RAJ NARAIN SINGH

v.

STATE OF U.P. & ORS.

(Criminal Appeal Nos. 891-892 of 2002)

SEPTEMBER 18, 2009

[DALVEER BHANDARI AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860/ Arms Act, 1959 – ss. 302, 307, 323 and 342 r/w s. 34/ ss. 27 and 30 – Prosecution under – Conviction by trial court – Acquittal by High Court – On appeal, held : Acquittal order not correct – Eye witnesses' version is consistent and corroborates the version of FIR – Prosecution case was corroborated by medical evidence – Plea of private defence not proved – Non-examination of available witnesses not fatal – No particular number of witnesses required to prove a fact – Evidence Act, 1872 – s. 134.

Constitution of India, 1950 – Article 136 – Jurisdiction under – Scope of – Held : Jurisdiction not to be exercised to reweigh the evidence – Even if two views possible, Court not to interfere with order of acquittal, unless the acquittal order is perverse.

Respondents-accused were prosecuted u/ss. 302, 307, 323, 342 r/w s. 34 IPC and u/ss. 27 and 30 of Arms Act. As per prosecution, the incident was a result of an altercation between PW. 2 (relative of the deceased persons) and the accused persons, who were running a petrol pump. PW-1 (complaint), PW-2 and PW-3 were the eye-witnesses to the incident. Firearms were recovered

A from the possession of the accused. Accused No.3 had absconded.

The trial Court convicted all the three accused. In appeal, the High Court acquitted the accused. Hence, the B present appeals by the complainant and the State.

Allowing the appeals, the Court

HELD: 1. The scope of appeals under Article 136 of C the Constitution is very much limited. This Court does not exercise its overriding powers under Article 136 to reweigh the evidence. The court does not disturb the concurrent finding of facts reached upon proper appreciation. Even if two views are reasonably possible, D one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. But this Court will not hesitate to interfere, if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal E or grossly unjust. [Para 10] [765-G-H; 766-A-B]

Chandrappa v. State of Karnataka (2007) 4 SCC 415; *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450, referred to.

F 2.1. In view of the facts and circumstances of the case, the High Court clearly erred in reversing the order of conviction recorded by the trial Court. There is nothing to doubt the correctness of the version given by PW-1 G (complainant). He has proved the FIR lodged by him. There is no contradiction between the facts stated in the FIR and in his evidence given before the trial Court, which has been corroborated by the evidence of PW-2 and PW-3. PW-1, PW-2 and PW-3 who were eye-witnesses to the

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occurrence have fully proved the incident and corroborated the statements mentioned in the FIR and there is no inconsistency in the statements of all the three witnesses. There is no material contradiction in the cross-examination and the entire facts of the FIR which has been fully supported by the statements of all the three aforesaid witnesses. [Paras 12, 13 and 24] [775-H; 776-A; 768-B-C; 768-G-H]

2.2. It is not correct to say that PW-3, being an employee of PW-1, is not independent witness and therefore his testimony could not be relied upon. This fact neither finds any support from the prosecution evidence nor has been proved by any defence witness. Accused had relied upon the statement of PW-3 wherein he stated PW-1 as master for submitting that PW-3 is a servant of PW-1. But a careful perusal of his statement would indicate that PW-3 called PW-1 as master as PW-1 was a teacher and therefore he was described as master. From the said evidence, it therefore, cannot be deduced that PW-3 was a servant of PW-1. [Para 14] [768-B-C; F-G]

2.3. From the perusal of the post mortem report and the statement of the doctor it is clearly evident that the injuries on the deceased persons were found to be on the chest which is a vital part of the body and the death was natural as the bullet had hit them. [Para 15] [769-C-D]

2.4. There is nothing on record which can even remotely suggest that the act of the accused persons was in exercise of their right of private defence. There is no proof in support ofthe defence version that the two deceased came there to the petrol pump to commit

A robbery by hurling bomb and in the process also caused damage to the petrol pump. The investigation, at the place of occurrence soon after the incident did not reveal any remains of bomb or recovery of any firearm. There was no damage to petrol pump. No such suggestion was put B by the defence to either PW-10 or PW-11, both of whom were present at the place of occurrence at the time when the showroom of the accused persons was searched and weapons, cartridges and other articles were seized. [Para 17] [770-A-E]

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2.5. There is no reason to doubt the prompt registration of the FIR. It is not correct to say that the natural conduct of father loosing two sons would be to stay with the sons and weeping instead of going to the D police station immediately to lodge an FIR. In the circumstances of the case, it is quite clear that PW-1 could not reach upto his sons after they fell down due to firing. It is also clear from the record that the two accused had locked PW-2, a relative of PW-1 in their E custody and at that time accused No. 2 was having a gun. In the circumstances of the case, when both sons of P.W. 1 fell down, his relative (PW-2) was in the custody of the accused persons, PW-1 had indeed no other option except to approach the police station. That was also F necessary since there was also danger to the life of PW-2. [Para 18] [770-F-G; 771-A-E]

2.6. It is not correct to say that PW-1 to PW-3 are G interested witnesses and there are some contradictions in their statements. Though PW-1 and PW-2 are related to each other and also with the two deceased as both deceased were the sons of PW-1, PW-3 cannot be said to be in any way interested with PW-1 or PW-2 nor he

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had enmity with the accused persons. [Para 19] [771-F-G] A

2.7. It is not necessary that all those persons who were present at the spot must be examined by the prosecution in order to prove the guilt of the accused. Section 134 of the Evidence Act provides that no particular number of witnesses is required for proof of any fact. It is trite law that it is not the number of witnesses but it is the quality of evidence which is required to be taken note of by the courts for ascertaining the truth of the allegations made against the accused. The ghastly acts, of the nature and gravity as the present one, when committed in a public place may very well create a sense of fear and shock in the minds of the witnesses and thus prevent them from coming forward and deposing against the perpetrators of the crime. If the testimonies of those witnesses, who have deposed during the trial, are otherwise found to be reliable, trustworthy and cogent, the said evidence cannot be disbelieved or discarded merely because the prosecution has failed to examine other witnesses allegedly present on the spot. [Paras 20 and 21] [772-B-D; 774-F-H] B C D E

Takhaji Hiraji v. Thakore Kubersing Chamansing, **(2001) 6 SCC 145, relied on.** F

2.8. It is not correct to say that the story of accused No. 1 and accused No. 2 locking the PW-2 in the showroom is unbelievable. The facts that PW-2 was assaulted by the accused persons and forcibly taken to the showroom and locked in there; that gun shot was fired at PW1; and that when the two sons of PW-1 reached the spot, two consecutive shots were fired at them which resulted in their death and thereafter G H

gunshots were fired PW 1, are clear not only from the evidence of PW-1 but has also been fully corroborated by the evidence of PW-2 and PW-3. It is quite evident from the record that a big crowd gathered at the spot. Under the circumstances of the case, it was quite natural for the accused persons to keep PW-2 in their custody. Making PW-2 captive, a fact to which PW-11, the investigating officer was also a witness, could well protect the accused persons from the crowd which had come to the place of occurrence after hearing the gunshots. Making PW-2 captive could also protect the petrol tank from being damaged by the pressure of the agitated crowd. The injuries were found on the body of PW-2 by the doctor who had examined him soon after the incident. [Para 22] [775-A-E]

Case Law Reference:

(2003) 3 SCC 454	**Referred to**	**Para 8**
(2007) 4 SCC 415	**Referred to**	**Para 10**
(2008) 10 SCC 450	**Referred to**	**Para 11**
(2001) 6 SCC 145	**Relied on**	**Para 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 891-892 of 2002.

From the Judgment & Order dated 27.2.2002 of the High Court of Judicature at Allahabad in Criminal Appeal Nos. 234 and 235 of 1996.

WITH

Criminal Appeal Nos. 1811-12 of 2009.

U.U. Lalit, Shail Kumar Dwivedi, AAG, P.K. Jain, Sudhakar Diwedi, Arun Chadhaury, S.P. Singh, Prashant Choudhary, Garvesh Kabra, Shrish Kumar Misra, Vijay Kumar, C. Jay Raj, Venkateswara Rao Anumolu, Pankaj Kumar, Prashant Choudhary for the appearing parties.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave Granted.

2. The present Criminal Appeals have been preferred against the judgment and order passed by the Allahabad High Court whereby it reversed the judgment and order of conviction passed by the trial Court under Sections 302, 307, 323, 342 read with 34 of the Indian Penal Code (in short "the IPC") and Sections 27 and 30 of the Arms Act.

3. The facts leading to the filing of the present appeals, as per the prosecution, in brief are that on 23.05.1994, i.e., a day prior to the date of the occurrence, Sunil Singh alias Guddoo (PW-2), a resident of village Vasnari, Police Station, Kerakat, District Jaunpur came to visit the house of Raj Narain Singh (PW-1), complainant/appellant herein who is a resident of village Pravaspur, Police Station, Mariyahun, District Jaunpur for the 'Bidai' of his sister in connection with a marriage in PW-2's family. On the fateful day, i.e., 24.05.1994 at around 8.30 a.m., PW-2 went to the petrol pump known as the Dharamraj Service Station, Pali owned by the accused persons for procuring petrol for his scooter. At the petrol pump, an altercation arose between PW-2 and Prabhakar Pandey (Accused No.3), and the same ended up in a fight between them. Shortly after PW-2 had left the house of PW-1, PW-1 alongwith one Adya Prasad also left the house for going to the examination centre where they were to evaluate the board examination answer books. On their way to the said

A examination centre, PW-1 and said Adya Prasad saw that PW-2 was being dragged and beaten by the accused persons. On seeing this, PW-1 and Adya Prasad tried to intervene. At this, Accused No. 3 exhorted Pushkar Pandey (Accused No. 2) to shoot the interveners, whereupon, Accused No. 2 fired a shot B from his double barrel gun which compelled PW-1 and his companion to retreat to safety. The gunshot and the resulting commotion attracted the attention of Rajesh and Brijesh, both sons of PW-1, who then emerged from the village pathway on their motorcycle and reached the spot. Karunakar Pandey C (Accused No. 1) and Accused No. 3 exhorted Accused No. 2 to kill both Rajesh and Brijesh. Shots fired by Accused No. 2 hit Rajesh and Brijesh, as a result of which, both fell down from their motorcycle and died on the spot. The aforesaid incident was witnessed by Ramjee Maurya (PW-3), Virendra Singh, D Bhola Nath Singh and several other persons. PW-2 was taken captive by the accused persons inside the said service station showroom. Immediately thereafter, PW-1 went to the Police Station, Mariyahun and lodged a written report at about 9.10 a.m. on the same day. On the basis of the aforesaid written E report, the First Information Report (in short "the FIR") was registered by the Head Constable Jeet Bahadur Singh (PW-8) and a Crime Case No. 178/1994 was registered in the presence of SSI Narendra Pratap Singh (PW-11) under F Sections 323, 342, 307, 302 of the IPC. Thereafter, PW-11 proceeded to the spot of occurrence. On reaching the spot of occurrence, PW-11 noticed PW 2 being kept captive by the accused Nos. 1 and 2 inside the showroom. Thereupon, he proceeded towards the showroom and on seeing him the two G accused tried to flee away from the place of occurrence. They were, however, apprehended and on searching them, PW-11 recovered a pistol and a gun from their possession. Accused No.3 was found to be absconding from the spot of occurrence. PW-2 was then freed from the custody and sent to the police H station along with Constable Sunil Kumar Singh for the purpose

of medical treatment. The statement of PW-1 was recorded on the spot and that of PW-2 was recorded after he returned back after undergoing medical examination. Subsequently, with the help of PW-1 and PW-2, a site plan was prepared and four empty cartridges of 12 bore were seized by the police. Dr. M. L. Srivastava (PW-4), who had examined PW-2 on 24.05.1994 at 1.50 p.m. in his report, mentioned about four injuries on the person of PW-2. Dr. C.K. Gupta (PW-7) had conducted the post-mortem of the dead bodies of the deceased persons and in his two reports opined that the gunshots had injured the vital part of the body and that death had been caused due to shock and hemorrhage. On the completion of the investigation, a charge sheet was submitted. On the basis of the same, the charges were explained to the accused who pleaded not guilty and claimed to be tried.

4. The prosecution, in order to establish the guilt of the accused, examined several witnesses and exhibited documents. After examining the witnesses from both sides and upon hearing arguments advanced by the parties, the trial Court by its judgment dated 01.02.1996 convicted all the three accused. Accused No. 2 was convicted and sentenced to life imprisonment under Section 302 IPC, ten years RI under Section 307 IPC, six months RI under Section 323 read with 34 IPC, six months RI under Section 342 read with 34 IPC; and 3 years RI under Section 27 of the Arms Act. The trial Court also imposed a fine of Rs. 3000 and 1000 under Section 307 IPC and 27 of the Arms Act respectively. Accused No. 1 was convicted and sentenced to life imprisonment under Section 302 read with 34 IPC, six months RI under Section 323 read with 34 IPC, six months RI under section 342 read with 34 IPC. Accused No. 3 was convicted and sentenced to life imprisonment under Section 302 read with 34 IPC, seven years RI under Section 307 IPC, six months RI under Section 323 read with 34 IPC, six months RI under Section 342 read with

34 IPC; and six months RI under Section 30 of the Arms Act. The trial Court also imposed a fine of Rs. 3000 under Section 307 IPC. All the accused persons were also directed to pay a sum of Rs. 1, 50,000/- in total as compensation under section 357 (3) of the Code of Criminal Procedure (in short "the CrPC') to PW-1.

5. Aggrieved by the aforesaid decision of the trial Court, the accused preferred two separate appeals in the Allahabad High Court. Accused No. 2 preferred Criminal Appeal No. 234 of 1996 and Accused No. 1 and 3 preferred Criminal Appeal No. 235 of 1996. The High Court by its impugned judgment dated 27.02.2002 allowed the aforesaid appeals and set aside the decision of the trial Court thereby acquitting all the accused from the aforesaid charges.

6. Dissatisfied with and aggrieved by the decision of the High Court, four Special Leave Petitions (two by the Complainant/PW-1 and another two by the State of U. P.) were preferred. Leave was granted by this Court in the Special Leave Petitions filed by the Complainant/PW-1 on 29.08.2002.

7. Learned counsel appearing for the complainant as also the State forcefully argued before us that the decision of the High Court erroneously acquitting the accused persons suffers from serious infirmity inasmuch as the three eye-witnesses (PW-1, PW-2 and PW-3) were consistent in their statements and proved the prosecution case to the hilt as stated in the FIR and that no contradiction could be proved of the facts stated in the FIR and the statement of witnesses. It was further submitted that the High Court failed to appreciate the fact that a father would not unnecessarily implicate an innocent person at the cost of sparing the real culprits responsible for the murder of his two grown up sons. It was further contended that the High Court

ignored the vital fact that Accused No. 1 and 2 were arrested from the spot and arms were recovered from their possession immediately and that Accused No. 3 succeeded in absconding. It was further submitted that the High Court wrongly discarded the evidence of PW-3 on the ground that he could have got his cattle grazed elsewhere and that his statement was recorded two days later from the date of occurrence. It was further contended that the High Court erroneously came to the conclusion that the prosecution failed to attribute to the accused persons any motive for the commission of the said offence. It was further submitted that the High Court failed to take into consideration the fact that the delay in medical examination of PW-2 was adequately explained by the prosecution and that could not have been made a ground for disbelieving the case of the prosecution.

8. On the other hand, learned counsel appearing on behalf of the accused persons strongly opposed the aforesaid contentions and submitted that the High Court has rightly set aside the decision of the trial Court as there are several serious infirmities in the evidence of the prosecution witnesses and in the manner of recovery of seized weapons and cartridges. It was further submitted that if the order of acquittal is one of the possible view, the same deserves deference rather than interference by the appellate court. In support of the same, reliance has been placed on the decision of this Court in *Rang Bahadur Singh v. State of U. P.*, (2000) 3 SCC 454; *Ghurey Lal v. State of U. P.*, (2008) 10 SCC 450.

9. In view of the aforesaid submissions advanced by the parties, we will now proceed to address the submissions in light of the evidence available on record.

10. The scope of appeals under Article 136 of the Constitution is undisputedly very much limited. This Court does

A not exercise its overriding powers under Article 136 to reweigh the evidence. The court does not disturb the concurrent finding of facts reached upon proper appreciation. Even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. B But this Court will not hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust. Recently, in the case of *Chandrappa v. State of Karnataka,* (2007) 4 SCC 415, at page 432 this Court (per C Thakker J.) after elaborately discussing the previous decisions on this point has aptly summarized the law as follows:

> **"42.** From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an D order of acquittal emerge:
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> (*1*) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
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> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
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> F (*3*) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such G phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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(*4*) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence 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. A B

(*5*) 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." C

11. The same view has been reiterated by this Court in ***Ghurey Lal*** *v. State of U.P.*, (2008) 10 SCC 450, at page 476, **in which** one of us (Hon'ble Justice Dalveer Bhandari) after **discussing** a number of authorities on this issue summarized the law as follows: D

"**69.** The following principles emerge from the cases above: E

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law. F

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. G

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for H

A the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong."

12. There is no dispute with regard to the place of commission of the crime. It was committed at the Dharamraj Service Station. If we critically examine the evidence of PW 1, there is nothing to doubt the correctness of the version given by him. PW-1, complainant in the present case has proved the FIR (Ext. Ka-5) lodged by him. He has stated the contents of Ext. Ka-5 verbatim in his statement and in cross examination also there is no contradiction between the facts stated in the FIR and his evidence in the trial Court which has been corroborated by the evidence of PW-2 and PW-3. PW-3 in his deposition before the trial court has categorically stated that he reached at 'bhita' in the morning at about 8 a.m. for grazing his cattle and after sometime while he was still there, he saw that the Accused No. 3 was having an altercation with PW-2. All the accused persons then started beating PW-2. PW-3 further stated that at that time PW-1 and one Adya Singh came there and tried to intervene but Accused No. 2 fired a shot at PW-1 from his double barrel gun which, however, did not hit PW-1. Upon this, sons of PW-1 namely, Rajesh and Brijesh, reached the spot on their motorcycle and they were also fired upon by Accused No. 2. The gunshots struck both the deceased persons who fell down from their motorcycle and died on the spot.

13. Thus, it is quite clear that PW-1, PW-2 and PW-3 who were eye-witnesses to the occurrence have fully proved the incident and corroborated the statements mentioned in the FIR and there is no inconsistency in the statements of all the three witnesses. There is no material contradiction in the cross examination and the entire facts of the FIR which has been fully supported by the statements of all the three aforesaid witnesses.

14. Another submission of the counsel appearing on behalf of the accused is that PW-3, being an employee of PW-1, could not be said to be an independent witness and therefore his testimony could not be relied upon. We cannot accept this contention as it neither finds any support from the prosecution evidence nor has been proved by any defence witnesses. Counsel for the Respondent relied upon the statement of PW-3 wherein he stated PW-1 as master for submitting that PW-3 is a servant of PW-1. But a careful perusal of his statement would indicate that PW-3 called PW-1 as master as PW-1 was a teacher and therefore he was described as master. From the said evidence, it therefore, cannot be deduced that PW-3 was a servant of PW-1.

15. From the perusal of the post mortem report and the statement of the doctor it is clearly evident that the injuries on the deceased persons were found to be on the chest which is a vital part of the body and the death was natural as the bullet had hit them. According to the statement of PW-7, the cause of death was the gun shot ante-mortem injury on the vital part of the body and from excessive bleeding and shock. According to the statement of PW-7 at the time of firing of the gun its barrel must have been at a distance of 3 to 6 feet from the dead bodies. As a result of which the deceased Brijesh and Rajesh had suffered injuries from the gun shots fired within 6 feet from the place where they were hit by the bullet and the same caused their instant death.

16. It is the case of the accused that the shot was fired by the defence in their right of private defence. In the written statement of Accused No. 2 recorded under Section 313, Cr.PC, this fact has been accepted that there was quarrel regarding petrol. Both deceased Brijesh and Rajesh came to the petrol pump on motor cycle. Shots were fired indiscriminately by Accused No. 2 from the licensed gun of Accused No. 3. The shots hit Rajesh and Brijesh. They have

A also accepted the recovery of licensed gun of A3 from the petrol pump.

17. The defence towards the end of the trial tried to put up a version that the two deceased came there to the petrol pump to commit robbery by hurling bomb and in the process also caused damage to the petrol pump. Unfortunately, however, no proof in support of the said contention could be produced by the defence. There is nothing on record which can even remotely suggest that the act of the accused persons was in exercise of their right of private defence. The investigation, at the place of occurrence, soon after the incident did not reveal any remains of bomb or recovery of any firearm from the hands of the deceased or any damage to the petrol-pump. No injury was also found on the bodies of the accused. It is pertinent to mention here that no suggestion regarding recovery of any bomb materials or detection of any signs of damage to the petrol pump by the deceased persons and PW-2, was put by the defence to either PW-10 or PW-11, both of whom were present at the place of occurrence at the time when the showroom of the accused persons was searched and weapons, cartridges and other articles were seized. Thus, the submission of the defence with regard to the alleged exercise of right of private defence by the accused persons being without any basis, the same also fails.

18. As far as the allegation of delay in lodging of FIR is concerned, it was been stated on behalf of the prosecution that the incident had taken place at 8.30 a.m. and as per the FIR the police station Mariyahun is about 7 km from the place of occurrence. It is the case of the defence that as the report was lodged at the police station at 9.10 a.m., the same being very prompt, therefore, there is bungling regarding report and time of FIR. It was contended that the deceased Brijesh and Rajesh were the sons of PW-1and they died on the spot and in such a situation, the natural conduct of father loosing two sons would be to stay with the sons and weeping instead of going to the

police station immediately to lodge an FIR. However, we are unable to accept such contention, as it is devoid of any merit. In the present case it is quite clear from the evidence of the witnesses that first of all, PW-2 who was relative of the PW-1 came to the petrol pump i.e. the place of occurrence. The altercation arose between PW-2 and Accused No. 3. All the three accused then started beating PW-2. PW-2 was then dragged and looked inside the show room. When PW-1 came to prevent the accused from doing this, the Accused No. 2 fired shot at him but by chance the shot did not hit him. At that time, the deceased Rajesh and Brijesh emerged there on motorcycle. On the exhortation by the accused persons, Accused No. 3 fired shots aiming at them, due to which Brijesh and Rajesh fell down and died on the spot. It is also proved from the evidence that PW-1 along with his companion Adya Prasad Singh again came forward to his sons then the accused Pushkar again fired a shot. In the aforesaid circumstances, it is quite clear that PW-1 could not reach upto his sons after they fell down due to firing. It is also clear from the record that the two accused had locked PW-2, a relative of PW-1 in their custody and at that time Accused No. 2 was having a gun. In the aforesaid circumstances, when PW-1's both son fell down, his relative (PW-2) was in the custody of the accused persons, PW-1 had indeed no other option except to approach the police station. That was also necessary since there was also danger to the life of PW-2. In the aforesaid circumstances, we find no reason to doubt the prompt registration of the FIR.

19. Another submission which was made on behalf of the accused was that PW-1 to PW-3 are interested witnesses and there are some contradictions in their statements. It has been contended that PW-1 and PW-2 are related to each other and also with the two deceased as both deceased were the sons of PW-1. However, PW-3 cannot be said to be in any way interested with PW-1 or PW-2 nor he had enmity with the accused persons. A perusal of the evidence of PW-3 unmistakably makes it quite clear that on the fateful day, he

A proceeded at 6 O'clock from his house for grazing cattle and had reached at 8 O'clock, at 'bhita' in front of petrol pump towards east of the road along with his cattle. The incident took place in the month of May and as the cattle were grazing, his presence at the place at 8 a.m. cannot be doubted.

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20. The learned counsel appearing for the accused has strenuously argued and drawn our attention to the fact that the prosecution has not examined the other witnesses available on the spot. However, we are unable to accept the said contention as it is not necessary that all those persons who were present C at the spot must be examined by the prosecution in order to prove the guilt of the accused. Section 134 of the Evidence Act provides that no particular number of witnesses is required for proof of any fact. It is trite law that it is not the number of witnesses but it is the quality of evidence which is required to D be taken note of by the courts for ascertaining the truth of the allegations made against the accused. In the *Takhaji Hiraji v. Thakore Kubersing Chamansing,* (2001) 6 SCC 145, at page 155, this Court observed as follows :

E "19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. *It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not* F *convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a* G *deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already*

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overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we find that there are at least 5 witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is not even suggested by the defence that they were not present at the place of the incident and did not participate therein. The injuries sustained by these witnesses are not just minor and certainly not self-inflicted. None of the witnesses had a previous enmity with any of the accused persons and there is apparently no reason why they would tell a lie. The genesis of the incident is brought out by these witnesses. In fact, the presence of the prosecution party and the accused persons in the chowk of the village is not disputed. How the vanity of the Thakores was hurt leading to a heated verbal exchange is also not in dispute. Then followed the assault. If the place of the incident was the chowk then it was a sudden and not premeditated fight between the two parties. If the accused persons had reached their houses and the members of the prosecution party had followed them and opened the assault near the house of the accused persons then it could probably be held to be a case of self-defence of the accused persons

A in which case non-explanation of the injuries sustained by the accused persons would have assumed significance. The learned Sessions Judge has on appreciation of oral and circumstantial evidence inferred that the place of the incident was the chowk and not a place near the houses
B of the accused persons. Nothing more could have been revealed by other village people or the party of tightrope dance performers. The evidence available on record shows and that appears to be very natural, that as soon as the melee ensued all the village people and tightrope
C dance performers took to their heels. They could not have seen the entire incident. The learned Sessions Judge has minutely scrutinised the statements of all the eyewitnesses and found them consistent and reliable. The High Court made no effort at scrutinising and analysing the ocular
D testimony so as to doubt, if at all, the correctness of the several findings arrived at by the Sessions Court. With the assistance of the learned counsel for the parties we have gone through the evidence adduced and on our independent appreciation we find the eyewitnesses
E consistent and reliable in their narration of the incident. In our opinion non-examination of other witnesses does not cast any infirmity in the prosecution case."

(emphasis underlined)

F 21. Further, we cannot lose sight of the fact that ghastly acts, of the nature and gravity as the present one, when committed in a public place may very well create a sense of fear and shock in the minds of the witnesses and thus prevent them from coming forward and deposing against the
G perpetrators of the crime. If the testimonies of those witnesses, who have deposed during the trial, are otherwise found to be reliable, trustworthy and cogent, the said evidence cannot be disbelieved or discarded merely because the prosecution has failed to examine other witnesses allegedly present on the spot.

H

22. Another submission which has been advanced by the learned counsel for the accused is that the story of Accused No. 1 and Accused No. 2 locking the PW-2 in the showroom is completely unbelievable. As discussed hereinbefore, on altercation having taken place for petrol, PW-2 was assaulted by the accused persons and forcibly taken to the showroom and locked in there immediately thereafter. On being asked by PW-1 not to do the same, the gun shot was fired at him but he retreated to safety. Thereafter, when both deceased, Rajesh and Brijesh, the two sons of PW-1 reached the spot, two consecutive shots were fired at them which resulted in their death and thereafter again gun shot was fired towards PW-1. This fact is quite clear not only from the evidence of PW-1 but has also been fully corroborated by the evidence of PW-2 and PW-3. It is quite evident from the record that a big crowd gathered at the spot. Under the said circumstances, it was quite natural for the accused persons to keep PW-2 in their custody. Making PW-2 captive, a fact to which PW-11, the SSI who was investigating the case was also a witness, could well protect the accused persons from the crowd which had come to the place of occurrence after hearing the gunshots. Making PW-2 captive could also protect the petrol tank from being damaged by the pressure of the agitated crowd. The injuries were found on the body of PW-2 by the doctor who had examined him soon after the incident at 1.50 pm on the same day.

23. The name of Surendra Kumar servant has been disclosed after his death, for the first time in the statement under Section 313 CrPC and prior to that the name of Surendra Kumar was never even referred to at any place. The fact that Surendra Kumar was a servant at the petrol-pump at the time of incident has not been proved by any oral or documentary evidence by the defence.

24. In view of the aforesaid discussion, facts and circumstances of the case, we are of the considered view that the High Court clearly erred in reversing the order of conviction

A recorded by the trial Court. Accordingly, we set aside the judgment and order of the High Court and restore the judgment and decision of the trial Court.

25. The appeals are hereby allowed. The bail bonds of the B Accused No. 1, Accused No. 2 and Accused No. 3 stand cancelled and they are directed to surrender before the jail authorities within 15 days from today, failing which the authorities are directed to proceed in accordance with law.

26. The appeals are hereby allowed in terms of aforesaid C order.

K.K.T. Appeals allowed.