

SUPREME COURT OF INDIA**Bench: Justices B.R. Gavai and Sandeep Mehta****Date of Decision: 07 May 2024**

CRIMINAL APPEAL NO(S). 3684 OF 2023

JAGVIR SINGH ...APPELLANT(S)**VERSUS****STATE OF U.P. ...RESPONDENT(S)****Legislation:**

Section 302 read with Section 34 of the Indian Penal Code (IPC)

Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Subject: Appeal against the High Court's judgment affirming the trial court's conviction of the appellant for murder under IPC Section 302, 34.**Headnotes:**

Criminal Law – Murder – Appeal against conviction – Allegations of shooting by appellant and co-accused from a roof, resulting in death – Main issues include reliability of eyewitness testimonies and feasibility of their claimed observations from their respective positions – Eyewitness testimonies questioned due to physical impossibilities and inconsistencies in observing the event – Testimony contradicted by site inspection and distances involved – Trial court and High Court convictions based on these testimonies – Supreme Court finds the evidence presented does not meet the threshold of reliability, leading to a miscarriage of justice – Acquittal granted due to unreliable eyewitness accounts and doubts in prosecution's narrative. [Paras 1-40]

Eyewitness Testimony – Reliability Questioned – Analysis – Held – Supreme Court finds the testimony of the so-called eyewitnesses Ram Prakash (PW-1), Sultan Singh (PW-2), and Ram Naresh (PW-5) unreliable and conflicting with physical evidence and site inspection records. Eyewitnesses' presence

and ability to witness the incident from their claimed positions found to be improbable. [Paras 10-36]

Analysis – Re-evaluation of Eyewitness Testimony – Supreme Court undertakes a thorough analysis of the testimonies of alleged eyewitnesses and site inspection reports. Concludes that witnesses could not have possibly seen the incident from their claimed locations based on the physical layout and distances involved – Fatal inconsistencies lead to a failure of the prosecution’s case. [Paras 22-35]

Decision – Acquittal of Appellant – The Supreme Court, after noting the inherent improbabilities and discrepancies in the prosecution’s version, grants the benefit of the doubt to the appellant, Jagvir Singh. Conviction under Section 302 read with Section 34 IPC quashed, and appellant acquitted due to unreliable eyewitness testimony and uncorroborated circumstantial evidence. [Para 38-40]

Referred Cases:

- Selveeraj v. State of Tamil Nadu (1976) 4 SCC 343 (referenced for setting aside concurrent findings based on improbable and inconsistent evidence).

J U D G M E N T

Mehta, J.

1. The instant appeal is directed against the judgment dated 10th May, 2019 passed by the Division Bench of the High Court of Allahabad whereby the Criminal Appeal No. 6318 of 2003 preferred by the appellant for challenging the judgment dated 25th November, 2003 and the order of sentence dated 27th November, 2003 passed by the learned Additional Sessions Judge No.1, Mainpuri(hereinafter being referred to as the ‘trial Court’) in S.T. No. 56 of 2003 was rejected.
2. By the said judgment, learned trial Court convicted the accused appellant and accused Omkar for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860(hereinafter being referred to as

'IPC') while acquitting accused Sobran and Durvin from the charges. The accused appellant as well as accused Omkar were sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, each and in default of payment of fine to further undergo rigorous imprisonment for a period of one year.

This Court is informed that accused Omkar has served out the sentence awarded to him and was released on remission.

Brief facts: -

3. The first informant-Ram Naresh(PW-5) gave a written report(Ex.Ka.15) at the Police Station Dannahar, District Mainpuri alleging that his sister, brother-in-law and nephew Sanju(deceased) were residing nearby his house in village Gokulpur for the last 15 years; on 31st August, 2002, at about 5.00 p.m., accused Omkar came and asked Sanju(deceased) to remove his Naands(Hauda) from the land of the accused, to which, Sanju(deceased) objected saying that the Naands(Hauda) were existing there for a long time; at this, accused Omkar armed with a rifle of 315 bore along with Jagvir Singh(appellant herein) armed with country made pistol climbed on the roof of house of accused Omkar and exhorted the two accused(Durvin and Sobran) to surround Sanju(deceased); the accused Durvin and Sobran who were armed with country made pistols went to the house of Sanju(deceased) who on account of fear and to save his life climbed up to the roof of informant's house. Accused Omkar and Jagvir fired shots at Sanju(deceased) from the roof of Omkar's house. On hearing the noise, Ram Naresh-first informant(PW-5) and Ram Prakash(PW-1) rushed to the courtyard and found injured-Sanju trying to step down, but he rolled down near the staircase and died in the courtyard. All four accused ran away from the spot after firing gunshots.
4. On the basis of the said report, FIR No. 85 of 2002 (Ex.Ka.2) dated 31st August, 2002 came to be registered against the four accused namely Omkar, Jagvir Singh, Durvin and Sobran. Investigation was assigned to Ganga Prasad Gautam(PW-6) who prepared the inquest report(Ex.Ka.6) and other spot documents. The dead body of Sanju was subjected to autopsy by Dr. M.L. Gupta, Medical Officer(PW-3) who prepared the post mortem report(Ex.Ka.1) taking note of four abrasions and two firearm wounds on the body of the deceased. The entry wound was located on the chest area and the exit wound was located on the back of the chest. The Medical Officer(PW-3) opined that the death of Sanju was caused due to shock and haemorrhage

as a result of ante mortem injuries. The Site Inspection Plan(Ex.Ka.12) was prepared, statements of witnesses were recorded and a country-made pistol was recovered vide recovery memo(Ex.Ka.13) on being pointed out by the accused appellant Jagvir Singh.

5. Upon conclusion of the investigation, a charge sheet(Ex.Ka.14) came to be filed against the four accused persons nominated in the FIR for the offences punishable under Section 302 read with Section 34 IPC.
6. Since the offence was exclusively sessions triable, the case was committed and transferred to the Court of Additional Sessions Judge No.1, Mainpuri('trial Court'). The trial Court framed charges against the accused persons for the above offences. They abjured their guilt and claimed trial. The prosecution examined seven witnesses, exhibited 15 documents and 8 material objects to prove its case. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, 1973(hereinafter being referred to as 'CrPC'). They denied having committed the crime and claimed to have been falsely implicated. The accused appellant Jagvir Singh stated in his Section 313 CrPC statement that "Pradhan-Ramvir and others were firing from the roof of informant which hit deceased-Sanju standing in veranda, due to which, Sanju died".
7. The learned trial Court, proceeded to rely upon the testimony of Ram Prakash(PW-1)(father of Sanju), Sultan Singh(PW-2)(uncle of Sanju), and Ram Naresh(PW-5)(the first informant and maternal uncle of Sanju) as being eyewitnesses of the occurrence.
8. The evidence of Medical Officer(PW-3) was treated as conclusive to establish the fact regarding the homicidal death of Sanju. Upon conclusion of trial, the learned trial Court acquitted two accused Durvin and Sobran and convicted the accused appellant and accused Omkar by judgment dated 25th November, 2003 and sentenced them on above terms by order of sentence dated 27th November, 2003.
9. The appeal preferred on behalf of the accused appellant challenging the conviction and sentence was rejected by learned Division Bench of the Allahabad High Court by judgment dated 10th May, 2019 which is subjected to challenge in this appeal by special leave.

Submissions on behalf of the appellant:

10. Shri Kaushal Yadav, learned counsel for the accused appellant vehemently urged that the testimony of so called eye witnesses, Ram Prakash(PW-1), Sultan Singh(PW-2) and Ram Naresh(PW-5) is totally unreliable and they are concocted witnesses as they were not present at the crime scene.
11. It was submitted that the manner and location at which Sanju(deceased) received the injuries would make it clear that none of these so called eye witnesses were in a position to see the incident.
12. He urged that as per the admitted case of prosecution, gunshots were fired by the accused persons while standing on the roof of the house of accused Omkar and that time Sanju received the gunshot injury while standing on the roof of the house of his maternal uncle Ram Naresh(PW-5). Drawing the Court's attention to the Site Inspection Plan(Ex.Ka.12) prepared by Ganga Prasad Gautam, Investigating Officer(PW-6), learned counsel urged that there is a gap of almost 3-4 houses between the two spots. The eyewitnesses were admittedly not anywhere near Sanju(deceased) and were admittedly on the ground when the gunshots were fired at him.
13. Thus, there was no possibility that any of these witnesses could have actually seen the incident of firing or identified the assailant(s) who fired gunshots at Sanju(deceased).
14. Attention of the Court was drawn to the certain excerpts from the evidence of the three star prosecution witnesses namely, Ram Prakash(PW-1), Sultan Singh(PW-2) and Ram Naresh(PW-5) which are reproduced hereinbelow:-
Examination in Chief of Ram Prakash(PW-1)

“Omkar had 315 bore illegal rifle and Jagvir had illegal country made gun and Sobran and Durvin were also carrying illegal weapons in their hands, they came to my house and Omkar asked them to surround Sanju, Sanju climbed the wall of my under constructed house and ran towards his maternal Uncle's house. The accused reached the roof of their house and Sanju has reached the roof of his Uncle's house. On chaos myself and my brother in law Ram Naresh also reached the roof of the house. I was about 10 paces away from Sanju when Omkar fired on him. Out of fear we came down and Sanju also followed us. Sanju was shot on roof itself and while getting down the blood was flowing and he stumbled upon the stairs. After falling from the staircase he died on the spot”

Cross Examination of Ram Prakash(PW-1)

“I work in the bangle factory in Firozabad. My village Gokulpur to Firozabad where I work in the factory is about 56-57 kms away. The witness of the incident is Sultan Singh who is the son of Ramvir Pradhan's uncle. He is nephew in relation to my wife Shaitan. During the incident I used to stay in Firozabad in the rented accommodation. Accused Omkar house is towards the north side of my village. There is a Chak Road which runs from Omkar's house. The chak road is used to travel for the city, there are 3 rooms in Omkar's house facing towards east. Each room is at least 5-5 or 6-6 feet long. There is a dilapidated house while coming towards my house from Omkar's house. The dilapidated house is about 10-12feet long. There is a Girdhari's finished house which is 18feets long in north south and my brother in laws Ram Naresh house is situated along with house of Girdhari which has one room and a veranda. There is a balcony in front of the veranda. Both the doors of the room of Ram Naresh house open in the veranda. Both the rooms of Ram Naresh is about 66 or 7-7 feet long. Veranda is about 10-11 feet long. It is connected with the wall of my house, one room of Ram Naresh a courtyard and two other room, right after that is my house. There is a room within a veranda towards the east having staircase used for going on to the roof. There is no other way to reach the roof of Ram Naresh. Accused Omkar's house cannot be seen by standing in the veranda of Ram Naresh. We ran after my son incurred injury of fire. My signature was not taken by the Inspector on the Fard. My signatures was not taken anywhere in the Panchama. The people who registered the report informed me that your name is also mentioned as the witness.”

Examination in Chief of Sultan Singh(PW-2)

“Date of incident 31.08.2002 at about 5 pm in the evening. I was cutting grass at the time of the incident in my field. I heard the sound of the abuse and that surround him so that he cannot run away. I saw this while standing on the ram of my field that the Omkar was carrying 315 bore rifle, Jagvir carrying country made gun and these people were standing on the roof of Omkar. I saw that Omkar fired on Sanju who was standing on the roof of Ram Naresh. The fire shot hit Sanju. Jagvir also fired. 3-4 firing was made on the roof. Sanju incurred

firearm injury, he could only come towards the staircase and fell from there. Then I came to the house of Ram Naresh from my field and saw Sanju had died.”

Cross Examination of Sultan Singh(PW-2)

“My field is 100 mts away from my house towards the south. From my field deceased Sanju's house is visible but the door is not visible nor the complainant Ram Naresh's house and veranda is not visible.

I stood in my field after hearing the noise of abuses. I came to the place of incident after the firing took place. I did not see the bullet entering and exit the body of the deceased but i heard the sound of fire and saw Sanju falling down from the staircase.”

Examination in Chief of Ram Naresh(PW-5)

“At 5 pm 4 people came at the door of Sanju namely Omkar, Soberan, Jagvir and Durvin. After taking fodder when Sanju came to the house then these people asked him to remove his Naands (Hauda) then Sanju replied that Naada (Hauda) were there since his birth and that he will not remove. On this all the four people ran away to their houses and Omkar carrying a rifle, Jagveer, Soberan and Durvin carrying country made pistols came there. Durvin and Soberan came in front of the door of Sanju. Omkar asked them to surround him while Omkar and Jagveer climbed on top of the roof. Out of fear of Durvin and Soberan my nephew Sanju reached on the roof of my house from his half constructed house. As soon as me and my brother in law Ram Prakash from the staircase went to the roof then Omkar made 2-3 firing on Sanju. Jagvir also fired. Me and Ram Prakash were climbing the stairs up while Sanju was coming towards the staircase.

This incident was witnessed by me, my brother in law, Sultan Singh S/o Moti Lal and all the people from my house.

Cross Examination of Ram Naresh(PW-5)

In my report I have stated that "I and my brother in law Ram Prakash after hearing the sound of firing went towards the roof we saw Sanju was injured". This is the correct statement. When I climbed one step of the staircase I saw Sanju coming towards the staircase, my brother in law saw the same thing with me.

When I and my brother in law reached the courtyard we saw Sanju stumbling down from the staircase from the courtyard where there is a veranda in front of my house, from where the roof of Omkar is not visible.

When Inspector arrived Ram Prakash was present at the place of the incident. He was conscious but he did not state anything to the Inspector."

15. Learned counsel for the appellant further submitted that the theory setup by Ram Prakash(PW-1) in his examination-in-chief, that he and Ram Naresh(PW-5) both climbed on to the roof with Sanju(deceased) and saw the gunshots being fired at him is totally falsified and contradicted by Ram Naresh(PW-5) who candidly admitted that he and his brother-in-law Ram Prakash(PW-1), upon hearing the sound of firing, went towards the roof and saw that Sanju had been injured by gunshots. This very fact was also mentioned in the FIR(Ex.Ka.2). He also urged that the witness Ram Naresh(PW-5) admitted in his testimony that they saw Sanju stumbling down from the staircase into the courtyard. They were standing in the veranda in front of his house and from there the roof of Omkar's house is not visible.

16. Learned counsel urged that Ram Prakash(PW-1) being the father of the deceased did not sign any of the documents prepared at the spot. He admitted in his cross examination that during the incident, he used to stay in Firozabad in a rented accommodation which was about 56-57 kms away from his village Gokulpur where the alleged incident took place. The witness also admitted that the people who registered the report informed him that his name was also mentioned as a witness. Learned counsel submitted that the conjoint reading of these admissions as appearing in the evidence of Ram Prakash(PW-1) would make it clear that he was not present at the spot and was created to be an eye witness at a subsequent point of time.

17. It was contended that the allegation made by the witnesses that the accused appellant fired at Sanju while standing beside accused Omkar is nothing but a piece of fabrication made owing to prior enmity.

18. It was further submitted that as per Ram Prakash(PW-1) and Ram Naresh(PW-5), the incident took place in two parts. In the first part, there was an exchange of hot words(arguments) between the four accused and Sanju(deceased). Even at that point of time, all the four accused were carrying weapon in their hands whereas, Sanju(deceased) was alone and unarmed. Thus, if at all, the accused were intending to kill Sanju, then there was no reason for them to have gone away from the house of Ram Naresh(PW-1) where this heated exchange took place. Rather, they could have easily shot and killed Sanju then and there.

19. It was further submitted that the very sequence of events regarding the second part of the incident wherein, the witnesses claimed that the two accused persons Sobran and Durvin were asked to surround Sanju; the accused Omkar and Jagvir Singh(accumed appellant) went towards the house of Omkar and climbed on to the roof; that Sanju climbed to the roof of Ram Naresh's house and then, the gunshots were fired at him by accused Omkar and Jagvir Singh from the terrace of Omkar's house is on the face of it a piece of fiction without an *iota* of truth.

20. He urged that conviction of the accused appellant is totally unjustified because the testimony of the so-called eyewitnesses is unreliable on the face of the record.

Learned counsel thus implored the Court to accept the appeal and quash the impugned judgment and acquit the accused appellant by giving him the benefit of doubt.

Submissions on behalf of the Respondent-State: -

21. *Per contra*, Ms. Garima Prasad, learned Additional Advocate General representing the State of Uttar Pradesh, vehemently and fervently opposed the submissions advanced by learned counsel for the appellant and urged that two Courts, i.e., the trial Court and the High Court, have recorded concurrent findings of facts while convicting the appellant and affirming his conviction and hence, this Court should be slow to interfere in such concurrent findings of facts. She submitted that it is clear from the testimony of the three eye witnesses i.e. Ram Prakash(PW-1), Sultan Singh(PW-2) and Ram Naresh(PW-5) that the accused appellant Jagvir Singh and the accused

Omkar fired gunshots at Sanju(deceased) causing his death at the spot. She implored the Court to dismiss the appeal.

22. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgments and the material placed on record.

Discussion and Conclusion:

23. From a perusal of the FIR(Ex.Ka.2), it is manifest that the first informant-Ram Naresh(PW-5) categorically mentioned in the report that on hearing the gunshots, he and his brother-in-law Ram Prakash(PW-1) climbed on the top of the roof and saw that Sanju(deceased) was injured, and while he was climbing down the staircase, he rolled down, fell in the courtyard near the stairs and died. This fact is even admitted by Ram Naresh(PW-5) during this cross-examination in the following terms: -
“However, I mentioned in my report that, “when I and my brother-in-law after hearing the gun shots/fire reached the roof of the house, we saw Sanju injured”, is correct.”

24. The first informant-Ram Naresh(PW-5) also stated that he and Ram Prakash(PW-1) were climbing up the stairs while Sanju was coming down the staircase. Sanju got down 2-3 steps from the staircase and then stumbled down. When he and his brother-in-law Ram Prakash(PW-1) reached the courtyard, they saw Sanju stumbling down from the staircase from the courtyard, from where the roof of Omkar is not visible.

25. Thus, apparently, the claim made by Ram Prakash(PW-1) in his evidence that he and Ram Naresh(PW-5) had reached the roof of the house from where they saw Omkar firing at Sanju is a sheer piece of concoction and unacceptable on the face of the record.

26. Another material fact emerging from examination-in-chief of Ram Prakash(PW-1) is that he did not allege that accused appellant Jagvir Singh also fired at Sanju. He also admitted in his cross-examination that the house of accused Omkar will not be visible from the courtyard of Ram Naresh.

27. Both, Ram Prakash(PW-1) and Ram Naresh(PW-5) stated in their testimony that they got alarmed on hearing the sound of gunfire. If at all the shot had been fired from the house of Omkar, there is no reason as to why the witnesses would go to the courtyard of the house of Ram Naresh(PW-5) rather than rushing towards the direction from where the sound of the gunshot had been heard. Manifestly, their attention would be drawn towards

the sound of the gunshots being fired and in natural course, they would look towards that direction and not anywhere else.

28. Ram Prakash(PW-1) and Ram Naresh(PW-5) deposed in their testimony that during the second part of the incident; accused Omkar asked the accused Durvin and Sobran(since acquitted) to corner and surround Sanju who also rushed to the roof of the house of Ram Naresh(PW-5).

29. We further find that the conduct of the eye-witnesses Ram Prakash(PW-1) and Ram Naresh(PW-5) is totally unnatural. Both the witnesses claimed to have seen Sanju(deceased) being chased and surrounded by accused Durvin and Sobran. Despite, that, neither of them, made an attempt to save Sanju from these assailants or to at least raise a hue and cry so that the neighbouring people could be sounded about the incident. Neither of the witnesses made an attempt to intervene or to shield Sanju. 30. Furthermore, both the witnesses claimed that they saw accused Omkar and accused appellant Jagvir Singh rushing towards the house of Omkar and climbing the roof thereof. Hence, there was no rhyme or reason as to why, Sanju would also climb up the roof of Ram Naresh's house and take the risk of exposing himself to the offensive intents of the accused persons.

31. The participation of accused Durvin and Sobran in the incident has not been accepted by the trial Court and on that basis, these two accused persons were acquitted. Clearly, thus, the story put forth by the witnesses that accused Durvin and Sobran were also amongst the four offenders who were making an attempt to eliminate Sanju is unacceptable and unbelievable. Thus, the quarrel, if any, unquestionably took place between accused Omkar and accused appellant Jagvir Singh on the one side and Sanju on the other. Once accused Omkar and accused appellant Jagvir Singh had moved on from the place where the first part of the incident took place, Sanju had no reason, whatsoever, to climb up the roof of Ram Naresh's house because he was not facing any threat thereafter. Thus, the entire prosecution case is shrouded under a cloud of doubt.

32. A three judge Bench of this Court in the case of **Selveraj v. State of Tamil Nadu**¹ set aside the concurrent findings of guilt recorded by the trial Court and the High Court, wherein on an appreciation of evidence the prosecution story was found highly improbable and inconsistent of ordinary

¹ (1976) 4 SCC 343

course of human nature. The relevant extract of which is reproduced hereinbelow: -

“4. The conviction of the appellant rests on the oral testimony of Natesan and Manisekaran who claimed to be eyewitnesses to the murder of the deceased. Both the learned Additional Sessions Judge as well as the High Court have believed the evidence of these two witnesses and ordinarily we would be loath to disturb the concurrent view taken by both these Courts as regards the appreciation of their evidence, but we find that there are inherent improbabilities in the story put forward by these two witnesses and we do not think it would be safe to act upon their uncorroborated testimony. In the first place, it is difficult to believe that the appellant was so inflamed with passion as to demand sexual intercourse with the deceased who happened to be the wife of his cousin, and that too, not while she was alone, but in the presence of her husband. Even if he was mad with lust, he would not have chosen to come at this particular time, namely, 9 p.m. for making advances to the deceased, when he must have known that her husband Natesan would in all probability be at home. In any event, when Natesan came into the house, the appellant would have run away and not continued to insist that the deceased should submit to sexual intercourse with him. The entire story appears to be highly improbable and inconsistent with the ordinary course of human nature. Then again, look at the conduct of Natesan on seeing this highly explosive situation. He finds that the appellant is demanding sexual intercourse with his wife and is threatening her with a knife in his hand. And yet, he does not step out of the house and shout for help. He does not even try to go to the rescue of the deceased. He silently and shamefacedly watches his wife being murdered by the appellant. He is not alone in the house. Manisekaran has come in the meantime, with the result that there are two persons on his side and yet, both of them quietly watch the proceedings without making any attempt to save the deceased. This conduct is highly unnatural and we find it difficult to accept it.

5. It may be noted that Manisekaran's presence at the time of the incident is rather unusual. Manisekaran was, according to his evidence, working as an apprentice in the tailoring shop of Natesan, and it is difficult to believe that he should have been at the house of

Natesan at 9 p.m. after the tailoring shop was closed. Manisekaran was admittedly not staying with Natesan. He was living in a house which was a little distance away from the house of Natesan. He would ordinarily go back to his house after the tailoring shop was closed. But, in order to make Manisekaran an eyewitness, the prosecution came forward with the story that he was sent by Natesan with edibles for his children at 8.15 p.m. This is a tall story which is difficult to believe. There is no reason why at 8.15 p.m. Manisekaran should have been asked by Natesan to purchase edibles from the market and carry them to the house for the children. In all probability the children would have finished their meals. Even if Manisekaran carried edibles to the house of Natesan, there is no reason why he should have waited there for half an hour from 8.30 p.m. to 9 p.m. in order to be able to witness the incident. It is again strange and unusual that though Manisekaran saw the appellant stabbing the deceased, he did not utter any shout or attempt to run out of the house for the purpose of seeking help for the deceased. We are not at all satisfied that Manisekaran was an eyewitness to incident and his testimony cannot be relied upon for the purpose of supporting the conviction of the appellant.”

33. The so-called eye witnesses, Ram Prakash(PW-1) and Ram Naresh(PW-5) were the closest relatives of the victim. They allegedly saw the fatal assault on the victim and yet did not take any step to save him from the assault. If these witnesses PW-1 and PW-5 had actually seen the assault, their reaction and conduct does not match up with the reaction expected from them. Their conduct is highly unnatural, and we find it difficult to accept their presence at the crime scene.
34. Further, it is evident from the testimony of Ram Prakash(PW1) that there is a gap of 3 to 4 houses between the house of Ram Naresh(PW-5) and the house of accused Omkar which makes it clear that the estimated distance between the two locations would be more than 30-40 ft. The Site Inspection Plan(Exhibit P-12) also fortifies our conclusion. Both the witnesses, PW-1 and PW-5 admitted the fact that the roof of accused Omkar was not visible from the courtyard of Ram Naresh(PW-5) in their evidence as we have elaborated above. In this background, we have no hesitation in holding that the so called eye witnesses, PW-1 and PW-5, who were unquestionably

- standing or moving at the ground level could not have seen the gunshots being fired at Sanju(deceased) from the roof of Omkar's house.
35. Sultan Singh(PW-2) admitted that he was working in his field when the incident took place and thus, there was no possibility that, he could have seen the incident with his own eyes. But despite that, the prosecution tried to project him as an eyewitness of the incident which again creates a grave doubt on the truthfulness and *bona fides* of the prosecution story.
 36. Resultantly, we have no doubt in our mind that neither of the so called eye witnesses i.e., Ram Prakash(PW-1), Sultan Singh(PW2) and Ram Naresh(PW-5) had actually seen the gunshots being fired at Sanju(deceased). As a matter of fact, the entire sequence of events as narrated by prosecution witnesses does not inspire confidence.
 37. Indisputably, Sanju received a single gunshot injury which proved fatal. Considering the significant disparities and discrepancies in the evidence of Ram Prakash(PW-1) and Ram Naresh(PW-5) regarding the identity of the assailant who actually fired at Sanju(deceased), we feel that the conviction of accused appellant Jagvir Singh on the basis of such flimsy and wavering evidence is not at all justified. The trial Court as well as the High Court committed glaring error while holding that Ram Prakash(PW-1), Sultan Singh(PW-2) and Ram Naresh(PW-5) were eyewitnesses to the incident and that they saw the accused appellant along with accused Omkar firing at Sanju(deceased). These findings are unsustainable on the face of the record in view of the analyses and discussion of evidence made above.
 38. Consequently, the appellant deserves to be acquitted giving him the benefit of doubt. Hence, the judgment dated 25th November, 2003 and order of sentence dated 27th November, 2003 passed by the trial Court and judgment dated 10th May, 2019 passed by the High Court are hereby quashed and set aside.
 39. The appellant is acquitted of the charges. He is in custody and shall be released from the prison forthwith, if his custody is not required in any other case.
 40. The appeal is accordingly allowed.
 41. Pending application(s), if any, shall stand disposed of.

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