

# SUPREME COURT OF INDIA

Naresh Kumar

Vs.

Kala Wati

Crl.A.No.578 of 2002

(Dr. Arijit Pasayat, V.S. Sirpurkar and Asok Kumar Ganguly JJ)

25.02.2009

## JUDGEMENT

### **Dr. ARIJIT PASAYAT, J.**

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Delhi High Court dismissing the Revision Petition filed by the appellant.

2. Background facts in a nutshell are as follows:

“The appellant is the brother of one Smt. Rekha Rani Jain (hereinafter referred to as the `deceased') Respondents 1 & 2 faced trial for alleged commission of offences punishable under Section 498A, 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the `IPC'). Learned Additional Sessions Judge, Delhi, in Sessions Case No.80 of 1992 held that the prosecution has been able to establish the accusations. Appellant filed a revision petition questioning acquittal. On the day the matter was fixed before the High Court it appears the learned counsel appearing for the present appellant did not appear before the Court and only the learned counsel for the State appeared.

The High Court held that since the appellant was not represented, the matter had to be decided ex parte. The High Court appointed a learned counsel as Amicus Curie and recorded that with the assistance of the learned Amicus Curie and learned counsel for the State, the records were perused and held there was no case for interference.”

3. Learned counsel for the appellant submitted that on the date fixed there was an accident because of which learned counsel who was appearing in the case all through could not appear. It is pointed out that learned Amicus Curie did not have even records with him and he could have hardly rendered any assistance to the court. It is also submitted that the accused persons were not represented before the High Court.

4. Learned counsel for the accused on the other hand submitted that the trial court analysed the evidence in great detail and no interference is called for.

5. It is not necessary to go into the merits of the case. The appellant has indicated the reason for which there was no appearance when the matter was called before Learned Single Judge. That being the position, we set aside the impugned order and remit the matter to the High Court for fresh disposal in accordance with law. To avoid unnecessary delay, let the parties appear before the High Court on the 3rd of March, 2009 without any further notice.

“The learned Chief Justice of the High Court is requested to direct listing of the case before an appropriate Bench. It is made clear that we have not expressed any opinion on the merits of the case.”

6. The appeal is disposed of accordingly.