IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.832 of 2023

Arising Out of PS. Case No.-17 Year-2021 Thana- GOPALGANJ TOWN District- Gopalganj

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Anuj Kumar Singh, male, aged about 23 years, S/o Late Bhola Singh, R/o Village- Ekderwa, P.S. Gopalganj Town, Dist. Gopalganj, Bihar

... ... Appellant

Versus

1. The State of Bihar
2. Uma Dubey @ Umakant Dubey, male, aged about 55 years, S/o Late Jagarnath Dubey, R/o Village- Ekderwa Mahabir Rai Ka Tola, P.S. Gopalganj, Dist. Gopalganj
3. Ratikant Dubey @ Sadhu, male, aged about 23 years, S/o Uma Dubey @ Umakant Dubey, R/o Village- Ekderwa Mahabir Rai Ka Tola, P.S.- Gopalganj, Dist. Gopalganj

... ... Respondents

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Appearance :

For the Appellant	:	Mr. Devashish Giri, Advocate
For the Respondent Nos. 2&3	:	Mrs. Soni Shrivastava, Advocate
	:	Mr. Indrajeet Bhushan, Advocate
	:	Mr. Ravi Bhardwaj, Advocate
For the State	:	Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 01-02-2024

Heard Mr. Devashish Giri, learned counsel for the appellant/informant, Mrs. Soni Shrivastava, learned counsel for the private-respondents/original accused and Mr. Binod Bihari Singh, learned A.P.P. for the State.

2. The present appeal has been filed by the informant under Section 372 of the Code of Criminal Procedure, 1973

wherein, the appellant/informant has challenged the order dated 18.07.2023 passed by the learned Additional Sessions Judge-VIII, Gopalganj in Sessions Trial No. 83 of 2022 (arising out of Gopalganj P.S. Case No. 17 of 2021 dated 05.01.2021) whereby, the present private-respondents have been acquitted for the charges levelled against them for offences punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. Learned counsel for the appellant has separately provided a copy of the deposition of the prosecution witnesses and the documentary evidence produced by the prosecution witnesses before the trial court. After referring to the same, learned counsel would submit that there are four eye-witnesses to the occurrence in question. Learned counsel has referred to the deposition of PW-4, the informant, who is the son of the deceased. Thereafter, learned counsel has referred to the deposition given by PW-1, who is the nephew of the deceased. At this stage, counsel has also referred to the deposition given by PW-3, who is the brother of the deceased. Thereafter, it has been mainly contended that the occurrence in question took place in presence of all the eye-witnesses and the informant, PW-4, has specifically given the names of the assailants in the *fardbeyan* which was given by him before the concerned police authorities. It is further submitted that all the eye-witnesses

have specifically given the names of the accused/ assailants and the manner in which the occurrence took place. It is also submitted that the medical evidence also supports the version of the prosecution and the eye-witnesses, despite which the trial court has recorded the order of acquittal in favour of the private-respondents relying upon the faulty investigation made by the investigating agency. Learned counsel has, therefore, urged that when there are four eye-witnesses to the occurrence in question and they have supported the case of the prosecution, coupled with the fact that the medical evidence also supports the version of the eye-witnesses, the trial court ought to have convicted the respondents/accused. Learned counsel, therefore, urged that the impugned order passed by the trial court be quashed and set aside and the present appeal be allowed.

4. Learned counsel for the appellant has placed reliance upon the decisions rendered by the Hon'ble Supreme Court in the cases of ***Suresh Rai & Others vs. State of Bihar*** *reported in* ***(2000) 4 SCC 84***, ***Dhanaj Singh @ Shera & Ors. vs. State of Punjab*** *reported in* ***(2004) 3 SCC 654***, ***Ram Avtar Rai & Ors. vs. State of Uttar Pradesh*** *reported in* ***(1985) 2 SCC 61*** and ***Baso Prasad & Ors. vs. State of Bihar*** *reported in* ***(2006) 13 SCC 65***.

5. On the other hand, learned counsel appearing for the private-respondents/original accused has vehemently opposed the present appeal filed by the informant. Learned counsel would mainly contend that the prosecution had failed to prove the case against the accused beyond reasonable doubt and, therefore, the trial court has not committed any error while passing the impugned order of acquittal. Learned counsel has also referred to the deposition of the prosecution witnesses and thereafter contended that the so-called eye-witnesses are, in fact, projected as eye-witnesses and, in fact, they were not present at the place of occurrence. It is also submitted that the medical evidence also does not support the version of the so-called eye-witnesses. Learned counsel has referred to the deposition given by the PW-6, the doctor who had conducted the *post mortem* of the dead body of the deceased. Thereafter, learned counsel for the private-respondents has pointed out that there was a delay of more than eight hours in lodging the FIR. It is contended that the occurrence took place, as per the *fardbeyan,* at about 11:30 a.m. to 11:45 a.m. in the morning, whereas the FIR was lodged at 07:00 p.m. It is pointed out from the record that prior to that the injured was taken to the hospital on a motorcycle. However, that motorcycle was not seized by the Investigating Agency. It is further submitted that at 14:20

p.m., the inquest report was prepared. The said report has been signed by the Police Officer, who was present in the Sadar Hospital, Gopalganj. despite which the informant had not disclosed the name of the assailants before the police nor the FIR was lodged at the hospital. Learned counsel, therefore, urged that conduct of the informant, who is son of the deceased, is not natural. In fact, he was not an eye-witness to the occurrence in question.

6. Learned counsel for the private-respondents thereafter submitted that, from the place of occurrence, the Investigating Officer has not seized the blood-stained earth/soil nor empty cartridges were found. Even the murder weapon has not been discovered or recovered from the accused. It is further submitted that the *post mortem* was carried out at about 04:50 p.m. and in the deposition of the doctor recorded by the trial court, the said witness has specifically stated the time since death is 16-24 hours. Learned counsel, therefore, urged that even the medical evidence does not support the version of the so-called/projected eye-witnesses and, therefore, the trial court has not committed any error while passing the impugned order.

7. At this stage, learned counsel has placed reliance upon the decision rendered by the Hon’ble Supreme Court in the case of

N. Vijayakumar vs. State of Tamil Nadu *reported in* ***2021 (3) SCC 687,*** para 25. After referring to the said decision, it is submitted that when there are two views possible, the view which was taken by the trial court while acquitting the accused is to be believed, in absence of any cogent and reliable evidence placed by the prosecution before the trial court.

8. Learned counsel has also placed reliance upon the order dated 10.01.2024 passed by the Division Bench of this Court in Criminal Appeal (DB) No. 550 of 2023 wherein, this court has considered the decision rendered by the Hon'ble Supreme Court in the case of ***Chandrappa and Ors. vs. State of Karnataka*** *reported in* ***(2007) 4 SCC 415*** and submitted that this court has, in similar type of case, dismissed the acquittal appeal preferred by the informant. Learned counsel, therefore, urged that the present appeal be dismissed.

9. Learned A.P.P. has, after taking instruction, submitted that till date, the State has not preferred acquittal appeal against the impugned judgment and order of acquittal passed by the trial court. Learned A.P.P. has submitted that, on the basis of the evidence provided by the prosecution before the trial court, the trial court has rightly passed the order in favour of the accused.

However, in the facts of the present case, this court may pass appropriate order in the appeal, filed by the informant.

10. We have considered the submissions canvassed by the learned counsels appearing for the parties and we have also gone through the material placed on record as well as the copy of the deposition of the prosecution witnesses and the documentary evidence supplied by the learned counsel for the appellant/informant. It is the case of PW-4, who is the informant and an eye-witness to the occurrence in question that he had seen the occurrence when he was in the agricultural field. In the *fardbeyan* given by him, he has specifically disclosed the name of the appellants and the manner and method in which the occurrence took place. PW-1 is also projected as an eye-witness of the occurrence in question. We have gone through the deposition given by the so-called eye-witnesses i.e. PW-1 to PW-4. At this stage, it is pertinent to note that it is not in dispute that, as per the case of the prosecution, the occurrence took place at about 11:30 a.m. to 11:45 a.m. in the morning on 05.01.2021. It is also not in dispute that the FIR was lodged for the said occurrence at about 07:00 p.m. i.e. after the period of eight hours. Now, it is the case of the prosecution and the eye-witnesses that immediately after the occurrence took place, the injured was taken to the hospital on the

motorcycle by the two eye-witnesses and when they reached at Sadar Hospital, Gopalganj, it was found that the injured had succumbed to the injuries. Therefore, in the hospital itself, the inquest report was prepared. Thereafter, dead body of the deceased was sent for *post mortem* and the concerned doctor had conducted the *post mortem* at about 04:50 p.m.

11. From the evidence of the prosecution witnesses, including the PW-5, who has carried out the investigation, it is revealed that the concerned police officer was present in the Sadar Hospital, Gopalganj. The said fact is supported by the inquest report, which was prepared at 14:20 p.m. We have gone through the inquest report, which is signed by the concerned police officer of Nagar Thana, Camp-Sadar Hospital, Gopalganj. In the inquest report itself, it has been stated in ‘column 8’ that one Deepu Singh and Aditya Dubey gave the information with regard to the death of the deceased. It is specifically stated that deceased died because of the gun-shot injury. The said information was given by PW-2, Deepu Singh, who is cousin of the informant/nephew of the deceased and also projected as an eye-witness to the occurrence. At this stage, it is pertinent to note that though it was reported to the police by the so-called eye-witness, Deepu Singh that deceased died because of gun-shot injury, name of the assailants were not

disclosed before the concerned police authority at the time of preparing the inquest report. It is further required to be noted that, though the police authority was present in the hospital itself, FIR was not lodged in the police station. It is an admitted fact that the *fardbeyan* was given at the house of the informant and that too when the dead body was brought to the house of the informant in the evening hours i.e. at 07:00 p.m. We are of the view that the information given by witness at the time of inquest was required to be treated as an FIR.

12. It is also reflected from the cross-examination of the PW-4, informant, that there was dispute between the parties and 2-3 cases were going on between them.

13. At this stage, we would also like to refer to the deposition given by PW-6, the doctor who had conducted the *post mortem* of the dead body of the deceased. PW-6 has stated in the examination-in-chief that time since death is about 16-24 hours. At this stage, it is to be recalled that the *post mortem* was conducted at about 04:50 p.m., whereas, as per the case of the prosecution and the so-called eye-witnesses, the occurrence took place at about 11:30 a.m. to 11:40 a.m. Thus, from the aforesaid evidence of the doctor, who is an independent witness, it can be said that the

medical evidence does not support the theory put forward by the prosecution through the so-called/projected eye-witness.

14. At this stage, we would also like to refer to the deposition given by the PW-5, Investigating Officer, who has carried out the investigation. The said witness stated that he had gone to the place of occurrence in the night itself and he had tried to search the empty cartridges. However, the same was not found from the place of occurrence. During cross-examination, the Investigating Officer has also stated that the inquest report was prepared at 14:20 hours on the date of the incident and he has also stated that in the hospital, Daroga remained present. He has also admitted that he has not seized the motorcycle. He has further stated that he has recorded the statement of only near relatives of the deceased and also recorded statement of one independent witness, namely, Hirdeyanand Yadav. However, at this stage, it is pertinent to note that the independent witness, PW-7, Hirdeyanand Yadav has been examined by the prosecution and he had not supported the case of the prosecution and, therefore, he was declared hostile. It is also pertinent to note that the Investigating Officer has also not recovered or discovered the so-called murder weapon i.e. the pistols.

15. At this stage, we would like to refer to the decision upon which the reliance is placed by the learned counsel for the informant. In the case of ***Baso Prasad & Ors. vs. State of Bihar*** *reported* in ***2006(13) SCC* 65 (supra)**, the Hon'ble Supreme Court has observed in paragraph 20 and discussed about the Modi's Textbook of Medical Jurisprudence and Toxicology. Learned counsel has referred to para 20 of the said decision on the point of *rigor mortis*. The Hon'ble Supreme Court has observed in para 20 & Para 22 as under:

> "**20**. *Time of onset.—This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one to two hours after death.*
>
> ***22.*** *The exact time of death, therefore, cannot be established scientifically and precisely, only because of presence of rigor mortis or in the absence of it.*"

16. We cannot dispute the proposition of law laid down by the Hon'ble Supreme Court in the aforesaid decision. However, at this stage, once again, if the deposition given by the doctor, PW-6 is carefully examined, it is revealed that the doctor has specifically stated in examination-in-chief itself the time since death is about 16-24 hours. At this stage, once again, it is to be

observed that the case of the prosecution through so-called eye-witnesses is specific that the occurrence took place at about 11:45 a.m. and it is not in dispute that the *post mortem* was conducted at 04:40 p.m. i.e. after about 5 hours from the time of occurrence and it is specific case of the expert that the time of death is about 16-24 hours. We are of the view that the said medical evidence does not support the case of the prosecution and, more particularly, the deposition given by the so-called eye-witnesses is not trustworthy. We have already discussed hereinabove that the conduct of the informant, who is the son of the deceased, is not natural. As per the case of the informant, the injured was immediately taken to the hospital on the motorcycle by the witnesses and when they reached to the hospital, it was found that the injured had succumbed to the injuries. Therefore, inquest report was prepared immediately, at about 14.20 hours. Though, the so-called eye-witnesses i.e. the informant and PW-2, Deepu Singh, the FIR was not lodged in the hospital nor the names of the assailants were disclosed to the police immediately and, surprisingly and shockingly, the FIR was lodged at the house of the informant at about 07:00 p.m. and it is the specific case of the private-respondents/accused that they have been falsely implicated. Thus, in the facts of the present case, the deposition of the doctor, who is an independent witness and an

expert, is also required to be kept in view. Thus, we are of the view that the decision upon which reliance placed by the learned counsel for the appellant would not render any assistance to the appellant/informant.

17. The Hon'ble Supreme Court has observed in paragraph 10 in the case of ***Ram Avtar Rai & Ors. vs. State of Uttar Pradesh*** *reported in* ***1985(2) SCC 61*** as under:

> *"**10.** We agree with the High Court that the occurrence had taken place about 15 paces away from the house of the deceased and PW 1. It is true that blood-stained earth has not been recovered from the scene of occurrence by the investigating officer though as stated earlier the deceased had sustained as many as 5 lacerated injuries besides a number of contusions and abrasions. From the failure of the investigating officer to recover bloodstained earth from the scene of occurrence it is not possible to infer that the occurrence had not taken place in front of the house of the deceased and PW 1. The evidence of PWs 2 and 3 could not, therefore, be rejected as unreliable as has been done by the learned Sessions Judge. We agree with the High Court that as the occurrence had taken place in front of the house of the deceased PWs 2 and 3 who are members of the family of the deceased and PW 1 are natural*

witnesses who would have come out of the house on hearing the alarm of the deceased who had received as many as 34 injuries. Therefore, we accept the evidence of PWs 2 and 3 who corroborate in a large measure the evidence of PW 1. The discrepancies relied upon by the learned Sessions Judge in his judgment for rejecting the evidence of PW 1 are not material discrepancies. It is not possible to reject the evidence of PW 1 altogether on account of the discrepancies having regard to the fact that he is an injured witness whose presence at the scene of the occurrence when the deceased was attacked was not disputed before us by the learned Counsel for the appellants as mentioned above. In these circumstances, we find that the High Court was justified in accepting the evidence of PWs 1 to 3 and finding the appellants guilty and convicting them under Section 302 IPC read with Section 149 IPC in regard to the death of the deceased Radhe Raman and under Section 323 IPC read with Section 149 IPC in regard to the attack on PW 1 and also under Section 147 IPC. We confirm the conviction and the sentence awarded to the appellants by the High Court. The appeal fails and is dismissed."

18. Learned counsel has more particularly referred and relied upon the paragraph 10. In the said decision, the Hon'ble

Supreme Court has observed and held that from the failure of the Investigating Officer to recover blood-stained earth from the scene of occurrence, it is not possible to infer that the occurrence had not taken in front of the house of the deceased and PW-I and only on the basis of the same, the evidence of the eye-witnesses could not be rejected as unreliable.

18.1. We cannot dispute the proposition of law laid down by the Hon'ble Supreme Court in the aforesaid case. It is pertinent to note that if the deposition of the eye-witnesses is reliable and if they are trustworthy, the conviction can be recorded only on the basis of the deposition given by the eye-witnesses. However, as discussed hereinabove, we are of the view that PW-1 to PW-4 are not the eye-witnesses to the occurrence in question and they were projected as eye-witnesses. We have discussed in detail about the said aspect. We are, therefore, of the view that the aforesaid decision would not be helpful to the appellant in the facts of the present case.

19. Learned counsel for the appellant has placed reliance upon the decision rendered by the Hon'ble Supreme Court in paragraphs 5 to 7, in case of ***Dhanaj Singh @ Shera & Ors. vs. State of Punjab*** *reported in* ***2004 (3) SCC 654***. From the observations made by the Hon'ble Supreme Court in paragraph

Nos. 5 to 7, it can be said that, in case of the defective investigation, the court has to be circumspect in evaluating the evidence, but it would not be right in acquitting an accused person solely on account of the defect.

19.1. This court cannot dispute the propositions laid down by the Hon'ble Supreme Court in the aforesaid decision. The Hon'ble Supreme Court has specifically observed that the accused cannot be acquitted solely on account of defect on the part of the investigating agency. The Hon'ble Supreme Court has further observed that if the direct testimony of the eye-witnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of Investigating Officer cannot affect the credibility of the prosecution version. In the present case, we have discussed in detail that PW-1 to PW-4 are projected as eye-witnesses. However, their presence at the place of occurrence was doubtful. The testimony is also not corroborated by the medical evidence, as observed hereinabove. Though it is the submission of learned counsel for the appellant that the investigation carried out by the Investigating Officer was faulty, we are of the view that investigating agency has fairly and in right direction carried out the investigation. The said investigation, in the present case,

cannot be termed as faulty investigation. The Investigating Officer, PW-5, specifically stated in his examination-in-chief itself that he immediately rushed to the place of occurrence after the registration of the FIR and he tried to search the empty cartridges. However, the same was not found at the place of occurrence. Even PW-4, who is the informant and son of the deceased, and the so-called eye-witnesses did not produce the motorcycle on which the deceased/injured was taken to the hospital. At this stage, it is also relevant to note that PW-4 so-called eye-witness and the informant, has himself admitted in the cross-examination in paragraph 4 that he could not describe the exact place of occurrence. He has also admitted in paragraph 8 that he had heard the sound of firing in the early morning. However, he has stated in the *fardbeyan* that when the firing took place at about 11:30 a.m. to 11:45 a.m., he was present at the place of occurrence. Thus, we are of the view that in the facts and circumstances of the present case, investigation carried out by PW-1, cannot be termed as faulty investigation and the trial court has not acquitted the accused only relying upon the investigation carried out by the investigating agency. Once again, it is required to be noted that the Hon'ble Supreme Court in the aforesaid case has observed that when the direct testimony of the eye-witnesses corroborated by the medical

evidence fully establishes the prosecution version then, on the ground of faulty investigation, accused cannot be acquitted. However, in the present case, testimony of eye-witnesses is not corroborated by the medical evidence and ocular testimony is not found credible and cogent. Thus, in the facts and circumstances of the present case, the aforesaid decision rendered by the Hon'ble Supreme Court would not be applicable. Learned counsel has not placed reliance upon any other decisions of the Hon'ble Supreme Court in support of his submission.

20. At this stage, we would like to observe that the trial court, on the basis of the evidence led by the prosecution, has found that the prosecution has failed to prove the case against the accused beyond reasonable doubt. Relying upon the various aspects, therefore, when the order of acquittal has been recorded by the trial court, the scope of interference in the appeal filed against such order of acquittal is required to be kept in view.

21. Recently, this court has passed an order on 10.01.2024 in the case of ***Radhe Shyam Mahato @ Radheshwar Mahto vs. State of Bihar*** in ***Criminal Appeal (DB) No. 550 of 2023***. This court has considered the well-known decision rendered by the Hon'ble Supreme Court in the case of ***Chandrappa and Ors. vs. State of Karnataka*** *reported in* ***(2007) 4 SCC 415*** and

paragraph 42 of the said decision has been reproduced. In paragraph 42 of the case of ***Chandrappa (Supra)***, the Hon'ble Supreme Court has laid down the guidelines while deciding the acquittal appeal. It has been observed by the Hon'ble Supreme Court in the aforesaid case that an Appellate Court must bear in mind that in case of acquittal, there is double presumption in favour of the accused:- Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. It is further observed and held by the Hon'ble Supreme Court that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.

22. In the aforesaid order of 10.01.2024, the Division Bench has further referred to the decision rendered in the case of ***Nikhil Chandra Mondal vs. State of West Bengal*** *reported in* ***(2023) 6 SCC 605.*** The Hon'ble Supreme Court, in the said case, has observed in paragraph 22 as under:

> *"**22.** Recently, a three-Judge Bench of this Court in Rajesh Prasad v. State of Bihar*

[Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

23. Learned counsel for the private-respondents/original accused has also placed reliance upon the decision rendered in the case of ***N. Vijayakumar vs. State of Tamil Nadu*** *reported in* ***(2021) 3 SCC 687*** wherein, the Hon'ble Supreme Court has observed in ***paragraph 24 & 25,*** as under:

*"**24.** By applying the abovesaid principles and the evidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and*

also as referred to in the trial court judgment, it can be said that acquittal is a "possible view". By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, the appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no recordings were made and the appellant was not tested by PW 11 till 7.00 p.m.

25. *There are material contradictions in the deposition of PW 2 and it is clear from his deposition that he has developed animosity against the appellant and he himself has stated in the cross-examination that he was insulted earlier as he belonged to Scheduled Caste. Further there is no answer from PW 11 to conduct the phenolphthalein test after*

> *about an hour from handing over tainted notes and cellphone. The trial court has disbelieved PWs 2, 3 and 5 by recording several valid and cogent reasons, but the High Court, without appreciating evidence in proper perspective, has reversed the view taken by the trial court. Further, the High Court also has not recorded any finding whether the view taken by the trial court is a "possible view" or not, having regard to the evidence on record. Though the High Court was of the view that PWs 2, 3 and 5 can be believed, unless it is held that the view taken by the trial court disbelieving the witnesses is not a possible view, the High Court ought not have interfered with the acquittal recorded by the trial court. In view of the material contradictions, the prosecution has not proved the case beyond reasonable doubt to convict the appellant."*

24. From the aforesaid discussion, it would emerge that in the present case, PW-1 to PW-4 are projected as eye-witnesses to the occurrence in question. From the overall facts and specific of the present case and looking to the deposition given by the independent witnesses like PW-6, doctor and PW-5, Investigating Officer, we are of the view that the testimony given by the so-called/projected eye-witnesses is not trustworthy and credible. Their presence at the place of occurrence itself is doubtful. Further, the medical evidence also does not support the case of the

prosecution and the version of the eye-witnesses. We have also gone through the reasoning recorded by the trial court while passing the impugned order and we are of the view that the trial court has not committed any error while passing the impugned order whereby the present private-respondents have been acquitted.

25. In view of the aforesaid discussions and the facts and circumstances of the case, we are not inclined to entertain the present appeal.

26. Accordingly, the same stand dismissed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Gaurav Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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