singh PW11. ...When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered.

22. Keeping these broad principles in mind, we do not find any ground to reject the eye witness account furnished by PW10 Gopi Ram and PW11 Bhupinder. Thus, case of the prosecution stands fully established against the appellants and their conviction and sentenced are fully justified."

7. So far merits of the case are concerned, after having examined the matter in its totality, we find no infirmity in the concurrent findings of fact leading to the conviction of the appellants. The Trial Court and the High Court thoroughly examined the entire evidence on record, particularly the testimony of PW-10 and PW-11, being the eye-witnesses to the incident, while returning the findings against the appellants. We find no reason to consider

interference in the cogent findings. That being the position, this appeal is required to be dismissed.

8. However, in the interest of justice, it is made clear that the dismissal of this appeal shall have no adverse bearing on the orders of premature release already passed as also for consideration of the case of the respective appellants at the appropriate stage for remission/premature release in accordance with law.

9. Subject to the observations foregoing, this appeal stands disposed of.

10. All pending applications also stand disposed of.

.....J.  
[DINESH MAHESHWARI]

.....J.  
[BELA M. TRIVEDI]

NEW DELHI;  
SEPTEMBER 08, 2022

ITEM NO.102

COURT NO.11

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. 1201/2010

NAND KISHORE @ BALLI . &amp; ORS.

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

WITH

CrI.A. No. 1210/2010 (II-B)

Date : 08-09-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI  
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s)

Mr. V. Madhukar, Adv.  
Dr. Sukhdev Sharma, Adv.  
Dr. Shivani, Adv.  
Mr. J. B. Mudgil, Adv.  
Mr. Rameshwar Prasad Goyal, AOR

Mr. V. Madhukar, Adv.  
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Mr. J. B. Mudgil, Adv.  
Mr. Rakesh Kumar Yadav, Adv.  
Mr. Binay Kumar Das, AOR

For Respondent(s)

Dr. Monika Gusain, AOR  
  
Mr. Rishi Malhotra, AOR  
  
Mr. Shashank Shekhar, Adv.  
Mr. Chander Shekhar Ashri, AOR

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

Criminal Appeal No. 1201 of 2010

This appeal stands disposed of in terms of the signed order.

All pending applications stand disposed of.

*Criminal Appeal No.1210 of 2010*

We have taken note of the salient features of the case on its merits in the judgment separately delivered in relation to Criminal Appeal No. 1201 of 2010. However, in relation to this appeal, an issue has been raised by the appellant that he was juvenile on the date of incident, i.e., 10.12.1999, while asserting that his date of birth is 02.11.1984. This assertion has been made with reference to a birth certificate said to have been issued by the Additional Registrar (Birth and Death), Narnaul on 10.02.2009. Further to that, the appellant also seeks to rely upon a copy of the Aadhaar Card issued by the Unique Identification Authority of India. These documents have been filed with an application seeking permission to file the same in this appeal.

It remains a fact that the petitioner has raised the claim of his juvenility on the date of the incident only in this Court. Such a claim was not made earlier, whether before the Trial Court or before the High Court. However, taking note of the submissions made on behalf of the appellant and the overall circumstances that he had served nearly seven years of imprisonment, the appellant was ordered to be released on bail by this Court on 04.11.2011.

Even when the claim of juvenility has been made for the first time in this Court, in reference to Section 7A of Juvenile Justice (Care and Protection of Children) Act, 2000 and the course adopted by this Court in akin circumstances<sup>1</sup>, it appears just, proper and expedient that a due enquiry is made by the Trial Court concerned

<sup>1</sup> For example, the order dated 29.11.2021 in SLP (Cr1.) No. 643 of 2020: Ashok v. The State of Madhya Pradesh.

to examine the claim of the appellant in accordance with law and a report be sent to this Court at the earliest.

Therefore, and in view of the above, the question of juvenility of the appellant is referred for determination to the Trial Court, i.e., the Court of Additional Sessions Judge, Narnaul. The Court concerned shall be entitled to examine the authenticity and genuineness of the documents sought to be relied upon by the appellant and if found necessary, it would also be open for the Court concerned to have the appellant medically examined by taking an ossification test or any other modern and recognised method of age determination.

It would be expected of the said Trial Court to submit its report to this Court within two months from the first date of appearance of the parties.

The parties, through their respective counsel, shall stand at notice to appear before the Trial Court i.e., the Court of Additional Sessions Judge, Narnaul on 10.10.2022.

This appeal be listed before the Court as soon as the report is received.

(SNEHA DAS)  
SENIOR PERSONAL ASSISTANT

(RANJANA SHAILEY)  
COURT MASTER (NSH)