

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.229 of 2012

Arising Out of PS. Case No.-93 Year-2006 Thana- PHULWARIA District- Gopalganj

1. KANHAIYA SAH S/O CHOKAT SAH RESIDENT OF VILLAGE- BHAGWANPUR, P.S.- PHULWARIA, DISTT- GOPALGANJ
2. BALISTAR SAH S/O KHOOBLAL SAH RESIDENT OF VILLAGE- BHAGWANPUR, P.S.- PHULWARIA, DISTT- GOPALGANJ
3. AJAY SAH S/O JAWAHIR SAH RESIDENT OF VILLAGE- BHAGWANPUR, P.S.- PHULWARIA, DISTT- GOPALGANJ
4. RAJAZUL HAQUE S/O ISH MOHAMAD RESIDENT OF VILLAGE- BHAGWANPUR, P.S.- PHULWARIA, DISTT- GOPALGANJ
5. MUMTAJ ALI S/O LATE NATHUNI MIAN V
6. MUSTAQUE ALI S/O ISRAIL MIAN RESIDENT OF VILLAGE- BHAGWANPUR, P.S.- PHULWARIA, DISTT- GOPALGANJ

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur,
Mr. Akhilesh Kumar, Advocates
For the Respondent/s : Mr. Parmeshwar Mehta (APP)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

30-11-2018

Appellants, Kanhaiya Sah, Balistar Sah, Ajay

Sah, Rajazul Haque, Mumtaj Ali And Mustaque Ali have been found guilty for an offence punishable under Section 337 of the IPC and each one has been sentenced to undergo RI for six months, under Section 27(1) of the Arms Act and each one has been sentenced to undergo RI for three years as well as to pay fine of Rs. 2000/- and in default thereof, to undergo RI for six months additionally with a further direction to run the



sentences concurrently vide judgment of conviction and order of sentence dated 28.02.2017 passed by Additional Sessions Judge, FTC- No.1, Gopalganj in Sessions Trial No. 242/2007/530/2009.

2. Juma Rahim (PW-11) gave his Fard-e-beyan at State Dispensary, Hathua where his son Afsar Ali, was admitted for treatment on 18.07.2006 at about 11:00 PM disclosing therein that his son, Afsar Ali, niece, Shahjahan were reading over the roof of his house where his mother was also sitting. At about 9:00 PM, during course of celebration at the house of his neighbour, Khublal Sah on account of Chhatihar of his daughter's son (*nati*), Khublal Sah, Kanhaiya Sah, Reyazul Haque, Mushtaque Ali, Ajay Sah and Mumtaj Ali came over roof of bungalow of Khublal armed with gun, Katta, pipe gun and began to fire in jubilant mood, as a result of which, his son Afsar, niece, Shahjahan and mother, Maimun Nisa sustained fire arm injury. All of them began to shout whereupon, he came out from his house, gone over roof and found all the injured in pool of blood and were groaning. On his shouting and divulging that fire-arm injury has been



sustained by the injured, all of them, escaped from the roof of the bungalow. With the help of villagers, all the injured persons were lifted to the Hathua Hospital where they are being treated.

3. After registration of Fulwaria PS Case No. 93/2006 investigation commenced and concluded by way of submission of charge-sheet, facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that injured might have sustained injuries in different way by different persons but on account of hostility since the time of election of Mukhiya when both the neighbours fought against each other erupting grudge, getting an opportunity in order to teach, woven a story and got the appellants involved in false and frivolous case. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 14 PWs out of



whom PW-1, Arbind Kumar Pandey, PW-2, Rustam Ali, PW-3, Jaitun Nisa, PW-4, Dinesh Kumar Sahu, PW-5, Maimul Khatoon, PW-6, Afsar Ali, PW-7, Shahjahan, PW-8, Shamima Khatoon, PW-9, Saleya Khatoon, PW-10, Taj Mohammad, PW-11, Juma Rahim, PW-12, Dr. Shaligram Bishwakarma, PW-13, Naresh Pd. Yadav and PW-14, Dr. Sanjay Kr. Singh as well as had also exhibited Ext-1 series, injury report, Ext-2, endorsement over Fard-e-beyan, Ext-3 Series, X-ray report. As stated above, nothing has been adduced in defence.

6. Learned counsel for the appellants while assailing the judgment of conviction and sentence has submitted that though, there happens to be some sort of slackness at the end of the learned counsel for the appellant during course of trial while cross-examining the witness but the fact of the case, objective finding of the I.O. and the finding recorded by the doctor being inconsistent with the prosecution version, give a definite impression of improbability in the prosecution version whereupon, irrespective of examination of 14 witnesses on behalf of prosecution, the finding



recorded by the learned lower court could not survive. In order to justify such submission, it has been submitted that initial version suggests firing from the roof of bungalow which has not been found by the I.O. Admittedly, difference in between houses of informant, Khublal are not contiguous rather as is evident from the witnesses, it happens to be at a distance of 10 feet while from the objective finding of the I.O., it happens to be at the distance of 70 Feet. It has also been submitted that house of Khublal is a double storey building and so, in case the prosecution version, though developed is accepted (a) that the firing was made in air then falling from upward to downward direction straightway whereupon the pellet might have embedded over skull of all the three injured or, the injuries would have been in vertical way or (b) in case of aimed at, the firing having been made from a distance of 70 ft having from the roof of double storey building would have projected in giving an angle going upward to downward and that being so, is not at all fit in tune of prosecution version as PW-11, doctor had not found any injury in such a way.



7. That being so, the allegation having been attributed at the end of the prosecution that firing was made at the roof of the Khublal in order to celebrate the function, is found completely smashed. The second aspect which the learned counsel for the appellants has submitted that apart from being double story building, from the evidence of Maimu Nisa, one of the injured, it is evident that there was no fencing around her roof but the roof of Khublal is found properly fenced with the railing having height of average human being, that means to say more than 5 ft. Then in that circumstance, was it possible to cause firing and in likewise manner, proper way of identification of each of the accused while firing. That being so, the claim of the prosecution that these appellants were causing firing, is found nothing but an absurd story which has purposed been introduced in the background of prevailing animosity which, the prosecution party themselves admitted. Furthermore, it has also been submitted that there happens to be faulty investigation because of the fact that the I.O. had not gone over the roof of the Khublal in order to verify whether there



was any possibility for the appellants, to fire, and in likewise manner was any opportunity for proper identification while causing firing. As the I.O. had not gone over roof of house of Khublal, so there happens to be absence of any kind of incriminating material.

8. Furthermore, it has also been submitted that two kinds of witnesses are available on the record. The first one, own family members/kith and kin of the informant and the second kind is that of independent witness who, during course of evidence, have not supported the case of the prosecution. Now coming to the evidence of informant and his kith and kin including that of injured, it has been submitted that there happens to be material development in their testimony supported by the I.O. and on account thereof, their evidences are fit to be discarded. Apart from this, it has also been submitted that no source of identification was available whereupon, identification as claimed also became unreliable. So, in sum and substance, it has been urged at the end of learned counsel for the appellants that prosecution could not be said to be succeeded in substantiating its case.



9. On the other hand, learned APP while counter-meeting with the submissions made on behalf of the appellants, has submitted that evidence in its totality is to be seen. It should not be considered in piecemeal manner. When the evidence of witnesses are considered in its totality, then in that circumstance, it is apparent that prosecution has succeeded in substantiating its case. Furthermore, it has also been submitted that from the evidence of PW-11, doctor corroborated by PW-14, another doctor who had conducted X-ray, it is crystal clear that all the three victims have sustained pellet injuries. Injured, Pws-5, 6, and 7 have got primacy on account thereof, their evidences are to be taken as truthful and during course of appreciation of the same, it is evident that they have substantiated the prosecution case by way of arraying the appellants to be the author of the injury. It has also been submitted that the prosecution case should not be brushed aside on the defective investigation or incompetency of the I.O.. From the evidence of PW-13, the I.O., it is evident that he made collusive investigation otherwise, there was no



occasion for the informant to deflect from his earlier statement whatever been made while recording the Fard-e-beyan, during course of further statement and that happens to be the reason behind that there happens to be visibility of contradiction in the evidence of the respective witnesses. Therefore, the court should not be found influenced by the contradiction whatever been persisting in the evidences of the PWs. Therefore, the learned lower court has rightly found the appellants guilty for an offence punishable under Section 337 of the IPC as well as Section 27(1) of the Arms Act.

10. Before coming to oral evidence, quality of the witnesses are to be seen, firstly. PW-1, Arbind Kumar Pandey, PW-4, Dinesh Kumar Sahu and PW-10, Taj Mohammad are the witnesses whose presence has been on account of being one of the participants of the feast having been organized at the end of Khublal. PW-2 is the brother of the informant having separate house, PW-3 is the Bhabhi of the informant, PW-5 is one of the victims/mother of the informant, PW-6, one of the victims and son of the informant. PW-7, one of



the victims, daughter of the informant, PW-8, Shamima Khatoon and PW-9, Saleha Khatoon who are full sisters are neighbours of the informant. PW-11 is the informant, PW-13 and PW-14 are the doctors while PW-13 is the I.O.

11. PW-12 had examined all the three injured on 18.07.2006 and found the following:-

A. Shahjahan

1. Small pea size bleeding wound with lacerated inverted margin situated on:-

(1) left scapular region

(2) above left knee

(3) Left calf laterally,

(4) left calf medially,

(5) on mid left leg anteriorly, cause and opinion of the injury reserved till X-ray seen. Age of injury- within one to two hours.

Opinion on seeing X-ray report: X-ray report received from Sadar Hospital. Gopalganj vide OPD No. 7331 which shows a radio opaque foreign body in left upper arm 3 radio opaque foreign body shadow seen in the region of soft tissue of left leg vide Seva



X-ray, Gopalganj. He has stated that the injuries were gun shot injury and simple in nature.

B. Afsar Ali

1. Small pea size bleeding wound with lacerated inverted margin situated on:-

(a) Right upper chest

(b) left lower chest anteriorly

(c) right upper arm

(d) right shoulder,

(e) right clavicle,

(f) right forehead, cause and opinion of the injury reserved till X-ray received. Age of injury- within one to two hours.

Oponion:- X-ray report received from Sadar Hospital. Gopalganj vide OPD No. 7330 which shows X-ray of skull, normal, X-ray chest A/P view shows 4 radio opaque shadow, otherwise normal vide Seva X-ray, Gopalganj which shows the injuries are caused due to pellet of gunshot and simple in nature.

C. Maimun Nisa

1. Small pea size bleeding wound with lacerated inverted margin on left upper chest wall near



axilla, cause and opinion of the injury reserved till X-ray seen. Age of injury- within one to two hours.

M/g Scar on left knee. X-ray report seen sent from Sadar Hospital. Gopalganj vide OPD No. 7332 which shows one radio opaque shadow in left axillary region vide Sewa X-ray, Gopalganj which shows the injuries are caused due to pellet of gunshot and simple in nature.

During cross-examination, nothing substantial has been put to him in order to discredit his testimony.

12. PW-14, is another doctor who on the alleged date was posted at Gopalganj and as requisitioned, he had x-rayed body of all the injured, namely, Maimun Nisa (PW-5), Afsar Ali (PW-6) and Shahjahan (PW-7) and had issued X-ray report after examining X-ray plate. During course of which, he had found pellet embedded in the body of all the three injured (exhibited). Again during cross-examination, nothing has been procured.

13. Now coming to the oral evidence. First of all, the evidence of PW-1, PW-4 and PW-10 are to be seen. PW-1, during course of his examination-in-chief



had stated that he was one of the invitees of Khublal and accordingly, had gone to participate in the feast. He had seen some persons engaged in exploding crackers while Khublal, Kanhaiya, Balister were actively engaged in welcoming the invitees. Who sustained injury, he is not knowing but, somebody had sustained injury on account of explosion of the crackers. He had further admitted to be examined by the police. Identified the accused. During cross-examination, he had stated that Reyazul, Mastquim and Mumtaj were taking meal along with him.

14. PW-4 had stated that he was also invited at the end of Khublal, on account thereof, he had gone to participate in the feast. While he was taking meal, he had seen some persons engaged in exploding the crackers. After sometime, he heard shouting of neighbour of Khublal that Khublal and his friends have fired. He happens to be public representative, on account thereof, he had gone to the house of Juma Rahim, inquired but, they have not shown the victim. After some time, he heard that son and neice of Juma Rahim have sustained fire arm injury. When he tried to



see the injured, he was not allowed. During cross-examination, he had stated that Khublal, Kanhaiya, and Reyazul were engaged in offering meal to him.

15. PW-10 had stated that on the alleged date and time of occurrence, he was one of the invitee of Khublal and so had gone to participate in the feast. He had seen 300-400 persons were taking meal while he along with others were managing the same. During course thereof, children were exploding crackers. He does not know anything since thereafter. His statement was not recorded by the police. During cross-examination, he had stated that Balistar, Khublal, Kanhaiya, Reyazul, Mushtaque Miyan and Mushtaque Ali were engaged along with him in managing the affair.

16. Now in order to scrutinize the evidence of remaining witnesses, first of all, the evidence of injured, namely, Pws-5, 6 and 7 has to be seen on priority basis because of the fact that right from inception of the instant proceeding it is evident that only these three persons were present over the roof. PW-6 and PW-7 were engaged in reading while PW-5



was along with them and during course thereof, they sustained injuries as claimed.

17. PW-5 had stated that on the alleged date and time of occurrence, she was over the roof of her house. Afsar Ali and Shahjahan were along with her. On that day, there was Chhatihar at the house of Khublal. Accused persons had gone at their roof and began to fire as a result of which she along with Afsar and Shahjahan sustained injury. Khublal, Balistar, Kanhaiya, Mushtaque, Reyazul, Ajay and Mumtaz were the persons who fired. They began to shout whereupon her daughter-in-law as well as her son came and then lifted all of them to hospital. During cross-examination, at para-3, she had stated that she after taking meal, was lying over the roof. There was Chhatihar at the house of Khublal wherein there was a large gathering. People were taking meal. Then she stated that the roof of the Khublal is fenced from all around at the height of normal man. She had further stated that save and except her grand-son, grand-daughter, none was present over the roof. In para-4, she had stated that her son, Juma Rahim and daughter-



in-law were on another roof. They were over the roof lying north to her house. When she sustained fire arm injury then she began to see. She had sustained injury from left side. Her son Juma Rahim and daughter-in-law came after hearing her alarm. She narrated the event to them. At that very time, she was sitting having southern front, her grand-son and grand-daughter were also sitting having southern front. House of accused lies in the north. Then thereafter, there happens to be cross-examination over their strained relationship in the background of election of Mukhia. In para-5, she had stated that at that very time, crackers were being exploded at the house of Khublal. Then she denied the suggestion that she sustained injury from the explosion of the crackers. She had stated that she sustained the fire arm injury. At para-6, there happens to be contradiction. With regard to her previous statement to the effect that before police she had stated that during course of explosion of crackers at the house of Khublal, she perceived to have sustained fire-arm injury. She had also denied to have stated before the police that due to



night she could not see the assailant. Then had denied the suggestion that on account of animosity, she had deposed falsely. In para-8, she had denied to have not stated before the police that accused persons fired from their roof.

18. PW-6 had deposed that on the alleged date and time of occurrence, he was over his roof along with his sister, Shahjahan and grand-mother. He was reading in lantern light and during course thereof, he sustained fire arm injury. Firing was made from the roof of Khublal lies south to his house. House of Khublal lying at the distance of 10 Ft. At that very time, Khublal along with Kanhaiya, Balistar, Reyazul, Mushtaque and Ajay were over the roof of Khublal. He had sustained injury over his chest, forehead right side, his sister, Shahjahan and grand-mother had also sustained injury. Identified the accused. They were treated at hospital. At para-8, there happens to be contradiction whereunder he had stated that during course of statement before the police, he had stated that firing was made from the roof of Khublal. He had also stated that all of a sudden, he sustained fire-arm



injury. In para-9, he denied to have stated before the police that on account of darkness, he had not seen anybody during course of firing. At para-11, he had stated that at the time of occurrence grand-mother was sitting along with him. At para-12, he had stated that at the time of occurrence, his grand-mother was sitting having southern front. In para-13, he had stated that they had got animosity since before the occurrence with the accused.

19. PW-7 had stated that on the alleged date and time of occurrence, she along with her brother were reading over the roof of her house in lantern light. At that very time, her grand-mother was present. Firing was made from southern side as a result of which, she along with her brother and grand-mother had sustained injury. Firing was made from the roof of Khublal where Kanhaiy, Balistar, Reyazul, Mushtaque and Ajay were armed with gun. She had sustained injury over her left leg as well as left shoulder. Identified the accused. They were treated at hospital. During cross-examination at para-2, she had stated that they were sitting having southern front. She



sustained injury while reading. She along with her brother and grand-mother shouted after sustaining injury. Then had denied the suggestion that firing was not made from southern side. Then had denied that she had not stated before the police that Kanhaiya, Balistar, Reyazul, Mushtaque and Ajay were firing having armed with gun. She denied to have stated before the police that she had not seen anybody making firing and from which side firing was made, she is unable to disclose. Then had denied the suggestion that she happens to be a tutored one.

20. PW-2 had stated that on the alleged date and time of occurrence, he was over his roof along with his wife and children. He had seen Kanhaiya, Balistar, Reyazul, Mushtaque and Ajay were firing from their house. His house lies 10 Ft away from his house. Khublal was armed with gun. Kanhaiya was armed with katta and Ajay was armed with pistol while others were armed with katta. After firing made by them, he heard sound of uproar. Lantern was burning near him. He had gone to children with lantern and then had seen Afsar, Shahjahan and Maimun Nisa in



injured condition on account of injury. Blood was oozing out. When the accused got down from the roof after firing then he had identified them in generator light. Identified the accused. During cross-examination, he had stated at para-3 that at that very time, his brother Juma Rahim was at ground floor of the house. In para-4, he had stated that after hearing uproar of children, he gone near the children. In para-5, he had stated that at a distance of 10 ft from the place he was recessing. Children were reading. In para-6 and 7, there happens to be cross-examination relating to Chhatihar as well as animosity prevailing amongst on account of Mukhiya election. In para-8, he had stated that house of Khublal lies at a distance of 10 Ft intervened by a Gali. He has got no fencing around the roof while roof of Khublal is duly fenced from all sides. In para-9, he had stated that there happens to be staircases in the house of Khublal. In para-10, he had stated that after hearing cry of children, his attention was diverted and during course thereof, he had seen the accused persons getting down through staircase. In para-12, he had stated that he had



not heard sound of explosion of crackers at the place of Khublal. At para-13, he had denied to have not stated before the police that Khublal was armed with gun, Kanhaiya was armed with katta.

21. PW-3 is wife of PW-2. She had stated that on the alleged date and time of occurrence, she along with her husband and son were sitting at the eastern side of roof. Accused persons were firing from their roof as a result of which, Afsar, Shahjahan and Maimun Nisa sustained fire arm injury. They were treated at the hospital. Balistar, Mumtaz, Reyazul were firing. Identified. During cross-examination, she had stated that the house of Juma Rahim lies adjacent east to her house. Juma was not present over the roof. Where he was, she is not knowing. At para-5, she had stated that she along with her husband were lying and talking. After hearing sound of shouting of Afsar, She had gone. Afsar was over another roof. Only she had gone. Her husband had not gone. Then there happens to be cross-examination relating to Chhatihar at the place of Khublal wherein large number of persons were invited as well as were present. She had further



stated that she had seen seven persons over the roof of Khublal. Then had stated that she had made statement before the police that some persons were over the roof of Khublal and were firing in order to celebrate. Then had denied to have not stated before the police that Khublal along with Kanhaiya, Balistar, Reyazul, Mushtaque and Ajay were also involved in firing. Then had disclosed with regard to event whereunder wife of Khublal as well as her Dayadin were the candidates of Mukhia. In para-7, she had stated that she had not got down from the roof after the occurrence. She had stated before the police that after hearing sound of uproar raised by her mother-in-law, children, she had gone there and had seen blood oozing out from their bodies.

22. PWs-8 and 9 are the neighbours of the informant. They are full sisters as well as Dayadin. During course of examination-in-chief, they have categorically supported the case of the prosecution identifying the appellants indulged in firing causing injury to the Afsar, Shahjahan and Maimun Nisa.

23. PW-8 during cross-examination had



stated at para-7 that she had heard 4-5 rounds of firing. She had not heard sound of crackers. At para-8, she had denied to have stated before the police that so many persons were engaged in exploding crackers by the side of wall of Khublal. In para-9, she had stated that just after firing, she heard alarm of children. In para-10, she had denied to have stated before the police that after some time, she heard sound of shouting, weeping from the roof of her Pattidar whereupon, she had gone and found , Afsar, Shahjahan and Maimun Nisa in injured condition. She had denied to have not stated before the police that firing was made from the roof of Khublal. Firing was being made by Khublal along with Kanhaiya, Balistar, Reyazul, Mushtaque and Ajay as a result of which injured sustained injury. Then had admitted with regard to animosity in the background of candidature of Mukhia.

24. PW-9 at para-8, during course of cross-examination had stated that firing was being made after aiming at the injured. In para-9, she had denied to have stated before the police that there was firing in the air. In para-10, she had denied to have stated



before the police that after some time, she heard hulla that mother, son and niece of the informant have sustained fire arm injury whereupon , she had gone there. In para-13, she had stated that about an hour before firing there was assemblage of persons over the roof of Khublal. In para-14, she had stated that she is unable to disclose who was armed with what kind of weapon. In para-15, she had stated that after third round of firing the injured raised cry.

25. PW-11 is the informant. He had stated that on the alleged date and time of occurrence, he was over his roof. At that very time, there was celebration of Chharihar at the house of Khublal. The house of Khublal is double storey. There happens to be 30-35 steps gap in between his house as well as house of Khublal. Khublal along with Kanhaiya, Balistar, Reyazul, Mushtaque and Ajay who were armed with gun, were firing. At that very time, his mother, son and niece were present over the roof. His son and niece were reading. Then thereafter, they began to fire aiming over his roof, as a result of which, his son, niece and mother sustained fire arm injury, as a result



of which, blood oozed out from the injury. They were taken to hospital. Police came, recorded his statement. Exhibited. The motive has been shown on account of strained relationship due to candidature of Mukhia at one side, wife of Khublal while at other end, his Bhabhi. Identified the accused. During cross-examination, he had stated that since before election of Mukhia, there was cordial relationship amongst them. In para-10, he had stated that at the time of occurrence only he was the male member over the roof. He was east to the place where children were reading. He was sitting there. In para-13, he had stated that five minutes prior to the occurrence, there was indiscriminate firing in order to celebrate Chhathihar. Further stated that at the time of occurrence seven persons were over the roof of accused. There were 400-500 persons present. In para-20, he had admitted that during course of Fard-e-beyan, he had stated that after hearing sound of cry of his children, he along with his other family members rushed to the roof and then had seen Afsar, his son, Shahjaha, his niece and his mother in an injured condition. From them, he



came to know that they have sustained fire arm injury. At para-21, he had denied to have stated before the police that some persons were exploding crackers by the side of house of Khublal. In para-22, he had admitted that Khublal had gone against him during course of election of Mukhia.

26. PW-13 is the I.O.. He after registration of the case, took up the investigation, (exhibited the relevant document). He recorded further statement of the informant, statement of the witnesses, visited the place of occurrence which happens to be the house of informant having northern front. Then had disclosed the boundary of the place of occurrence, East-informant himself and then Idris Mian, West-thatched house of Akbar Mian, North-house of Mustaquim Mian and South-house of Khublal at a distance of 70 Ft having pucca structure. Received injury report and then, after concluding the investigation, submitted charge-sheet. During cross-examination at para-7, he had stated that he is unable to say as to how many places there was blood spot. In para-8, he had stated that spot was over roof. He had not snapped



photographs. He had not found any lantern. He had not found pellet. He had not found incriminating article over the roof. At Para-10, he had stated that colour of the spot was like blood. Paragraphs-11, 12, 13, 15, 16, 17 and 18, there happens to be cross-examination relating to contradiction of respective witnesses.

27. After giving anxious consideration to the materials available on the record, it is evident that sustaining fire arm injury by the Pws-5, 6 and 7 is not at all controverted. However, there happens to be inconsistency amongst the witnesses so far location of two houses are concerned, that means to say house of informant as well as house of Khublal. It is further evident from the evidence of PW-11, the informant as well as PW-5, one of the injured that house of the Khublal happens to be double storey. It is evident from the evidence of PW-5, that roof of Khublal is fenced from all around in the height of average man, that means to say, about 5 Ft. There happens to be no discloser at the end of the prosecution that there was any source of light at the roof of the Khublal, in the aforesaid background, being on roof of ground floor,



one will be in a position to see and identify a person having over roof of second floor that too when roof is fenced up to the height of 5 ft, speaks a lot. In likewise manner, all of them spoken that firing was being made whereupon PW-5, PW-6, PW-7 sustained injury while PW-9 had stated that firing was made at aiming at injured, certainly. Anyway, if the story as propounded is accepted, then either it will give vertical or downward direction as well as location of body, as stated by the doctor would not have affected portion. Apart from this, the initial version, (Fard-beyan) disclosed the place, roof of bungalow from where firing was made which, given a go by during course of evidence, purposely, as I.O. had not found bungalow at the Darwaza of Khublal.

28. That being so, the nature of allegation that the firing was made from the roof of second floor and by such firing, the aforesaid injury has been caused, became doubtful. That means to say, the manner of occurrence as projected by the prosecution is found suspicious one.

29. Consequent thereupon, judgment of



conviction and sentence so recorded by the learned lower court, is, hereby, set aside. Appeal is allowed.

30. Since all the appellants are on bail, they are discharged from the liability of their bail bonds.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10/12/2018
Transmission Date	10/12/2018

