

A NETRAJ SINGH
v.
STATE OF M.P.

MARCH 22, 2007

B [DR. ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.]

C *Practice and Procedure—Change of counsel—Acquittal of accused—*
appellant by Sessions Court—Appeal by State before High Court, during
pendency of which, accused filed application for permission to change counsel
which was allowed—However, on the day of final hearing in respect of the
appeal, the cause list did not reflect name of the new counsel—Consequently
there was no appearance on behalf of accused when the matter was taken
up for hearing—Reversal of order of acquittal by High Court in absence of
accused's counsel—Challenge to—Held: There was obvious prejudice to the
D *accused—Hence judgment of High Court not sustainable—Matter remitted*
back for fresh consideration—Penal Code, 1860—s.302 r/w s.149.

E **Appellant who was tried for alleged commission of offences punishable**
under s.302 r/w. 149 IPC was acquitted by the Trial Court on ground of
inadequate evidence. The State filed appeal before High Court. But when the
matter was taken up for final hearing in respect of the appeal, there was no
appearance on behalf of the appellant. High Court proceeded to hear the appeal
in absence of counsel for the appellant and thereafter reversed the order of
his acquittal by holding him guilty of the charged offences. Hence the present
appeal.

F **It was submitted before this Court that during pendency of appeal before**
the High Court, the Appellant had filed an application for permission to
change the counsel which was allowed, but since name of the new counsel
was not reflected in the cause list for the concerned day in respect of the
appeal, the Appellant went unrepresented.

G **Allowing the appeal, the Court**

HELD: Since the name of counsel who had been permitted to appear on
behalf of the appellant was not reflected in the cause list, obviously the

appellant has been prejudiced. This is a case where the order of acquittal passed in favour of Appellant has been reversed by the High Court. In the aforesaid circumstances, the order of the High Court is set aside and the matter remitted back for fresh consideration. The name of the new counsel shall be indicated in the cause list and not the name of counsel who was earlier appearing. [Paras 5 and 6] [372-C-E]

CRIMINAL APPELLATE JURISDICTION : CrI. M.P. No. 10384 of 2004.

IN

Criminal Appeal No. 1006 of 2006.

From the Judgment & Order dated 02.05.2006 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 741 of 1992.

R.P. Gupta, Parmanand Gaur and Jamshed Bey for the Appellant.

Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Madhya Pradesh High Court reversing the order of acquittal passed by the trial Judge i.e. learned Additional Sessions Judge, Narsinghpur. Appellant was tried for alleged commission of offences punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial Court found the evidence to be inadequate and held the accused-appellant not guilty and accordingly directed the acquittal.

2. The State preferred an appeal questioning the said order of acquittal. It appears that the matter was listed for hearing on 1.5.2006. There was no appearance on behalf of the present appellant who was the respondent in the appeal before the High Court when the matter was taken up for final hearing. The High Court proceeded to hear the appeal in the absence of learned counsel and reversed the order of acquittal and held the appellant guilty of charged offences.

3. It is the stand of learned counsel for the appellant that during the pendency of the appeal the appellant filed an application for permission to change the counsel and sought permission to engage one Mr. Ashutosh Singh, Advocate to appear on his behalf in place of Mr. Anil Nima who was

A earlier appearing at the time of hearing. By order dated 31.1.2005 the application was allowed and the Court granted permission to Mr. Ashutosh Singh to appear on behalf of the appellant in place of earlier counsel. But in the cause list for the concerned day in respect of the appeal, the name of earlier counsel appeared. According to learned counsel for the appellant in view of the aforesaid position, the appellant was unrepresented.

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4. Learned counsel for the respondent did not dispute the factual position as stated by the appellant.

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5. Since the name of learned counsel who had been permitted to appear on behalf of the present appellant was not reflected in the cause list, obviously the appellant has been prejudiced. This is a case where the order of acquittal passed in favour of the appellant has been reversed by the impugned judgment of the High Court.

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6. In the aforesaid circumstances, we set aside the order of the High Court and remit the matter for fresh consideration. To avoid unnecessary delay, let the parties appear before the High Court on 13th April, 2007 so that appropriate orders can be passed by the concerned bench. The name of Mr. Ashutosh Singh who was permitted to appear on behalf of the present appellant by order dated 31.1.2005 shall be indicated in the cause list and not the name of learned counsel who was earlier appearing. We make it clear that by remitting the matter to the High Court for fresh consideration we have not expressed any opinion on the merits of the case.

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7. The appeal is allowed to the aforesaid extent.

B.B.B.

Appeal allowed.

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