

**(2009) 12 AHC CK 0342**

**Allahabad High Court**

**Case No:** None

State of U.P.

APPELLANT

Vs

Nirmal Dubey and Another

RESPONDENT

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**Date of Decision:** Dec. 5, 2009

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 307, 34

**Hon'ble Judges:** Uma Nath Singh, J; S.N.H. Zaidi, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

1. This leave to appeal arises out of a judgment dated 29th August, 2009 passed by learned Additional Sessions Judge (F.T.C.-1), Court Room Nos. 10, Sultanpur, in Sessions Trial Nos. 400 of 2006 recording acquittal of accused-respondents in an offence u/s 307/34 I.P.C.

2. We have heard learned State Counsel and perused the trial court judgment.

3. It appears that the incident took place on 28-10-2006 when complainant Krishna Kant Dwivedi was going on his motorcycle at 8:30 a.m. towards Musafirkhana for teaching. Accused-respondents came in a Maruti Car and driving parallel to his motorcycle fired gunshots. As a result, the complainant fell down. Thereafter, the accused-persons took out the key of motorcycle and fired again at the complainant and went away in the car. Further, as per prosecution case, there was past enmity between the parties. On careful scrutiny of the trial court's judgment, we do not find any infirmity and perversity whatsoever in it, for the reason that the injury noticed on the body of the injured could have been self-inflicted or could be received from a friendly hand. That apart, the marks of holes noticed on the cloth of the complainant were at different places from the marks of injury on the body. Moreover, no bullets/pellets were found inside the body, nor was there any exit wound.

4. That apart, the Apex Court in a number of decisions regarding interference with the judgment of acquittal has held that when two views are possible, the view taken by lower court in the facts and circumstances of the case in favour of the accused should be taken as the probable and reasonable view.

5. In view of the aforesaid, we do not find any merit in this leave to appeal. Hence, dismissed.