

Puttu Singh Alias Thakur and ors. Vs. State of U.P.

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SooperKanoon Citation : sooperkanoon.com/476702

Court : Allahabad

Decided On : Jul-27-1990

Reported in : 2000CriLJ537

Judge : B.K. Sharma, J.

Acts : Arms Act - Sections 25; [Indian Penal Code \(IPC\), 1860](#) - Sections 399 and 402; Code of Criminal Procedure (CrPC) - Sections 294

Appeal No. : Crl. Appeal No. 1620 of 1980

Appellant : Puttu Singh Alias Thakur and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : U.K. Saxena, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

B.K. Sharma, J.

1. This is an appeal against the judgment and order dated 24-7-1980 passed by Sri Khem Karan, the then IVth Addl. Sessions Judge, Jalaun at Orai in S.T. No.

242 of 1979 State v. Puttu Singh, Ghasi alias Ghasote and Mathura under Sections 399/ 402, I.P.C. and Section 25 of the Arms Act, P.S. Dakore, whereby he convicted Puttu Singh, Ghasi alias Ghasote, Mathura and Sheo Singh present accused-appellants of the offences under Sections 399/ 402, I.P.C. and sentenced each one of them to suffer R. I. for 5 years for the offence under Section 399, I.P.C. and R. I. for a period of 3 years for the offence under Section 402, I.P.C. and further convicted Puttu Singh. Ghasi alias Ghasote and Mathura accused-appellants of the offence under Section 25 of the Arms Act and sentenced each one of them to undergo R.I. for a period of half years.

2. During the pendency of this appeal, Mathura accused-appellant died and consequently the appeal abates to his extent. Puttu Singh accused-appellant is not traceable as yet. Ghasi alias Ghasote and Sheo Singh accused-appellants are represented by their counsel. Heard their counsel and learned A.G.A.

3. The prosecution story, briefly stated, was that on 28-8-1979, in the evening an information was received by the S. O. Ramayan Singh of Police Station Dakore, District Jalaun that a gang of dacoits would assemble at the Mazar of Dadiyawalababa and would prepare to commit dacoity at the house of Ram Das Verma in village Mohana in midnight, that this information was entered in the G. D. of the police station at 8.15 P.M. and the S. O. then made a departure from the police station with Chandra Bhan Dubey, S. I. and the police force with the V.L.P. pistol, arms and ammunitions and torches and reached at the bus stand of village Mohana and took from there Ram Das Verma, Bhag Chandra Tripathi, Shree Ram, Bhan Singh and Balwan Singh and apprised them of the purpose and sent two constables to the house of Ram Das Verma and then made departure for the spot and then arrived at the temple near the mazar of Dadiyawalababa that after reaching there he made three parties that party No. 1 was made by him (the S.O.) in his own leadership, which included Bhagya Chandra Tripathi, P.W. 1, and it was posted at a distance of 25 paces towards North from the mazar in the Aar of Mahuli tree and a Teela, that party No. 2 was formed in the leadership of S. I. Chandra Bhan Dubey, P.W. 3 and included public witnesses Ram Das Verma and Balwan Singh P. W. 2 that party No. 2 was posted at distance of 25 paces towards North West from the Mazar and in the Aar of Babul tree and Teela that party No. 3

was found under the leadership of Ram Gopal Singh head Constable and it included a constable and a public witness Sri Ram Tripathi, that was posted at a distance of 30 paces towards West of the mazar in the Aar of Teela. Necessary instructions were given to the force and public witnesses, that on 11.30 P.M. two bad characters came from the south of the mazar from the side of the river which was flowing at south East from the mazar and sat at the North of the mazar adjacent to it and started smoking Biries and started talking to each other, that one of them was saying, 'Sardar Nahin Aya', that then three more bad characters came from the same direction and joined the earlier two persons and started saying.' Ram Das Ke Yahan Dacoity Dalna Hai. Pahley Bandoon per Kabja Karney Hai.' After it, one bad character shouted 'Jai Ho Dandyawalababa' retorting. 'Chalo Dacoity Ka Samai Ho Gaya a Hai'; that thereupon, the S. O. and Chandra Bhan Dubey S. I. got satisfied that it is a gang of dacoits assembled and preparing to commit dacoity and consequently, the S. O. challenged the dacoits and fired with V. L. P. saying that they are under the siege of the police and commanded them to surrender their weapons otherwise, they would be shot dead; that the fire from V.L.P. created light; that all the three raiding parties surrounded the bad characters and arrested four of them, namely Puttu Sigh, Ghasi, Mathura and Sheo Singh (who were accused-appellants before this Court) but Babbu alias Babu Ram co-accused managed to escape from the spot; that on a search being taken, a double barrel gun along with belt of cartridges carrying five live cartridges and a torch were recovered from the possession of Puttu Singh accused-appellant; that a Girinar Gun with a live cartridge loaded in it and five live cartridges were recovered from the possession of Ghasi alias Ghasita accused-appellant along with a torch; that a gun with a live cartridge in the barrel, a torch and 9 live cartridges were recovered from the possession of Mathura accused-appellant and a pharsa was recovered from Sheo Singh accused-appellant; that a recovery memo was prepared at the spot about the recoveries made from these accused-appellants and the recovered properties were sealed there and that then the police force returned to the police station along with the arrested accused and the recovered articles and lodged them at the police station. The prosecution case further was that the accused-appellant Puttu Singh, Ghasi and Mathura did not have any licence for the fire arms recovered from their possession. On the basis of

the recovery memo which was prepared at the spot, the head constable prepared the Chik report at the police station at 4.10 A.M. on 29-8-1979 and case was registered under Sections 399/ 402, I.P.C. against all of them and separate cases were registered under Section 25 of the Arms Act against Puttu Singh, Ghasi and Mathura' accused -appellants.

4. The prosecution case further was that the gun recovered from Puttu Singh accused-appellant was obtained by him by committing the murder of Babbo Singh of Temro about which a case was pending in the Court and the gun recovered from Mathura accused-appellant was one which had been stolen by making house breaking by night at the house of a Kacchi about which also a case was pending in Court. Necessary sanction for prosecution under Section 25 of the Arms Act was obtained from the appropriate authority.

5. All these cases were committed to the Court of Session and all the accused-appellants and Babu alias Baboo Ram co-accused were tried by the learned Additional Sessions Judge together. At the trial, all of them denied the alleged arrest and recovery and claimed to have been falsely implicated in this case.

6. At the trial, the architect of the raid Ramayan Singh S.O. of the police station was conspicuous by his absence. Chandra Bhan Dubey S.I. (P.W. 3) is the principal witness of the prosecution. He has narrated the entire prosecution story on oath starting from the receipt of the information on the police station, the departure, the taking of the witnesses, the reaching at the Mazar, the making of the parties, the positioning of the parties, the arrival of the bad characters, their sitting together on the northern border of the Mazar, touching the northern border, their conversation and their getting up to proceed, the challenge and the firing of the V.L.P. shot by the Station Officer, the raid and the arrest of all the four accused-appellants and the escape of their companion Babu Ram co-accused and the recovery from the accused-appellants as aforesaid. He has also testified to the preparation of the recovery memo, the sealing of the recovered properties and return to the police station along with the arrested accused-appellants and the recovered properties. No other police officer has been examined at the trial.

7. Out of the public witnesses, the prosecution has examined two public witnesses, namely Bhagya Chandra Tripathi P.W. 1 and Balwan Singh P.W. 2. The evidence of the I.O. given at the trial is just formal in nature. The accused-appellants did not lead any oral and documentary evidence in support of their defence. The public witness Bhagya Chandra Tripathi, P.W. 1 broadly narrated the prosecution story of taking him from the bus stand of village Mohana up to the time of arrest and recoveries. Balwan Singh P.W. 2 another public witness also has broadly supported the prosecution case about the arrest and the recoveries. But both these witnesses have been declared hostile by the prosecution and cross examined because of some deviation from the prosecution story and some omissions.

8. At first sight, the case appears to be a case with some substance in which factory made weapons which were the subject-matter of some offences were said to have been recovered. However, on a close scrutiny, the prosecution story is found to bristle with suspicious features and is highly doubtful. There are also inconsistency on various points.

9. As noted earlier, the architect: of the raid Ramayan Singh S. O. has not entered in the witness box. Chandra Bhan Dubey, S. I. P. W. 3 claimed that the S. O. and he himself had come to bus stand of village Mohana at 10.00 P.M. where Ram Das Verma at whose house the dacoity was supposed to be committed by the gang of dacoits and other public witnesses Bhagya Chandra Tripathi P.W. 1, Shree Ram, Man Singh and Balwan Singh P.W. 2 met them. He testifies that two persons were sent to the house of Ram Das Verma for guarding it.

10. In his cross-examination, Balwan Singh P.W. 2 claimed that he, Ram Das Verma, Bhagya Chandra Tripathi PW 1 and Man Singh were sitting in a shop at the bus stand when the S.O. and the constable reached there. He claimed that it was shop of Narain Das. It was elicited from him that it was 10.00 p.m. At that time, the shop could not be expected to be open. The witness was asked about it and on this he said that the shop had closed and the shop keeper Narain Singh was also not present at the shop. These witnesses were least likely to be present together at the bus stand at 10.00 p.m. None of these witnesses said that he had

got down there from a bus and or was waiting for any conveyance. Chandra Bhan Dubey S.I. P.W. 3 did not refer to any shop of Narain Das in his testimony. In the ordinary course, the witnesses could be taken only from their respective houses at that hour.

11. Chandra Bhan Dubey, S.I. P.W. 3 testified that the witnesses met at the Bus stand, that the witnesses were carrying their weapons, Bhagya Chandra was carrying his rifle, Ram Das was carrying his gun and Sri Ram was also carrying his gun. He also testified that Balwan P.W. 2 and Man Singh witness were carrying lathies.

12. Bhagya Chandra Tripathi, P.W. 1 on the other hand claimed that after police force met them at the bus stand of Mohana village, the public witnesses went to their respective houses and brought their weapons. He has testified that he brought his rifle, Ram Das Verma (intended victim of the dacoity) brought his gun, Shree Ram Tripathi brought his gun and the rest of the witnesses brought their lathies. Balwan Singh P.W. 2 on the other hand testified that when the police force met them at the bus stand, they were already carrying their respective weapons. He does not say that they went to their houses and brought their weapons on receiving information from the S.O. about the intended dacoity. So in this respect, his testimony is in line with the evidence of Chandra Bhan Dubey S.I. P.W. 3 as noted above. However, the prosecution does not stand to gain by it.

13. The cross-examination of Chandra Bhan Dubey S.I. P.W. 3 on the subject is also worth mentioning. He said that Ram Das Verma had told them that he would go for the security of his house but he (the S.I.) told him that he is making a better arrangement for the safety of his house and called upon him to accompanying him. He further testified that the constables who were sent to guard his house, knew it (the location of the house of Ram Das Verma) and so there was no need of sending Ram Das Verma with them to his house. He further testified that Ram Das Verma did not go to his house to give information about the intended dacoity.

14. Chandra Bhan Dubey S.I. P.W. 3 testified about the departure of the force and the public witnesses including Ram Das Verma aforesaid for the mazar of Dadiyawalababa and after reaching and staying there, participating in the arrest of

the dacoits. He has not testified as to in which raiding party, Ram Das Verma was kept at the spot but according to recovery memo whose signatory he (this witness) was Ram Das Verma was a member of party No. 2 posted at the North West from the mazar in the Aar of Babul tree and a teela.

15. Bhagya Chandra Tripathi, P.W. 1 testified in his cross-examination that Ram Das Verma at whose house dacoity to take place was also present at the scene of arrest along with his licenced gun.

16. Balwan Singh P.W. 2 testified in his cross-examination by the defence that at the shop near bus stand Ram Das Verma was present with his gun, that he did not ask Ram Das Verma to go to his house and to look after it and that they (the witnesses except Ram Das Verma) would go for arresting the dacoits. He claimed that Ram Das Verma had told the S.O. that he would look after his own house but the S.O. told him that he would send the police men to his house, meaning thereby that he over-ruled Ram Das Verma and called upon him to accompany the police party to the spot of arrest and recovery. This witness has further stated that Ram Das Verma did not go to his house to caution the members of his house about the intended dacoity. The witnesses stated that they did not know the names of the constables who were sent to the house of Ram Das Verma. He further stated that the S.O. had told that two constables have been sent, that Ram Das Verma did not tell that he would check at his house whether the constables have reached there or not?

17. Ram Das Verma, aforesaid was not examined by the prosecution at the trial to explain the improbable that he would leave the inmates of his house to their fate or at the mercy of the two constables allegedly sent to his house to face the dacoits if they managed to reach there by one way or the other and accompanied the police parties to the scene where the dacoits were supposed to assemble and prepare for committing dacoity later in the night at his house.

18. Thus this is one suspicious feature in the prosecution story which makes it highly improbable.

19. The site plan prepared by the I.O. shows that there is a temple of Dadiya Wala Baba and to its north-east at some distance there is a Mazar of Dadiya-Wala-baba with a 4 feet high Chabutra. To the east of the Mazar at some distance, there is a river running from north to south. The site plan also shows a Mahuli tree and Tila at north-east from the Mazar at a distance of about 25 paces. The site plan further shows the presence of small trees and a Tila at a distance of 25 paces towards north-west from the north of the Mazar. The site plan also shows the presence of a Tila on the west of the northern side of the Mazar at a distance of about 30 paces.

20. According to the testimony of Chandra Bhan Dubey S.I. (PW 3) party No. 1 was posted in the Aar of Maholi tree and Tila towards north-east from the Mazar. Chandra Bhan Dubey S. I. (P.W. 3) further claimed that his party was positioned towards north-west in the Aar of small trees and Tila. Bhagya Chandra Tripathi (P.W. 1) testified to the positioning of the three parties similarly. However, Balwan Singh (P.W. 2) even while testifying to the location of party Nos. 1 and 2 similarly stated differently about the positioning of party No. 3. According to him, party No. 3 was posted to the south of the Mazar as against the testimony of Chandra Bhan Dubey (P.W. 3) and Bhagya Chandra Tripathi (P.W. 1); that this party No. 3 was posted to the west of the Mazar.

21. From the testimony of these witnesses and the site plan prepared by the I.O., it does not appear that the presence of the three raiding parties at the locations claimed by the prosecution would remain unnoticed from the dacoits, if they really came in two batches crossing, the eastern river and taking a turn towards north-west to assemble at the north of the Chabutra of the Mazar. All the three witnesses claimed to have seen both the sets of dacoits while they were coming to the place of their assembly and preparation.

22. All the three prosecution witnesses had testified to the retorts imputed to the dacoits in the recovery memo. Any discrepancies between the contents of the retorts reproduced by them may not be of much consequence. What is of importance is that in the ordinary course, these witnesses were unlikely to be able to over hear the conversation made by the culprits amongst themselves, sitting in the North of mazar as claimed by these witnesses, if these 3 parties were

positioned at the point Nos. 2, 3 and 4 as given in the site plan prepared by the I.O. The I.O. has shown the presence of trees and teela etc. on these points and shown their distance as measured by him. It has been claimed by Bhagya Chandra Tripathi, P.W. 1 in his cross-examination that the bad characters are talking slowly, so this is another suspicious feature in the prosecution story.

23. The prosecution story of spot arrest of the accused-appellants is also quite doubtful and improbable. According to the testimony of Chandra Dubey P.W. 3 and the recovery memo out of the 4 accused-appellants arrested at the spot, one is said to be carrying a factory made S.B.B.L. gun 12 bore and 5 live cartridges, another was armed with English S.B.B.L. gun 12 bore along with 5 live cartridges, another was found carrying American S.B.B.L. gun along with 5 live cartridges and besides this, one was carrying pharsa. This was the state of arms and ammunition with the dacoits assembled at the spot of arrest and recovery as claimed by the prosecution. It is difficult to believe that amongst the above 5 dacoits, one would run away and the 4 of them would meekly surrender to the raiding party without attacking at the raiding parties with their weapons and without firing a single shell from their fire-arms and without inflicting any injury by pharsa on the policemen and the public witnesses who were members of the raiding parties and without offering any resistance as claimed by the prosecution witnesses and as stated in the recovery memo also.

24. In the recovery memo, it was said that on the challenge being given by the S.O., 3 dacoits carrying pharsa stopped with their weapons pointing upwards (i.e. surrendered themselves). The recovery memo at the same time states that all the 4 dacoits were attacked and were arrested after using necessary force 'Hamla Karkey...Avashyak Bal Ka Prayog Karkey Giraftar Kar Liya Gaya.' If they would surrender, there was no occasion to use any force to effect their arrest. Bhagya Chandra Tripathi, P.W. 1 testified to the challenge of the S.O. and said, 'Dacoit Log Kharey Ho Gayey Aur Unmeyn Sey Yek Bhag Gaya Jab Daroga Ji Ney Lalkara Tha...Char Badmash Jo Kharey Ho Gaye They, Unko Hamney Giraftar Kar Liya.' He did not testify to the using of force by the police for effecting the arrest of these 4 dacoits.

25. Balwan Singh P.W. 2 similarly testified to the challenge and to the V.L.P. fire and said that they (raiding parties) challenged the bad characters and arrested the bad characters and one bad character ran away. He also did not testify that force was used in affecting the arrest. Cross-examined by the defence, he stated that neither the bad characters nor the police, nor the witnesses fired any shot at each other. He testified that as soon as the fire of V.L.P. was shot by the S.O., the bad characters ran towards East, and that the bad characters who had trailed behind in running were caught at the spot. He further stated that the bad characters were caught at the very place where they were sitting and that no one ran after bad character who had run away. Both these witnesses were partially hostile but on this point, their testimony is hardly different from the testimony of Chandra Bhan Dubey S.I. P.W. 3. Chandra Bhan Dubey, P.W. 3 testified that the S.O. challenged the dacoits, that all the raiding party at once surrounded the bad characters and arrested 4 bad characters at the spot while one bad character managed to escape. He did not testify that any assault was made by the dacoits. In his cross-examination, he stated that the bad character who ran away was not chased as the bad characters arrested at the spot might have run away in the process. He further stated that no injury was inflicted by him on any of the accused. He, stated 'Sabhi Key Dwara Bal Prayog Karkey Pakrey Gaye.' However, he could not tell whether any of the accused-persons received injury or not. Cross-examined, he testified that the arrest was made near the mazar at 4-5 paces towards the North from it. The suggestion made to him from the side of the defence was that no such occurrence took place as claimed by him and that the accused-persons were actually called from their houses and were falsely implicated in this case.

26. Here it may be noted that the record contains the injury reports relating to Sheo Singh and Mathura Prasad, accused-appellants. In the medical report regarding Sheo Singh, the time of examination was given as 5.10 p.m. on 31-8-1979 by the medical officer in charge of the police hospital Orai and the injury report of Mathura Prasad purports to be recorded by the same medical officer in charge, police hospital Orai, the same day at 5.20 p.m. These are the prosecution papers though they have not been formally proved by calling the medical officer nor any admission denial has been obtained from the defence as required by Section 294 of the Cr. P. C. Nevertheless, the documents being prosecution

papers do bind the prosecution and the injury report of Sheo Singh contains 5 contusions and two traumatic swellings covering different parts of the body and the injury report of Mathura Prasad contained 4 traumatic swelling. These documents tend to support the defence claim that the accused-appellants were rounded up from their respective houses and implicated in this case and in that process, they were inflicted these injuries.

27. Something may be said about the testimony of public witnesses Bhagya Chandra Tripathi P.W. 1 and Balwan Singh P.W. 2. They are semi hostile. Bhagya Chandra Tripathi P.W. 1 supported the prosecution story and also testified to the alleged recovery but stated that he could not tell what has been recovered from whom and could not tell whether the accused-appellants were present in Court at the time of their evidence were the persons who were arrested at the spot. Cross-examined by the learned State Counsel, he claimed that the recovered property was seen at the spot and the documents were scribed at the spot but claimed that these were not read over to them. He claimed in his cross-examination by the defence that for sealing of articles cloth was called from the house of a grocer in village Mohana by the S.O. The prosecution suggestion was that he had colluded with the accused-persons which he denied. Cross-examined by the defence, it came that he was a teacher in Gandhi College, Orai and that he had rented house at Orai (for his living). He added that mostly he goes back to his house (in village Mohana) daily, that in Orai, Children of his relations are studying and live in the room rented by him and off and on he also stayed at the house taken by him on rent at Orai. He claimed that in the night between 28/29-8-1979, he was in Mohana and denied that no such occurrence had taken place in his presence. He also denied that he was at Orai in the night in question. In the ordinary course, when he had rented a house at Orai, the place of his service he was expected to be living in that house at Orai. If he were doing up and down daily from his village to Orai there was hardly any need for him take a house on rent at Orai for living. He has not disclosed the names of any of the relatives whose children, according to him, live in the house rented by him at Orai. So his presence in village Mohana at the time when the S.O. is said to have taken him from the bus stand at 10 p.m. on 28-8-1979 becomes doubtful for this reason also.

28. It may be that Bhagya Chandra Tripathi, P.W. 1 was not asked in his cross-examination by the defence that he was a prosecution witness in another case of spot arrest under Sections 399/402, I.P.C. But it was suggested to Chandra Bhan Dubey S.I. P.W. 3 in his cross-examination by the defence that before the present occurrence, a case of the offences under Sections 399/ 402, I.P.C. had been prosecuted and that therein Bhagya Chandra present P.W. 1 and Balwan Singh present P.W. 2 were also prosecution witnesses. The S.I. did not doing (sic) it. He pleaded only his ignorance about it though that case was suggested to be relating to the same police station. Then he was asked if any occurrence had taken place at the place of the present occurrence subsequent to the present occurrence or not. He pleaded ignorance on this point also. However, it was elicited from him and this is of importance that in the night between 9/10-7-1980 a gang was arrested at the mazar of Chiriya baba which was situated 4 Kms. away from the place of the present occurrence and that in that case, Bhagya Chandra Tripathi (P.W. 1) and Balwan Singh (P.W. 2) were prosecution witnesses. This tends to show that both these prosecution witnesses examined at the trial in the present case, were pocketed witnesses of the police. These two witnesses appeared to be subject to stress and strain from both the sides and for this reason they have said something for the prosecution and something for the benefit of the defence also. Their testimony does not inspire confidence. A shadow of doubt is cast on the prosecution case.

29. At this stage, we may refer to the evidence of Balwan Singh (P.W. 2). He has testified to the prosecution story with variation and contradictions on certain aspects. We have noted the contradictions on certain aspects. We have noted the contradiction in the location where the 3rd raiding party was posted. Then he made a variation about the specified weapons recovered from the different accused-persons. For instance according to recovery memo Girinar gun was recovered from Ghasi accused-appellant while according to this witness, it was recovered from Mathura accused-appellant. He stated that the recovered property was sealed at the scene of spot and that then they came to the bus stand. Asked about the scribing of the recovery memo and other papers, he first stated that he did not remember whether any scribing was done at the spot or not. But when he was read over the recovery memo, he specifically stated that all the Likhparhi

(scribing) was done at the police station after returning there and seeing his signatures on the recovery memo he stated that these were taken at the police station. Cross-examined on behalf of the State, he further states that when he was interrogated by the police immediately after the spot arrest, he told the sub-inspector that the recovery memo was prepared at the spot and that his signatures were obtained at the spot. Cross-examined by the defence, he stated that he did not remember whether any Likhparhi on the bundles of the recovered property prepared at the spot was done at the spot or not. He claimed that his statement was recorded by the police one day after occurrence and that at that time other witnesses were also present and further that it was at that time that his signatures and the signatures of other witnesses were taken on the recovery memo. The defence has relied on this to show that all the Karguzari was done by the police sitting at the police station. There appears substance in this claim keeping in view the totality or the circumstances of the case.

30. The I.O. of this case entered the witness box but beyond making a routine statement, he said nothing. The prosecution did not place on record any material to show that any of the recovered guns were connected with any earlier occurrence. The verbatim claim made by Chandra Bhan Dubey S.I. (P.W. 3) in his testimony that the gun recovered from Puttu Singh accused-appellant had been obtained by committing the murder of Babboo Singh temro cannot be taken at its face value in the absence of any supporting documents. Similarly, his testimony that the gun recovered from Mathura accused-appellant was the one obtained by house breaking by night at the house of Kachhi of village Grampur, also cannot be taken as such. The I.O. did not say a single word about the murder of Babboo Singh or about the house breaking by night testified to by him. If the documents were filed or other material had come on record connecting these weapons with the said earlier offences, planting of these weapons might have been rendered unlikely and improbable and the prosecution story might have gained credence. The fact that no such material has come tends to show that the claim made by the prosecution was not founded on fact. It may be mentioned that the recovery memo itself said that the factory marking on these weapons were somewhat erased. Considering the totality of circumstances, it appears quite likely that these weapons somehow came to the possession of the police and have been planted

on the accused-appellant aforesaid.

31. In view of the above discussion, the prosecution story of the spot arrest of the accused-appellants and the recoveries from them is highly doubtful and suspicious and the prosecution evidence is discrepant and unworthy of credit and consequently, the accused-appellants are entitled to be given benefit of doubt.

32. For the reasons aforesaid, the appeal is allowed. The conviction of the accused-appellants Puttu Singh, Ghasi alias Bhasote and Sheo Singh for the offences under Sections 399 and 402, I.P.C. is set aside and they are acquitted of the same, and the conviction of the accused-appellants Puttu Singh and Ghasi for the offence under Section 25 of the Arms Act is also set aside. They are acquitted of the same. Ghasi and Sheo Singh accused-appellants are on bail from this Court. They need not surrender to it. Their bail bonds are cancelled and sureties discharged. The bail of the Puttu Singh accused-appellant has already been cancelled. He need not surrender to it. His bail bonds are now discharged.

33. Let a copy of this judgment be sent to the Sessions Judge, concerned for information and compliance.