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ITEM NO.1

Court No. 6

SECTION IIA

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

Petition(s) for Special Leave to Appeal (Crl) No(s).5534/2012

(From the judgement and order dated 28/02/2012 in CRA No.1100/1997, of The HIGH COURT OF CHHATTISGARH AT BILASPUR)

NARESH

Petitioner(s)

VERSUS

STATE OF M.P. (NOW CHHATISGARH)
(With office report)

Respondent(s)

WITH SLP(Crl) NO. 4194 of 2012

(With appln. for exem. from filing O.T. and bail and c/delay in filing adl. documents and taking on record adl. documents office report)

Date: 11/03/2014 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE C.NAGAPPAN

For Petitioner(s) Dr. Rajesh Pandey, Adv.
Mr. Mahesh Pandey, Adv.
MS. Priyanka Pandey, Adv.
Ms. Mridula Ray Bharadwaj, Adv.

For Respondent(s) Mr. Apoorv Kurup, Adv.
Mr. C.D.Singh, Adv.
Mr. Ansuman Srivastava, adv.

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

Leave granted.
The appeals are allowed in terms of the signed order.

|(Shashi Sareen)
|Court Master

| |(Veena Kherra)
| |Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 580 OF 2014
(Arising out of SLP(Crl.) No. 5534 of 2012)

|NARESH

|...| Appellant(s) |

| Versus |

with

Cr1. A. No. 581 of 2014 @ SLP(Cr1.) No. 4194 of 2012

O R D E R

Leave granted.

An incident that occurred on 10.07.1988 at village Kotmi Sunar situate within the jurisdictional limits of Police Station Akaltara, District Bilaspur led to registration of two cases one at the instance of Budhram and the other at the instance of Ramaiya first informants in the two cases. While the report lodged by Budhram was registered as FIR No. 94 of 1988 that lodged by Ramaiya was registered as Crime No. 95 of 1988. Two Charge sheets it appears were after completion of investigation submitted in the cross cases which eventually led to the trial of the accused persons in Sessions Trial No. 210 of 1991 arising out of FIR 94 of 1988 and Sessions Trial No. 109 of 1991 arising out of FIR No. 95/1988. The Trial Court recorded evidence in the two cases separately and disposed of both these cases by separate judgments both dated 23.05.1997.

In Sessions Trial No. 210 of 1991 Ramaiya was convicted for an offence punishable under Section 304 Part-II and 323, Indian Penal Code while Naresh, the appellant herein was convicted for an offence punishable under Section 323, IPC only. In the cross case arising out of FIR 95 of 1988, accused persons were convicted for different offences punishable under Sections 148, 325, 323 and 149, IPC except Pardeshi who was convicted for an offence punishable under Section 148, IPC only.

Aggrieved by the judgments and orders aforementioned Cross appeals were then preferred by the convicted persons before the High Court of Chattisgarh at Bilaspur. While appellants Naresh and Ramaiya preferred Criminal Appeal No. 1100 of 1997, convicts in the other case namely Bhudnath, Bhujbal, Meghnath, Pitamber, Mangal Chandra filed Criminal Appeal No. 1134 of 1997. The High Court has while dismissing the appeals filed by the appellants- Naresh and Ramaiah affirmed their conviction and sentence awarded to them but left Criminal Appeal No. 1134 of 1997 filed by the convicted in the other case pending.

Appearing for the appellant Mr. Rajesh Pandey argued that the High Court had fallen in error in disposing of the appeals preferred by the appellants Naresh and Ramaiah without adverting to the appeals filed by the accused persons in the cross case. It was contended that since the cross case arose out of the very same incident about which two versions were given by the two parties involved in the

commission of offences, the High Court ought to have heard the appeals of all the convicted persons together instead of hearing and disposing of one appeal while leaving the other untouched. Reliance in support was placed by Mr. Pandey on the decisions of this Court in Kulwant Singh Vs. Amarjit Singh and Two Ors. 2000 (3) SCC 290 and Mohd. Khalil Chisti Vs. State of Rajasthan and Ors. 2013 (2) SCC 541.

In the first of the two cases mentioned above this court had while dealing with a similar fact situation found fault with the High Court disposing of one of the appeals while leaving the cross appeal untouched.

This Court observed:

"We are quite amazed as to why the two appeals which arose out of the same incident and in fact resulted in cross-sessions cases, could not have been heard together."

To the same effect is the observation made by this court in Khalil Chisti's case supra in which also this Court had disapproved of the High Court hearing criminal appeals separately when the same arose out

of a common incident leading to cross cases filed by the two groups. This is evident from the following passage:

"As rightly pointed out by the learned counsel for the appellants, in the light of the case and cross-case, it would be in the fitness of things that the respective appeals preferred by the appellants against Sessions Case No. 157 of 2011 and the one preferred by the convicts in Sessions Case No. 178 of 2011 ought to have been heard and disposed of simultaneously by the High Court. Unfortunately, such recourse has not been adopted by the High Court and we were informed that the other appeal (Criminal Appeal No. 131 of 2011) relating to Sessions Case No. 178 of 2011 is still pending on the file of the High Court."

In the circumstances therefore and keeping in view the fact that the incident that led to registration of the cross cases and eventual conviction of the accused was one and the same, we are of the view that the High Court ought to have heard the appeal arising out of the said two cases together instead of hearing and disposing of the one appeal without attending to the other. Resultantly the judgment and order passed by the High Court deserves to be set aside with a direction that the two appeals arising out of the cross Sessions Case No. 109 of 1991 and 210 of 1991 shall be heard together and disposed of afresh.

We accordingly allow these appeals, set aside the order passed by the High Court and remit the matter back to the High Court for a fresh disposal in accordance with law keeping in view the observations made above.

.....J.
(T.S.THAKUR)

.....J.
(C.NAGAPPAN)

New Delhi,
March 11, 2014.