

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.129 of 2014**

Arising Out of PS. Case No.-352 Year-2012 Thana- GORAUL District- Vaishali

1. Naresh Ray @ Nanhki, S/O Sri Davendra Ray, Resident of Village Mangurathi, P.S. Mahua, District Vaishali.
2. Md. Habib @ Md. Habib Miya, S/O Salim Miya, Resident of Village Maudah Chatur, P.S. Patepur, District Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 360 of 2014

Arising Out of PS. Case No.-352 Year-2012 Thana- GORAUL District- Vaishali

Akash Singh @ Sangram Singh @ Bhajji, S/o Late Vijay Bahadur Singh, R/o Village- Rampur, P.S. - Murabad Shahpur, Dist- Jaunpur, (U.P.).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 129 of 2014)

For the Appellant/s : Mr. Nagendra Kumar Singh, Amicus Curiae.

For the State : Mr. Abhay Kumar, APP

(In CRIMINAL APPEAL (SJ) No. 360 of 2014)

For the Appellant/s : Mr. Nagendra Kumar Singh, Adv.

Mr. Bijay Kr. Pathak, Adv.

For the State : Mr. Abhay Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 12-02-2026

Both the criminal appeals have arisen out of the same judgment; hence, they are being decided together by a common judgment.



2. These appeals have been preferred against the judgment of conviction dated 12.02.2014 and the order of sentence dated 18.02.2014 passed by the court of the learned Ad hoc Additional District and Sessions Judge-II, Hajipur, Vaishali, in Sessions Trial No. 274 of 2013 arising out of Goraul P.S. Case No. 352 of 2012, whereby and whereunder the appellants Naresh Rai @ Nanhki and Akash Singh @ Sangram Singh @ Bhaiji were convicted for the offences under Sections 399, 402, and 414 of the Indian Penal Code (in short, 'IPC') and also for the offences under Sections 25(1A) and 26 of the Arms Act. By the same judgment, the appellant Md. Habib @ Md. Habib Miya has been convicted for the offences under Sections 399 and 402 of the IPC and Sections 25(1A) and 26 of the Arms Act.

2.1. The appellants Naresh Rai @ Nankhi and Akash Singh @ Sangram Singh @ Bhaiji have been sentenced to undergo seven years of rigorous imprisonment each for the offence under Section 399 of the IPC, seven years of rigorous imprisonment each for the offence under Section 402 of the IPC, and three years of rigorous imprisonment each for the offence under Section 414 of the IPC. They have been further sentenced to undergo seven years and five years of rigorous imprisonment each for the offences under Sections 25(1A) and 26 of the Arms



Act, respectively.

2.2. The appellant Md. Habib @ Md. Habib Miya has been sentenced to undergo seven years of rigorous imprisonment for the offence under Section 399 of the IPC and has been further sentenced to undergo seven years of rigorous imprisonment for the offence under Section 402 of the IPC. He has also been sentenced to undergo seven years and five years of rigorous imprisonment for the offences under Sections 25(1A) and 26 of the Arms Act, respectively.

2.3. By the impugned order of sentence, all the appellants have also been punished with a fine of Rs. 5,000/- each for the offence under Section 399 of the IPC, Rs. 3,000/- each for the offence under Section 402 of the IPC, and Rs. 3,000/- and Rs. 2,000/- each for the offences under Sections 25(1A) and 26 of the Arms Act, respectively. In default of payment of fines, they have been directed to undergo simple imprisonment for a period of three months additionally. All the sentences of imprisonment have been directed to run concurrently by the trial court.

2.4. All the appellants have been acquitted of the offence under Section 35 of the Arms Act by the same impugned judgment, and two co-accused persons, namely, Prem Singh and



Rajesh Kumar, who faced trial jointly with the appellants, have been acquitted of the charged offences.

Prosecution Story : -

3. The substance of the prosecution story, as appears from the FIR, is as follows:

As per the informant, on 07.11.2012 at about 8:30 P.M., Sanjay Kumar (PW-3), S.H.O. of Goraul Police Station, received an information an from the S.H.O. of Mahua Police Station that some miscreants had assembled at village Husainakhurd and were planning to commit a crime. The S.H.O. of Mahua Police Station requested him (PW-3) to reach village Husainakhurd and told him that he (the S.H.O. of Mahua) had also asked for help from the S.H.O. of Bhagwanpur Police Station and requested him to reach the place of occurrence. Accordingly, the police officials of the three police stations proceeded to the place of occurrence, and as per the informant, he reached Husainakhurd at about 9:30 P.M. In the meantime, the S.H.O.s of Mahua and Bhagwanpur reached there along with other police officials, and they came from three directions. Upon seeing the police vehicles, five persons who were talking to each other near the road started fleeing, and thereafter, they were chased by the police personnel. Upon being chased, two of them



were apprehended, and during that course, local people also gathered, and with their help, one more accused person was apprehended, who sustained some injury caused by the local people during the course of apprehending him.

3.1. As per the informant, in the presence of two independent persons, namely, Anil Kumar Singh and Jitendra Chaudhary, all three apprehended accused persons, who disclosed their names as Naresh Rai @ Nanhki, Akash Singh @ Sangram Singh @ Bhaiji, and Md. Habib @ Md. Habib Miya, were searched.

3.2. From the person of the accused Naresh Rai @ Nanhki, one Passion motorcycle of Hero Honda Company bearing Registration No. BR-31K-6589 and one pistol loaded with a magazine, on which “Made in USA” was written, were recovered. The magazine contained four live bullets, and at the bottom of the bullets, the mark “7.65 mm” was mentioned. Apart from these articles, one mobile set of Nokia Company containing a SIM of Idea Company was also recovered from his possession.

3.3. From the person of Akash Singh @ Sangram Singh @ Bhaiji, one pistol with a loaded magazine containing three live bullets was recovered, and at the bottom of the bullets,



the mark “7.65” was mentioned. The said firearm was recovered from the waist of the said accused. Apart from these firearms, some other articles, such as a golden locket, an election identity card belonging to one Abhishek Kumar Singh, and two deposit receipts of the State Bank of India and Union Bank of India, were also recovered.

3.4. From the possession of the apprehended accused, Habib Miyan, one loaded country-made pistol of .315 bore, containing one live bullet marked “8 mm KF,” was recovered.

3.5. As per the informant, all three apprehended accused, who are the present appellants, could not produce documents justifying their possession of the seized materials and could not give satisfactory answers for keeping these articles in their possession. When they were asked about the details of the remaining two accused persons who managed to escape, they revealed their names as Prem Singh and Rajesh Kumar and also stated that all of them had assembled at the alleged place with the intention of looting motorcycles.

3.6. As per the informant, a seizure list (Ext-1) was prepared in respect of all the recovered articles at the place of recovery, upon which the signatures of two independent persons were also taken. One copy of the same was provided to the



apprehended accused persons, and thereafter, the accused persons and the recovered articles were handed over to the concerned jurisdictional police officials.

3.7. The informant, Sanjay Kumar, the S.H.O. of Goraul Police Station, recorded his self-statement on the same day of the arrest of the accused and recovery of the articles at 22:30 hours at Husainakhurd, the place of occurrence, describing the above-mentioned prosecution story. On that basis, the formal FIR (Ext-2) bearing Goraul P.S. Case No. 352 of 2012 was registered for the offences under Sections 399, 402, and 414 of the IPC and also under Sections 25(1B)(a), 26, and 35 of the Arms Act against the five named accused, including the appellants, which set the criminal law in motion.

4. After completion of the investigation, all the appellants, along with the other named accused persons, were charge-sheeted for the same offences as mentioned in the FIR.

5. After taking cognizance of the alleged offences, the learned Magistrate, finding the major offences to be triable by the Court of Sessions, committed the case of the appellants to the Sessions Court for trial.

6. All the appellants were charged with offences under Sections 399, 402, and 414 of the IPC, and the appellant Akash



Singh @ Sangram Singh @ Bhaiji and two co-accused persons were separately charged with the offence under Section 35 of the Arms Act.

6.1. In addition to these offences, the appellants were charged with offences under Sections 25(1A), 26(2), and 35 of the Arms Act. All the said charges were read over and explained to the appellants by the trial court, to which they pleaded not guilty and claimed to be tried.

7. During the course of the trial, the prosecution examined a total of nine witnesses, who are as follows:

Sl. No.	Name	Relevancy
PW-1	Rabindra Kumar Sharma	The then Police officer and a member of the raiding party
PW-2	Jagat Kishore Prasad	The then SHO of Bhagwanpur police station and a member of the raiding party
PW-3	Sanjay Kumar Singh	The informant and the then SHO of Goraul Police station
PW-4	Md. Ayub	The then SHO of Mahua P.S. and a member of raiding party
PW-5	Isteyak Khan	The then Head Constable of Goraul P.S. and a member of raiding party.
PW-6	Sakaldeep Prasad	The then Sub-Inspector of Goraul P.S. and the Investigating officer
PW-7	Dhananjay Sharma	The then In-charge of Malkhana



		of Goraul P.S., who produced the seized articles before the trial court
PW-8	Jagatpati Prasad Karn	The then Sergeant Major, posted at police line Hajipur, who mechanically examined the seized firearms and gave his report as a Ballistic Expert
PW-9	Manoj Kumar	A formal witness who proved the prosecution's sanction given by the concerned Collector.

8. In addition to the above-mentioned ocular evidence, the prosecution produced, proved, and exhibited the following documents as documentary evidence:

Sl. No.	Relevancy
Ext-1	Seizure list
Ext-2	Self-statement of the informant (PW-3)
Ext-2/1	An Endorsement on Ext-2
Ext-3 & 3/1	The petitions dated 20.11.2012 & 07.12.2012
Ext-4	Signature of the sergeant Major (Ballistic Expert) upon the report
Ext-5, 5/1 & 5/2	Signatures on the report of the Sergeant Major
Ext-6	Signature of the I.O. over the sealed cover/the inquiry report
Ext-7	Examination Report
Ext-8	After inspection, exhibits were put in bags, and written notes on the bags
Ext-9	Prosecution sanction order
Ext-10	Initial signature of one namely, Rajiv Ranjan Prasad on the prosecution sanction order

9. In addition to the above ocular and documentary



evidence, the prosecution also produced the seized articles before the trial court and got them marked as material objects, which are as follows:

Sl. No.	Relevancy
Material Ext-I	Semi Automatic pistol
Material Ext-I/a	Semi Automatic pistol
Material Ext-II	Magazine of pistol
Material Ext-II/a	Magazine of pistol
Material Ext-III	One country made pistol
Material Ext-IV to IV/g	Five live cartridges of 7.65 mm bore and two empty cartridges and one cartridge of 8 mm bore
Material Ext-8	One bag made of cloth, in which the arms were kept

10. After the completion of the prosecution evidence, the statements of the appellants were recorded under Section 313 of the Cr.P.C., giving them an opportunity to explain the material circumstances appearing against them from the prosecution evidence, which were denied by them, and they claimed themselves to be innocent. They mainly took the plea that they had been falsely implicated in the case in connection with the alleged recovery of the firearms and other articles.

11. The appellants did not adduce any evidence, either ocular or documentary, in their defence.

Submission on behalf of the appellants:-

12. Mr. Nagendra Kumar Singh, learned counsel



appearing for the appellant in Cr. Appeal No. 360 of 2014, submits that from the allegations in the prosecution story mentioned in the FIR, the alleged offences punishable under Sections 399, 402, and 414 of the IPC, for which the appellant, Akash Singh @ Sangram Singh @ Bhaiji, has been convicted, are not made out, as the prosecution did not adduce any evidence to show that the said appellant and other co-accused persons had assembled at the alleged place to make preparations for loot or dacoity. Insofar as the recovery of firearms from the possession of this appellant and others, as well as their presence at the alleged place, is concerned, there are serious contradictions among the testimonies of the prosecution witnesses, particularly with respect to the direction in which the appellant and other co-accused persons started fleeing upon seeing the police party. Further, with regard to the position in which the appellants were first noticed by the police party, contradictory statements were made by the prosecution witnesses, as some stated that the accused persons were on a motorcycle, whereas others stated that they were in a standing position and talking to each other. Learned counsel further submits that, as per the description of the place of occurrence given by the Investigating Officer and other prosecution



witnesses, there are several houses on both sides of the alleged road from where the accused persons, including the appellant, were apprehended, and for coming and going, there were only two directions, the eastern and western sides. However, as per the prosecution story, the police party had surrounded the accused from three sides; therefore, it was not possible for them to run in either direction of the road. In this regard, there are serious contradictions among the testimonies of the prosecution witnesses, as some stated that the appellant and the accused persons tried to run towards the eastern side, while others stated that they tried to run towards the western side. Therefore, the alleged attempt to run by the accused persons, including the appellant, was not possible towards both sides. If the prosecution story is believed that the accused persons were surrounded from three sides, then the alleged attempt to run in either direction becomes inherently improbable and inconsistent with the overall narrative.

12.1. Learned counsel further submits that mere recovery of firearms from the possession of the appellants and co-accused persons does not attract the offences punishable under Sections 399, 402, and 414 of the IPC. In support of this submission, learned counsel has placed reliance upon the



judgment of this Court passed in the case of **Sulo Thakur & Ors. vs. State of Bihar, reported in 2006 (4) PLJR 190** and the relevant paragraph No. 20, upon which reliance has been placed, is reproduced as under:

20. As per the case and evidence, appellants along with others at odd hours of the night were found sitting, smoking in the verandah of the Minna High School. On raid five appellants were arrested and others, succeeded in fleeing away. A country made pistol with a live cartridge was recovered from the possession of Appellant-Sulo Thakur *and* two live cartridges from the possession of Appellant-Abbas Mian. Empty polythene of wine and ends of Biri and cigarette were also found. This shows that appellants and others had taken wine there. Appellants who were arrested on spot disclosed that they had assembled there and were making planning for committing dacoity. Their statements that they had assembled there and were making plan to commit dacoity were inadmissible in law. To constitute offence under Section 399/402 IPC the prosecution has to prove that appellants had assembled for the purpose of committing dacoity and they were making planning for the same. In the present case, there is nothing which goes to prove that the assemblage of the appellants and others was for the purpose of committing dacoity and they were making planning for the same. Mere recovery of



pistol and cartridges is not enough to constitute offence under Sections 399 and 402 IPC. In the present case, assemblage of the appellants and others may be for making merry or to commit offence other than dacoity. So, in my view, offence under Sections 399/402 IPC is not proved and it fails.

12.2. Learned counsel further submits that as per the FIR, the process of search and seizure of the alleged firearms, motorcycles, and other articles from the possession of the apprehended accused persons, including the appellant, was conducted before two independent persons, namely, Anil Kumar Singh and Jitendra Chaudhary, but they were not produced and examined before the trial court, and in this regard, no explanation has been given. It is the case of the prosecution that the third accused was apprehended with the help of local people who were in large numbers, but none of them was produced and examined before the trial court. Hence, there is no independent witness to prove the charged offences despite the availability of independent witnesses. It is lastly submitted that all the material prosecution witnesses, including the informant, did not say anything in their evidence before the trial court that the seized articles were sealed either at the place of recovery or at the police station, which casts serious doubt on the allegations of the



prosecution. Further, copies of the Station Diary entries of the three police stations, whose police officials were involved in raiding the alleged place, were neither produced nor exhibited by the prosecution to prove the action taken by the police officials upon receiving the secret information regarding the presence of the appellant along with the accused persons at the alleged place of occurrence.

Submissions made by learned Amicus Curiae :-

13. As no one appears on behalf of the appellants in Criminal Appeal (SJ) No. 129 of 2014, learned counsel appearing for the appellant, namely, Akash Singh @ Sangram Singh @ Bhaiji, in Criminal Appeal (SJ) No. 360 of 2014, is requested to assist this Court as Amicus Curiae in Criminal Appeal (SJ) No. 129 of 2014. Accordingly, he has made his submissions in respect of the appellants, namely, Naresh Ray @ Nanhki and Md. Habib @ Md. Habib Miya, and his submissions are almost the same as those stated above in respect of Criminal Appeal (SJ) No. 360 of 2014.

Submissions made on behalf of the State:-

14. On the other hand, Mr. Abhay Kumar, learned APP appearing for the State, has argued that the recovery of firearms from the possession of the appellants was proved by the



prosecution witnesses, and from the manner in which the alleged firearms and other articles, such as motorcycles, were recovered from their possession, it can be easily inferred that all the accused persons, including the appellants, had gathered at the alleged place of occurrence to make preparations to commit the offence of loot, and they were five in number. Therefore, the offences for which the trial court convicted the appellants clearly stood attracted in this matter. As far as the process of sealing of the seized articles is concerned, it came in the evidence of the Sergeant Major that all the seized articles were in a sealed condition when they were brought before the trial court, and they were also produced in a sealed condition. The seizure memo was also proved before the trial court, and the credibility of the prosecution story, particularly in respect of the offences under the Arms Act, cannot be rejected merely on account of the non-examination of two independent witnesses, as the police officials who were part of the raiding party appeared before the trial court and deposed, and their evidence is sufficient to prove the recovery of firearms from the possession of the appellants. As such, there is no illegality in the impugned judgment, and the appeal lacks merit and is liable to be rejected.



Consideration and Analysis : -

15. I have heard both sides, perused the evidence adduced by the prosecution available on the record of the trial court, and also taken into consideration the statements of the appellants as well as the findings recorded by the trial court in the impugned judgment. The instant matter mainly relates to the alleged recovery of firearms from the possession of the appellants. It is primarily on the basis of such alleged recovery that the appellants were suspected to have been present at the alleged place in preparation for committing dacoity. In respect of the said recovery, the appellants have been charged with the offences under Sections 25(1A), 26(2), and 35 of the Arms Act.

16. For attracting the offence under Section 25(1A), where the allegation is that a firearm or firearms has/have been recovered from an accused, such recovery must be proved beyond reasonable doubt. If the recovery itself appears suspicious, then the commission of other offences under Sections 26 and 35 of the Arms Act may also be rendered doubtful. To prove the recovery of firearms, the prosecution must establish proper sealing of the seized firearms. Proper sealing involves immediate packing, sealing, and labeling of the firearms with case details and signatures of witnesses at the spot.



The procedure adopted must be proved through the seizure memo, Malkhana register entries, and the testimony of the seizing officer and independent witnesses. Improper sealing, including the absence of specimen seal or gaps in the chain of custody, creates material doubt and may lead to acquittal or grant of benefit of doubt to the accused, as it raises the possibility of tampering. When an illegal firearm is recovered by the police or any competent authority, it must be immediately packed and sealed at the place of recovery, and not later at the police station. In exceptional circumstances, sealing at the police station may be permissible, but such circumstances must be clearly explained. After sealing, a detailed description such as the type of firearm, number, markings, etc. must be recorded in the seizure memo. The package must bear the signatures of the investigating officer and, if possible, independent witnesses. The label or slip must contain details such as the case number, description of the firearm, name of the accused, and date of seizure. A specimen of the seal used must be prepared separately. If improper sealing occurs such as absence of seal, broken seal, or lack of documentation it creates reasonable doubt regarding the integrity of the evidence and raises the possibility that the alleged weapon was planted, manipulated, or



tampered with. The primary responsibility to seal the seized weapon lies upon the detecting officer or the officer effecting the recovery.

In this regard, the judgment of the Hon'ble Apex Court in the case of *Amarjit Singh @ Babbu Vs. State of Punjab* reported in *1995 Supp (3) SCC 217* is important wherein paragraph no.7 is reproduced as under:

"7. The entire prosecution case, thus, is clouded with number of infirmities which compel this Court not to accept such an unworthy evidence. These infirmities have been brushed aside by the Designated Court by observing that since the model number of the revolver was noted down, the non-sealing of the revolver or the handing over of the same to some other police official or a private person, who has not been examined are of no consequence. We are unable to agree and subscribe to this view in a case of this nature. The non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. The report of PW 4 that the weapon is capable of being fired is insignificant since it cannot be said with certainty as to what was the condition of the weapon at the time of the recovery, apart from the evidence of PW 4 that he did not test-fire the revolver."

17. In several cases involving recovery of firearms,



this Court has come across lapses in the sealing process on the part of police officials, resulting in acquittal of the accused for offences punishable under the Arms Act. Therefore, this Court lays down the following guidelines, which must be adopted by police officials in cases involving recovery of firearms:

(i) Whenever a police official acts upon secret information to raid a particular place or person, such information must be recorded in the General Diary (Rojnamcha) of the police station. The same must be proved before the trial court by exhibiting the relevant entry so as to justify the action of the police and rule out fabrication of a false story of recovery.

(ii) After recovery of a firearm, the police officer heading the raiding team must prepare the seizure memo at the place of recovery. In exceptional circumstances, it may be prepared at the police station or another secure place, but such circumstances must be mentioned in the seizure memo. The seizure memo must contain a complete description of the recovered firearms and details of the persons present at the time of recovery including the details of sealing process if taken on the spot of recovery with specimen of used seal. Efforts must be made to conduct recovery in the presence of independent witnesses; if not possible sufficient reasons showing efforts



must be recorded in the seizure memo.

(iii) When the police party proceeds to a place on this information that some persons have gathered with firearms, upon reaching there, the police officials involved in the search must get themselves searched before independent persons (either other officials or private persons, if available). Details of such search must be recorded in the seizure memo to rule out the possibility of planting firearms, if due to reasonable reasons the said search is not possible then the reasons must be recorded in the seizure memo.

(iv) Thereafter, the seized weapons must be sealed at the place of recovery by putting them in a cloth bag. A slip containing details of all seized firearms and the names of witnesses (including police officials and accused), along with their signatures or thumb impressions, must be affixed with seal on the outside part of the bag. One copy of such slip with specimen of used seal must be kept inside the bag. A separate specimen of the seal used must be prepared, and one copy of the specimen must also be kept inside the bag. The sealing process must be done before witnesses, and the adopted procedure must be described in the seizure memo. After completion of sealing procedure and preparation of the seizure memo, the accused and



seized articles must be produced before the jurisdictional Magistrate at the earliest. The Magistrate must note whether the articles are produced in sealed condition and also note other relevant details, and such endorsement or note must form part of the record.

(v) When the sealed firearms are produced before the ballistic expert pursuant to court direction, the expert must record the description and condition of the seal thereafter can break it for examination, and thereafter must reseal the articles by using his own official seal following the same procedure. Apart from the examination findings, details and description of the earlier sealing condition and present adopted procedure must be mentioned in the expert report. The sealing slips relating to earlier sealing procedure found outside and inside the bag at the time of opening must also be kept and sealed in another bag by expert with other relevant details.

(vi) During trial, when seized firearms are produced before the court, the court after breaking the existing seal, recording evidence and exhibiting the articles, must reseal them using the court seal. The slips found inside or outside being affixed to the bag must be proved and exhibited as documentary evidence. The Malkhana Register showing deposit and condition



of seized articles at the time of depositing must also be produced and exhibited.

18. Now, coming to the present case, it is necessary to examine whether the proper sealing procedure was adopted or not in present matter. As per the FIR based on the self-statement of the SHO, Goraul P.S., three pistols were recovered from the possession of the appellants; two were loaded with magazines and one was loaded with a live bullet. Although the informant mentioned preparation of the seizure memo at the spot but he remained completely silent regarding sealing of the seized firearms either at the spot or at the police station. PW-2, the SHO of Bhagwanpur Police Station, in cross-examination (paragraph 4), stated that he did not remember whether the recovered firearms were sealed or not. PW-6, the Investigating Officer, deposed in cross-examination that when he obtained the seized firearms from the Malkhana on 08.12.2012 for ballistic expert's examination, he did not remember whether they were sealed or not. The informant also remained silent in his self-statement which was basis of FIR and in chief examination of his evidence regarding sealing of recovered firearms. Although PW-8, the Ballistic Expert, stated that the articles were produced before him in sealed condition but PW-7, the Malkhana in-



charge, stated in cross-examination (paragraph 6) that the seized materials were sealed before him. It is not the prosecution case that PW-7 was present at the place of recovery. As per the Investigating Officer, the seized articles were taken from the Malkhana on 08.12.2012 for ballistic examination. This indicates that the firearms were sealed for the first time before the Malkhana in-charge, and not at the spot or immediately after recovery. Thus, there is sufficient material to show that the alleged firearms were not sealed at the place of recovery and remained unsealed until handed over for ballistic expert's examination. Further, the prosecution failed to produce two independent witnesses, namely Anil Kumar Singh and Jitendra Chaudhary, to prove recovery and preparation of the seizure memo. No plausible explanation was given for their non-production. Additionally, though appellant Md. Habib Miyan was allegedly apprehended with the help of several local persons but none of them was examined as witness. Furthermore the entry made in daily police diary by the SHO of concerned P.S. at the time of proceeding to alleged place to conduct raid, was not proved by producing the daily police diary (Rojnamcha) before the trial court which also goes against the operation. There are also material contradictions regarding the position and conduct



of the appellants when they were apprehended as per prosecution. PW-1 stated that the accused were coming on motorcycles and fled upon seeing the police. PW-3 stated they were found being assembled near a house. PW-2 stated that they were sitting and talking on the road. There is also contradiction regarding the number of motorcycles, and further the recovered motorcycle was not produced before the trial court, which was material for proving the offence under Section 414 IPC.

Conclusion :-

19. In view of the above, this Court is of the considered opinion that the prosecution remained fail to prove the recovery of alleged firearms from the possession of appellants beyond reasonable doubt. Since the offences under Sections 399 and 402 IPC were primarily based on such recovery, those charges also remain doubtful.

20. Accordingly, this Court is not persuaded to affirm the conviction of the appellants for the alleged offences hence they are acquitted of all charges, giving them the benefit of doubt.

21. In the result, both appeals are allowed. The impugned judgment of conviction and order of sentence are



hereby set aside. The appellants are presently on bail; accordingly, their bail bonds stand cancelled forthwith and their sureties are discharged from their liabilities.

22. Let the trial court's records, along with a copy of this judgment, be transmitted to trial court forthwith for compliance and necessary action.

23. Let a copy of this judgment also be sent to the Director General of Police, Bihar, who shall ensure compliance with the sealing procedure keeping in view the guidelines mentioned in paragraph no. 17 of this judgment, particularly with regard to recovery of firearms, by issuing appropriate directions to all SHOs of police stations.

(Shailendra Singh, J)

Rajiv/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.02.2026
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