

# SUPREME COURT OF INDIA

Ghota Alias Ghatu Ghosh

Vs.

State of West Bengal

CrI.A.No.10 of 1999

(Doraiswamy Raju and Arijit Pasayat JJ.)

20.04.2004

## ORDER

1. Heard the learned counsel appearing on either side.
2. The main grievance on behalf of the appellants is that the appeal before the High Court came to be disposed of without hearing the learned advocate for the appellants or the petitioners and, therefore, such a disposal cannot be said to be an effective disposal of the appeal. It may be pointed out at this stage that though the respondents before the High Court have engaged a counsel, the counsel was not effectively participating in the hearing and after the appeal remained part-heard on 04.12.1997, when it was again called on 05.12.1997, the counsel engaged by the accused-respondent before the High Court appears to have represented that the client has taken back the brief from him and he has retired from the case. It is in such circumstances the High Court seems to have proceeded to dispose of the appeal after hearing the learned Public Prosecutor.
3. Though, we may not appreciate or approve of the tact adopted before the High Court by the respondent therein, still it has to be ensured that before the acquittal of the accused could be reversed, the presence of the accused, as has been done at the stage of imposing the punishment, could have been equally secured to make the hearing of criminal appeal effective and meaningful, in all respects. Often courts have emphasized, the need to hear someone who could present the case on behalf of the accused, if need be by providing legal assistance or at any rate having an Amicus-Curiae to perform such role, in the larger interest of justice. On this only ground, the judgment of the High Court is set aside. The High Court shall restore the criminal appeal to its file and dispose of the matter afresh in accordance with law after hearing both the parties. Learned counsel for the appellants assures the appearance of the appellants herein (respondents before High Court) before the High Court with or without their counsel on 07th July, 2004 when the case shall be called before an appropriate Bench for appearance/hearing of parties.
4. This Court has enlarged the appellants on bail. The High Court will decide about their

further continuance or otherwise on bail, pending disposal of the appeal on the date of their appearance before the court as to how they should be dealt with so far as bail is concerned. The appeal is disposed of on the above terms.