PETITIONER:
G. RAJ MALLAIAH AND ANOTHER

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT27/04/1995

BENCH:
A.S. ANAND, S. RAJENDRA BABU.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. Rajendra Babu, J.

Leave granted.

The appellants were chargesheeted for offences arising under Section 304 I.P.C. and Section 3 and 4 of the Dowry Prohibition Act read with section 498A, I.P.C. The allegation made in the chargesheet is that one G. Madhavi Latha was married to Manik Prabhu the son the appellants herein on 8.6.1983; that the decreased Madhavi Latha, the appellants and her husband were living in Hyderabad, that on 27.6.1989 Madhavi Latha is said to have committed suicide by setting fire to herself in the presence of her children and she succumbed to the same on 29.6.1989; that the appellants were ill-treating the deceased by burling abuses at her and did not provide proper or timely food as she did not bring enough money towards dowry. In the trial 20 witnesses were examined on behalf of the prosecution and several documents were market while the defence examined two witnesses and also got several documents marked. The trial court held that the offences arising under Section 304B I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act were not established and acquitted them of the said charges. However, the trial court convicted the appellants for offices arising under Section 498A and sentenced them to sufer rigorous imprisonment for a period of two years and to pay a fine of Rs. 200/- each in default to suffer simple imprisonment for one month.

Aggrieved by the said conviction, the appellants preferred an appeal being Criminal Appeal No. 577 of 1993 on the file of the High Court. The appellants engaged the services of Shri Shankar Rao Biloliker and Shri Milind Gokhale and subsequently they were replaced by Shri Anil Kumar and Shri C. Praveen Kumar, Advocates who filed memo of appearance with consent of the learned counsel appearing earlier in the case. The appeal was listed for hearing on 12.8.1997 when Mr. Milind Gokhale filed a memo stating that the appellant had taken away the file and wanted to engaged some other counsel and he had already endorsed his no objection on the Vakalstnama. The matter was listed for hearing on 14.8.1997, 26.8.97, 27.8.97 and finally on

28.8.1997 on which date the matter was diseissed. On all these dates the name of Mr. Milind Gokhale was shown as the learned counsel for the appellants whereas in fact Mr. Anil Kumar and Shri Praveen Kumar had filed memo of appearance on 25.1.1993. However, that information was not put up with the file, fed into the computer either, nor printed in the cause list. In those circumstances the appeal came to be dismissed in the absence of the learned counsel for appellants.

An application was filed by the parties under section 482 of the Criminal Procedure Code in Miscellaneous Petition No. 4201 of 1997 seeking for setting aside the judgment passed on 28.8.1997 dismissing their appeal. The said application set out the facts to which were have adverted to new about the change of the advocates and the names of the new advocates appearing in the case not having been shown in the cause list. In fact, the High Court held an enquiry into the matter and called upon the office to make a report and the said report a copy of which is made available to us, reflects what we have stated about the mistake of the office in not indicating the names of the advocates and about the change of the advocates. It is clearly admitted in the Report that by mistake the names of Mr. Anil Kumar and Mr. Praveen Kumar were not shown in the cause list. The High Court however, dismissed the petition observing that Mr. Milind Gokhale whose name was shown in the cause list should have informed the appellants and the criminal appeal having been disposed on merits, the same could not be restored. The respondent remained unrepresented.

It is no doubt true that it is open to the Court to dispose of an appeal on merits even in the absence of the learned counsel appearing for the parties when the case is set down for hearing and the advocate or the party concerned does not appear. However, when the learned counsel could not appear before the Court not on account of the fault either of the appellant or the advocates themselves, but on account of mistake committed by the Registry of the High Court in not showing the names of the counsel in the cause list properly and the counsel not being aware of the listing of the case before the Court in such a master we do not think that principle should be extended.

We may notice a decision of this Court in Bani Singh vs. State of Uttar Pradesh (AIR 1996 SC 2439) in which a bench of three Judge considering the scope of Section 385 and 386, Cr. P.C. took the view that while dealing with an appeal under the Code, both the appellant and his lawyer if absent on the dates set down for hearing the Court is not bound to adjourn the case and may dispose of the appeal on merits and dismissal of the appeal simplicitor for non-prosecution is not contemplated. In the aforesaid decision, it is also noticed that by adopting this procedure if a case is decided on merits in the absence of the appellant or his advocate, the higher court can remedy the situation if there has been a failure of justice. In the present case the case was set down for hearing on different dates without notifying the names of the advocates appearing for the appellant, but showing the name of the advocate who had retired from the case. Therefore, it could not stated that the appellant or his advocate had notice of hearing of the case on the dates set down for hearing. Hence, we must hold that the decision in the case without hearing the appellants or their advocate has resulted in miscarriage of justice and the principle stated in the decision in Bani Singh vs. State of U.P. does not come in the way of the view we have expressed in this case.

Therefore the order made by the High Court dismissing

the appeal is set aside and the matter shall stand remitted to the High Court which shall be disposed of in accordance with law by restoring the appeal to its original number. The appeals are allowed accordingly.

JUDIS