

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1630 OF 2013

SHER SINGH DAGAR

Appellant(s)

Versus

SUMIT SAUNDAL AND ANOTHER

Respondent(s)

WITH

CRIMINAL MISCELLANEOUS PETITION NO. 7486 OF 2016
(For early hearing)

O R D E R

This appeal by special leave arises out of a judgment and order dated 30th May, 2012 passed by the High Court of Delhi in Criminal Appeal No. 1472 of 2011, whereby CrI.L.P. No. 95 of 2012 and CrI. Appeal No. 1472 of 2011 challenging the acquittal of Respondent No.1 for an offence punishable under Section

302 of the Indian Penal Code (in short 'the IPC') have been dismissed and the acquittal of the said respondent by the trial Court affirmed.

Respondent No. 1 - Sumit Saundal, was tried for offences punishable under Sections 498-A, 302 and 304-B of the IPC. By a judgment and order dated 28th September, 2011 the trial Court eventually acquitted the said respondent for the offence of murder punishable under Section 302 IPC, while convicting him for offences punishable under Sections 498-A and 304-B of the IPC.

Aggrieved by the judgment and order and order afore-mentioned the State and the father of the deceased victim preferred Crl.L.P. No. 95 of 2012 and Criminal Appeal No. 1472 of 2011 challenging the acquittal of the respondent. The said appeals were, as noticed above, heard and dismissed by a Division Bench of the High Court of Delhi vide judgment and order dated 30th May, 2012. The present appeal, by special leave, filed by the complainant - father of the deceased assails the correctness of the said judgment and order.

Mr. Manoj Joshi, learned counsel for the appellant urged a short point in support of the appeal. He submitted that the judgment and order passed by the High Court deserved to be set aside as the High Court had, while disposing of the appeals filed by the appellant and the State remained oblivious of the fact that the respondent had filed Criminal Appeal No. 33 of 2012 to assail his conviction under Sections 498-A and 304-B of the IPC. Our attention, in this connection, was drawn by the learned counsel to the orders passed by the High Court in Criminal Appeal No. 33 of 2012, pending before the High Court which is being adjourned from time to time to await the disposal of the present appeal. It was submitted that since the judgment and order under appeal was common, the High Court ought to have heard and disposed of the appeals filed by the complainant, State and that filed by the accused together, instead of hearing and disposing of the appeal against acquittal, without taking up the appeal filed by the accused against his conviction. The matter could, therefore, be remanded back to the High Court to enable it to hear and dispose of the appeals filed by the State, the complainant and that filed by

the accused together.

Learned counsel appearing for Respondent No.1 fairly conceded that the disposal of the appeals against acquittal under Section 302 IPC by the High Court appeared to be in ignorance of the pendency of the appeal filed by the accused against his conviction for offences punishable under Sections 498-A and 304-B of the IPC. He urged that from the reading of the judgment and order of the High Court, it appears that though, an appeal against the conviction of the respondent under Sections 498-A and 304-B of the IPC was pending before the High Court on the date the acquittal appeals were taken up for hearing the fact that a Criminal Appeal filed by the respondent against his conviction under Sections 498-A and 304-B of the IPC was pending, was not brought to the notice of the Court.

There is no gain saying that learned counsel for the parties ought to have drawn the attention of the High Court to the pendency of the appeal filed by the respondent so that the same could also be heard along with the acquittal appeals. For whatever reason the

High Court appears to have remained in the dark about the pendency of the appeal and proceeded to dispose of the acquittal appeals on merit. It is in that context that learned counsel for the respondent urged that instead of this Court examining the merits of the impugned judgment passed by the High Court, the better course would be to remit the matter back to the High Court for hearing of the acquittal appeals afresh along with the criminal appeal filed by the accused.

There is, in our opinion, merit in that contention. The judgment and order under appeal in the acquittal appeals filed by the State and the complainant and the appeal filed by the accused against his conviction under Sections 498-A and 304-B of the IPC, being common, the same ought to have been heard together, especially when the Court would be required to call upon to appreciate the evidence adduced at the trial and the nature of the offence, if any, committed by the accused. Suffice it to say that the proper course appears to be to set aside the order passed by the High Court and remit the matter back to the High Court for a fresh disposal along with Criminal Appeal filed by the respondent - accused.

We, accordingly, allow this appeal, set aside the judgment and order passed by the High Court and remit the matter back to the High Court with the request that all the acquittal appeals may be heard and disposed of afresh in accordance with law along with pending criminal appeal filed by the respondent against his conviction.

It is made clear that we have not expressed any opinion on the merit of the case and the contentions that may be raised before the High Court.

In view of the above order, CrI.M.P. No. 7486 of 2016 stands disposed of.

.....CJI.
(T.S. THAKUR)

.....J.
(D.Y. CHANDRACHUD)

New Delhi,
July 05, 2016

ITEM NO.9

COURT NO.1

SECTION II

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

CRLMP. 7486/2016 in Criminal Appeal No(s). 1630/2013

SHER SINGH DAGAR

Appellant(s)

VERSUS

SUMIT SAUNDAL & ANR

Respondent(s)

(for early hearing and office report)

Date : 05/07/2016 This application was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Appellant(s)

Mr. Manoj Joshi, Adv.
For Mrs. Lalita Kaushik, Adv.

For Respondent(s)

Mr. R.K. Kohli, Adv.
Mr. Chandra Prakash, Adv.

Mr. K. Radhakrishnan, Sr. Adv.
Mr. A. Deb Kumar, Adv.
Mr. D. S. Mahra, Adv.
Mr. Surya Narayan Patro, Adv.

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

This appeal is allowed in terms of the signed order.

In view of the order passed in this appeal, Crl.M.P.
No. 7486 of 2016 stands disposed of.

[VEENA KHERA]
COURT MASTER

[SUKHBIR PAUL KAUR]
A.R.-CUM-P.S.

(Signed order is placed on the file)