2026:JHHC:26261

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No. 1158 of 2008

[Against the judgment and order of conviction and sentence dated 26.07.2008 & 29.07.2008 respectively, passed by learned Additional Sessions Judge, F.T.C.-II, Latehar in S.T. No. 53 of 2007]

Santosh Lohra, son of Basant Lohra, resident of Village-Hutap, P.S.-Chandwa, District-Latehar

... ... **Appellant**

Versus

The State of Jharkhand … … **Respondent**

With

Cr. Appeal (SJ) No. 26 of 2013

[Against the judgment and order of conviction and sentence dated 11.12.2012 & 12.12.2012 respectively, passed by learned District & Additional Sessions Judge, 1st, Latehar in S.T. No.53 (B) of 2007]

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1. Baleshwar Ganjhu, son of Budhan Ganjhu, resident of Village-Amjharia, P.O.-Hutap, P.S.-Chandwa, District-Latehar
2. Akalu Ganjhu, son of Lalku Ganjhu, resident of Village-Basdia, P.O.-Hutap, P.S.-Chandwa, District-Latehar

... ... **Appellants**

Versus

The State of Jharkhand … … **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant(s) : Mr. Jitendra S. Singh, Sr. Advocate
Ms. Shabina Parween, Advocate
Ms. Sumitra Kumari, Advocate
Ms. Sanskriti Shahini, Advocate

For the State : Mrs. Nehala Sharmin, Spl.P.P.
[Cr. Appeal (SJ) No. 1158 of 2008]
Mr. Prabhu Dayal Agrawal, A.P.P.
[Cr. Appeal (SJ) No. 26 of 2013]

JUDGMENT

C.A.V. on 20.07.2026 **Pronounced on 31/08/2026**

1. I have already heard the arguments of Mr. Jitendra S. Singh learned senior counsel for the appellants and Mrs. Nehala Sharmin learned Spl.P.P. for the State.

2. **Criminal appeal (SJ) No. 1158 of 2008** is directed against the

judgment and order of conviction and sentence dated 26.07.2008 & 29.07.2008 respectively, passed by learned Additional Sessions Judge, F.T.C.-II, Latehar in S.T. No. 53 of 2007, whereby and whereunder the **appellant, Santosh Lohra** has been held guilty for the offences under Sections 402 of the I.P.C. and 25(1-B)a & 26(1) of the Arms Act and sentenced to undergo R.I. for 5 years along with fine of Rs.2000/- with default stipulation for the offence under Section 402 of the I.P.C.; R.I. for 3 years along with fine of Rs.1000/- with default stipulation for the offence under Section 25(1-B)a of the Arms Act and R.I. for 2 years along with fine of Rs.2000/- with default stipulation for the offence under Section 26(1) of the Arms Act. All the sentences were directed to run concurrently.

3. **Criminal appeal (SJ) No. 26 of 2013** is directed against the judgment and order of conviction and sentence dated 11.12.2012 & 12.12.2012 respectively, passed by learned District & Additional Sessions Judge, 1st, Latehar in S.T. No.53 (B) of 2007, whereby and whereunder the **appellant No.1, namely Baleshwar Ganjhu** has been held guilty for the offences under Sections 25(1-B)a of the Arms Act and sentenced to undergo R.I. for 2 years along with fine of Rs.2000/- with default stipulation and **appellant No.2, namely Akalu Ganjhu** has been held guilty for the offence under Section 25(1-B)a/35 of the Arms Act and sentenced to undergo R.I. for 2 years along with fine of Rs.2000/- with default stipulation.

4. Since both the appeals arise out of the same P.S. Case, i.e,

Chandwa P.S. Case No. 106 of 2006, therefore, both the appeals are being heard and decided together.

Factual Matrix

5. Factual matrix giving rise to these appeals as per the self-statement of the informant, S.I. Awadh Kr. Yadav (P.W.-3), Officer-in-charge, Chandwa P.S., is that on 03.09.2006 at about 06:00 P.M., he along with S.I. K.K. Mahto, S.I. Shyam Singh Roy, Constable Ajay Kumar, Constable Permeshwar Thakur, Constable Mithilesh Kr. (P.W.-4), Constable Dennial Tigga (P.W.-7), Constable Chandra Bhushan Pandey, Hawaldar Puran Uraon (P.W.-9), Constable Raghunath Minz (P.W.-5), Constable Shasi Bhagat, Constable Bishwanath Kujur (P.W.-8), and Constable Lal Bahadur Singh (P.W.-6) proceeded to conduct a raid to apprehend the suspected accused persons in connection with Chandwa P.S. Case No. 103/06 dated 27.08.2006. In the course of the raid, the informant received secret information that some miscreants have gathered near Amjharia Dak Bungalow and were planning to commit some crime. Upon receiving such information, he along with the police party, proceeded towards the said place. The police party reached there at about 07:30 P.M. and on seeing the police party, the miscreants began to flee towards the forest. The informant asked the police personnel to chase and apprehend them, whereupon six miscreants were apprehended, who disclosed their names as Santosh Lohra, Sitkam Singh, Baleshwar Ganjhu, Akalu Ganjhu, Chhotu Ganjhu, and Mahesh Ganjhu. They were searched in

the presence of two independent witnesses, namely, Sukh Narayan Singh (P.W.-1) and Vijoi Singh (P.W.-2). During the course of the search, one country-made pistol loaded with a cartridge and one Nokia mobile phone bearing Mobile No. 9431119521 were recovered from the possession of Santosh Lohra; one single-barrel muzzle-loading gun was recovered from the possession of Baleshwar Ganjhu; one knife was recovered from the possession of Chhotu Ganjhu; and one *Farsa* and one Motorola mobile phone were recovered from the possession of Mahesh Ganjhu. The accused persons failed to produce any document in respect of the recovered articles. Consequently, the illegal arms and other articles were seized in the presence of the two independent witnesses by preparing seizure lists. The signatures of the independent witnesses were obtained thereon and a copy of each seizure list was served upon the respective accused persons. It is alleged that the accused persons had assembled with the intention to commit robbers with passengers travelling by vehicles passing through Amjharia Ghati and were variously armed with illegal weapons. It is further alleged that they were in possession of looted articles. Hence, the case was instituted.

On the basis of above self-statement, Chandwa P.S. Case No. 106 of 2006 dated 04.09.2006 was registered for the offences under Sections 399, 402 & 414 of the I.P.C. and 25 (1-B)a, 26/35 of the Arms Act against the accused persons.

6. After completion of investigation, charge-sheet was submitted

against the accused persons for the offences under Sections 399, 402 and 414 of the I.P.C. and 25 (1-B)a, 26/35 of the Arms Act. The case was committed to the Court of Sessions, where S.T. No. 53 of 2007 and S.T. No.53 (B) of 2007 were registered. The accused persons denied from the charges leveled against them and claimed to be tried.

7. In the course of trial, altogether 12 witnesses were examined by prosecution:-

(i) P.W.-1-Sukh Narayan Singh

(ii) P.W.-2-Vijay Singh

(iii) P.W.-3-Awadh Kumar Yadav (Informant)

(iv) P.W.-4-Constable Mithilesh Kumar

(v) P.W.-5-Raghunath Minz

(vi) P.W.-6- Constable Lal Bahadur Singh

(vii) P.W.-7-Constable Dennial Tigga

(viii) P.W.-8-Constable Vishwanath Kujur

(ix) P.W.-9-Hawaldar Puran Uraon

(x) P.W.-10-A.S.I., Girja Prasad Singh

(xi) P.W.-11-Rajendra Kumar Choudhary

(xii) P.W.-12-Lalan Kumar

Apart from oral testimony of witnesses several documentary evidence as well as material exhibits have also been adduced by the prosecution.

8. On the other hand, no oral or documentary evidence has been adduced by defence.

9. The case of defence is denial from occurrence and false implication.

10. The learned Trial Court after considering the evidence of prosecution arrived at definite conclusion about guilt of the appellants for the offences charged against them and convicted and sentenced them as stated above, which has been assailed in these appeals.

Submissions on behalf of the Appellants: -

11. Assailing the impugned judgment, the learned senior counsel for the appellants has submitted that the impugned judgment is legally untenable and contrary to the materials on record. The learned trial court has failed to properly appreciate the material contradictions and discrepancies appearing in the testimonies of the prosecution witnesses, which render their evidence unreliable, particularly when the said witnesses are police personnel and highly interested in the outcome of the case, thereby making the possibility of false implication. It is further submitted that the independent witness to the alleged seizure has not supported the prosecution case, which creates serious doubt upon the alleged seizure and the prosecution version as a whole. The learned trial court also erred in convicting the appellants under Section 402 of the I.P.C., despite the prosecution having failed to establish the essential ingredients of the said offence by cogent, reliable and unimpeachable evidence beyond reasonable doubt. In the absence of credible evidence, the appellants were entitled to the benefit of doubt, and therefore the impugned judgment of conviction and order of

sentence deserve to be set aside and the appellants be acquitted of the charges. These appeals may be allowed.

Submissions on behalf of the State: -

12. On the other hand, learned counsel for the State has opposed the aforesaid contentions raised on behalf of appellants and submitted that the learned Trial Court has rightly convicted the appellants on the basis of material available on record, therefore, there is no illegality or infirmity in the impugned judgment of conviction and sentence of the appellants and no merits in these appeals which is fit to be dismissed.

13. I have gone through the record of the case along with the impugned judgments in the light of contentions raised on behalf of both side.

14. The only point for determination in these appeals is **"as to whether the impugned judgment and order of conviction and sentence of the appellants suffers from any serious error of law calling for any interference in these appeals?"**

Analysis, discussions and reasons:-

15. Before imparting my verdict on above point, it is desirable to take brief resume of ocular testimony of witnesses examined in this case.

P.W.-1-Sukh Narayan Singh has deposed that on 03.09.2006, the police apprehended six culprits in Amjharia Ghati and they were searched in his presence and in the presence of Vijay Singh. During the search **a country made pistol loaded with a cartridge was recovered**

from the left waist of Santosh Lohra and **a Nokia mobile set bearing No. 9431119501 was recovered from his right pocket**. From the possession of **Baleshwar one single barrel muzzle loading gun was recovered**; from the waist of Chhotu Ganjhu one *Gupti* was recovered and from the hand of Mahesh Ganjhu, one *Farsa* and a Motorola set were recovered. The said articles were seized by the police by preparing seizure list. He had put signature on the said seizure lists which were marked as **Exhibit-1** and **Exhibit-1/1**.

In his cross-examination, he has stated that nothing was recovered in before him and nothing was written before him. The police called him and asked to sign, whereupon he signed on both the seizure lists. He has further stated that he had signed on a blank paper and he does not know anything about the case.

P.W.-2-Vijay Singh has stated that he was not aware of the arrest of six criminals by the police at Amjharia Ghati on 03.09.2006 and also not aware of any recovery. However, he admitted that the recovered articles were seized by preparing two seizure lists, on where he had put his L.T.I. He has identified his L.T.I. on the said documents. However, he has stated that the police did not record his statement. This witness was declared hostile as he contradicted to his previous version given before the police. He has claimed that he knows the accused persons, but denied that he has connived with them and had falsely deposed in this case.

P.W.-3-S.I., Awadh Kumar Yadav is the informant of this case.

He has stated that on 03.09.2006, he was posted as Officer-in-charge, Chandwa Police Station. On that day, at about 6.00 p.m., he along with S.I. K.K. Mahto, A.S.I. Shyam Singh Roy and armed police personnel of police station and reserved guard proceeding to conduct raid for apprehending accused persons involved in other cases. In the course of raid, he had received secret information that some miscreants have gathered at Amjharia Dak Banglow with intention to commit a crime. On receiving this information, he along with the police officers and police force reached there at about 7.30 P.M. On seeing the police party approaching Amjharia Dak Banglow, the miscreants began to flee. They were chased and six miscreants were apprehended, who disclosed their names as Santosh Lohra, Sitkam Singh, Baleshwar Ganjhu, Chhotu Ganjhu, Akalu Ganjhu and Mahesh Singh. They were searched in the presence of two independent witnesses, namely Sukh Narayan Singh and Vijay Singh. During the search **one loaded pistol and a Nokia mobile set were recovered from the possession of Santosh Lohra**; **one single barrel muzzle loading gun was recovered from the possession of Baleshwar Ganjhu**; one *Gupti* was recovered from the possession of Chhotu Ganjhu and one *Farsa* and a Motorola mobile set were recovered from the possession of Mahesh Ganjhu. The recovered arms and other articles were seized by preparing seizure lists as the accused persons failed to produce any documents relating to the said articles. A copy of seizure list was handed over to the accused persons. Thereafter, written report was prepared on his direction by S.I.

K.K. Mahto, on which he put his signature. The written report marked as **Exhibit-2**. He has further deposed that the I.O. of this case was Shayam Singh Roy, who had since died. He has further proved endorsement on the written report in his writing and signature which is marked as **Exhibit-3**. The formal F.I.R. which is marked as **Exhibit-4**. The seizure list relating to the recovery from Santosh Lohra and Baleshwar Ganjhu which is marked as **Exhibit-5** and another seizure list relating to recovery from the possession of all the accused persons which is marked as **Exhibit-5/1**. He has further deposed that confessional statement of Santosh Lohra was recorded by A.S.I. M. Khan and was signed by him. The same is marked as **Exhibit-7** with objection.

P.W.-4, Constable Mithilesh Kumar is an eye witness to the occurrence. He has corroborated the version of the informant deposing that on 03.09.2006, he was posted at Chandwa P.S. On that day, he along with other armed police personnel and Officer-in-charge of Chandwa P.S. Awadh Kumar Yadav, went on a raid. In the course of the raid, the Officer–in-charge received information that some suspected miscreants were staying near Amjharia Dak Bungalow and were planning to commit a crime. Thereupon, they proceeded towards Amjharia Dak Banglow. On seeing the police party, the miscreants began to flee. They were chased and six miscreants were apprehended, who disclosed their names as Santosh Lohra, Sitkam Singh, Baleshwar Ganjhu, Chhotu Ganjhu Mahesh Ganjhu and Akalu Ganjhu. They were

searched by the Officer-in-charge, during which **one loaded country made pistol** and **a mobile set were recovered from the possession of Santosh Lohra**; **one muzzle loading gun was recovered from the possession of Baleshwar Ganjhu**; one *Farsa* was recovered from the possession of Mahesh Ganjhu and one Gupti was recovered from the possession of Chhotu Ganjhu. The recovered articles were seized by preparing seizure lists and the accused persons were arrested.

P.W.-5, Constable Raghunath Minz has stated that on 03.09.2006 while he was posted at Chandwa P.S., he along with the Officer-in-charge Awadh Kumar Yadav and other armed police personnel went for patrolling and raid. In that course of the raid, the Officer-in-charge received secret information that some robbers are staying in Amjharia Dak Banglow. On receiving this information, they proceeded there. On seeing the police party, the miscreants began to flee. They were chased and six of them were apprehended. They disclosed their names as Santosh Lohra, Baleshwar Ganjhu, Chhotu Ganjhu and some others. All the six miscreants were searched by the Officer-in-charge. During the search **one country made pistol loaded with a cartridge and a mobile set were recovered from the possession of Santosh Lohra; one muzzle loading gun was recovered from the possession of Baleshwar Ganjhu**, one *Farsa* was recovered from the possession of Chhotu Ganjhu and one Gupti was recovered from the possession of Mahesh Ganjhu. All the recovered articles were seized by the Officer-in-charge by preparing seizure lists

and the miscreants were arrested.

P.W.-6, Constable Lal Bahadur Singh has deposed that on 03.09.2006, he was posted at Chandwa P.S. On that day, he along with Officer-in-charge, Awadh Kumar Yadav went on a raid to arrest some suspects. In that course Officer-in-charge received secret information that some thieves had gathered at Amjharia Dak Banglow. On receiving this information, they proceeded towards Amjharia Dak Banglow. On seeing the police party, the miscreants began to flee. Six of them were apprehended. The apprehended miscreants disclosed their names as Santosh Lohra, Baleshwar Ganjhu, Chhotu Ganjhu, Akalu Ganjhu, Sitkal Singh and Mahesh Singh. They were searched by Officer-in-charge and in that search **one loaded country made pistol and a mobile set were recovered from the possession of Santosh Lohra; one muzzle loading gun was recovered from the possession of Baleshwar Ganjhu;** one Gupti was recovered from the possession of Chhotu Ganjhu and one *Farsa* and a Motorola mobile set were recovered from the possession of Mahesh Ganjhu. The recovered articles were seized by preparing seizure list and the accused persons were arrested.

P.W.-7, Constable Dennial Tigga has deposed that on 03.09.2006, while posted at Chandwa P.S., he along with Officer-in-charge and other armed police personnel, went on a raid and arrested the suspected accused persons. In the course of raid, the Officer-in-charge received information that some miscreants were present at

Amjharia Ghati near Dak Bungalow. Thereupon, they proceeded there. On their arrival, the miscreants began to flee. They were chased and six miscreants were apprehended. They disclosed their names as Santosh Lohra, Baleshwar Ganjhu, Chhotu Ganjhu, Sitkan Singh, Mahesh Ganjhu and one other person. They were searched by the Officer-in-charge. During the search, **one loaded country made pistol and a mobile set were recovered from the possession of Santosh Lohra; one muzzle loading gun was recovered from the possession of Baleshwar Ganjhu;** one *Gupti* was recovered from the possession of Chhotu Ganjhu and one *Farsa* was recovered from the possession of Mahesh Ganjhu. All the recovered articles were seized by the Officer-in-charge and the accused persons were arrested.

P.W.-8, Constable Vishwanath Kujur has deposed that on 03.09.2006, while posted at Chandwa P.S., he went in patrolling along with Officer-in-charge and other armed police personnel. In course of patrolling, the Officer-in-charge received information that some miscreants had gathered near Amjharia Dak Banglow. Thereupon they proceeded there. On seeing the police party, the miscreants began to flee. They were chased and six of them were apprehended. They disclosed their names as Santosh Lohra, Baleshwar Ganjhu, Chhotu Ganjhu, Mahesh Singh and Sitkam Singh along with one other person. The Officer-in-charge searched them and in that search **one loaded country made pistol and a mobile set were recovered from the possession of Santosh Lohra;** one Gupti was recovered from the

possession of Chhotu Gangjhu and one *Farsa* and a mobile set were recovered from the possession of Mahesh Ganjhu. The said articles were seized by the Officer-in-charge by preparing seizure list. He further deposed that he has made statement before the police that **one muzzle loading gun had also been recovered from the possession of Baleswar Ganjhu**.

P.W.-9, Hawaldar Puran Uraon has deposed that on 03.09.2006, he was posted at Chandwa P.S. On that day, he along with Officer-in-charge Awadh Kumar Yadav and other members of armed forces went on a raid. In the course of raid, Officer-in-charge received secret information that some miscreants had gathered in Amjharia Ghati with the intention of committing a crime. On receiving this information, they proceeded towards Amjharia Ghati Dak Banglow. On seeing the police party, the miscreants began to flee. They were chased and six of them were apprehended. They disclosed their names as Santosh Lohra, Sitkam Singh, Baleshwar Ganjhu, Akalu Ganjhu, Chhotu Ganjhu and Mahesh Ganjhu. All of them were searched and in that course **one loaded country made pistol and a mobile set were recovered from the possession of Santosh Lohra; one muzzle loading gun was recovered from the possession of Baleshwar Ganjhu;** one Gupti was recovered from the possession of Chhotu Ganjhu and one *Farsa* and a mobile set were recovered from the possession of Mahesh Ganjhu. The said articles were seized by preparing seizure list.

P.W.10, A.S.I., Girja Pd. Singh is a formal witness. He has produced material exhibits of this case before the Court. He has proved the requisition in the writing and signature of Officer-in-charge, Chandwa P.S., Doman Rajak, which is marked as **Exhibit-8** and challan relating to the material exhibits in the writing and signature of the said Officer-in-charge, which is marked as **Exhibit-9**. He has further deposed that he has produced the material exhibits in the same condition in which they had been handed over to him by In-charge of Malkhana-cum-Officer-in-charge of Chandwa P.S. One country made pistol bearing P.S. no.106/06 and Malkhana Register No.27/06, which is marked as **Material Exhibit-I**, one cartridge of .315 bore bearing P.S. number and the signature of Officer-in-charge on a sticker as **Material Exhibit-II**. One country made muzzle loading gun bearing Malkhana Register number and P.S. number and also bearing signature of police officer and the C.J.M., Latehar which is marked as **Material Exhibit-III**. A silver-coloured Nokia mobile set bearing P.S. number and signature of police officer and the C.J.M. Latehar, on a sticker, which is marked as **Material Exhibit-IV**. One Gupti bearing P.S. number and signature of police officer and the C.J.M., Latehar, on a sticker, which is marked as **Material Exhibit-V**. One *Farsa* bearing a torn sticker, which is marked as **Material Exhibit-VI**. Further, one black-coloured Motorola mobile set bearing P.S. number and signatures of police officer and the C.J.M., Latehar on a sticker, which is marked as **Material Exhibit-VII**.

P.W.-11, Rajendra Kr. Chaudhary is Sergeant Major. He has examined the arms and ammunitions and submitted his report. He has deposed that on 14.09.2006, while posted at Palamau, he had received material exhibits of Chandwa P.S. case no.106/06 dated 04.09.2006 for examination. He has examined one single barrel muzzle loading gun, one country made pistol and one cartridge of .303 bore. He found that single barrel muzzle loading gun had been illegally manufactured. Its barrel was 82.5 c.m. in length and its body was 42 c.m. in length and the length from nozzle to butt was 124 c.m. Its trigger and other parts were in working condition and it could cause harm to the life and property. He has further deposed that he examined one illegally manufactured country made pistol. Its length 15.5 c.m., length of its body was 7 c.m., length of its butt 8.5 c.m. and length from the nozel to butt 25 c.m. Its trigger, spring and other parts were in working condition and it could cause harm to life and property. He has also examined one cartridge of .303 bore and found that it could be fired through a pistol of .303 bore and could cause harm. He has prepared examination report, which is marked as **Exhibit-10**.

P.W.-12, Lalan Kumar is a formal witness posted in Legal Cell Collectorate, Latehar. He has deposed that prosecution report of Chandwa P.S. case No.106/06 dated 04.09.2006 under Sections 399, 402, 414 I.P.C. and 25 (1-B)a, 26/35 Arms Act was typed by Nagendra Kumar of Legal Cell, Collectorate, Latehar. The said report bears the signature of M. Ranjan, D.M.-cum-D.C., Latehar and which is marked

as **Exhibit-11**.

16. Before examining the evidence on the charge under Section 402 of the I.P.C., it would be apposite to notice the statutory provision itself. Section 402 I.P.C. provides as under:-

> ***"402. Assembling for purpose of committing dacoity.—***
>
> *Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."*

17. At the outset, so far as the conviction of Santosh Lohra under Section 402 of the I.P.C. is concerned, it is required to be examined whether the prosecution has established beyond reasonable doubt that the alleged assembly was for the purpose of committing dacoity. Mere presence of five or more persons at a particular place, even when some weapons are allegedly recovered from some of them, by itself would not be sufficient to establish the essential requirement of Section 402 I.P.C.

18. In the present case, although the prosecution witnesses have stated that the accused persons had assembled near Amjharia Dak Bungalow and that they attempted to flee on seeing the police party, there is no cogent evidence demonstrating any specific preparation or overt act on their part towards committing dacoity. The allegation that they intended to loot passengers travelling through Amjharia Ghati

remains substantially an assertion of the prosecution without any independent or convincing corroborative circumstance. No looted article has been proved to have been recovered from the appellants in the present case, nor has any material been brought on record connecting the alleged assembly with any particular proposed act of dacoity.

19. The evidence of P.W.1 and P.W.-2, the alleged independent witnesses also does not lend support to the prosecution case with regard to the alleged purpose of the assembly. Though they have admitted their signature/L.T.I. on the seizure lists, but has not supported the prosecution version regarding the occurrence and P.W.-2 was consequently declared hostile. His evidence cannot be treated as wholly effaced from the record, but it also does not provide any corroboration to the prosecution regarding the essential ingredient of Section 402 IPC. Thus, even if the evidence of the police witnesses regarding apprehension of the accused is accepted, the same does not establish beyond reasonable doubt that they had assembled for the purpose of committing dacoity.

20. In such circumstances, the conviction of appellant, **Santosh Lohra (in Cr. Appeal (SJ) No. 1158 of 2008)** under Section 402 I.P.C. cannot be sustained and he is entitled to the benefit of doubt.

21. The conviction of Santosh Lohra under Section 26(1) of the Arms Act also requires separate consideration in the light of the statutory ingredients of the said provision. The prosecution has

undoubtedly led evidence regarding recovery of a country-made pistol loaded with a cartridge from his possession. However, the mere factum of recovery of a firearm during a police search, by itself, would not be sufficient to sustain a conviction under Section 26(1) of the Arms Act unless the prosecution establishes the specific ingredients constituting the offence under that provision. In the present case, the evidence does not satisfactorily establish the requisite element of secret contravention or other circumstances contemplated under Section 26(1) of the Arms Act. Therefore, the conviction of Santosh Lohra under Section 26(1) of the Arms Act also cannot be sustained.

22. However, with regard to the conviction of Santosh Lohra under Section 25(1-B)(a) of the Arms Act stands on a different footing. P.W.-1, the seizure witness, has specifically deposed that a country-made pistol loaded with a cartridge was recovered from the left waist of Santosh Lohra but in his cross-examination, he has denied the search in his presence. The evidence of P.W.-3, the informant and P.Ws.-4 to 9, who were members of the raiding party, is substantially consistent regarding the recovery of the said firearm from the possession of Santosh Lohra. Though P.W.-2 has not fully supported the prosecution case, his hostility by itself does not render otherwise consistent evidence of the remaining witnesses unreliable.

23. The recovery evidence receives further corroboration from the testimony of P.W.-11, Sergeant Major, who examined the seized country-made pistol and found the same to be illegally manufactured

and in working condition. He also examined the cartridge and opined regarding its capability of being fired through the relevant firearm and its potential to cause harm. His examination report has been duly exhibited as Exhibit-10. Thus, the oral evidence regarding recovery is materially corroborated by the technical evidence regarding the nature and working condition of the seized firearm. The prosecution has, therefore, succeeded in establishing the charge under Section 25(1-B)(a) of the Arms Act against Santosh Lohra beyond reasonable doubt.

24. Similarly, with regard to appellant, **Baleshwar Ganjhu (in Cr. Appeal (SJ) No. 26 of 2013)**, there is consistent evidence from P.W.-1 and P.Ws.-3 to 7 and P.W.-9 regarding recovery of a single-barrel muzzle-loading gun from his possession. Although there is some omission in the testimony of P.W.-8 regarding the recovery, the said witness subsequently stated that he had made a statement before the police regarding recovery of the muzzle-loading gun from Baleshwar Ganjhu. Such omission or discrepancy, particularly when viewed against the consistent evidence of the other witnesses, does not go to the root of the prosecution case.

25. The evidence regarding recovery from Baleshwar Ganjhu is further supported by P.W.-11, who examined the said firearm and found it to have been illegally manufactured. He further found its trigger and other parts to be in working condition and opined that it was capable of causing harm to life and property. The technical evidence thus corroborates the prosecution version regarding the nature of the

recovered firearm. On a cumulative assessment of the evidence, this Court finds that the prosecution has proved beyond reasonable doubt that the illegally manufactured and functional firearm was recovered from the possession of Baleshwar Ganjhu. His conviction under Section 25(1-B)(a) of the Arms Act, therefore, calls for no interference.

26. So far as appellant, **Akalu Ganjhu (in Cr. Appeal (SJ) No. 26 of 2013)** is concerned, the evidence stands on an entirely different footing. Admittedly, no firearm or ammunition was recovered from his possession. There is also no cogent evidence on record to establish that he had conscious or joint possession of any firearm recovered from another accused. The prosecution has not brought on record any circumstance demonstrating that Akalu Ganjhu exercised control or dominion over the firearm allegedly recovered from another accused or that he had knowledge of such possession.

27. The mere fact that Akalu Ganjhu was apprehended along with the other accused persons was present in their company cannot, in the absence of further incriminating evidence, by itself establish conscious possession of a firearm so as to attract the aid of Section 35 of the Arms Act. The criminal liability cannot be fastened upon an accused merely on the basis of his presence with other persons from whom incriminating articles are recovered, unless the prosecution establishes the necessary factual foundation for attributing possession or knowledge to such accused.

28. Consequently, this Court finds that the prosecution has failed to

establish the charge under Section 25(1-B)(a)/35 of the Arms Act against Akalu Ganjhu beyond reasonable doubt. He is, therefore, entitled to the benefit of doubt and his conviction and sentence under the said provision are liable to be set aside.

29. In view of above discussion and reasons, this Court arrives at the conclusion that the prosecution has succeeded in proving the charge under Section 25(1-B)(a) of the Arms Act against Santosh Lohra and Baleshwar Ganjhu, but has failed to establish the charges under Section 402 I.P.C. and Section 26(1) of the Arms Act against Santosh Lohra and the charge under Section 25(1-B)(a)/35 of the Arms Act against Akalu Ganjhu.

30. Accordingly, the conviction of appellant, **Santosh Lohra (in Cr. Appeal (SJ) No. 1158 of 2008)** under Sections 402 I.P.C. and 26(1) of the Arms Act is set aside, while his conviction under Section 25(1-B)(a) of the Arms Act is affirmed.

31. The conviction of appellant, **Baleshwar Ganjhu (in Cr. Appeal (SJ) No. 26 of 2013)** under Section 25(1-B)(a) of the Arms Act is affirmed.

32. The conviction and sentence of appellant, **Akalu Ganjhu (in Cr. Appeal (SJ) No. 26 of 2013)** under Section 25(1-B)(a)/35 of the Arms Act is set aside and he is acquitted of the said charges by extending to him the benefit of doubt. Appeal of Akalu Ganjhu is **allowed**.

33. So far as the sentence of the appellants, namely **Santosh Lohra** and **Baleshwar Ganjhu** is concerned, it appears that the occurrence is

of the year 2006 and since then, about two decades have elapsed and the appellants have suffered long agony of the trial and the appellant, **Santosh Lohra** has remained in custody for more than two years and one month out of three years sentence as awarded to him by learned Trial Court and the appellant, **Baleshwar Ganjhu** has remained in custody for about ten months out of two years sentence as awarded to him by the learned Trial Court, therefore, no useful purpose would be served by sending the appellants again in jail for sustaining the rest of the imprisonment. Hence, it appears expedient, in the ends of justice to modify/alter the sentence of the appellants. Accordingly, the sentence of the appellants, namely Santosh Lohra and Baleshwar Ganjhu is modified to the extent of period already undergone by them.

34. Consequently, these appeals are **partly allowed with modification in conviction and sentence**.

35. Both the appellants are on bail, as such they are discharged from the liability of bail bonds and sureties are also discharged.

36. Pending I.A(s), if any, stands disposed of.

37. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court
Dated 31/08/2026
Arpit/ ***N. A. F. R.***
Uploaded on 01/09/2026