

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**
District & Additional Sessions
Judge-II-cum-Special Judge
MP/MLA, Begusarai
Date of Judgment:- 19.03.2026

FORM A

Present : **Sanjay Kumar-III**
**District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai**

Date of Judgment : 19.03.2026

Case No. : Sessions Case No.- 142/1995
(C.I.S. No.- 171/14)
G.R. No.- 2636/1992
Town P.S. Case No.- 186/1992
u/ss- 307/149, 148, 333, 353, 186, 216(A) of
I.P.C. & 25(1-B)a, 27, 35 of Arms Act &
3,4,5 of Explosive Substances Act.

(Details of FIR/Crime and Police-station)

Informant	State of Bihar (through Syed Wasimul Haque, the Informant)
Represented by	1. Sri Raj Kumar Mahto, Ld. Spl. P.P.
Accuseds	1. Pappu Singh, aged about 52 years, S/O- Chhotan Singh, R/V- Madhurapur, P.S.- Teghra, Distt.- Begusarai. 2. Suraj Singh @ Suraj Bhan Singh, aged about 61 years, S/O- Late Ramnandan Singh, R/V- Shankarwa Tola, Mokama, P.S.- Mokama, Distt.-Patna. 3. Shankar Kunwar, aged about 67 years, S/O- Kamli Kunwar, R/V- Shokhara, P.S.- Phulwariya, Distt.- Begusarai. 4. Shambhu Singh, aged about 67 years, S/O- Sukhdeo Singh, R/V- Saboura, P.S.- Barauni, Distt.- Begusarai.
Represented by	1. Sri Chandra Kant Singh, Ld. Senior Adv. 2. Md. Mansoor Alam, Ld. Senior Adv. 3. Sri Shashi Bhushan Jha, Ld. Senior Adv.

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
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MP/MLA, Begusarai
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FORM B

Date of offence	26.06.1992
Date of FIR	27.06.1992
Date of Charge-sheet	22.09.1992
Date of commencement of evidence	28.05.2007
Date on which judgment is reserved	13.03.2026
Date of the Judgment	19.03.2026
Date of the Sentencing order, if any	25.03.2026

FORM C

List of prosecution/Defence/Court Witnesses

A. Prosecution

Rank	Name	Nature of Evidence
P.W.-1.	Nityanand Prasad	Assistant in Collectorate
P.W.-2.	Shiv Kumar Sharma	Constable
P.W.-3.	Vinay Kumar Thakur	Constable
P.W.-4.	Pramod Kumar Sharma	Constable
P.W.-5	Baijnath Yadav	Constable
P.W.-6	Lalkeshwar Das	Constable
P.W.-7	Naresh Sao	Constable
P.W.-8	Nageshwar Kamti	Constable
P.W.-9	Krishna Chand	Inspector
P.W.-10	Bablu Marandi	Constable
P.W.-11	Tuntun Kunwar	Seizure list witness
P.W.-12	Rudal Paswan	Constable
P.W.-13	Mahesh Prasad	Retired Addl. S.P.
P.W.-14	Yogendra Dubey	Hawaldar
P.W.-15	Lagandeo Singh	A.S.I
P.W.-16	Ramashish Kumar	Constable
P.W.-17	Syed Wasimul Haque	Police Inspector (Informant) & I.O.
P.W.-18	Dr. S.M. Wakar	Doctor
P.W.-19	Dr. Prakash Nandan Singh	Doctor
P.W.-20	Ram Nivash Singh	Seizure list witness

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Judge-II-cum-Special Judge
MP/MLA, Begusarai
Date of Judgment:- 19.03.2026

B. Defence witnesses, if any:-

Rank	Name	Nature of Evidence
Nil		

C. Court witnesses, if any:

Rank	Name	Nature of Evidence
Nil		

FORM D

List of prosecution/Defence/Court Exhibits

A. Prosecution

Sl. No.	Exhibit Number	Description
1.	Ext.-1	Sanction report for prosecution of D.M. Begusarai.
2.	Ext.-2 to 2/7-P.W.-11	Eight Seizure list
3.	Ext.-3/P.W.-17	Formal FIR
4.	Ext.-4/P.W.-17	Seizure list
5.	Ext.-5/P.W.-17	Seizure list
6.	Ext.-6/P.W.-17	Seizure list
7.	Ext.-7/P.W.-17	Seizure list
8.	Ext.-8/P.W.-17	Seizure list
9.	Ext.-9/P.W.-17	Seizure list
10.	Ext.-9/1-P.W.-17	Seizure list
11.	Ext.-10/P.W.-17	Seizure list
12.	Ext.-11	Injury report
13.	Ext.-12 to 12/5-P.W.-19	Injury Report
14.	Ext.13 to 13/7-P.W.-20	Seizure list

B. Defence Exhibits:-

Sl. No.	Exhibit Number	Description
Nil		

C. Court Exhibits:-

Sl. No.	Exhibit Number	Description
Nil		

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Special Judge MP/MLA, Begusarai
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D. Material Objects:

Sl. No.	Exhibit Number	Description
Nil		

J U D G M E N T

EXPLANATION OF CHARGES

01. All the above named accused persons are facing trial for an offence dated 26.06.1992 for forming an unlawful assembly and being armed with deadly weapons, committing murderous assault, grievous hurt on the police force while executing the official duties, for obstructing them in such commission and for harboring, sheltering and facilitating the accused persons in commission of robbery or dacoity who were armed with firearms in the joint control of each other. They were also charged for keeping and using bombs which were known to be in dangerous for human life, thus, charged under Sections 307/149, 148, 323, 353, 186, 216(A) of I.P.C. & 25(1-B)a, 27, 35 of Arms Act & 3,4,5 of Explosive Substances Act.

It's also important to mention here that charges were framed also against Manoj Singh & Ranjan Singh but during the course of trial Manoj Singh and Ranjan Singh died and the proceeding against them were dropped.

PROSECUTION STORY

02. The prosecution case, in brief, is that on 26.06.1992, at about 2:00 am, informant received secret information that the notorious criminals of Mokama, District Patna, namely Surya Singh, Shankar Singh and Mukesh Mishra, who were absconding in heinous offences such as murder, dacoity and kidnapping, along with other members of their gang, had taken shelter in the house of contractor Dayaram Singh situated in Kapasya chowk behind Alka Talkies and were planning to commit some serious offence. The said information was informed to superior officers and at about 3:00 am, informant along with other police personnels proceeded for verification of the information. At about 3:15 am, they reached near Alka Talkies and upon verification, the information was found to be true. At about 4:00 am, informant along with the raiding party attempted to enter the house of Dayaram Singh through the main gate, the criminals present inside the house started firing upon the police party with the intention to kill and also hurled two

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bombs. The bombs exploded near the boundary wall and in the courtyard. On the direction of Dy.S.P Shri Mahesh Prasad, the house was surrounded from all sides. The criminals were repeatedly warned to surrender but they continued firing. In the said occurrence, informant sustained injuries due to the explosion of a bomb. In order to retaliate and protect the police party, positions were taken on the adjoining roofs and firing was made in self-defence. During the exchange of fire, some criminals were seen receiving bullet injuries. After some time the firing stopped and the house was searched. The police party, positioned on the northern roof of the house of Dayaram Singh, also fired several rounds, after which the cries of two persons were heard from the roof. Despite this, the criminals continued firing intermittently and, in response, informant and the police party also continued firing. With the help of electric bulbs light from the nearby houses and the light of torches, the positions of the criminals could be clearly observed. Thereafter assessing the situation, informant along with the raiding party attempted to enter the house of Dayaram Singh. At that time, two criminals tried to flee away towards the eastern side after exploding a bomb, but they were overpowered and apprehended by the armed force. Both the criminals were carrying one bag each and while fleeing they exploded one bomb each. In the presence of two independent witnesses, namely Tuntun Kumar and Rambilas Singh, the personal search of the apprehended criminals was conducted in accordance with law. From their respective bags, two live bombs each were recovered. A seizure list was prepared and all four bombs along with the two bags were taken into possession and both the accused persons were arrested. Upon inquiry, they disclosed their names as Vinod Kumar Singh and Ranjan Singh. Thereafter, informant along with the police party cautiously entered the courtyard of the house of Dayaram Singh, where two persons were apprehended from the southern side. Upon enquiry, accuseds disclosed his name as Mukesh Mishra and Mukesh Singh. In the presence of the aforesaid witnesses, a country-made pistol along with five live cartridges of .303 bore with a charger were recovered from the accused Mukesh Mishra and a bundle of currency notes of ₹500 were also recovered from the fold of his lungi. Near the staircase leading to the roof, another injured criminal was found lying. Upon inquiry, accused disclosed his name as Manoj Kumar Singh. Upon search, two live cartridges of .303 bore concealed in

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his lungi were recovered from his possession, besides this, one air gun along with fifty pellets of the air gun were also recovered. On the southern and western corners of the roof of the house of Dayaram Singh, one bomb and four empty cartridges of .306 bore were recovered which were seized in the presence of witnesses after preparing the seizure list. During further search of the house of Dayaram Singh, one person was apprehended from the toilet with a bag. Upon search, two live bombs were recovered from the said bag. Upon inquiry, accused disclosed his name as Shambhu Singh. The police personal demanded valid documents from the accused persons regarding the country-made pistol, cartridges and bombs recovered from them, but they failed to produce any such documents. Among the injured criminals, Mukesh Mishra sustained bullet injuries on the right side of his chest and left rib, Mukesh Singh sustained injuries on the left shoulder and left armpit, Pappu Singh sustained a bullet injury on the left thigh and Manoj Kumar Singh sustained a bullet injury below the left knee. Constable Prabhuram, who was posted on the southern side of the house, informed that after firing from the roof of the house of Dayaram Singh, two criminals fled towards the western side while firing from rifles. Accuseds Mukesh Mishra and Mukesh Singh stated that the two criminals who had fled away were Suraj Singh and Shankar Singh. The accused persons admitted that they had assembled at the house of Dayaram Singh with illegal arms to commit a serious offence and that Dayaram Singh had provided them shelter. During the occurrence the accused persons fired several rounds and hurled bombs at the police party with the intention to kill, causing severe injuries to him and other police personnel. Thereafter, the present case was registered.

Here it's also mentioned that a huge quantity of arms ammunition and bombs, pellets explosives used or unused articles were recovered. A detailed seizure list was prepared to describe it in brief the seizure lists were mentioned in Exts.- 2 to 2/7 series, Ext.- 3 to Exts.- 10/P.W.-17, Exts.- 13 to 13/7 series/P.W.- 20 were marked.

On the basis of the written application Town P.S. Case No.- 186/1992 under Sections 307, 333, 186, 324, 353, 216(A) of I.P.C & 25(1-B)a, 26, 27, 35 of Arms Act & 3/4/5 of Explosive Substance Act instituted and police after investigation submitted charge-sheet u/ss- 148, 149, 307, 324, 333, 353, 186,

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Judge-II-cum-Special Judge

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Date of Judgment:- 19.03.2026

216(A) of I.P.C. & 25(1-B)a, 27, 35 of Arms Act & 3,4,5 of Explosive Substance Act. After cognizance the court committed this case to the Court of Sessions and thereafter this record was transferred to this court for trial and disposal. On 28.05.2007 charges were framed and summons were issued for the prosecution evidence. On behalf of prosecution altogether twenty witnesses were examined.

It's important to mention here that initially in this case ten accused persons were impleaded. In course of investigation and trial, accused persons, due to their death or absence, got their names dropped or trial separated. It's also important to mention here that trial of Vinod Kumar Singh was separated on 17.02.2007 but he kept on being remanded in this case without being charged. A petition on behalf of prosecution was filed stating this fact which was not objected by the defence counsels. With such facts as pointed out by the prosecution and not opposed by the defence and the clerical error the trial of Vinod Kumar Singh proceeded even not being charged for the offences and his trial was got separated on 17.02.2007. So, his case was not taken up for consideration during this trial. Now, the court proceeds with the present charge facing four remaining accuseds.

On behalf of the prosecution it was submitted that all the charge-sheeted witnesses have been examined and all the documentary evidences has been brought on record. Hence it's evidence be closed. With such submission, the prosecution evidence was closed and statement of accused persons were recorded under Section 313 Cr.P.C to which they denied the evidences and claim themselves innocent.

On behalf of the defence, neither documentary evidences were brought on record nor any defence witnesses were examined.

3. Now, it is to be judged as to whether prosecution has able to prove it's case beyond all reasonable doubt or not?

Findings.

4. As stated above on behalf of prosecution altogether twenty oral witnesses were examined including the informant, witnesses to seizure list, police officials and doctor. Thirteen documentary evidences were also brought on record. On behalf of defence, no oral witness was examined and no documentary evidence in the form of Arms licenses were brought on record.

Now, this court minutely scrutinizes the evidences of the

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District & Additional Sessions
Judge-II-cum-Special Judge
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Date of Judgment:- 19.03.2026

prosecution.

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P.W-3.	Vinay Kumar Thakur
P.W-4.	Pramod Kumar Sharma
P.W.-5	Baijnath Yadav
P.W.-6	Lalkeshwar Das
P.W.-7	Naresh Sao
P.W.-8	Nageshwar Kamti
P.W.-9	Krishna Chand
P.W.-10	Bablu Marandi
P.W.-11	Tuntun Kunwar
P.W.-12	Rudal Paswan
P.W.-13	Mahesh Prasad
P.W.-14	Yogendra Dubey
P.W.-15	Lagandeo Singh
P.W.-16	Ramashish Kumar
P.W.-17	Syed Wasimul Haq
P.W.-18	Dr. S.M. Wakar
P.W.-19	Dr. Prakash Nandan Singh
P.W.-20	Ram Nivash Singh

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In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

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District & Additional Sessions
Judge-II-cum-Special Judge
MP/MLA, Begusarai
Date of Judgment:- 19.03.2026

14. Ext.13 to 13/7-P.W.-20 Seizure list

Before dealing with the evidence this court points out that out of twenty witnesses, four witnesses namely, P.Ws.-11 & 20 were witness to seizure list whereas P.Ws.- 18 & 20 were doctors and rest were police officials.

SCRUTINY & ANALYSIS OF EVIDENCES

5. **P.W.-01 is Nityanand Prasad**, he has stated that on 08.09.1992, he was posted in the Legal Section of the Collectorate, Begusarai. Letter No.- 1346, dt.- 08.09.1992, issued from the officer of the D.M, was prepared by him. It bears the signature of the then D.M., Sri Rameshwar Singh, which he identified. The sanction order was dated 07.09.1992 and also contains his initials signature which was marked as Ext.-P-1/P.W.-1. The prosecution sanction was accorded against the accused persons namely Mukesh Singh, Mukesh Mishra, Manoj Kumar Singh, Pappu Singh and Dayaram Singh.

In cross-examination from the side of Suraj Bhan Singh & Shankar Kunwar, he has stated that the prosecution sanction order was not against Suraj Bhan & Shankar Kunwar. From the said prosecution sanction, it does not transpire whether the complaint was placed before the D.M. A copy of the case diary furnished at that time. It cannot be stated whether the sanction order issued by the D.M is still in force.

In cross-examination from the side of Pappu Singh, he has stated that he doesn't have the Sanction report prepared in respect of the weapon. He doesn't know or identify the person named in the said sanction report.

In cross-examination from the side of rest accused persons, he has stated that despite repeated calls, no one appeared to conduct the cross-examination, accordingly, the witness is discharged.

Different sets of cross-examination were made to this witness. On analysis of his evidence, this court finds that he had accepted that the sanction order was with respect to Arms Act and that to also only against Mukesh Singh, Mukesh Mishra, Manoj Kumar Singh, Pankaj Singh and Dayaram Singh.

6. **P.W.-02 is Shiv Kumar Sharma**, he has stated that on 26.06.1992, he was posted at Town P.S. Begusarai. At about 03:00 am, he received information that some criminals were staying at the house of Dayaram near Naya Tola. He along with the then S.H.O., Inspector and constables went there and

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

cordoned off the area. On seeing the police party, the criminals opened fire and the police also retaliated. About two to three persons were injured from the both sides. Injureds were apprehended by the Officer-in-charge and brought to the police station. He didn't see whether anything was recovered from his possession. The criminal committed the offence with the intention of saving his life and causing the death of the police personnel.

In cross-examination from the side of Suraj Bhan Singh & Shankar Kunwar, he has stated that the criminal neither fired any shot nor he fired at anyone. However, he has stated that a shot was fired. He has unable to disclose the name and address of the person who fired the shot, nor can he identify him. His statement was recorded for the first time today and prior to this, his statement was not recorded by the I.O & Dy.S.P.

In cross-examination from the side of rest accused persons, he has stated that despite repeated calls, no one appeared to conduct the cross-examination, accordingly, the witness is discharged.

On analysis of the evidence of this witness, this court finds that he has claimed that neither any shot was fired by him nor he fired any shot. He has also not identified anyone.

7. **P.W.-03 is Vinay Kumar Thakur**, he has stated that on 26.06.1992, he was on deputation at Begusarai, Town P.S. On the direction of a senior officials, he proceeded to conduct a raid at the house of a contractor at about 02:30 am, however, he doesn't remember the name of the contractor or the exact locality. The police party had gone there to apprehend the criminals present at the spot. After some time, firing started from the side of the criminals and they made a deadly attack upon the police party. In self-defence, the police also retaliated. In the morning, it was found that some police personnel had been injured and about 3-4 criminals had also been injureds. Injured criminals were apprehended and brought to the police station, where some weapons, cartridges, bombs and some cash were recovered.

In cross-examination from the side of Suraj Bhan Singh & Shankar Kunwar, he has stated that he doesn't know the name or identity of the person who fired the shot, nor can he identify him. No shot was fired at him. He has also fire any shot in self-defence. His statement was not recorded by the I.O., earlier it has

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

been recorded here for the first time. He has appeared to depose in this court as per the direction of the senior officer.

From the side of Manoj Singh, in his cross-examination, he has stated that he can't say from where the articles were recovered. He was at the morcha and didn't see any recovery being made.

From the perusal of the evidence of this witness, this court finds that he has not identified any accused persons not in his presence any arms and ammunition were recovered.

8. **P.W.-04 is Pramod Kumar Sharma**, he has stated that on 26.06.1992, he was posted at Begusarai Town P.S. At about 03:00 am, he went on a raid along with the police personnel. During the raid, they reached near a cinema hall however he doesn't remember its name. The criminals were hiding in a nearby house. During the raid, firing took place and the police also retaliated. He only heard the sound of gunfire. Later, it was found that 2-3 police personnel and 3-4 criminals were injured. The injured criminals were brought to the P.O and weapons and other articles were recovered from them.

In cross-examination from the side of Pappu Singh, he has stated that an air gun fires pellets and is generally used for hunting birds.

In cross-examination from the side of Ranjan Singh, Shambhu & Vinod Kumar, he has stated that he can't say whose house was situated near the place where they went to conduct the raid.

From the side of Manoj Singh, he has stated that he can't say in whose house the raid was conducted.

From the side of Suraj Singh & Shankar Kunwar, he has stated that none of the accused persons were apprehended by them. They didn't fire any shot. He had not given any statement to the police earlier his statement is being recorded for the first time today. He didn't identify any of the accused persons who fled away or arrested.

From the perusal of evidence, this court finds that his statement was not recorded by the police and he has deposed before this court for the first time. He has not identified any of the accused person who had either fled away or arrested.

9. **P.W.-05 is Baidhyanath Yadav**, he has stated that on 26.06.1992

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

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District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

he was posted at Begusarai Town P.S. At about 03:00 am, the S.H.O directed them to conduct a raid near Alka Cinema. A house surrounded by a boundary wall was surrounded by the police party where some criminals were hiding. During the raid, the criminals started firing and the police also retaliated. About 3-4 criminals were injured and apprehended and some weapons were recovered from them. The criminals also hurled bombs, causing injuries to some police persons. He doesn't recognize the person who appears to be provoking or supporting him.

In cross-examination from the side of Pappu Singh, he has stated that Daroga Jii didn't take his statement.

From the side of Ranjan Singh, Shambhu Singh & Vinod Kumar Singh, he has stated that if they go for a raid, he can't say which place is adjacent or nearby.

From the side of Manoj Singh, he has stated that he didn't get a chance to go inside.

On analysis of the evidence of this witness, this court finds that this witness has accepted that S.H.O had already briefed him to adopt a particular story. Since he was outside, he had not seen what was recovered from where.

10. **P.W.-06 is Lal Keshwar Das**, he has stated that on 26.06.1992, he was posted at Begusarai Sadar P.S. At about 2-3: am, a senior officer took them to a place behind Alka talkies to conduct a raid at a house. The police party took positions around the house. The criminals inside started firing to them and the police also retaliated. During the incident, the first officer sustained injuries due to the firing by the criminals and in the retaliatory action, three criminals were injured. Thereafter, they left the place. From the spot, country-made pistols, bombs and other articles were recovered and the injured criminals were arrested.

From the side of Pappu Singh, this witness has deposed that the SHO briefed them to say the same facts to the higher police officials as told to him by the S.H.O. At that time, when the S.H.O briefed them there were eight persons were present.

From the side of Suraj Singh & Shankar Kunwar, he has stated that the senior officer instructed the members of the raiding party as to what they were required the state before the senior officer. He didn't identify the perpetrator by his uniform as he was inside the area and didn't see the gunman. A country-made

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
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MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

pistol was recovered and took away by the S.H.O. He doesn't know where he was kept at the police station.

In cross-examination on behalf of the accused Manoj Singh, he has stated that as per the instructions of Bara Babu (Officer-in-Charge) they have not given any statement here. As they were standing outside, they didn't see what articles were recovered from the P.O. He can't state how many persons were present at the place where the raid was conducted.

11. **P.W.-07 is Naresh Sao**, he has stated that on 26.06.1992 he was posted as Town P.S. At about 03:00 am, he accompanied the Officer-in-Charge in a raid at a house. The police was surrounded from all sides. Some miscreants from inside started firing and the police also retaliated. Four criminals and some police personnel sustained injuries. Weapons and bombs were also recovered.

In cross-examination from the side of Suraj Singh & Shankar Kunwar, he has stated that he didn't fire any shot and no injury was sustained to him.

From the side of Ranjan Singh, Shambhu & Vinod, he has stated that he can't say how many persons reside in that locality.

From the side of Manoj Singh, he denied on behalf of cross-examination.

From the side of Pappu Singh, he has stated that he has seen an air gun. A .303 bullet can't be fired from an air gun.

On analysis of the evidence of this witness, this court finds that he has not identified the accused persons. He knew that from a air gun, a bullet of .303 caliber could not be fired. He has supported the incident of 26.06.1992.

12. **P.W.- 8 is Nageshwar Kamti**, he has stated that at the time of the occurrence, he was posted in District Police, Begusarai. The incident took place on 26.06.1992 at about 3-4 am at the house of Dayaram Singh, contractor at Tapasya Chowk, Begusarai. 6-7 criminals namely Mukesh Singh, Manoj Singh, Shankar Singh, Suraj @ Suraj Bhan Singh, Shambhu Singh, Vinod Singh & Ranjan Singh were present there and were planning to commit a crime. When the police reached the spot, the criminals were armed with weapons. During the incident, three of them namely Mukesh Singh, Mukesh Mishra & Manoj Singh sustained injury and were apprehended. Shankar Singh and Suraj Singh managed to escape. From the

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

possession of the criminals, bombs & cartridges & others articles were recovered. He has further stated that he can identify the accused persons if produced before him.

In cross-examination from all the accused persons, he has stated that he had never been to the house of Dayaram Singh prior to this case and visited it only after the occurrence. At that time, the senior officer was bringing two or three persons out of the house. He doesn't know from which room they were brought or how many rooms the house. Dayaram Singh was present there but the senior officer didn't inform them about it. The occurrence took place at night in darkness. He was standing about 100-150 ft away. He was neither assaulted nor did he fire shot and no shot was fired at him. He didn't see anyone fleeing from the place, the names of the persons who allegedly fled away were stated by the senior officer. His statement has recorded before the court for the first time today, and he had not given any statement to the police earlier. He has appeared before the court in compliance with it's order and am ready to file his affidavit.

From the perusal of the evidence of this witness, this court finds that in his chief-examination he has named the accused persons who were involved in the offence and also named who were arrested and who fled away. However, in the cross-examination, he has candidly accepted that he had not seen any persons fleeing on his own. Instead their names were told to him by the S.H.O. This implies that his narration about the accused fled away was not known to him. But he has supported the incident.

13. **P.W.-9 is Krishna Chandra**, he has stated that the occurrence took place on 26.06.1992 at about 04:00 am, at the house of contractor Dayaram Singh situated in Tapasya Mohalla. At the said place, Mukesh Singh, Mukesh Mishra, Manoj Singh, Shambhu Singh, Vinod Singh, Ranjan Singh, Pappu Singh and Chhotan Singh (not an accused in this case) were apprehended. From their possession, arms, bombs, empty cartridges and live cartridges were recovered. Broken sticks, thorns, pieces of iron, tin and other articles were also found at the place of occurrence. Out of the accused persons apprehended namely Mukesh Singh, Mukesh Mishra, Manoj Singh, Pappu Singh & Chhotan Singh had sustained injuries. During the occurrence, a bomb splinter struck his head. He has stated that he had not identify the accused persons.

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

In cross-examination from the side of Suraj Singh, he has stated that the house of Dayaram Singh is situated at the north-east corner of Tapasya Chowk. On that day, he didn't meet Dayaram Singh at the P.O. He had no opportunity to enter into his room. There was another building there which had about 5-6 rooms. He doesn't know whether the injured persons are still alive or dead. His signature was not taken on any document. The aforesaid seized articles have not been produced before the court.

From the side of all the accused persons, he has stated that the said house belongs to Dayaram Singh. He has not had the opportunity to see any document regarding it but he can state the boundaries of the land.

After scrutiny of the evidence of this witness, this court finds that he has supported the incident of 26.06.1992 but also named Chhotan as an accused, though, he was not an accused in this case. However, he had the knowledge that the said house was of Dayaram Singh. This court also finds that he has not identified any of the accused persons.

14. **P.W.-10 is Bablu Marandi**, he has stated that the incident took place on 26.06.1992 while he was posted at Begusarai Town P.S. He received secret information that some criminals were hiding in the house of Dayaram Singh situated behind the cinema hall near Kapasya Chowk. Thereupon, he along with Inspector Chandra, Inspector Haque Sahib and Jamadar Jeevan Prasad proceeded to the spot in a jeep. At about 04:00 am, firing started from the side of the criminals and bombs were also hurled at the police party. In order to save his lives and in self-defence, the police party also opened fire. During the incident, about 3-4 persons from both sides sustained injuries. Some of the accused surrendered while 2-3 of them managed to flee away while firing. Four accused persons were caught with arms. Mukesh Singh, Suraj Singh, Mukesh Mishra and Manoj Singh were apprehended and brought to the police station while the injured were sent for treatment. He has stated that he identified the accused persons if produced before him.

In cross-examination on behalf of Pappu Singh, he has stated that he proceeded in two or three groups under the leadership of K. Chandra. They all went by vehicle and reached near the house of Dayaram Singh. A large number of police personnel were present. Some of them had taken positions on the north and

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

east sides. The accused persons didn't run towards him. They were moving towards the south. It was not dark as there was sufficient light around 04:00 am. Thereafter, they returned by road to the police station.

From the side of Suraj @ Suraj Bhan Singh, he has stated that the day of the occurrence, there was sufficient daylight at about 04:00 am. He can't state the date of his marriage. He had not visited the house of Dayaram Singh prior to the occurrence. He was informed by Bada Babu about the space inside the house however he didn't enter the house and therefore can't say about it. The police party had taken positions by cordoning the area, first at a distance of about 200-300 yards and then at about 50 yards. He didn't fire any shot. He was carrying a rifle. While taking position near a bush, he sustained an injury from a thorn. About eight persons were present near the bush and the nearest constable also sustained a similar injury. He showed the injury but didn't go to the Government Hospital and instead took treatment near the police station for about three-four days. He didn't apprehend any accused though he chased them. Later, the senior officer informed him that Suraj Singh had fled away. He was mistaken in earlier stating that he had identified Suraj Singh among those who fled away.

In cross-examination from the rest accused persons, he has stated that a double floor house was situated to the North of Dayaram Singh's house, a bush to the East and a hut to the West. He can't say whose properties these were. He held his position at the spot. It has not correct to say that he has deposing at the instance of Bada Babu. He reached the scene at about 04:00 am, didn't enter any room, didn't apprehend any accused person and didn't recover any articles. His statement was not at the direction of any senior officer.

From the scrutiny of the evidence of this witness the court finds that he was a member of the raiding team. He has supported the prosecution case and his presence at P.O. He has also named the accused persons who were apprehended including Suraj Singh. But this was not the case of prosecution as P.W.-17 says Suraj Singh was among the two, who fled away. Besides in cross-examination, he says that the name of Shankar Singh was told to him by the S.H.O. On this point, this witness fumbles. Besides, he has also stated that he along with other were briefed by the S.H.O, what to tell about the incident to the their seniors. This shows that this witness was tutored.

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

15. **P.W.-11 is Tuntun Kunwar**, he has stated that the incident occurred on 26.06.1992. At that time, he was behind Alka Talkies, eight seizure lists were prepared in his presence. He further stated that he bears his signature & identified the seizure lists which was marked as 2, 2/1, 2/2, 2/3, 2/4, 2/5, 2/6, 2/7.

In his cross-examination from the side of accused Shankar, he has stated that he do not remember at whose instance and at what time he signed it, nor do he remember whether the paper was blank or written.

From the side of rest accused persons, he has stated that he doesn't know what was written in the said seizure list and his statement was not recorded by the police.

This court from the evidence of this witness finds that he was witness to the seized article. Though he didn't remember whether the seizure list was prepared in his presence or was prepared earlier but he has identified the seizure list from Exts.-2 to 2/7.

16. **P.W.-12 is Rudal Paswan**, before being before he has stated that the incident occurred on 26.06.1992 at about 04:00 am. He has stated that they were present behind Alka Talkies at the house of contractor Dayaram Singh. Dy.S.P Mahesh Prasad, inspector and the S.H.O. Wasimul Haque were also present with the police party. The house was surrounded and the occupants were asked to surrender. However, they started firing and hurled bombs at the police party. Thereafter, the Dy.S.P ordered that the police also retaliated and about 3-4 round were fired. During the raid, Mukesh Mishra, Mukesh Singh, Manoj Singh and Suraj Singh were apprehended while some others managed to escaped from the roof.

He has further stated before the police that he had identified the Suraj Singh and Shankar Singh among the persons who had escaped. From the P.O., one pistol and seven cartridges were recovered from the possession of Mukesh Singh, one pistol was recovered from Mukesh Mishra and one pistol with one cartridge was recovered from Manoj Singh. A firearm, fifty air-gun pellets, bombs and others articles were also recovered from the roof. He identified the accused Manoj Singh present before the court and he could identified the other accused persons if shown.

In cross-examination from the side of Suraj Singh, he has stated that

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

he had never visited the house of Dayaram Singh prior to the occurrence. The house had about 4-5 rooms and there was no boundary wall, with a field situated behind it. At the time of the occurrence, he was standing on the eastern side of the house along with 50-60 police personnel. He didn't apprehend any person. His statement was recorded 3-4 times between 03-04:00 pm. He had stated before the police that on seeing the police force, Dy.S.P ordered firing and thereafter he also fired. He further stated that he had identified the accused with the help of torchlight. He has deposing in this case under the orders of his superior officer.

From the side of Pappu Singh, he has stated that they proceeded under the leadership of A.S.I Ram Jeevan Pd. Singh and returned thereafter.

From the side of rest accused persons, he has stated that he cannot say whether the house of Dayaram Singh had a boundary wall. They left the P.O at about 03:45 am and went to Town P.S. No person from the house or nearby was injured. He neither apprehended anyone nor seized any article. He has deposing as instructed by the police officers.

From the perusal of the evidence of this witness, this court finds that this witness was declared hostile by the prosecution. However, he tried his best to support the prosecution case for the fact that he had written the details of the date of the occurrence, names of Suraj Bhan Singh, Mukesh Singh, Manoj Singh. He has come to depose on the instruction of senior officers. On analysis of the evidence of this witness, this court finds that the prosecution was hell bound to get the name of atleast three accused should come in the deposition of this witness. But he was caught by the defence. This seriously causes dent in the prosecution case. Besides he has named Suraj Bhan Singh as one of the accused who was caught at the P.O itself. This shows that prosecution was intending to implicate Suraj Bhan Singh by any means. So his evidence becomes also doubtful as the prosecution himself had declared hostile.

17. **P.W.-13 is Mahesh Prasad**, he has stated that the incident occurred on 26.06.1992. At that time, he was posted as the Dy.S.P., Begusarai Headquarters. At about 12:00 midnight, he received information that certain criminals from the district were proceeding to the residence of Jayram Singh, a contractor near Kapasya Chowk with the intention of committing a crime. After consulting the S.P., a raid was conducted involving BMP, District Police

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

Constables and local officers, including K.S. Chandra, Inspector Wasimul Haque, S.H.O., Jeevan Prasad, Jamadar & A.S.I. The house of Dayaram Singh was surrounded and the occupants were ordered to surrender. On realizing the police presence, the criminals fired and hurled bombs. The incident continued until about 04:00 am in the morning. Police returned fire in self-defence. Four injured criminals Umesh Singh, Mukesh Mishra, Manoj Singh and Pappu Singh were apprehended and three others were also caught though their names were not known. Country-made revolver and ammunitions were recovered from the premises. 2-3 criminals including Shankar Singh & Suraj Singh managed to escape with their weapons. Several police personnel were injured including he himself, as his right wrist was hit by a bomb. Inspector Chandra, S.H.O Haque, Ram Jeevan Prasad and also sustained injuries.

In cross-examination from the side of Pappu Singh, he has stated that his statement was recorded before the I.O along with those of other witnesses. While witness statement was recorded separately. The S.H.O organized the raiding party under his supervision after receiving information and the S.P directed him to carry out the raid. The party was divided and he led 4-5 constables to the South wall. The S.H.O ascertained Dayaram Singh's whereabouts on his orders. Electric lights were on around the house. Criminals were warned that they were surrounded by the police then the criminals fired from the room, courtyard and roof. He didn't enter into the firing and went inside only after it stopped. The accused persons were apprehended and recovered articles were brought to the police station. He didn't remember how many times his statements were recorded by the I.O. He saw Pappu Singh injured in the courtyard. He didn't see or inquire about Dayaram Singh's family or servants. The place was a criminal hideout and local residents observed the incident. No member of the public was injured. The seizure list was prepared on the spot. It was not correct to say that the accused were apprehended in a pre-planned manner.

From the side of Shankar Kunwar, he has stated that he has deposed in court the same statement that he had given to the I.O. The house of Dayaram Singh was cordoned off on all four sides. However, in his statement to the police, he didn't mention that the house was cordoned off from the East. No separate raiding party was formed at that spot. He has candidly accepted that in his

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

statement to the I.O., he has stated that he didn't know the names of Suraj Singh & Shankar Kunwar who fled away. The names were informed to him by Shambhu Singh & Mukesh Mishra.

He has stated that it was not correct to say that they didn't inform him and that he gave a false statement to the police. He has further stated that he also saw 2-3 criminals fleeing away but he didn't pursue them.

From the side of Suraj Singh, he has stated that before the day of the occurrence, he had never visited the house of Dayaram Singh. The house is located North of NH-31 behind Alka Cinema with some shops and the cinema situated between the house and the highway. The house has a fence but he doesn't recall the height of the wall or whether there was any wire on the wall. Since the incident occurred about 16 years ago, he can't say who many rooms were inside the house. From his position, he could see about half to three quarters of the courtyard. Apart from him, Inspector K Chandra, S.H.O., Haque, Jeevan Prasad and 30-35 raiding party members were present in the courtyard. He remained until about 04:30 am. Entry was made using a ladder but he didn't climb it. He didn't fire any weapon though some members outside held pistols. He cannot name those members. After the raid, some members outside mentioned criminals who had fled away but he can't name them. There was no water in or around the house. Before the raid, he met S.P at his camp (dera) around midnight then proceeded to Town P.S paperwork was done in the courtyard of Dayaram Singh's house around 4-4:30 am but he didn't sign any documents. He doesn't recall the number of bullets seized or whether they were recovered from inside or outside the house. After the raid, they went to the police station and then to the camp. He has stated that police has recorded joint statement of the raiding team. He doesn't recall his movements later that day. In his statement to the police, he didn't mention the time of receiving information, discussions with the S.P or that the palm of his right hand was injured, though he did state he was injured. The accused persons were told to surrender, the incident occurred about 04:00 am in rain, with electricity providing light. Some accused persons escaped with weapons. It was not correct to say that no such incident occurred or that he gave a false statement regarding Suraj Singh fleeing away.

From the side of rest accused persons, he has stated that he received

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

information from the S.P that certain persons were hiding at the spot. He reached the scene approximately half an hour after receiving the information. About 60 rounds of bullets were fired from both sides. The incident occurred in the densely populated area. No one was killed and the bomb didn't cause any damage to the walls. He led the police from the South but didn't apprehend any person.

After analysis of evidence, it becomes evident that even being the senior most officer, he was not able to recall the height of the fencing. Beside other witness has stated that there was water logging in the house, but he has not found such water logging. Earlier he has stated that bomb hit his palm, but there was no such injury was found by the doctor. He himself has not identified Shankar Kunwar as Suraj Bhan Singh but came to know about him only from Shambhu Singh & Mukesh Mishra. However, he proves that from the P.O some accused persons were arrested and bombs, pistols, cartridges and pillets were recovered from P.O.

18. **P.W.-14 is Yogendar Dubey**, he has stated that the occurrence took place on 26.06.1992 at about 3-4:00 am at Kapsya Chowk behind Alka Cinema, at the house of Dayaram Singh. He has stated that the informant along with police officers conducted a raid and surrounded the house. When the accused persons were asked to surrender, they allegedly opened fire and hurled bombs at the police personnel, causing bomb splinter injuries to some police personnel. He has further stated that seven accused persons namely Mukesh Mishra, Mukesh Singh, Pappu Singh, Manoj Singh, Ranjan Singh, Shambhu Singh and Vinod Singh were apprehended at the spot, while Suraj Singh and Shankar Singh allegedly escaped with weapons. He has also stated that Mukesh Mishra, Mukesh Singh, Pappu Singh and Manoj Singh were found injured and the police recovered bombs, empty cartridges and a revolver from the P.O.

In cross-examination from the side of Suraj Singh, he has stated that he could not say how many rooms were in the house of Dayaram Singh. He has further stated that he was for the first time when he was deposing before the Court and that his statement had not been recorded by the police earlier. He has also stated that he had not sustained any injury and that no obstruction had been caused in the discharge of his duty. He has further deposed that on the date of occurrence he had entered the house of Dayaram Singh between 3-4:00 am and had remained

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

there for half an hour while about 20–25 police personnel had surrounded the house. He has stated that he had not seen who had fled away and that he had come to know the name of the accused persons present outside. He has further stated that he could not say how many rounds had been fired whether any empty cartridges had been recovered or what was the height of the boundary wall. He has also stated that he had not apprehended anyone personally and that he had gone there on the orders of his superior officer. He denied the suggestion that he was deposing falsely or that the name of Suraj Singh had been wrongly mentioned.

From the side of accuseds Shambhu, Ranjan & Vinod, he has stated that he cannot say how many houses were around Dayaram Singh's, located inside a mohalla, and doesn't recall the exact number of houses. He doesn't remember if people from adjacent houses came, some were coming from behind, but he doesn't recall their number. He didn't apprehend anyone personally.

From the side of Pappu Singh, he has stated that he was standing at a distance of about 25 yards from the house of Dayaram Singh and that he had also gone inside the house. He denied the suggestion that the accused persons have been falsely implicated by alleging a planned attack.

From the side of Shankar Kunwar, he has stated that the house of Dayaram Singh is situated about 100 yards from the N.H. He has further stated that he cannot say how many houses are situated between the N.H. and the said house. He has also stated that he cannot describe the boundary of the house and that there are other houses nearby, but he does not know to whom they belong. He has further stated that Shankar Singh was among those who fled away and that the accused persons had disclosed that he was apprehended. He denied the suggestion that he has wrongly named Shankar Singh as one of the persons who fled away. He has stated that after the raid he came to the police station in a police vehicle along with two accused persons.

From the perusal of the evidence of this witness, this court finds that he has supported the encounter of 26.06.1992. It's also found that in his cross-examination he has stated that before the encounter he had not identified any of the accused persons. It was only when he came out then came to know that some accuseds had fled away. It was only on the narration of others he came to know about the accuseds who fled away. So far this reason his identification becomes

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

doubtful.

19. P.W.-15 is Lagandeo Singh, he has stated that the occurrence took place on 26.06.1992 at about 04:00 a.m. near the house Dayaram Singh. Upon receiving information, they reached the place of occurrence. On seeing the police, Manoj Mishra, Shambhu Singh and others confronted them and opened fire and also hurled bombs. The accused persons continued firing even towards the police station. The police party also retaliated by firing. During the occurrence, the then Officer-in-Charge and 2-3 constables sustained injuries. Two accused persons, namely Manoj Mishra and Manoj Kumar also sustained injuries. He has further stated that he chased accused Suraj Bhan Singh. He identified the accused Shambhu Singh and has stated that he can identify the other accused persons if produced before him.

In his cross-examination from the side of Shankar Kunwar, he has stated that he had proceeded on patrol duty under the leadership of Dy.S.P., and the raiding party was also constituted under his leadership at about 03:00 A.M. at Nagar Police Station. From there, they proceeded to the house of Daya Shankar Singh situated behind Alka Cinema. He has stated that he cannot say that there were how many houses between Alka Cinema and the house of Dayaram Singh, nor can he describe the boundary of the said house. He further stated that he did not enter inside the house. He has deposed that firing was being made from different directions and bombs were also being hurled and the assailants were at a distance of about six meters. He took cover on the eastern side for his safety. He has further stated that his statement was recorded two days after the occurrence and that he has made the same statement before the Court as he had made before the I.O. He has also stated that he did not sustain any injury.

From the side of Manoj Kunwar, he has stated that he reached the P.O about one hour after receiving information and on arrival disclosed his identity as a police personnel. He has stated that Manoj Kunwar and others intercepted them and questioned their identity. He has deposed that he identified the accused persons in the available light; however, he admitted that he had not seen Manoj Kumar Singh prior to this case and identified him for the first time herein. He has further stated that no injury was caused inside the house during the raid. The accused persons were firing and hurling bombs while taking shelter and

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

sustained injuries while fleeing at a distance of about 10 yards. Both sides fired for about 40–45 minutes, and no bullet marks were found at the place of shelter. Thereafter, all police personnel, except 2–3 constables, returned to the police station.

From the side of Ranjan, Shambhu & Vinod, he has stated that he was present about 100 yards East of the house of Dayaram Singh. He neither apprehended any accused nor fired any shot. He does not remember the number of persons present, though some local persons had gathered, and no one from the locality sustained any injury. He has further stated that some local persons were made witnesses to the seizure list, but he does not remember their names, and that he did not know the accused persons prior to the occurrence. The witness has stated that on the date of occurrence he did not enter the house of Dayaram Singh. Dayaram Singh disclosed the house to be his and fled away. He has stated that he saw him at about 04:00 A.M. from a distance of about 100 yards. He has further stated that about 30 armed police personnel were present with him. He has deposed that although he attempted to apprehend Dayaram Singh, he escaped, and neither did he chase him nor resort to firing. He has also stated that he did not go to the upper portion of the house. The house was surrounded by a boundary wall of about 7–8 feet, which he climbed during the search that continued for about one hour. He has further stated that the accused persons fled from the courtyard and thereafter the police party returned to the police station. He has also stated that his signatures were obtained at the police station, though he does not remember the exact time. He has admitted that he had not stated before the I.O. that he had chased Suraj Bhan Singh, and denied the suggestion that no such occurrence took place.

From the scrutiny and analysis of the evidence of this witness, it comes before the court that he has supported the incident of 26.06.1992. At the same time, this court finds that he has introduced certain new facts which was neither in the very detailed self-statement of the informant nor has come in the evidence of other witness including the I.O. According to him, when he tried to enter the house Manoj Mishra, Manoj and Shambhu Singh confronted. Besides, he also met Dayaram Singh. In his deposition he has stated that he was chasing Suraj Bhan Singh and later on said that he had not given statement to the I.O that he had

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

chased Suraj Bhan Singh. There was no whisper about Shankar Singh. So, this court finds that there was certain attempt to improve from the statement u/s 161 of Cr.P.C and deposition regarding the chase of Suraj Bhan Singh. On this part, this court doubts the deposition.

20. P.W.-16 is Ramashish Kumar, a constable who had been now discharged from service. He has stated that the incident occurred at the house of deceased Ram Dayal Singh (name wrong). At that time, he was a member of the armed force and present there. Counter-firing started from the said house in which Dy.S.P. Mahesh Prasad Singh, Inspector Jeevan Prasad and S.H.O Haq sustained injuries. Some suspects fled away while others were apprehended in an injured condition and arms were seized from the spot. The S.H.O has stated that Mukesh Mishra, Mukesh Singh and Manoj Singh were among those who were arrested and Shankar Singh has managed to flee away. He couldn't name others who fled away and due to the lapse of about 18 years, he was unable to identify any of the accused.

In his cross-examination by all the accused persons, he has stated that the distance from his house to Begusarai is four kilometer. This witness has supported the prosecution case and identified Shankar Singh.

21. P.W.-17 is Syed Wasimul Haque, he is the informant of this case. He was the Officer-in-Charge of Town Police Station on 26.06.1992 when he received information regarding the presence of the accused persons. After registering Sanha No. 754, he constituted a raiding team and proceeded to Kapasiya Chowk. When the police team surrounded the house of Dayaram Singh, indiscriminate firing was made and bombs were hurled at the police team. He further stated that the house was surrounded by boundary walls, and the police personnel took shelter behind the walls and thereby protected themselves from the firing of the accused persons. Despite warnings by the police personnel, the firing continued. In the light of the bulb, he was able to show the positions of the accused persons. Thereafter, on the order of Dy.S.P. Mahesh Prasad, the police team also retaliated, and after about 45 minutes the firing from the side of the accused persons stopped. With the help of a ladder, the police team entered the house of Dayaram Singh and apprehended Vinod Singh and Ranjan Singh, from whose possession arms and ammunition, including bombs, were recovered. Thereafter,

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

two accused persons were arrested from the said place, who disclosed their names as Mukesh Mishra and Mukesh Singh. From their possession also arms and ammunition were recovered. When the police team reached the roof, one bomb and four rounds of cartridges were recovered from the possession of Vinod Singh. It was further stated that two rounds of cartridges and one air gun along with 50 pellets were also recovered. Two rounds of .303 cartridges were also seized. In the course of search, Shambhu Singh was also arrested. According to this witness, several bombs were hurled and about 10 rounds of bullets were fired. Although pellets were recovered, no relevant papers were produced. During interrogation, Mukesh Mishra and Mukesh Singh disclosed the names of Suraj Singh and Shankar Singh as the persons who had fled away. The two accused persons have also stated that due to rivalry of Ashok Samrat & others they used to take shelter in the house of Dayaram Singh. The two arrested accused persons also confessed their involvement in the murder of the cousin of Ashok Samrat. The Investigating Officer (I.O.) has further stated that in the course of the firing, Manoj Mishra sustained injuries on the right side of his chest and left back, while another Manoj Mishra sustained injuries on the left shoulder below the shoulder. Several injury marks were found on the persons of the injured. It was further stated that the arrested accused persons, along with the seized firearms and bombs, were brought to the police station. The witness identified the signature of Agni Prasad, which was marked as Exhibit 2/3, 4, 5, 6, 7, 8, 9 and 9/1. According to the I.O., he recorded the statements of the accused persons as well as several members of the police team. Thereafter, the injured police personnel and the accused persons were sent to the hospital for treatment. He also recorded the statements of Dy.S.P. Mahesh Prasad, Inspector Krishna Chandra, and S.I. Jeevan Prasad, as well as the witnesses to the seizure list, namely Tuntun Kumar and Ram Naresh Singh. Thereafter, he inspected and described the place of occurrence. He identified the requisition slips of the injured persons, which were marked as Exhibits X, X/2 and X/3 to X/10. The I.O. further stated that he received the injury reports of the police personnel as well as the injured accused persons and also obtained the report of the Sergeant Major, which was entered in the case diary. The seized bombs were declared dangerous to human life. Thereafter, sanction report u/ss 25(1-B)a, 27 and 35 of the Arms Act was obtained from the District Magistrate. After receiving

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

the criminal antecedents of the accused persons, he mentioned the same in the case diary and on 20.09.1992 he handed over the charge of investigation to Rajeshwar Singh. In his cross-examination on behalf of Pappu Singh, he has admitted that he was a member of the raiding team, the informant of the case, and also the Investigating Officer. He has further admitted that, as mentioned in paragraph 3, he had recorded the statements of eleven persons at one time, three persons at one time, two persons at one time, and nine persons one time in a collective manner.

In cross-examination on behalf of Suraj Singh, he stated that since he himself was present at the place of occurrence, there was no need to meet Jeevan Prasad as the I.O of the case. The defence further questioned why, being the informant, he had also assumed the charge of investigation, to which he replied that other officials were engaged in other work. In paragraph 11 of his cross-examination, he has stated that the formal FIR was drawn at the place of occurrence. However, when his attention was drawn to his earlier statement that the FIR had been formally written at the police station, he has replied that he did not remember where the FIR was actually drawn. He has also admitted that even before the lodging of the formal FIR, he had assumed the investigation of the case. In paragraph 16 of the cross-examination, he has further stated that he was aware of the provisions of the Police Manual and the Cr.P.C., according to which the charge of investigation of a case can be assumed only after the lodging of a formal FIR. Thereafter, several questions were put to him regarding the preparation of details of the seized arms and ammunition and the cloth in which the seized articles were packed and sealed, to which he stated that he did not recall the details and how the sanction report was obtained. He has also stated that the seized explosive substances were sent to the FSL for examination. In further cross-examination, he stated that he himself, Inspector Krishna Chandra, and A.S.I. Jeevan Prasad were treated at Sadar Hospital, Begusarai, where their injuries were found to be simple in nature and caused by a hard and blunt substance. He has also accepted that, till the date of his cross-examination, no seized articles had been produced before him and even during the course of investigation, such articles were not produced before the Court of the Ld. C.J.M., as there was no custom prevailed at that time to produce such articles before the Ld. C.J.M. He has further stated that no numbers were given the seized arms and ammunition and that, even

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

when an application was sent to the District Magistrate for sanction, the arms and ammunition were not sent along with it. As regards the statements of independent witness of the surroundings he has stated that since Vijay Singh, Ram Bilas Babu, Digambar Jha were not available hence their statements were not recorded. Many questions were also asked with regard to household articles of Dayaram Singh.

(Here, it's important to mention that cerreatum of the paragraphs of the cross-examination of this witness was a little bit repeated, since they are in sequences of narration hence such repetition is ignored.)

He has also described how he climbed a ladder to enter the house of Dayaram Singh and noticed the presence of bruises there. He has further admitted in paragraph 67 of the cross-examination that from the statement of Brahmdev Thakur, it could not be ascertained which articles were recovered from the house. In cross-examination on behalf of Shankar Kunwar, it appears that in paragraph 69, that the accused persons had fired upon the police team with the intention to kill them. However, he denied the suggestion that the police had committed any crime with the help of hired assailants. He also admitted that he had no warrant to enter the house of Dayaram Singh. He has further stated that within one hour of receiving the information, the police team was constituted and the place of occurrence was a densely populated area. In paragraph 58 of his cross-examination, he stated that he had not mentioned the recovery of blood-stained articles in paragraph 5 of the case diary. In para 77, he has described the distance and time taken by him and by the police team reached the P.O. According to him, from Town P.S., the P.O was 4-5 km away and it took 20-22 minutes to reach their by vehicle. To prepare the seizure list, he has called the persons present there. However, no specific mark was affixed on the seized article or there was no description that which articles were recovered from whom. In para 82, he has specifically admitted that at the P.O he has not found any blood stains however later on he has admitted that where the accused persons were injured. He had found some blood stains but lastly he has denied the suggestion that he has made a table work and he has not visited the P.O.

On analyzing and scrutinizing the detailed examination-in-chief and cross-examination, this court finds that though questions were asked from the defence that while being a member of the raiding team, the informant he assumed

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

the charge of the investigation which he has replied that since other officers were engaged in some other works so he assumed the investigation also. On this point, the defence has raised question that only in exceptional circumstances and for cogent reasons and informant would be an investigator. The Id. Defence counsel has also pointed out that in catina of judgments the Ld. Apex Court has held that a person who is alleging some offences could not be ordered to investigate the truthfulness of the allegation made by himself. There must be some reason for that however no specific reason or assigned. Besides, this court finds that though, the number of seizure list and seized articles were mentioned by the I.O, also accepted that he has obtained a sanction under the Arms Act but no sanction was obtained with regard to explosive substance Act. In absence of sanction in Explosive Substance Act, the offences fails for Explosive substance Act. On this point, the witness has failed to satisfy the court. From the perusal of the chief and cross-examination of this witness, has affirmatively answered that after the constitution of the raiding team reaching at the P.O, being engaged in shoot out after 45 minutes. They used a ladder to enter into the house of Dayaram Singh to this extent, the evidence of this witness is accepted in support of the prosecution case detailed analysis would be made thereafter.

22. P.W.-18 is Dr. S.M. Makar, he was posted at Sadar Hospital, Begusarai. He has examined as Dy.S.P., Mahesh Pd. Singh on 26.06.1992 at about 07:15 am. He has found injuries (i) lacerated wound on the right forearm 1" X ½" X ½" on the middle third of right forearm, (ii) swelling with bruise and abrasion 2" X 1" on the top of the head. Both the injuries are simple in nature caused by firearm. He has stated that he identified his signature on the injury report which was marked as Ext.P.-11.

In cross-examination on behalf of accused Pappu Singh, he has stated that he has mentioned firearms. He cann't say that the it is not related to his subject. The injuries mentioned are simple in nature consisting of abrasions and other skin-deep injuries.

From the side of Manoj Kunwar, Shambhu Singh, Ranjan Singh and Vinod Singh, he has stated that he examined the victim on the written requisition of the police. The requisition mentioned injuries but didn't state the date and time of the injuries. The injury report doesn't mention the distance of

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

firing or the colour of the blood. It has not customary to describe such injuries as lacerated and verified in the injury report.

From the side of rest accused persons, he has stated that the injuries are superficial in nature. Both the injuries are simple in nature without any risk and can be manufactured. He has further stated that the term "firearms" includes weapons such as gun, rifle, etc. but he could not say that the said injuries were caused by firearms. Colour of injuries has not been mentioned.

23. P.W.-19 is Dr. Prakash Nandan Singh, he was posted as C.A.S. at Sadar Hospital, Begusarai who has examined A.S.I., Jeevan Prasad on 26.06.1992 at about 08:30 am. He has found following injuries (i) lacerated wound of size ¼" X 1/4" on the left side of forehead. The nature of injury is simple caused by hard and blunt substance. He identified his signature which was marked as Ext.-12. He has further stated that as per additional opinion the injuries may be caused by firearms. He has also examined Syed Wasimul Haque and found the lacerated wound of size 1"X1/4" on the left hand and one injury of size 1/4"X1/4" on the back of his head. The nature of injury was simple and caused by hard and blunt substance. He identified his signature which was marked as Ext.-12/1. He has further stated as per additional opinion of injuries that the injury may be caused by firearm. He has also examined as Krishna Chandra and found lacerated wound of size 1/4"X1/4" on the left side of the elbow. The nature of injury is simple and caused by hard and blunt substance. He identified his signature which was marked as Ext.-12/2. He has further stated as per additional opinion of injuries that the injury may be caused by firearm.

In cross-examination on behalf of the accused Shankar Kunwar, he has stated that he has not mentioned the colour of injury in injuries report. He has stated in chief-examination the injuries caused by hard and blunt substance but in cross-examination he has stated that on demand he had mentioned the injuries may be caused by firearms. The firearm opinion is of mere suspicion.

On behalf of the accused Suraj Singh @ Suraj Bhan Singh, he has stated that all injured persons, injuries were caused by hard and blunt substance. The injuries may be caused by felling on hard and blunt substance. He has also stated that all the injured persons, injures were not reserved by him. There was no need of X-ray. All injuries report have been given to I.O by him. He has stated that

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

thereafter the informant Wasimul Haque sent an application to give opinion that whether injuries can be done by firearms and explosive. He has stated that on the informant's request he has given additional opinion. In additional opinion, there is no description of injuries.

On behalf of the accused Manoj Singh & Shambhu Singh, he has stated that on police request he has conducted the examination of injured persons. No injuries were described in the requisitions. Colour of blood was not mentioned in injuries reports. He has not mentioned that the finding of blood in injury report.

24. **P.W.-20 is Ram Nivash Singh**, he has stated that the seizure lists dated 26.06.1992 were prepared in his presence at different times between 05:15 A.M. and 07:00 A.M., in front of the house of Dayaram Singh. He has identified his signatures on all the seizure lists which have been marked as Ext.-13, Ext.-13/1, Ext.-13/2, Ext.-13/3, Ext.-13/4, Ext.-13/5, Ext.-13/6, and Ext.-13/7.

In cross-examination from the side of Suraj Singh, he has stated that today itself he had the opportunity to see all the seizure lists. He has no idea that whatever written in the eight seizure list, he has no idea. No paperwork was done in his presence. He has also accepted that when he signed the papers, it was blank. He has also stated that his statement was never recorded by the police and he cannot identify the handwriting on the seizure lists. He has further stated that he was not present at the house of Dayaram Singh at the relevant time. He has stated that his signatures on all the seizure lists were obtained at the Nagar police station.

From the side of Shankar Kunwar, he has stated that his signature was obtained on a blank paper.

From the side of Manoj Singh, Ranjan Singh and others, he has stated that he has not aware of the contents of the documents on which his signatures.

From the perusal of the evidence of this witness, this court finds that though this witness has once stated that contents of seizure list was read over to him but at the same time he has stated his signature was obtained on blank paper and he was not present at the P.O. His signature were obtained at the Police Station. Besides he has also contradicted the version of the I.O cum informant that the seizure list were prepared at the P.O itself.

DEFENCE VERSION

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

25. In this case for four accuseds (initially ten) different sets of ld. Senior Counsels appeared namely Sri Chandrakant Singh for Pappu Singh, Sri Mansoor Alam for Suraj Singh @ Suraj Bhan Singh, Sri Shashi Bhushan Jha for Shankar Kunwar & Shambhu Singh. They not only defended the accused for whom they were representating but also assailed the truthfulness of the incident. So, their arguments are summarized and considered together. The learned counsels for the defence has stated that the charges in this case were framed u/ss 307/149, 148, 333, 353, 386, 216(A), of the I.P.C, 25(1-B)a, 27, 35 of Arms Act and 3,4,5 of Explosive Substance Act. At the very outset, it was pointed out that for proceeding either under Arms Act and Explosive Substance Act previous sanction is required. As per P.W.-1 sanction under Arms Act were granted by the District Magistrate on 07 September, 1992 which was marked as Ext.-1. The sanction under Arms Act were granted against the Mukesh Singh, Mukesh Mishra, Manoj Kumar Singh, Pappu Singh, Dayaram Singh against rest no sanction was granted. It was also pointed out that from the entire perusal of the case record and the depositions it would be quite clear that no sanctions were granted under Explosive Substance Act. It is a settled principle of law by Hon'ble Courts and the statutory provisions that if a sanction under Arms Act or the Explosive Substance Act is not granted the whole trial will vitiate and if granted only against a particular accused and not granted against some others then the contents of the allegations of the Arms Act or Explosive Substance Act would not be effective against those accused persons against whom sanction was not granted. The learned counsel has also stated that even sanctions were granted by the District Magistrate against some accused persons but from the evidence of I.O and P.W.-1 that seized arms and ammunitions were not produced before the District Magistrate which is also violative in nature.

The learned counsels for defence have also stated that there are certain flaws in the prosecution case from the very beginning itself. In this case, it was alleged that seven persons were arrested from the P.O but from the perusal of the injury reports brought on record by the prosecution, It would be evident that there is no injury report of the accused persons who had received injuries in the encounter which took place. Though, there are injury reports of the police personnel but there is no such injuries of the accused persons. The absence of the

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

injury reports of the injured accused persons it creates serious doubt on the version of the prosecution that even such encounter had taken place, because in the FIR and in the evidence of the I.O, it has come that the accused persons were sent for the medical treatment.

Learned defence counsel has also stated that not only from the FIR but from the depositions of witnesses, it has come that the alleged P.O which was the house of Dayaram Singh was a densely populated locality but no independent witnesses were examined. The absence of independent witnesses seriously dents the credibility of the prosecution version because the police team and particularly some police officials were supporting one side of the influensive persons namely Ashok Samrat, Bogo Singh who were against the accused persons. It has come before the court that Suraj Singh, Mukesh Mishra, Mukesh Singh were at inimical terms with the group of Ashok Samrat and there were bloody fight between them, the police team was acting on behalf of the above named persons supporting Ashok Samrat and others. So, the statement or evidences of independent witnesses becomes very crucial for obtaining true facts. So, the prosecution case also sullied with such omissions. It was also argued before the court that from the supplementary injuries report available on record which shows that it was on the request of police, P.W.-19 has admitted that though initially he has mentioned the nature of injuries as simple caused by hard and blunt substance but after such request he has opined that injuries may have been caused by firearms. This shows that the police team, taking advantage of their statutory position pressurized the doctor to change or add the cause of injuries from hard and blunt substance to firearm injuries. Even the prosecution has remained silent on such additional opinion that why the police team obtained such supplementary injury. The fact is that police team has received injuries from the bushes and the other shrubs at the time of the encounter. It was only the police team which has fired and there was no any firing from the accused side.

It was further submitted that after the police encounter Vinod Kumar Singh, Ranjan Singh, Mukesh Singh, Mukesh Mishra, Manoj Kumar Singh, Pappu Singh and Shambhu Singh were arrested and two others escaped. But from the evidence of P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.-5, P.W.-6, P.W.-7, P.W.-9, P.W.-11, P.W.-16 that none of them have identified any of the accused

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

persons facing trial. Even some of the rest witnesses who have named the accused persons and identified them. They have not identified Suraj Singh @ Suraj Bhan Singh & Shankar Kunwar on their own. Their identification was based on the narration of other police officials or the accuseds.

On behalf of Suraj Singh, it was stated that P.W.-2, P.W.-7, P.W.-9, P.W.-11, P.W.-16 have not whispered a word against the presence of Suraj Singh, P.W.-9, Nageshwar Kamti has stated in his chief examination that he has seen Suraj Bhan Singh @ Suraj Singh as the person who was fleeing away. Later on, in para 2 of his cross-examination, he has stated that he has not seen the person who had fled away but it was the officer-in-charge who has stated to him about the name of the person, so, P.W.-9 is a hearsay witness who has seen Suraj Bhan Singh or Shankar Kunwar fleeing away. So, the statement with regard to identification of Suraj Singh (P.W.-8) it becomes doubtful.

It was also cogently submitted by the defence counsels that the some of the witnesses has testified that they were not examined by the I.O and it was for the first time they have deposed before the court. On this point, the learned defence counsel brought on record, the citations **Darshan Singh Vs. State of Punjab, Criminal Appeal No.- 163/2010**. The Hon'ble Apex Court has pointed that that when the witness in proves its case to such an extent that it becomes so obligatory to its original version and suffers from several contradictions then it is not safe to rely on such witness. The Ld. Defence Counsel has also stated that once a witness is testified for the first time in court and not examined by the police u/s 161 of Cr.P.C, then no such reliance should be given to such version.

The learned defence counsel has also pointed out that the law decided in **Mukhtar Ansari Vs. State of U.P & Javed Masood & Anr Vs. State of Rajasthan AIR 2010 SC 979**. It was submitted that when the witnesses have not supported the case of the prosecution and they have not been declared hostile it shows that there is no any legal sanctity to such evidences. This could be making a tool to increase the number of witnesses. It is also well settled that it is not the number of witnesses but the quality of depositions matters.

So, the defence has also pointed out that P.W.-8 has stated that he has not deposed before the police but in chief-examination he explained the case as he has deposed before the police and named accused persons. The defence has

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

also pointed out that from the perusal of evidences of the witnesses that the I.O has recorded the statement en-bundle which shows that no independent version of the raiding team was recorded, the statements were recorded in a predetermined way only to falsely implicate the accused persons. This is not the mandate of free and fair justice and violative the natural rights of the accused persons.

As regard to the offence of seizure list is concerned, out of two witnesses Ram Niwash Singh was examined as P.W.-20 though he has brought on record the seized articles in Ext.-13 series but in cross-examination he has candidly accepted that the seized articles were neither seized before him nor what was written in the seizure list was known to him. He has simply put his signature at police station so even the seizure list was not properly prepared to play safe. P.W.-11, Tuntun has also stated almost same facts. This shows that the seizure list was not legally prepared. So, the accused persons be acquitted and set free.

PROSECUTION VERSION

On the other hand, the learned counsel for the prosecution Spl. P.P. Raj Kumar Mahto, vehemently opposed the submissions of the defence counsel and submitted that in this case altogether 20 witnesses were examined and they all have supported the case in their entirety, it was also submitted that with the passage of time some natural omission or variation is very natural but the evidences of the witnesses remain uncontradictory and uncontroverted. However, the Ld. Addl. S.P.P has admitted that there is no sanction obtained for the Explosive Substance Act and there are sanctions under Arms Act only against one person who is presently facing trial and there is no sanction against the rest three. With such submissions, the Ld. Addl. S.P.P has submitted that the prosecution has able to prove its case beyond all reasonable doubt, hence, the accused persons be convicted.

ANALYSIS AND FINDINGS OF THE COURT

26. Heard the learned counsel for the parties and perused the record. At the very outset, this court finds that the FIR, charge-sheet were very mutilated condition hence the torned documents were kept in a packed envelope.

The present occurrence had taken place on 26.06.1992 when the police received a secret information and raid the house of Dayaram Singh in the very early morning at about 04:00 am. When they have surrounded the P.O,

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

sensing the presence of police accused persons started indiscriminate firing and hurling bombs upon the police team. To protect the Government property and their life, police team retaliated and also warned them to surrender but from inside the accused persons kept firing. In the ensuing firing, five persons were injured and four police personnel including the Dy.S.P, I.O & others also received injuries. According to the prosecution, all the accused persons in this case were dreaded criminals and assembled to the house of Dayaram Singh to commit an offence. They have no respect for the law and even being warned that they have been surrounded by the police team, they continue their firing and hurling bombs.

On the other hand, the Ld. Defence counsel has stated that the police team acted on the rivals of Suraj Bhan Singh & Others. The falsity of the case would be evident that most of the witnesses have not identified the accused persons those who have identified, their identification was based on a hearsay evidence.

Before going in the merits this court is of the view that witnesses and evidences are eye and ear of the court through which it perceives the merits of the case. In a criminal case in which prosecution has to prove its case beyond all reasonable doubt, its evidences must be of impeccable in nature, free from partiality and unblemish in character.

This court also considered the submissions of the Id. Defence counsel by the prosecution it was claimed that Pappu Singh was holding an air gun and its fifty pillets along with 2 rounds of .303 cartridges. Why an criminal who was planning to commit some serious offences would posses an air gun. However, on analyses of this court finds that when prosecution has able to prove the recovery of arms and bombs from the P.O then why Pappu Singh was holding an air gun which was look alike a gun. From the depositions, no denial was obtained by the defence that why Pappu Singh was holding this gun and pillets. As no contradiction is on record regarding holding of gun by Pappu Singh, the contention of defence is negative.

On very careful and minutely scrutinization of the evidences, this court has found that earlier this case proceeded against 10 accused persons however in course of trial or before framing of charges many of them died or absconded themselves and proceeding were either dropped or separated and lastly on 28.05.2007 charges were framed against six accused persons u/ss 307/149, 148,

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

323, 353, 186, 216(A) of I.P.C. & 25(1-B)a, 27, 35 of Arms Act & 3,4,5 of Explosive Substances Act. However, out of six accused persons, two accused persons Ranjan Singh and Manoj Kumar Singh died and proceedings against them was dropped. Now, this trial has proceeded against Suraj Singh @ Suraj Bhan Singh, Shankar Kunwar, Shambhu Singh and Pappu Singh.

NOW, THIS COURT PROPOSED THE SCRUTINIZES POINT WISE FACTS OF THE CASE.

27. The prosecution has alleged that the bombs were hurled and bullets were fired from the firearms. The two Sections namely Explosive Substance Act, 1908 and Arms Act, 1959 contains the mandatory clause of previous sanction by the D.M. to proceed with the trial.

Section 7 of the Explosive Substance Act deals with restriction and trial of offences it says: that no court shall proceed to the trial of any person for an offence against this Act except with the consent of the D.M.

Likewise, Section 39 of the Arms Act requires the previous sanction of the D.M before any prosecution can be initiated against a person, for an offence u/s 3 for the offences related unlawful possession of the Arms. From the evidence of P.W.-1 and Ext.-1, it has come that only Pappu Singh is facing trial against whom, the original sanction was granted to proceed under trial of Arms Act. The sanction was also granted against Mukesh Singh, Mukesh Mishra, Manoj Kumar Singh, Dayaram Singh but as said above presently they are not facing trial. So, the offences under Explosive Substance Act is not legally applicable against the all accused persons whereas the provision of Arms Act is applicable only against Pappu Singh.

This court also points out that it is a settled principle of law that it is not the quantity of evidences but the quality of evidence matters while it comes in establishing the prosecution case. Even if a scores of witnesses are examined and if they are not relevant then this court is of the view that prosecution has failed to prove its case especially keeping in mind the legal provision that it is the prosecution which has to prove its case beyond all reasonable doubt.

At the very outset, this court finds that P.W.-17 Wasimul Haque has stated that even before lodging of the FIR, he assumed the charge of investigation. He failed to give any concrete reasons that why he himself being the informant assumes the charge of investigation, to which he simply answered that other police

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

officials were engaged in some other work. This court finds that it's against natural justice as no any cogent reason was made to explain the engagement of other police officials.

At the same time, police has claimed that four persons had received bullet injuries but police has not found any blood stains at the P.O. This is also surprising.

In the evidences, it have also come that after the said encounter Mukesh Mishra, Mukesh Singh, Manoj Kumar Singh, Pappu Singh and Shankar Singh were arrested and two persons namely Suraj Bhan Singh @ Suraj Singh and Shankar Kunwar fled away. However, P.W.-09 says that Mukesh Mishra, Shankar Singh, Vinod Kumar Singh, Ranjan Singh, Pappu & Chhotan (not even an accused) were arrested. P.W.-10 says that four persons were arrested who were Mukesh Singh, Mukesh Mishra Manoj Kumar Singh & Suraj Singh, whereas the case of the prosecution is that Shankar Singh & Suraj Singh had fled away. Even P.W.-8 and P.W.-10 have stated that it was the Officer-in-charge Wasimul Haque has told them about the name of the accused persons who had fled away from the P.O but Wasilmul Haque, Officer-in-charge himself has stated that it was Mukesh Mishra and Mukesh Singh have told him about the name of the persons who had fled away. However, he has again stated that Suraj Singh was the not the person who fled away from the seen. Again P.W.-12 says that the arrested persons were Mukesh Mishra, Mukesh Singh, Manoj Kumar Singh and Suraj Singh. Again Suraj Singh was named as the person arrested and not amongst the person who fled away from the P.O. As stated above, Suraj Singh who is claimed by the prosecution that he was amongst the persons who had fled away from the seen. P.W.-13, Mahesh Prasad who was the Dy.S.P at the time of occurrence has stated that he has not identified the persons who had fled away however he has stated, in para 02 of the cross-examination that it was on the narration of Shambhu Singh and Shambhu Mishra he has named Suraj Singh @ Suraj Bhan Singh who had fled away from the occurrence meaning thereby this witness has also not seen the two persons were fled away from the P.O. PW-14 has stated that seven accused persons were arrested. PW-15, in his examination-in-chief has stated that he has chased Suraj Bhan Singh but in his cross-examination at para 9 he has stated that he has not stated before the I.O that he has chased Suraj Bhan Singh. Meaning

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

thereby he has named Suraj Bhan Singh for the first time in his examination-in-chief. This can be termed as improvement of the prosecution case. P.W.-16 has stated that Shankar Singh was amongst the persons who fled away but as regard to identification of others is concerned he has frankly stated that he has not identified the others i.e. Suraj Bhan Singh. PW-17, Wasimul Haque who is the member of the raiding team, informant and I.O. of the case, has stated in his examination-in-chief he has named Mukesh Singh, Mukesh Mishra, Manoj Kumar Singh, Shambhu Singh, Vinod Kumar Singh, Ranjan Singh, Pappu Singh, and Praveen were the persons who were arrested from the place of occurrence. He further stated that Suraj Singh and Shankar Kunwar were among those who fled away and this information was not from his personal identification rather this information was given to him by Mukesh Mishra and Mukesh Singh. So, even the I.O., informant has no personal knowledge about Suraj Singh and Shankar Kunwar.

From the perusal of the evidences of the witnesses who are police officials, this court finds that police arrested seven accused persons from the place of occurrence itself and claimed that two persons had fled away namely Shankar Kunwar and Suraj Bhan Singh @ Surya Singh @ Suraj Singh. None of them had categorically identified that the accused persons who had fled away were Suraj Singh and Shankar Kunwar. As stated above, the prosecution has to make a definite identification with regard to the identification of the accused persons even Mahesh Prasad Singh, P.W.-13 who was the Dy. S.P at that time and has led the operation and P.W.-17 Syed wasimul Haque, the I.O or all other team members has identified them. The police inspector who was the informant and investigator of the case has not identified Suraj Singh and Shankar Kunwar from his own knowledge. They have claimed that they were told that the accused persons who had fled away, where Surya Singh @ Suraj Singh and Shankar Kunwar. So, the presence of two accused persons at the P.O becomes doubtful. It is a well settled established principle of law that the court has to ascertain whether the accused persons are implicated for their misdeeds or has been impleaded with vested interest. As known person who was a political figure and well known in the locality can be easily implicated just by saying name. In a criminal case, just by naming a person alleging him to be involved in a criminal activity is not going to meet the requirement of the criminal jurisprudence.

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

As discussed above, even some of the witnesses namely Rudel Paswan, P.W.-12, P.W.-10 Bablu Marandi had named Suraj Singh @ Suraj Bhan Singh were amongst who were arrested at the PO itself. However, at later instance, Bablu Marandi has stated that Suraj Singh was amongst the person who had fled away from the P.O. So, the identity of Shankar Kunwar and Suraj Bhan Singh becomes doubtful and thereby their involvement and presence at the P.O needs corroboration from the other evidences. Sadly there is no definite and concrete evidences with regard to their presence at the P.O and attacking upon the police team. So the maxim that not the quantity of witness but in the quality of witness matters becomes significant.

28. In course of depositions, none of the witnesses have stated with definite about height of the (outer wall) boundary of the Dayaram Singh only P.W.-15 has stated that the height of wall was approximately 7-8 feet. Dy.S.P Mahesh Prasad & Wasimul Haque, I.O has stated that they have not broked the main gate of the house and to get themselves entered into the house of the Dayaram Singh, they used a bamboo ladder. If, it was so, the prosecution has to explain that how some of the accused persons fled away from the place of occurrence, particularly when the house was surrounded by a number of police team who all of whom were armed with police guns. There is no definite evidence on this point.

With regard to P.O., his description of outer wall was also an important fact.

29. This Court has also analyses the evidences of P.W-18, Dr. S.M. Wakar, and P.W-19, Dr. Prakash Nandan Singh, they are the two doctors who had treated upon the injured persons. In their respective injury report, they all have found all the injuries were simple in nature. Dr. S.M. Wakar has treated upon the Dy.S.P Mahesh Prasad Singh and found a lacerated wound on the right forearm, along with swelling, bruise, and abrasion on the top of the head. Here ,this Court has also considered the submission of the defence that in his evidence, Mahesh Prasad Singh has stated that from the P.O he returned to his official residence in the Officers' Colony, Begusarai. Meaning thereby he has not gone to meet the doctor. In the said injury report, the injuries over the right forearm and on the top of head were in the nature of laceration, bruise, and abrasion. Such type of injuries

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

cannot be caused by a firearm. Had Mahesh Prasad been hit by any bullet or splinter bombs, he would have received different type of injuries and as per medical jurisprudence such type of alleged injuries would never be caused by firearm or bombs. However, this Court do not give weightage to such submission of the defence because injury report is available on record and its genuineness was never challenged. On this point, this court relies upon the injury report and there is no any contradiction, was specifically pointed out in the cross-examination that such type of injuries could not be caused by firearm as mentioned by doctor S.M. Wakar. At the same time, this court also consider that the defence has also pointed out that Dr. Prakash Nandan Singh who had treated upon Jeevan Prasad, A.S.I, Syed Wasilmul Haque, Krishna Chandra had found all the injuries were simple in nature caused by hard and blunt substance. When the Ext.-12 series were brought on record. The doctor in his cross-examination at para 08, 09, 10 has admitted that on the request of Wasimul Haque (informant) "whether the injuries could be caused by firearm then he had given Additional opinion that such types of injuries could be caused by firearm also.

On this point, regarding additional opinion, the Ld. Addl. S.P.P has not given any satisfactory reply that why the police has requisitioned additional opinion with regard to the injury caused by firearm. This court also finds that specific request made by informant to give a particular opinion amounts to interference in the independent assessment of the injuries. This court also finds that it could be a pressure tactics and against the known principles of natural justice. This court holds the similar view which is of the defence that taking advantage of their positions, police has pressurized indirectly the medical officer to give additional opinion with regard to the firearm injuries which reflects only in the cross-examination by the defence. This seriously dents the credibility of the injuries report and thus the prosecution case.

For a criminal trial it is the cardinal principle of criminal jurisprudence that the prosecution has to establish the time of occurrence, the place of occurrence and manner of occurrence of the incident. From the perusal of the evidences of the witnesses, this court finds that all the witnesses have stated that the time of incident at about 04:00 am all the witnesses have in unison stated that they have surrounded and taken position around the house of Dayaram Singh. All

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

the witnesses have categorically deposed that the occurrence took place on 26.06.1992 and the raid was conducted at about 04:00 am in the morning and also all the witnesses have stated that the accused persons had taken shelter in the house of Dayaram Singh situated in Kapasya Chowk behind Alka Talkies and were planning to commit some serious offence. So, date and time is proved by the prosecution.

As regard to manner of occurrence is concerned, this court has found that the police officials were initially informed about the assembly of the accused persons at Kapasya Chowk behind Alka Talkies from where they proceeded to the house of Dayaram Singh. After verification when the police warned them to surrender that they have been surrounded by the police, the accused persons started indiscriminate firing and hurling bombs from inside. There were some very minor contradictions or omissions which is very natural, due to passage of time and what witnesses have perceives the thing from their own prospective. So the manner of occurrence is also proved.

As regard to motive is concerned, this court finds that when the police team surrounded the accused persons and ordered to surrender, they were left with no alternative either to surrender or flew away. As discussed accused persons chosen not to surrender and opted to flew away. In this way, they not only, to have a safe passage fired upon the police team to disperse but also with an intention to inflict maximum damage. There are evidences as well as recovery of arms and ammunition and live bombs, used splinters of bombs and cartridges proves this fact. There is no iota of discrepancies. So, the manner of occurrence is well proved.

30. Taking into consideration all the discussions made above and findings, this court finds that no doubt human memory is fallible and with times memories fades away. Hence with passing of time some minor omissions or deviations are natural. But when such omission or deviation are of such a nature, which leads to deprivation of others natural or constitutional rights as guaranteed in Act 21 of the Constitution, then the court has to appreciate it in the right perspective. There is no doubt that when the police raid the house of Dayaram Singh on 26.06.1992 an encounter took place in which seven persons were arrested which were Vinod Kunar Singh, Ranjan Singh, Mukesh Mishra, Mukesh Singh,

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

Manoj Kumar Singh, Pappu Singh and Shambhu Singh and two persons namely Suraj Bhan Singh & Shankar Kunwar fled away. Though, P.W.-9 has also named Chhotan Singh. At present, out of seven arrested accused persons only Pappu Singh and Shambhu Singh are facing trial. They were arrested from the P.O and from the possession of Pappu Singh, two rounds of .303 bullet were recovered from his possession, also one air gun and 50 rounds of air gun pillets were recovered. Pappu Singh has received some injuries. Shambhu Singh was arrested from the toilet of Dayaram Singh with a packet (Jholla) from which two live bombs were recovered. All the witnesses have named them being apprehended with firearms and bombs at the P.O itself. Even in cross-examination, there was no contradiction or omission was obtained by the defence regarding their presence at P.O.

Since Pappu Singh was injured in his left thigh with bullet injury whereas Shambhu Singh had no injuries. This proves the presence of the two accused persons at the P.O involved in a gruesome attack upon police personnel so their names were also reiterated by different witnesses. For this, the court finds that the presence of accused Pappu Singh, Shambhu Singh at P.O is established beyond all reasonable doubt. So, Pappu Singh and Shambhu Singh are held guilty in the alleged offences beyond all reasonable doubt whereas as discussed above, the presence of Shankar Kunwar & Suraj Singh @ Suraj Bhan Singh @ Surya Singh are not proved beyond all reasonable doubt.

31. Now, this court proposes to scrutiny the charges for which accused persons were charged for facing trail.

(I) Section 216(A) of I.P.C., this section deals with harboring of criminals, it says:-

Whoever, knowing or having reason to believe that any persons are about to commit or have recently committed robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

From the evidences, it has come, uncontroverted, that the house was of Dayaram Singh and not of any of the accused persons involved in this offence.

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

Though, Dayaram Singh was charge-sheeted but proceeding against him was dropped on 24.08.1995 itself. Since the offence deals with harboring and providing other facilities to the criminals. This offence is not proved against the two accused persons facing trial. Accordingly, the two accused persons are held not guilty for the offence u/s 216(A) of I.P.C.

(II) To constitute an offence under Section 353 of I.P.C if says at assault or criminal force to deter public servant from discharge of their duty.

Section 353 of I.P.C. says that:-

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

It is a settle principle that the offence under Section 353 of I.P.C postulates two ingredients. This implies that the obstruction need not be direct physical force. It could be creating hindrance in the official work of the public servant. The very purpose of incorporating Section 353 of I.P.C is maintaining the authority and dignity in public officials in India, any attempt to prevent a public servant from performing his duty or using of force or threats of force can be too serious legal consequences. Since, as per Ext.-3 and the depositions of other witnesses police have entered Sanha No.- 754 in the station diary and have proceeded to the place of occurrence. Initially the police team warned the accuseds persons and directed them to surrender, they instead of co-operately started firing and hurling bombs. All the police team where on official duty, nowhere it has come that police team was not on the official duty. They were in possession of official arms. Hence, the offences u/s 353 of I.P.C is proved against the two persons held guilty.

(III) Section 148 of I.P.C. says that:-

Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

three years, or with fine, or with both.

For the offences u/s 148 of I.P.C, this court finds that in continuation of their unlawful assembly ten accused persons including the present two trial facing accuseds were armed with deadly weapon like firearms and bombs. Many firearms and remaining bombs were recovered at the P.O and the seizure list which was marked from Ext.-4 to Ext.-10, Ext.-13 to 13/7. shows that the accused persons were armed with deadly weapons. Accordingly, the offence u/s 148 of I.P.C. is well proved.

(iv) As regard to offence under Section 307/149 of I.P.C is concerned, this court finds that to constitute an ingredient for the offence under Section 307 of I.P.C says:-

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act cause death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is herein before mentioned.

Section 149 of I.P.C says that:-

If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

For taking into account, for the offence u/s 307/149 of I.P.C are concerned, this court finds that when the police team raid the house of Dayaram Singh, the two accused persons presently facing trial along with others make a barge of bullets and bombs upon the police team. For which four police personnel were injured. Though as per the injury report, Ext.-11 and Ext.-12 to 12/5 series, it has come before the court that though the injuries were simple in nature but caused by firearm. It is a settled principle of law that for to establish the guilt for offence u/s 307/149 of I.P.C, the intention and knowledge is required while the accused persons threw bombs and firing bullets, were well aware about their act. They were trying to murder the police personnel. Had the police team not secure their

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

positions from the wall or other obstacles they would have been killed. Many of them took shelter of the wall or other obstacles due to which their lives were saved. Accuseds have a common object to murder or annihilate the police team. The fire of the gun and explosion of bombs was an attempt to murder the police personnel. For this court is of the view that the one and only unlawful common object of the accused persons were to murder the police team. Hence the offence u/s 307/149 of I.P.C. are proved.

(v) **Section 333 of I.P.C says that:-**

Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

While dealing with the offences u/s 307/149 of I.P.C., this court has already come that injury reports as Ext.11 and Ext.-12 series have shown simple injuries inflicted upon the police personnel whereas Section 333 deals with the causing grievous injuries to the public servant in the discharge of his duty. However, there is no such evidence available on record. Accordingly, this court finds that an offence u/s 333 of I.P.C is not proved.

(vi) **Section 186 of I.P.C says that:-**

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

It says that the voluntarily obstruction of a public servant in a discharge of their public functions, as this court has already held guilty, the accused persons for the offence u/s 353 of I.P.C. hence the two accused persons are held guilty for the offence u/s 186 of I.P.C.

CONCLUSION

32. Summarizing all the discussions made above, this court finds and hold that from perusal of the evidences of the witnesses who are police officials,

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

witnesses to the seizure list, doctors and one person from the collectorate, this court finds that police arrested seven accused persons from the P.O itself and claimed that two persons had fled away namely Shankar Kunwar and Suraj Bhan Singh. None of witnesses had categorically identified that the accused persons who had fled away were Surya Singh @ Suraj Bhan Singh & Shankar Kunwar. As stated above, the prosecution has to make a definite identification with regard to the identification of the accused persons even P.W.-13 who was the Dy.S.P at that time and has led the operation and P.W.-17 (I.O & informant) or all other team members has not identified them on their own. Their information was based on the narration of either of other witnesses or accused persons. The evidence of identification by the co-accused is the weakest form of identification. It ought to have been corroborated by cogent and formidable evidences. However, all the witnesses have identified Mukesh Mishra, Mukesh Singh, Manoj Singh, Shambhu Singh, Vinod Kumar Singh, Ranjan Singh and Pappu Singh were arrested from the P.O. In which trial facing accused Pappu Singh was hit by a bullet in his left thigh and Shambhu Singh though has no injuries however he was arrested with two live bombs with a packet (Jholla). So their identity and implication in this case are proved beyond all reasonable doubt. So, this court is of the view that prosecution has able to prove its case against the two accused persons Pappu Singh & Shambhu Singh beyond all reasonable doubt.

At the same time, this court is of the view that the prosecution has not able to prove its case under Section 307/149, 148, 333, 353, 186, 216(A) of I.P.C. & 25(1-B)a, 27, 35 of Arms Act & 3,4,5 of Explosive Substance Act against Suraj Bhan Singh @ Suraj Singh & Shankar Kunwar. They are present in the court and they are acquitted and set free.

The rest two accused persons Pappu Singh & Shambhu Singh are present before the Court. They are held guilty u/ss- 307/149, 148, 353, 186 of I.P.C. Besides, Pappu Singh is also held guilty u/ss 25(1-B)a, 27, 35 of Arms Act. They are not held guilty u/ss- 333, 216(A) of I.P.C. & 3,4,5 of Explosive Substance Act. Their bail bonds are cancelled and taken into custody.

Dictated and corrected by me.

Sd/-

(Sanjay Kumar-III)

Dist. & Addl. Sessions Judge- II

BEGUSARAI

19.03.2026

Sd/-

(Sanjay Kumar-III)

Dist. & Addl. Sessions Judge- II

BEGUSARAI

19.03.2026

**In the Court of District & Additional Sessions Judge-II-cum-
Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar**

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

ON THE POINT OF SENTENCE

25.03.2026

33. Heard the learned counsel for the convicts and the Id. Spl. P.P., on the point of sentence.

The learned counsel for the convicts have humbly submitted that besides this offence, there is no any criminal antecedent against the convicts and the whole family revolves around them. So, the court be pleased to take a lenient view while awarding the sentence.

On behalf of convict Pappu Singh, learned senior counsel Chandrakant Singh appeared and submitted that it is the first offence of the convict in his family. He has an old mother to look after alongwith three unmarried daughters. Convict is the sole bread-earner and he has faced the rigor of trial for 38 years. He has remained in judicial custody for six months during the trial. He has also submitted and filed a medical certificates that his wife has died due to cancer, so, the convict be given benefit of Section 389(3) of the Cr.P.C He be granted bail to prefer an appeal and look after his family. For this, the learned counsel has pleaded for a lenient sentence and enlarged the convict of u/s 389(3) of Cr.P.C.

On the other hand, for the convict Shambhu Singh, learned senior counsel Shashi Bhushan Jha has submitted that convict has a clean antecedent and he has remained in judicial custody for four months during the trial. So, the court be pleased to take a lenient view.

On the other hand, the learned Spl. P.P., Sri Raj Kumar Mahto appeared on behalf of the prosecution and submitted that convicts have taken law in their hands and committed hindrance in their discharge of official duties. Their intention were only to commit murder of the police officials, hence they be awarded in maximum punishment up to ten years.

34. Heard the learned counsels for the appellants and the Id. Spl. P.P. In course of analyses of the evidences, this court has found that the two convicts were arrested red handed from the spot itself. Their conduct at the time of encounter, fingers their one and only intention to commit murder of the police officials and tried to flew away from the P.O. So, this court is of the view that in such circumstances they are not entitled for a lenient view of this court. This court is also considerate of the fact that the trial has lasted for 34 years. In such circumstances, the court awards the following sentences:-

For the reason stated above the two convicts namely Pappu Singh & Shambhu Singh are sentenced to undergo imprisonment under Section 307 of I.P.C for ten years with a fine of Rs/- 10,000 each, and in default of fine they have to undergo imprisonment for six months.

For the reason stated above the two convicts namely Pappu Singh & Shambhu Singh are sentenced to undergo imprisonment under Section 149

In the Court of District & Additional Sessions Judge-II-cum-Special Judge MP/MLA, Begusarai
Sessions Case No. - 142/1995
Suraj Bhan Singh and others Vs State of Bihar

Present: **Sanjay Kumar-III**

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment:- 19.03.2026

of the I.P.C for ten years with a fine of Rs/- 10,000 each, and in default of fine they have to undergo imprisonment for six months.

For the reason stated above the two convicts namely Pappu Singh & Shambhu Singh are sentenced to undergo imprisonment under Section 148 of the I.P.C for three years with a fine of Rs/- 1,000 each, and in default of fine they have to undergo imprisonment for one month.

For the offence under Section 353 of the I.P.C., two convicts namely Pappu Singh & Shambhu Singh are sentenced to undergo imprisonment for two years with a fine of Rs/- 500 each, and in default of fine they have to undergo imprisonment for one month.

For the offence under Section 186 of the I.P.C., two convicts namely Pappu Singh & Shambhu Singh are sentenced to undergo imprisonment for three months.

For the offence under Section 25(1-B)a of Arms Act, the sole convict Pappu Singh has to undergo rigorous imprisonment for five years with a fine of Rs/- 5,000, in default of fine he has to undergo imprisonment for six months.

For the offence under Section 27 of Arms Act, the sole convict Pappu Singh has to undergo rigorous imprisonment for five years with a fine of Rs/- 5,000, in default of fine he has to undergo imprisonment for six months.

All the sentence shall run concurrently and the sentence already gone in judicial custody shall be set off according to law.

Pronounced by me in the open court today

i.e. on 25.03.2026

Dictated and corrected by me.

Sd/-

(Sanjay Kumar-III)

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Sd/-

(Sanjay Kumar-III)

District & Additional Sessions

Judge-II-cum-Special Judge

MP/MLA, Begusarai

Date of Judgment	19.03.2026
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