

[Against the Judgment of conviction dated 02.04.2009 and Order of sentence dated 04.04.2009 passed by learned Additional Sessions Judge, Fast Track Court No. IV, Bokaro in Sessions Trial No. 423 of 2006].

Santosh Saw, son of Nandujee Saw, resident of Bansgoda,
P.S. – Marafari, District – Bokaro.

... ... **Appellant**
 Versus
 The State of Jharkhand ... **Respondent**

WITH
Criminal Appeal (S.J.) No. 308 of 2009

1. Ajay Kumar Gupta @ Ajay Gupta, son of Ram Rup Gupta.
2. Mukesh @ Mukesh Saw @ Mukku, son of Ram Chandra Saw,
Both resident of Bansgoda, P.S. – Marafari, District – Bokaro.
3. Md. Naushad @ Nausad Alam, son of Md. Kasim,
resident of Azad Nagar, P.S. – Marafari, District – Bokaro.

... ... **Appellants**

Versus

The State of Jharkhand **Respondent**

For the Appellants	: Mr. D.K. Chakraverty, Advocate [In both cases].
For the Respondent	: Mrs. Ruby Pandey, A.P.P. [In Cr.A.(SJ) No. 375/2009]
For the Respondent	: Mrs. Nehala Sharmin, Spl.P.P. [In Cr.A.(SJ) No. 308/2009]

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P R E S E N T
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

C.A.V. on 17.06.2026 Pronounced on 30.06.2026

Both the criminal appeals are arising out of common judgment passed in S.T. No. 423 of 2006, therefore taking together for hearing and adjudication.

2. Heard learned counsel for the parties.
3. Appellants of both the criminal appeals have challenged the judgment of conviction dated 02.04.2009 and order of sentence dated 04.04.2009 passed by learned Additional Sessions Judge, Fast Track Court No. IV, Bokaro in Sessions Trial No. 423 of 2006, whereby and whereunder, the appellant-Santosh Saw [appellant in Cr.A. (S.J.) No. 375/2009] has been held guilty for the offence under Section 414 of the I.P.C. only and sentenced to undergo R.I. of three years only. However, appellants of Cr.A.(S.J.) No. 308/2009 i.e. Ajay Kumar Gupta, Mukesh @ Mukesh Sao and Md. Naushad @ Naushad Alam were held guilty for the offence under Sections 413 and 414 of the I.P.C. and sentenced to undergo R.I. for five years for the offence under Sections 413 of I.P.C. and R.I. for three years for the offence under Section 414 of I.P.C. Both the sentences of these appellants were directed to run concurrently.

FACTUAL MATRIX

4. The factual matrix giving rise to these appeals is that S.I. Dilip Kumar Das of B.S. City Police Station, Bokaro lodged a self-written report addressed to Officer-in-Charge, Maraphari Police Station stating inter alia that

on 18.07.2006 at about 1:45 P.M., he received a secret information that present appellants namely, Mukesh Saw, Ajay Kumar Gupta, Santosh Saw, Nausad and some others have stolen aluminum plate, iron, copper, brass etc. in huge quantity in the Jhopri of Raghu Lohar at Azad Nagar (Azad Basti), Jatang Tola. The informant making S.D. Entry informing to superior police officer along with other police personnel proceeded toward the place of occurrence. It is alleged that when the informant party reached at Azad Nagar then saw 6-7 persons were fleeing away from the said house, who were chased, but managed to escape. The informant identified the fleeing persons as Mukesh Saw @ Muku, Ajay Kumar Gupta, Santosh Saw and Nausad, whom he was knowing from before. The informant enquired with the local persons residing adjacent to hut of Raghu Lohar, who disclosed that he has given this hutment on rent to one Mukesh Saw @ Muku. It is alleged that in presence of independent witnesses, the room was searched and 18 pieces of aluminum ingot plate upon which it was inscribed as 'NALCO' in English and Hindi whose length was 2 ft. breath 5" and thickness 4" each weighing 20 Kg. the total weight of which is 360 kg., six pieces of thick aluminum wire in 7 pieces, total weight 4 kg., Cooper

pipe weight 14 kg., 60 small pieces of iron angle weighing 25 kg., one big weighing machine (Taraju) and iron weight of 20 Kg., 5 Kg, 2Kg., 1 Kg. each.

5. After preparation of seizure list, the case was instituted as Marafari P.S. Case No. 51 of 2006 for the offence under Sections 413, 414, 34 of the I.P.C. against the above named accused persons.
6. After completion of investigation, charge sheet was submitted against the above named accused persons. The appellants denied the charges and claimed to be tried.
7. In course of trial, altogether 08 witnesses were examined by the prosecution, apart from following documentary evidences :-
 - Exhibit-1 : Seizure list.
 - Exhibit-2 : Written report.
 - Exhibit-2/1: Endorsement on written report.
 - Exhibit-3 : Property certificate
 - Exhibit-4 : Formal F.I.R.
8. On the other hand, the case of defence is denial from occurrence and false implication without any reason and plea of innocence. However, no oral or documentary evidence has been adduced by defence.

- 9.** The learned trial court, after scrutinizing oral as well as documentary evidence adduced by prosecution recorded the definite findings about guilt of the appellants for the offence under Sections 413 / 414 of the I.P.C. against three appellants and under Section 414 of I.P.C. against Santosh Saw and sentenced them, as stated.
- 10.** Assailing the impugned judgment, learned counsel for the appellants has submitted that admittedly the place of occurrence belonged to one Raghu Lohar. In course of investigation, no material has been collected showing that the said hutment room was taken on rent by the present appellants. Therefore, there is no recovery from the conscious possession of the appellants as per seizure list of this case, which do not bear the signature of appellants. The owner of the hutment namely, Raghu Lohar has not been examined in this case, which also cast serious doubt on the prosecution story. The very ingredients of offence under Sections 413 and 414 of the I.P.C. is lacking in this case, therefore, the whole approach of the learned trial court is erroneous and beyond the weightage of evidence available on record. Therefore, the impugned judgment of conviction and sentence of appellants is

liable to be set aside. Hence, this appeal may be allowed.

- 11.** On the other hand, learned APP as well as learned Spl.P.P. appearing for the State in both cases have controverted the aforesaid contentions raised on behalf of the appellants and have submitted that there are ample positive evidence against the appellants showing their conscious possession of the seized material kept in the house. Therefore, there is no valid reason to interfere with the impugned judgment of conviction and sentence of the appellants. These appeals are devoid of merit and fit to be dismissed.
- 12.** I have perused the record of the case along with impugned judgment of conviction and order of sentence of the appellants in the light of contentions raised on behalf of both side.
- 13.** The only point for consideration of this appeal is, as to whether the impugned judgment of conviction and sentence suffers from any serious error or law calling for any interference in this appeal or not?
- 14.** It appears that altogether eight witnesses have been examined by the prosecution during trial of the case.
- 15. P.W.-1 Dilip Kumar Das (Informant)** is one of the members of the raiding party. He has proved the

recovery of the seized materials from the hut of Raghu Lohar during raid conducted by police personnels. The local villagers disclosed that this hutment type room was let out to the accused persons. He has proved the seizure list of the seized materials as Exhibit-1. He has further proved the written report in his own handwriting and signature as Exhibit-2 and claimed to be identified all the accused persons.

In his cross-examination, he has admitted that the room from which the stolen articles were seized was locked and at the time of search and seizure, lock was broken open, but he has not prepared any seizure list of the lock was broken. At that time, no one was present in or near the room. He has not interrogated with the neighbour persons, who have also huts near the place of occurrence. There was no theft report in connection with the seized articles and none of the seized materials have any mark of B.S.L. to identify the same as property of B.S.L. He was acquainted with the miscreants, who started fleeing away but who disclosed their names, he can't tell. He has assumed the seized property belonging to B.S.L. property on basis of telephonic confirmation and on his own wisdom.

He has denied the suggestion of defence that without any material, he falsely implicated the accused persons.

- 16. P.W.-2 Kusheshwar Prasad Singh** is the Manager of Bokaro Steel City Limited, who has issued the property report regarding the seized materials marked Exhibit-3. He categorically admits in his cross-examination that from the very outlook of the seized materials, it cannot be said that it contains any mark of B.S.L.
- 17. P.W.-3 Ratan Sah and P.W.-4 Madan Singh** have been declared hostile by the prosecution.
- 18. P.W.-5 Constable Nimai Kumar Singh** was working as Home Guard at B.S. City Police Station on 18.07.2006. He has also proceeded along with informant to place of occurrence at the time of raid. Some miscreants were fleeing away, who were chased, but managed to escape. He has also proved the recovery of seized materials from hutment type room allegedly possessed by the accused persons. In his cross-examination, he has categorically stated that he can't say whether the seized materials were stolen property or not. He has not identified any of the miscreants.
- 19. P.W.-6 Bharat Kumar Rai** is also a Home Guard and member of the raiding party. He has proved the

recovery of stolen property from a hutment type room at Azad Nagar and the miscreants managed to flee away. He has not identified any miscreants. He does not know about the owner of the said hutment type room.

20. P.W.-7 Vijay Kumar Dang the then A.S.I. of police station, was also a member of raiding party. He has claimed the recovery of seized materials from a hutment type room at Azad Nagar. He also saw some miscreants fleeing away, but could not be apprehended. Local villagers disclosed their names as Mukesh Saw @ Muku, Ajay Kumar Gupta, Santosh Saw and Nausad. He also came to know at the place of occurrence that the room was belonging to Raghu Lohar, which was let out to the accused persons and accused persons have stored the stolen property of B.S.L. in the said room.

In his cross-examination, he admits that there was no theft report about the seized materials and nothing was recovered from the persons, who managed to flee away. There was no mark of identification on the seized material showing that it belonged to B.S.L. He has not identified any of the miscreants.

21. P.W.-8 S.I. Gandru Oraon is the Investigating Officer of this case. He has proved the endorsement on written report for registration of F.I.R. as Exhibit-2/1, Formal F.I.R. as Exhibit-4. He was handed over the investigation of this case. In course of investigation, he recorded the statements of witnesses Vijay Kumar, Bidyanand Ram, Nimai Kumar Singh, Md. Sagir, Bharat Kumar Ram, Menka Prasad and also restatement of informant. The place of occurrence of this case is the mud made house, roof with mud tiles consisting of one room belonging to Raghu Lohar, situated at Azad Nagar from where the stolen property from B.S.L. were stored, which were seized in presence of witnesses. He has also recorded the statements of Deep Chand, Tantu Badu, Ratan Saw, Keshaw Saw, Md. Saffique, Madan Singh etc. He also got criminal antecedent of the accused persons and finding sufficient evidence as well as direction of the superior officers submitted charge sheet against the accused persons for the offence under Sections 413 / 414 / 34 of the I.P.C. His attention was drawn upon the statement of hostile witnesses.

In his cross-examination, this witness clearly admits that in course of investigation, he obtained no

documentary prove that the place of occurrence was belonging to Raghu Lohar and he has let out the same to the accused persons. There was no theft report about the seized materials and never claimed by the B.S.L. to be released in its favour. There was no mark of identification of B.S.L. on the seized materials. He also admits that in the property certificate issued from B.S.L., there is no ground mentioned as to how and for what reasons, property was belonging to B.S.L. He also admits that nothing was recovered from conscious possession of any of the accused persons. Except the informant, none of the witnesses have been able to identify the accused persons during investigation.

He has denied the suggestion of defence that his investigation is perfunctory and without any sufficient evidence submitted charge sheet against the accused persons. due to their criminal antecedents.

- 22.** From the aforesaid discussions of evidence adduced by prosecution, it is crystal clear that the prosecution has miserably failed to prove that the place of occurrence was belonging to the present appellants even on rent. The very owner of the house from where the stolen articles are alleged to have been seized by breaking open the lock namely, Raghu Lohar has not been

examined in this case and even during investigation, he was not interrogated. Admittedly, none of the miscreants (present appellants) were apprehended at the spot nor they have been identified by any other witnesses except the informant, who claims to be acquainted with the accused persons only because they have some criminal antecedents. The Property Certificate (Exhibit-3) issued by the Manager of B.S.L. is also groundless. Admittedly, the seized materials have no mark of identification of B.S.L., rather on aluminum Plates “NALCO” was scribed. Therefore, it is crystal clear that nothing has been seized from the conscious possession of present appellants nor it has been proved that the stolen property was ever possessed by the appellants or they have any dominion over the said seized properties. At this juncture, the relevant provision is extracted hereunder:

413. Habitually dealing in stolen property.—

Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

414. Assisting in concealment of stolen property.—

Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished

with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

From the above definition, it appears that to constitute offence under Section 414 of I.P.C., following ingredients have been proved by the prosecution beyond all reasonable doubt:-

- (i) That the property in question is a stolen property,
- (ii) The accused assisted in concealing or disposing of or making away with such property,
- (iii) He did the act under (ii) voluntarily, and
- (iv) He knew or had reason to believe that the property was stolen property.

23. In the instant case, admittedly, the above ingredients have not been established by prosecution. Therefore, the conviction and sentence of the appellants is absolutely illegal and beyond weightage of evidence available on record. The learned trial court has not considered the very basic ingredients of Sections 413 and 414 of I.P.C., which cannot be applied on the basis of evidence against the appellants.

24. In view of above discussions and reasons, the impugned judgment of conviction and order of

sentence of the appellants is hereby set aside and they are acquitted from the charges leveled against them.

25. Accordingly, these appeals are **allowed**.

26. Appellants are on bail, as such they are discharged from the liability of bail bond. Sureties are also discharged.

27. Pending I.A., if any, stand disposed of.

28. 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, Ranchi

Dated : 30th June, 2026

Sunil / **N.A.F.R.**

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