

Avtar Singh

Vs

Bhajan Singh

(G. T. Nanavati, V. N. Khare JJ)

27.11.1997

JUDGMENT

NANAVATI. J.

1.The three appellants were tried alongwith 13 other accused for various offences alleged to have been committed by them, one of them being the offence punishable under Section 302 IPC.The trial court convicted appellant No.1 only and acquitted the other accused including appellant Nos.2 and 3.Against the conviction, appellant No.1 has filed an appeal in the High Court and it is still pending.Against the acquittal of appellant No.1 for the offence punishable under Section 302 and against the acquittal of rest of the accused, Bhajan Singh and Pritam Singh, who are original informant and his brother respectively, filed a Revision Petition before the High Court.

2.It appears that the appeal and the Revision Petition were heard together and the judgment in both the cases was reserved.Thereafter, the High Court thought it fit to dispose of the Revision Petition filed by Bhajan Singh and Pritam Singh but kept the appeal filed by Avtar Singh pending till the retrial ordered by the High Court is over.Therefore, the three accused against whom an order of retrial is passed have approached this court.

3.It is contended by the learned counsel for the appellant that the order passed by the High Court is illegal inasmuch as retrial could not have been ordered without setting aside the judgment passed by the trial court.As the appeal filed by the appellant No.1 is pending in the High Court, we do not propose to say anything else except that the order passed by the High Court is clearly illegal.As retrial could not have been ordered without setting aside the order of the trial court, on that shot ground alone, we allow this appeal and set aside the judgment and order passed by the High Court.

4.In view of this order, CrI.A.No.738/91 preferred by appellant Nos. 2 and 3 will not survive.Both the appeals are disposed of accordingly.

5.The High Court shall now proceed to hear the appeal filed by appellant No.1 and dispose of the same on merits