

PETITIONER:
AVTAR SINGH & ORS. ETC.HARENDRA SINGH AND ANR.

Vs.

RESPONDENT:
BHAJAN SINGH & ORS. ETC.STATE OF MADHYA PRADESH

DATE OF JUDGMENT: 27/11/1997

BENCH:
G.T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:
THE 27TH DAY OF NOVEMBER, 1997.

Present :

Hon'ble Mr. Justice G.T. Nanavati
Hon'ble Mr. Justice V.N. Khare

U.R.Lalit, Sr. Adv., Ranjit Kumar, Chandra Bhushan pd., Anup
G. Choudhary, Ashok Kr. Singh, U.N. Singh, P.N. Gupta, H.S.
Paul, J. Buttar, Alok Mahajan, Advs. with him for the
appearing parties.

J U D G M E N T

The following Judgment of the Court was delivered:
WITH CRIMINAL APPEAL NO. 738/91

Nanavati. J,

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 his 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.

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 After 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.

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 also 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 short ground alone, we allow this appeal and set aside the judgement and order passed by the High Court.

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

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

JUDIS