



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS.502-507 OF 2023

**NIRMALA BAI DEVIDAS
CHAVHAN**

... APPELLANT(S)

VERSUS

**STATE OF MAHARASHTRA
AND OTHERS ETC.**

... RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS.508-513 OF 2023

J U D G M E N T

AUGUSTINE GEORGE MASI, J.

1. This judgment shall decide Criminal Appeal Nos. 502-507 of 2023, preferred by the informant, and Criminal Appeal Nos. 508-513 of 2023, preferred by the State of Maharashtra, both of which arise out of the common judgment dated 02.02.2022 ("Impugned Judgment") passed by the High Court of Judicature at

Bombay, Nagpur Bench (“High Court”), in Criminal Appeal Nos. 559, 560, 561, 562, 570 and 576 of 2018. By Impugned Judgment, the High Court, upon a reappreciation of the entire evidence, reversed the judgment of conviction and order of sentence dated 10.08.2018 passed by the In-charge Additional Sessions Judge, Mangrulpir (Camp at Washim) (“trial court”), in Sessions Trial No. 44 of 2014, whereby twenty of the accused had been convicted and sentenced to imprisonment for life, the High Court allowed all six appeals and acquitted them of the offences charged.

2. The prosecution case has its genesis in an incident alleged to have occurred on 18.03.2014, the day of the Holi festival, at about 4:00 p.m., at Naik Nagar, Manora, District Washim, within the jurisdiction of Police Station Manora. On the same day, at 17:15 hours, First Information Report No. 38 of 2014 (“FIR”) came to be registered upon the oral report of Nirmala Bai Devidas Chavhan, the Appellant in the first set of appeals and the mother of the deceased

Avinash, for offences punishable under Sections 302, 307, 147, 148 and 149 of the Indian Penal Code, 1860 (“IPC”), read with Section 135 of the Bombay Police Act, 1951.

3. It is the case of the prosecution that at about 1:00 p.m. on that day the deceased Avinash had gone to Somnath Nagar to seek the blessings of his grandmother, where the accused Janardhan (A-1) and Milind (A-22) were playing a DJ and Avinash asked the DJ to be stopped as his grandmother was unwell which culminated into a quarrel, in the course of which, according to the prosecution witnesses, reference was made to the Zilla Parishad election of the year 2013 and a threat to kill was held out.
4. At about 4:00 p.m. on the same day, the deceased, along with his father Devidas (PW-10), his brother Mukesh (PW-2) and his cousin Ganesh (PW-13), returned to Naik Nagar, which is around some 2 to 2.5 kilometres distant from Somnath Nagar, in a car. As the four alighted in front of their house, the accused persons are alleged to have caught hold of them and dragged

them outside the house of A-1, at a distance of about 150 feet, where they were assaulted with iron pipes, an iron bar and wooden planks, some of the accused held the victims and others exhorted. Avinash died at the spot and others i.e. PW-2, PW-10 and PW-13 sustained injuries, principally upon the head. The informant Nirmalabai (PW-19), who deposed to having witnessed the occurrence from the porch of her house, named 21 persons in her report and attributed to each of them the weapon carried, the victim held and the part of the body assaulted.

5. The investigation was thereafter carried out in the normal course. The spot *panchanama* was drawn between 17:30 and 18:15 hours upon the spot being shown by PW-19, and blood-mixed soil and a blood-stained stone were seized. The inquest upon the body of the deceased was held at 18:55 hours. The postmortem examination was conducted on 19.03.2014 by Dr. Gote (PW-21), who found a laceration measuring 2 x 4 cm over the scalp upon the head of the deceased

with a fracture of the frontal bone and opined the cause of death to be haemorrhage due to head injury. The three injured were treated at the Rural Hospital, Manora, were referred to the Government Medical College, Akola, and were thereafter shifted to Icon Hospital, Akola. All the accused came to be arrested in due course. Memorandum and recovery *panchanamas* under Section 27 of the Indian Evidence Act, 1872 were recorded and iron pipes and wooden planks came to be recovered at the instance of some of the accused.

6. The statements of the eye-witnesses PW-9 and PW-14 were recorded on 20.03.2014, those of the injured PW-2 and PW-13 on 24.03.2014 and that of PW-10 on 28.03.2014, also recorded after a certification of fitness was given by the treating doctor. The case property was despatched to the Chemical Analyser, Amravati on 20.05.2014, which was declined on that day for the reason that the lac seals were broken, and was accepted on 22.05.2014 after resealing by doctors and by police officers, of which no

record was made.

7. After completion of the investigation, chargesheet came to be filed before the Judicial Magistrate, First Class, Manora, against 23 accused for offences punishable under Sections 147, 148, 149, 307, 302 and 120-B of IPC read with Section 135 of the Bombay Police Act, 1951. The case was committed to the Court of Session and registered as Sessions Trial No. 44 of 2014 upon the file of the trial court.
8. The trial court framed the charge under Sections 147, 148, 149, 302 read with Section 149, 307 read with Section 149 and 120-B of IPC and under Section 135 of the Bombay Police Act, 1951. The accused pleaded not guilty. A-19 had died during the pendency of the trial. The prosecution examined 29 witnesses, among them were the three injured, PW-2, PW-10 and PW-13, the three eye-witnesses, PW-9, PW-14 and PW-19, the medical witnesses PW-20, PW-21, PW-24, PW-25 and PW-26, and the two investigating officers, PW-23 and PW-28. The accused denied their involvement and stated the

case to be one of false implication. The accused asserted in their statements recorded under Section 313 of Code of Criminal Procedure, 1973 (“CrPC”) that it was the complainant party which had come to the house of the accused, and that the injuries were caused in the scuffle by residents of the locality who had come to their rescue. Three medical witnesses were examined in defence, and documents were brought on record to show that four of the accused had taken treatment for their own injuries on 21.03.2014.

9. Vide judgment dated 10.08.2018, the trial court held the death of the deceased to be homicidal and the testimony of the injured witnesses and of the eye-witnesses to be cogent and trustworthy. It disbelieved and discarded the evidence relating to the dragging of the victims from before the house of PW-10 to the house of A-1, no *panchanama* of that place or of the car having been prepared, and it excluded the reports of the Chemical Analyser for the reason that the case property not having been kept

sealed. The trial court acquitted all the accused of the charge under Section 120-B IPC and under Section 135 of the Bombay Police Act, 1951 and acquitted A-16 and A-17 of all the charges.

- 9A. However, upon the available evidence it convicted 20 accused i.e., A-1 to A-15, A-18, A-20, A-21, A-22 and A-23, under Section 302 read with Section 149 of IPC and sentenced them to imprisonment for life; under Section 307 read with Section 149 IPC upon three counts and sentenced them to rigorous imprisonment for seven years upon each count; under Section 147 IPC and sentenced them to rigorous imprisonment for one year; and under Section 148 IPC and sentenced them to rigorous imprisonment for two years, all the sentences to run concurrently, together with fine and default stipulations.
10. The convicted accused challenged the judgment of trial court before the High Court by filing the six appeals as aforementioned. The High Court vide Impugned Judgment allowed the appeals

and held that the prosecution had failed to prove its case beyond reasonable doubt and that the accused were entitled to the benefit of doubt, and directed them to be set at liberty forthwith. The grounds upon which the High Court proceeded with acquittal are taken up in the course of the discussion which follows.

11. The informant, who was not arrayed as a party before the High Court, obtained permission to prefer special leave petition. The State of Maharashtra preferred separate special leave petition. Leave having been granted in both, the appeals were registered as aforesaid and have been heard together.
12. Learned senior counsel appearing on behalf of the Appellant-informant assails the Impugned Judgment by contending that the High Court has failed to appreciate the facts and circumstances of the case in their proper legal perspective, and that its findings run contrary to the material on record. He submits that the judgment of the trial court was a well-reasoned one, rendered upon a consideration of the whole

of the evidence, and that nothing was shown which called for interference with it. The High Court became oblivious of the fact that the case was one of murder and of grievous hurt, that the death of the deceased was neither accidental nor natural but homicidal, and that the Impugned Judgment reads as though the case pertained to a fight or to simple hurt.

13. He further submits that the evidence of an injured witness stands upon a higher pedestal and that cogent reasons are required before it is discarded, relying upon **Ramlagan Singh and Others v. State of Bihar**¹, **Balraje v. State of Maharashtra**² and **Jarnail Singh and Others v. State of Punjab**³. Learned senior counsel urge that the principle relating to a parrot-like version has no application to an injured witness, whose presence at the place of occurrence cannot be doubted, and that the portions of the depositions which the High Court characterised as identical were in fact

¹ (1973) 3 SCC 881

² (2010) 6 SCC 673

³ (2009) 9 SCC 719

elicited in cross-examination by the defence, when the witnesses had no opportunity of concerting a common story. It is pointed out that all three injured witnesses were subjected to searching and extensive cross-examination, that the suggestions of tutoring put to them were denied, and that their evidence was not shattered but was corroborated by the medical evidence, so that they could not be termed tutored witnesses.

14. It is submitted that the case is not one resting upon ocular evidence alone, the medical witnesses proved that the death was homicidal and that the injuries were caused by hard and blunt objects. A weapon was discovered and seized upon the statement of each of several accused and the recoveries were duly proved and that mere exaggeration as to an episode cannot lead to the discarding of the whole of the corroborated evidence on record.
15. It is urged that the accused admitted their presence at the spot and, have failed to explain that presence either in cross-examination or in

their statements under Section 313 of CrPC, the burden lay upon them, and a statement under Section 313 of CrPC, not being substantive evidence, could not discharge it, reliance being placed upon ***Manu Sao v. State of Bihar***⁴. Reliance was also placed upon ***Takhaji Hiraji v. Thakore Kubersing Chamansing and Others***⁵ to contend that where overwhelming evidence is available, the non-examination of further witnesses is not material. Relying further upon ***Rammi alias Rameshwar v. State of M.P.***⁶, it is contended that post-event conduct differs from person to person and that no particular manner of behaviour can be expected of the informant. Reliance is also placed upon ***Gangadhar Behera and Others v. State of Orissa***⁷ to contend that the mechanical rejection of the evidence of a related witness may lead to a failure of justice and that normal discrepancy does not affect credibility.

16. He finally submits that even assuming there

⁴ (2010) 12 SCC 310

⁵ (2001) 6 SCC 145

⁶ (1999) 8 SCC 649

⁷ (2002) 8 SCC 381

were lapses in the investigation as to the sealing of the case property, the delay in sending it for chemical analysis and the failure to prepare a *panchanama* of the place in front of the house of PW-10, those lapses could not render the ocular evidence doubtful, and that the acquittal is perverse and was recorded without application of mind to the evidence.

17. Learned counsel appearing for the State of Maharashtra adopts the submissions of informant and contends that the testimonies of the injured and of the eye-witnesses could not be discarded as identical when they stood corroborated by the medical evidence. That the High Court could not overlook the basic principles of criminal jurisprudence and acquit the accused of the offences under Sections 307, 147 and 148 IPC merely upon a finding of benefit of doubt in relation to the charge of murder. The doctrine of last seen ought to have been applied and that the High Court could not have ignored the reasoning of the trial court upon an appreciation of the evidence.

18. On the other hand, learned senior counsel appearing for the Respondent-accused supports the Impugned Judgment and submits that it is humanly impossible for 6 witnesses, four of whom were themselves under simultaneous assault, to reproduce the same minute detail as to the name of each of 23 accused, the weapon carried by each, the victim held by each and the part of the body assaulted. That such an identity of narration is the mark of tutoring and not of truth and the High Court committed no error in so holding. Reliance is placed upon **Lakshmi Singh and Others v. State of Bihar**⁸, **Rambilas and Others v. State of M.P.**⁹, **State (Delhi Administration) v. Laxman Kumar and Others**¹⁰, **Himmat Sukhadeo Wahurwagh and Others v. State of Maharashtra**¹¹, and **State of Punjab v. Mohri Ram and Others**¹².

19. He further submits that the medical evidence is irreconcilable with the ocular version, in that

⁸ (1976) 4 SCC 394

⁹ AIR 1997 SC 3954

¹⁰ (1985) 4 SCC 476

¹¹ (2009) 6 SCC 712

¹² 1994 Supp (1) SCC 632

four accused are deposed to have beaten the deceased continuously upon the head with iron pipes while the postmortem discloses a single laceration, and that PW-21, the doctor, admitted in cross-examination that a single injury is possible only if all the blows fall upon the same place, and that had four persons so beaten the head continuously, the head may have been crushed. Learned senior counsel also draws attention to the deposition of PW-2 and PW-10 that an eyeball of PW-10 had come out of its socket and his teeth had been dislodged, whereas the medical record shows the eyeball movement to be normal and a spot *panchanama* records no teeth at the place of the assault.

20. Learned senior counsel further submits that the conduct of PW-19 was unnatural and her presence at the scene of occurrence is doubtful and no independent witness was examined although the occurrence took place in a residential locality and a crowd had gathered when the police arrived, and that even the *panch* witnesses are relatives. The statements of the witnesses were recorded belatedly and without

explanation and the carbon copy of the FIR sent to the Magistrate did not tally with the original, a discrepancy which PW-23, the Investigating Officer, was unable to explain, further the case property was not kept sealed and the reports of the Chemical Analyser are therefore worthless. That the injuries sustained by the accused were suppressed and remain unexplained, reliance being placed upon **Lakshmi Singh (supra)** and upon **Kailash Gour and Others v. State of Assam**¹³ to contend that the benefit of a defective investigation must go to the accused.

21. Lastly, he submits that this Court does not interfere under Article 136 of the Constitution of India with an order of acquittal unless it is shown to be clearly unreasonable, perverse, manifestly illegal or grossly unjust, and that the mere circumstance that a different view of the evidence is possible affords no ground for reversal is made, reliance being placed upon **State of Karnataka v. Amajappa and Others**¹⁴, **State of Rajasthan v. Bhanwar**

¹³ (2012) 2 SCC 34

¹⁴ (2003) 9 SCC 468

Singh and Others¹⁵ and ***State of Punjab v. Kewal Krishan***¹⁶.

22. We have given our thoughtful consideration to the submissions of the parties and have carefully gone through the evidence on record as well as the judgments rendered by the courts below.
23. At the threshold, it is necessary to identify the nature of the exercise which these appeals call for. These are not appeals against concurrent findings. The trial court convicted and the High Court, in the exercise of its appellate power to reappreciate the whole of the evidence, reversed the finding of trial court. The question which arises for our consideration is, therefore, whether the view taken by the High Court in acquitting the accused is a reasonable and possible view upon the material on record, such that it does not call for interference in the exercise of the discretionary jurisdiction of this Court under Article 136 of the Constitution of

¹⁵ (2004) 10 SCC 709

¹⁶ (2023) 13 SCC 695

India, and not whether this Court, sitting as a court of first appeal, might have taken a different view. We propose to examine the principal grounds upon which the High Court proceeded and to test them, for ourselves, against the record.

24. The first of those grounds is the identical character of the ocular testimony. The occurrence, as per the prosecution case itself, was a sudden and violent assault by a large number of persons upon four victims at one and the same time, lasting, according to the injured witnesses, for 2 to 3 minutes. Six witnesses were examined as having seen the occurrence, namely the 3 injured, PW-2, PW-10 and PW-13, and the 3 eye-witnesses, PW-9, PW-14 and PW-19. Their statements correspond, one with another, in the name of every assailant, in the weapon carried by each, in the victim held by each and in the part of the body upon which each blow is said to have fallen. The following passage from the deposition of PW-2 Mukesh is illustrative:

“.....As soon as we alighted from our car, all the accused caught hold of us and dragged us in front of house of accused Janardhan Rathod. Accused Vinod Haridhan Rathod and Ravi Tulshiram Rathod had held me. Accused Gowardhan Rathod and Arun Ramlal Pawar had held my father. Accused Ashok Ramlal Pawar, Kuldeep Ramlal Pawar had held my brother Avinash. Manohar Tulshiram Rathod, Dilip Dalsing Rathod and Pradip @ Dhotya Babusing Rathod had held my Cousin Ganesh.....”

25. PW-10 Devidas deposed thus:

“.....As soon as we alighted from the Car, all accused surrounded us. Each one of us was caught hold by two persons. All accused dragged us to the house of Janardhan. Avinash was caught hold by Kuldeep Pawar and Ashok Pawar. Mukesh was caught hold by Vinod Rathod and Ravi Rathod. Ganesh was caught hold by Manohar Tulshiram Rathod, Dilip Dalsing Rathod and Pradip @ Dhotya Jadho.....”

26. PW-9, PW-13, PW-14 and PW-19 have deposed in the same fashion. The High Court found that the witnesses had spoken in almost identical fashion without moving an inch away from each other, and that the absence of any role in the carrying of a weapon attributed to those who are said to have held the victims appeared to have been done thoughtfully so as to create a show of truthfulness.

27. In a normal course, where a single occurrence involving a large number of persons is witnessed by several persons who are differently placed, and some of them themselves are under assault, it is expected and natural that the accounts which they give will ordinarily bear the marks of individual perception. Differences of detail in such a narration are the natural product of the circumstances in which the observation was made, and their presence lends assurance rather than detracting from it. A correspondence as complete as the present one, extending to the description of the acts of 23 persons and even when it is given not immediately but some days after the occurrence, is of the opposite character. The High Court was entitled to regard it as a circumstance raising a serious doubt as to whether these witnesses were speaking to what they had seen or to what they had been tutored to say. It is a settled principle that an identical and stereotyped version bears the imprint of tutoring rather than of truthful recollection, which is a caution long administered by this

Court, and it was administered in circumstances not dissimilar in ***Lakshmi Singh (supra)***, in ***Laxman Kumar (supra)*** and in ***Himmat Sukhadeo Wahurwagh (supra)***.

28. The answer pressed on behalf of the Appellants must be met squarely. It is urged that the principle of the parrot-like witness has no application to an injured witness, whose presence at the scene carries its own guarantee and whose evidence stands upon a higher footing. The proposition, so far as it goes, is unexceptionable, but the presence of a witness at the place of the occurrence and the truthfulness of the detail which he or she attributes to each member of a large assembly are distinct matters. An injured witness is a reliable witness as to the assault upon himself, however, his evidence does not, for that reason alone, become a reliable inventory of the precise part played by each of 23 persons, whom he recounted identically some days later.

29. The High Court did not disbelieve that PW-2, PW-10 and PW-13 were assaulted, nor did it

doubt that they had suffered the injuries proved by the medical evidence. What it declined to accept as safe and correct was the minute and uniform attribution of roles of all 23 persons which was described by the witnesses. That distinction is a legitimate one. At this juncture, it must be taken into account that, this distinction is not displaced by the submission that the identical passages were elicited in cross-examination, the attribution of a specific role to each accused appears in the examination-in-chief of each of these witnesses and, indeed, in the oral report lodged on the very day of the occurrence.

30. We now turn to the conflict between the ocular account and the medical evidence, which we regard as the weightier of the two grounds carrying the acquittal. Upon the evidence of all 6 witnesses, 4 persons, namely A-1, A-2, A-18 and A-22, each armed with an iron pipe, beat the deceased continuously upon the head. The postmortem report disclosed only a single laceration measuring 2 x 4 cm over the scalp

with a fracture of the frontal bone beneath it. PW-21, Dr. Gote, who conducted the postmortem examination, stated in his cross-examination as follows:

“If a person is beaten continuously for 2 to 3 minutes by 4 persons by 4 different pipes there is possibility that there would be several injuries on the head and it is also possible that there would be one injury. It is correct that a single injury is possible if all the blows by the pipe falls on the same place. If the blows falls on different place on the head several injuries would be there. According to me, if a person is beaten continuously for 2 to 3 minutes by 4 persons by 4 iron pipes and the blows falls on the same place then the head may be crushed, depending upon the force of the blows.”

The High Court held it to be impossible that four persons, continuously giving repeated blows upon the head with different weapons, would land every blow upon the same site, and that upon this aspect the testimony of the eye-witnesses could not be believed. This conclusion drawn by the High Court is not the product of conjecture but it is an inference drawn from the medical evidence, flowing from the mouth of the prosecution's own witness, who deposed that had four persons so beaten the head, it may,

depending upon the force of the blows, have been crushed. It was not in the present case.

31. The trial court sought to meet this difficulty by treating the account as an instance of the exaggeration to which witnesses speaking of their own suffering are prone. As a general proposition that could be so, and the High Court said as much. However, exaggeration explains an overstatement of the force or the ferocity of an assault. It does not explain how an assault deposed to as having been delivered by four named assailants with four separate weapons registered upon the body of the deceased as a single point of impact. The trial court did not give due weight to that distinction, which, in a case where the conviction of twenty persons rested upon the attribution of separate acts to separate accused, required to be addressed.
32. The same discord runs through the evidence relating to the injured PW-10 Devidas. PW-2 and PW-10 both deposed that an eyeball of Devidas had come out of its socket and that his teeth had been dislodged. The medical record

dated 19.03.2014 showed his eyeball movement to be normal, and the spot *panchanama* recorded no teeth at the place of the assault. PW-21 admitted that he had found no lacerated wound upon the chin, no injury upon the lower lip and no lacerated wound upon the right eyebrow of Devidas, and that his notings were not consistent with a claim that the eyeball had come out of the socket. The High Court treated these as vital discrepancies which could not be lightly brushed aside, and in a case resting wholly upon ocular testimony we are unable to say that it was in error in doing so.

33. The approach of the High Court is in accord with the recent decision of this Court in ***Sanjay Kumar v. State of Bihar and Another***¹⁷ of which one of us was a member (Sanjay Karol, J.), where an acquittal was sustained in the face of a like mismatch, the Court observed as follows:

“44. This assumes significance because the present case is not one where there is a single eyewitness speaking to a single injury. The prosecution has built its case on a detailed

¹⁷ 2026 INSC 735

attribution of separate shots by separate assailants. Where such detailed attribution is not fully supported by medical evidence, and where independent witnesses do not support the prosecution, the court must be slow in overturning an acquittal.

45. The High Court, therefore, cannot be said to have acted perversely in treating the mismatch between the FIR/ocular version and the post-mortem report as a relevant circumstance. It is not necessary for the accused to demonstrate that the prosecution case is false in every respect. It is sufficient if the evidence creates a reasonable doubt as to whether the prosecution has proved the charge beyond reasonable doubt.”

It was further held that a criminal court cannot select one apparently corroborated portion of the evidence while ignoring other material inconsistencies, and that the question is whether the evidence as a whole crosses the threshold of proof beyond reasonable doubt. The submission that the injuries proved by the medical witnesses corroborate the ocular account is answered by that principle; the injuries establish that the four victims were assaulted, which was never in doubt, but do not establish the manner of the assault as deposed to.

34. The infirmities noticed by the High Court do not

end there, and it is necessary to notice the remaining ones, each of which we have examined against the record. The genesis of the entire episode was a quarrel over the playing of a DJ between two persons, some hours earlier and around 2.5 kilometres away from the place of the assault. From that slender beginning, the prosecution arrayed 23 persons from four related families, most of whom were not residents of Naik Nagar and had no connection with that quarrel and assigned to each of them a specific role. To nine of the twenty persons convicted, no weapon at all was attributed, the case against them being confined to the holding of a victim or the shouting of exhortation.

35. It is to be noted here that a group and factional rivalries carry with them a tendency to rope in the innocent along with the guilty, this Court has on several occasions administered caution while deciding such matters, one such case is ***Eknath Ganpat Aher and Others v. State of Maharashtra and Others***¹⁸, upon which the

¹⁸ (2010) 6 SCC 519

High Court relied. In a case which rests upon constructive liability under Section 149 of IPC, the safe identification of the membership of the assembly is the very foundation of the conviction and where that foundation is laid exclusively by interested testimony of a stereotyped character, an appellate court is entitled to regard it as unsafe. It may also be noticed, though we do not rest our conclusion upon it, that the only overt act attributed to any person upon the injured Ganesh (PW-13) with an iron bar was attributed to a juvenile who was not tried with the accused, and the blows with a wooden plank to a person who was never arrested or chargesheeted.

36. Next, the assault took place in a residential locality. PW-1 admitted in his cross-examination that forty to fifty persons had gathered at the spot; the oral report recited that the residents had witnessed the incident, an assertion from which PW-19 resiled in the witness box and PW-19 admitted that there were six houses nearby and that she was upon

good terms with her neighbours. Notwithstanding this, not a single independent witness was examined, and even the *panch* witnesses are admittedly relatives. The High Court held that in these circumstances the trial court ought to have drawn an adverse inference against the prosecution. The principle governing the matter was restated in ***Sanjay Kumar (supra)*** in the following terms:

“49. In the present matter, the independent witnesses were not peripheral witnesses. The prosecution itself considered them material enough to cite them in the chargesheet. When the two independent witnesses examined did not support the prosecution, and the remaining independent witnesses were withheld without satisfactory explanation, the courts below were entitled to treat this as a circumstance creating doubt on the prosecution case.

50. The argument that hostile witnesses do not completely efface the prosecution case is again correct as a proposition of law. But where the prosecution case is otherwise attended by contradictions between ocular and medical evidence, doubtful presence of interested witnesses, and lack of independent corroboration, the hostility of independent witnesses assumes greater significance.”

37. The reliance placed upon ***Takhaji Hiraji (supra)*** does not carry the matter further, the rule there stated presupposes that the evidence

which has been led is itself overwhelming, that premise is absent here.

38. Another aspect which requires consideration is that there is the delay in the recording of the statements. PW-9 and PW-14 were admittedly present when the police reached the spot, yet their statements were not recorded until 20.03.2014, and PW-23 admitted in his cross-examination that the statements of the eye-witnesses could have been recorded through PW-16 without delay. The statements of the injured were recorded from 24.03.2014, though the hospital records exhibited before the trial court showed them to be conscious and oriented. The trial court accepted the explanation offered through the treating doctors, and the explanation was not without force so far as the injured were concerned but no explanation at all was forthcoming for the delay in the case of PW-9 and PW-14, and the trial court did not advert to it. The High Court held that the unexplained delay, in the setting of a body of witnesses all of whom are related

and interested, left room for the construction of a version. That inference was open to it upon the material.

39. Finally, there are infirmities in the FIR and in the investigation. The carbon copy of the FIR sent to the Magistrate does not tally with the original, the columns as to the time of registration and the station diary entry being blank in the one and written in ink in the other. PW-23 was unable to offer any explanation and the attempt of PW-28 to explain the discrepancy by reference to a practice of keeping two original copies did not survive his admission that he knew of no rule requiring it and had no personal knowledge of the writing of this report. To these must be added the concededly serious lapses in the handling of the case property, which the Chemical Analyser declined to receive because the lac seals were broken and which was thereafter resealed without any record, upon which both the courts below were agreed in excluding the reports of the Chemical Analyser. It is not necessary for us to decide finally upon

whether the FIR was ante-timed, nor did the High Court rest its conclusion upon that finding alone. A defect in investigation does not by itself entitle an accused to an acquittal where the substantive evidence is found to be reliable, but where the substantive evidence is itself infirm, the lapses assume significance and their benefit enures to the accused.

40. At last, there remains the matter of the injuries upon the accused. It was brought on record through the medical witnesses examined in defence, and by the documents exhibited that four of the accused had taken treatment for their injuries on 21.03.2014 and PW-21 admitted that he had examined certain of the accused and had issued medico-legal reports in respect of them, which did not form part of the chargesheet. The trial court treated the non-production of those reports as a lapse of the Investigating Officer occasioning no prejudice.

41. The High Court took the view that the injuries upon the accused had been withheld and remained unexplained, and that this reinforced

the doubt as to whether the true genesis of the occurrence had been placed before the court. The consequences of such a non-explanation were considered by this Court in ***Parshuram v. State of Madhya Pradesh***¹⁹, where, after setting out the three inferences enumerated in ***Lakshmi Singh (supra)***, namely that the prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version, that the witnesses who have denied the presence of the injuries are lying upon a most material point, and that a defence version which explains those injuries is rendered probable, it was held as follows:

“22. Undisputedly, in the present case also, the witnesses are interested witnesses. The injuries sustained by three accused persons are not at all explained. The trial court and the High Court have not considered this aspect of the matter.

23. Non-explanation of injuries on the persons of the accused would create a doubt, as to, whether, the prosecution has brought on record the real genesis of the incident or not.”

The witnesses in the present case are, without exception, related to the deceased and to the

¹⁹ 2023 INSC 973 : (2024) 12 SCC 322

injured and the injuries upon the accused are unexplained; and a defence version which would account for them was set up from the stage of the statements under Section 313 of CrPC. The view which the High Court took upon this material is in keeping with the principle so stated.

42. It is upon the cumulative effect of these several strands that the High Court proceeded, and it is against that background that the threshold of interference must now be applied. The principles governing the reversal of an acquittal are no longer *res integra*. They were restated by this Court, after a survey of the earlier decisions, in ***Babu Sahebagouda Rudragoudar and Others v. State of Karnataka***²⁰ that an appellate court will interfere with an order of acquittal only where the acquittal suffers from patent perversity, or is founded upon a misreading of or an omission to consider material evidence on record, or where no two reasonable views upon the

²⁰ (2024) 8 SCC 149

evidence are possible and the only view which can be taken is that consistent with the guilt of the accused.

43. The above restraint operates with added force when this Court is invited to interfere under Article 136 of the Constitution of India, for an order of acquittal reinforces the presumption of innocence with which an accused sets out, and this Court, in the exercise of its discretionary jurisdiction, will not disturb such an order unless it is shown to be perverse, manifestly illegal or productive of a gross miscarriage of justice.

44. Tested upon that touchstone of decisions rendered by this Court, the view taken by the High Court cannot be displaced. It is not a view arrived at by ignoring the evidence, the High Court reproduced the material portions of the depositions and dealt with each of the reasons which had weighed with the trial court. It is not a view based upon a misreading, the medical evidence upon which it principally turns is the evidence of the prosecution's own expert, in the

very words in which he gave it. It is not a case in which the only view possible upon the record was the view consistent with guilt, on the contrary, upon the conflict between the ocular and the medical evidence and upon the unsafe character of the identification of a large assembly, the conclusion reached by the High Court is one which is well justified on the basis of the record. The submission that the acquittal is perverse and was recorded without an application of mind is, in these circumstances, not one which commends itself to us.

45. We are conscious that the reasoning of the High Court is not free from imperfection. The characterisation of the recoveries effected under Section 27 of the Evidence Act, and of the explanation offered for the discrepancy in the FIR through PW-28, might have received detailed notice, the trial court having recorded findings upon both. As to the former, it may be observed that the mere exhibiting of a memorandum does not by itself establish a recovery, which must be proved in accordance

with law and as to the latter, the trial court's reasoning was entitled to be addressed rather than passed over. An error in the reasoning at the margin does not, however, vitiate a conclusion which is otherwise sustainable upon the record. The two findings which carry the acquittal, namely the medical improbability of the fatal assault as deposed to and the unsafe character of the identification of a large assembly upon interested and stereotyped testimony, remain untouched by any such correction.

46. Therefore, in our considered view, the acquittal recorded by the High Court is not the product of a perverse or capricious appreciation of the evidence but a reasoned conclusion resting upon the material on record. It is, at the least, a reasonable and possible view and once it is such a view, it is not liable to be interfered under Article 136 of the Constitution of India by this Court. The threshold for interference is not crossed in the present case.

47. In view of the foregoing discussion, we find no ground to interfere with the Impugned Judgment dated 02.02.2022 passed by the High Court in Criminal Appeal Nos. 559, 560, 561, 562, 570 and 576 of 2018. The prayer of the Appellant-informant and the State for the setting aside of that judgment and for the restoration of the conviction and sentence recorded by the trial court is declined.
48. Criminal Appeal Nos. 502-507 of 2023 and Criminal Appeal Nos. 508-513 of 2023 are accordingly dismissed.
49. Pending application(s), if any, shall stand disposed of.

.....J.
[SANJAY KAROL]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
AUGUST 03, 2026.**