

In the Court of Principal Sessions Judge, Begusarai
Criminal Appeal No. 29/2025
(Arising out of Ballia P.S. case no. 55/2005)

In the matter of :

Raj Kumar Tanti, S/o Late Dukha Tanti, R/o vill. Parihara P.S. Parihara, Distt. Begusarai

.....Appellant (Accused).

Vrs.

The State of Bihar

.....O.P.

Present : Rishi Kant

Principal Sessions Judge, Begusarai

Ld. Counsel on behalf of Appellant :- Sri Purnendu Kumar Jha, Ld. Advocate.

Ld. Addl. P.P. on behalf of O.P. :- Sri Santosh Kumar, Ld. P.P. I/c

Date of Judgment:- 16.06.2026

JUDGMENT

1. This criminal appeal has been preferred against the judgment and order dated 20.09.2025 passed by Miss Kiran Kumari Ld. JMFC, Ballia in G.R. Case No. 795/2005 arising out of Ballia P.S. Case No. 55/2005, whereby the learned Trial Court found the appellant guilty and sentenced him to undergo Rigorous Imprisonment for 3 years with fine of Rs. 10,000/- for the offence under Section 25(1-b)a of Arms Act, and in default of fine, to further undergo SI for 2 months. He was further sentenced to undergo RI for 1 year for the offence under Section 26/35 of Arms Act.

2. I have heard learned lawyer appearing for the appellant and learned P.P in-charge and perused the lower record, impugned judgment and the evidences available on record.

3. The learned counsel for the appellant submitted that the learned lower court committed errors of law, justice, and facts in the aforementioned judgment and order. The learned court failed to closely examine the seriousness of the evidence of the aforementioned case. The learned trial court failed to examine the evidence produced by the prosecution in the court with a keen eye, and in sheer haste passed the said judgment and order, which is completely untenable from a legal and judicial standpoint. Based on the First Information Report (FIR) and the evidence of the witnesses, the prosecution has failed to establish the place of occurrence of the aforementioned incident. The alleged place of occurrence, an unclaimed pillow was found on a platform (machan), under which a country-made pistol and two cartridges were recovered, whereas no recovery of ammunition or explosives was made from the conscious possession of the applicant, or from their residential premises or camp is not, the said platform (machan) was located in the bamboo grove (basbeeta) of Phuleshwar Singh, which did not and does not belong to the appellant. The learned lower court, in its judgment and order, failed to consider that the evidence of the independent witnesses of the alleged seizure list has not been produced by the prosecution. The rules of seizure were not followed by the informant, which is improper. Moreover, the seizure list witnesses Brahmadev Sahni and Phoolchandra Sahni are named witnesses in the charge-sheet. The testimonies of the official witnesses named in the charge-sheet, Om Prakash Paswan, Awadhmesh Das, and Ram Prasad Sah, were also not produced before the court, which renders the entire trial doubtful. The material exhibits presented by the prosecution side before the court were neither properly produced, nor has it been verified from where and under whose orders Amarjeet Paswan, who is a chowkidar (watchman), exhibited the material objects in the court; all these facts cast doubt on the entire narrative of the prosecution. The evidence of the witnesses produced by the prosecution is not corroborative of one another. The judgment and order dated 20/09/2025 passed by the learned lower trial court is liable to be set aside. So, on this ground alone, the judgment of conviction and

order of sentence passed by the learned court below is liable to be set aside.

4. On the other hand learned P.P In-charge in course of her argument submitted that the learned Trial Court has rightly appreciated the evidence on record and passed a well-reasoned judgment of conviction. There is no illegality or perversity in the impugned judgment warranting interference by this Hon'ble Court. That minor contradictions and discrepancies are natural and do not affect the core of the prosecution case. The prosecution has successfully proved the charges against the appellants beyond all reasonable doubts. That the sentence awarded is proportionate to the nature of offence and does not call for any interference. Hence, the appeal being devoid of merit is liable to be dismissed.

5. Now in the light of the submissions raised on behalf of the parties and on perusal of the evidences available on the case record and the impugned judgment of conviction and order of sentence passed by the learned Court below, and on consideration of the same, I find, in this case the prosecution examined three witnesses out of eight charge-sheeted witnesses.

6. At this juncture, I have gone through the written application of informant and on careful consideration of the same, I find, the prosecution case is that on 14.04.2005 at about 2 P.M., the police station of Ballia apprehended the accused Raj Kumar Tanti @ Bahra and recovered a country made pistol alongwith two live cartridges without any valid licence from his possession. Accordingly, a seizure list was prepared.

7. On this basis, Ballia P.S. Case No. 55/2005 dated 14.04.2005 was instituted under Sections 25(1-b)a, 26,35 of Arms Act. After investigation, charge-sheet under Sections 25(1-b)a, 26,35 of Arms Act was submitted. Cognizance was taken and the case was transferred to the court of Miss Kiran Kumari Ld. JMFC, Ballia for trial.

8. Now at this juncture, I would like to consider the evidence of prosecution witnesses. I shall now consider the evidence of P.W. 1, 2 & 3, on whose testimonies the learned JMFC, Ballia Miss Kiran Kumari based the conviction of the appellant. I now proceed to analyze the evidence of these prosecution witnesses.

9. **P.W.1 Amarnath Singh** stated in his examination-in-chief that on 08.10.2005 he was at a post of Sergeant Major in Police line, Begusarai. He further states that on the order of Hon'ble Court, Parihara OP ASI Ram Kumar Pashwan came to me for the inspection of arms. He further states that after inspection of arms he found that the pistol and cartridge were dangerous and lethal to life. He further states that he submitted his investigation report which is in his handwriting and signature with stamp on it. He further states that he recog-nizes it is marked as **Exhibit-1**.

During cross-examination, he stated that he stated that the arms for which he has submitted the investigation report is not present here. In Para-3 he further states that he has in-spected the gun and cartridge physically. He further states that the arms which came for investiga-tion has signature under the name of Chief Judicial Magistrate. He further states that after investiga-tion I returned the guns and cartridge after sealing it. He further states in Para that the ingestiga-tion report that was sent for investigation has not any number or sign for identification. In Para he states that the gun and cartridges that was presented to me for investigation was of different kind and he did not remember that he has done more investigation about the gun like the length and width of the present examined pistol.

10. **P.W.2 Mumtaz Ali**, stated in his examination-in-chief, stated that on 14.04.2015 he was posted in Parihara OP. He further states that he went for raid along with ASI

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Ram Kumar Pashwan and constable Vishundev Pashwan with the aim of arresting the accused Ramsnewak Tanti accused in Ballia Police Station, Case No: 48/2003, 38/2005 and 73/2003. He further states that he conducted raid on Ram Shewak Tanti house to arrest him and he was not present here. He further states that he got information that he has went for dinner at his place. He further states that we raided the place and Ramsnewak Tanti and his brother Raj Kumar Tanti was present there but they managed to escape after seeing the police. He further states that he raided his house and followed all rules before doing raid. He further states that a country made pistol and rifle bullet was recovered under his pillow. He further states that in presence of two independent witness the seizure list of recovered arms was prepared. He further states at at around 2:00 PM my statement was recorded. He further states that the written statement is in my handwriting and under my signa ture and he recognize it. He further states that endorsement on FIR was done by SHO Ballia and is his hand writing and signature and is marked as Exhibit-2. He further states that there is of Brahamdev Sahni and Fulchandra. He further states that the seizure list is under re and handwriting and he recognize it and is marked as Exhibit-3. He further states that 10mal FIR is under signature of SHO Ashok Kumar Singh and I recognize it and is marked as Exhibit-4. He further states that accused Raj Kumar Tanti is present in this Court and I recognize him.

During cross-examination, he states that he is the informant in this case. He further states that has read the FIR. He further states that the did not know Raj Kumar and Ramsnewak Tanti before this incident. He further states that he had gone to arrest the accused Ramsewak Tanti but he has not found him in the house. Nearby people told him that he was running. He has not seen Ramsewak Tanti as escaping. He has not met the family members of him. He further states that he got secret information that Ramsnewak is at his house. He further states that he has gone to the house of Ramsnewak many times and near his dera, there is an orchard. He can't say that Ramsewak Tanti and Rajkumar Tanti were above the machan. They were running and he was chasing them. In para-6 he further states that hisrestatement was taken in front of I.O. and he seized the articles from the place of occurrence but he has not given any mark of identificatin on them. He further states in the statement he told the same thing as stated in FIR that in his statement he told that Ramsnewak Tanti has come for dinner and after seeing the police he escaped from the site. In para 8 he states that he has got secret information that Raj Kumar Tanti has his share in that house. He further stated that it is not true to say that a country made pistol and two live cartridges were recovered from the machan situated at Bansbitta of Fuleshwar Singh. He further stated that it is not true to say that he has seen Rajkumar as escaping and neither that dera belongs to him nor anything has been recovered from his conscious possession. He further states that he cannot tell the boundary of the house and the recovered arms was not sealed at the place of occurrence. He further states that the recovered ams in not present before him in this Court.

11. PW-3 Ram Kumar Paswan, stated in his examination-in-chief stated that he was posted as ASI in Par ihara OP in Ballia Police Station. He further states that on that day I was given the charge for inves tigation of "Case No.-55/ 2005". He further states that after taking the charge of investigation and perused the written statement of informant Mumtaz. Ali he mentioned the seizure list in diary. He further states that he took the statement of the informant in which he supported the incident. He fur-ther states the boundary of the place of incident. East Land of Laxhumi Sah, West- Khalifa

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Bridge North Natho Sahni, South- House of Udgar Mahto. He further states that the statement of witness Brahmdev Sahni, constable Ram Prasad Sah, Awdhesh Sah and Om Prakash Sah was taken of them supported the occurrence of incident. He further states that the criminal an lentccused Raj Kumar Tanti was noted. He further states that he is the member of Bum bam gang and is absconding in many cases. He further states that on the onder of Hon'ble the recovered arms was examined. He further states that he received the investigation re-port from senior attendant. He further states that prosecution sanction order report was received from then District Magistrate, Shri. Mihir Kumar Singh and is under his signature, I recognize it and maked as Exhibit-5. In Para-2 he further states that he recognize Raj Kumar and after investigation charge sheet was submitted against second accused.

During cross-examination, by defence in Para-3 he states that it is mentioned in written statement that Raj Kumar Tanti and Ram Sewak Tanti arrived to have their dinner but after seeing Police they escaped from the site. He further states that it is not mentioned anywhere in the written statement that the accused started running after seeing the police and police chased them. He further states that it is mentioned in Para-3 of diary that they got secret information on phone that the accused have arrived for dinner and after seeing the police they started running. He further states that the statement of Natho Sahni and Udgar Mahto was not taken. In para-4 he further states the nebyl the accused. that the recovered seized items is not present here and he did not take the In para-5 he further states that Parihara OP is in village and the act in Pariisillage. He further states that he already know the accused.

12. PW-4 Amarjit Paswan, stated in his examination-in-chief that on 08.04.2025 he is posted as constable at Police Station-Parihara, In Para-2 he further states that Under the order of the Hon'ble Court and on the direction of the Station House Officer, Ballia Police Station, Case Crime No. 55/2005 the sealed item was produced before the court. He further states that the item was sealed with red cloth and marked as MR-4/05 by red ink, and on which Ballia Parihara Police Sta-tion case No: 55/2005 dated 14.04.2005 under Section 25 (1-b) (a)/26/35 Arms Act by black ink. The seal was opened after the order of Hon'ble Court. In Para-3 he further states that on opening the seal one country-made pistol and two cartridge was found. On opening, one country-made pistol and two live cartridges were found. On the pistol, the case details "Case No. 55/2005 dated 14.04.2005, under Section 25 (1-b)a/26/35 Amis Act, was written and has his signature under Chief Judicial Magistrate and is marked as **Exhibit-ME-1**. In Para-4 he further states that on first Cartidge Ballia Police Case No. 55/2005 dated 14.04.2005, under Section 25 (1-b)a/26/35 Arms s mentioned and his a short signature of Chief Judicial Magistrate and is marked as **Exhibit-ME-2/1**andthe second cartidge is marked as **Exhibit-ME-2/2**.

During cross-examination, he stated that by defence he stated that he is posted as constable Paril/Police Station. He further states that the produced arms and ammunition were brought Today from Parihara Police Station. He further states that he has been ordered to bring the arms and present them in the Court but he does not have letter of that order. He further states that that the arms he produced before the court was not sealed in his presence.

13. Now at this juncture, I would like to consider the evidence of the prosecution witnesses and the materials available on the lower court record. I have carefully gone through the oral as well as documentary evidence adduced on behalf of the prosecution

and have also perused the impugned judgment of conviction and order of sentence passed by the learned Trial Court. On careful consideration of the same, I find that the entire prosecution case rests upon the alleged recovery of one country-made pistol and two live cartridges. Admittedly, there is no allegation that the appellant was apprehended at the spot with the alleged firearm in his hand or that any firearm or ammunition was recovered from his person. Therefore, the principal question which requires determination in the present appeal is whether the prosecution has been able to establish beyond all reasonable doubts that the alleged firearm and cartridges were recovered from the conscious and exclusive possession of the appellant and whether the essential ingredients of the offences punishable under Sections 25(1-b)(a), 26 and 35 of the Arms Act have been proved by reliable and convincing evidence.

14. Before appreciating the evidence of individual witnesses, it would be appropriate to mention here that according to the prosecution itself, the alleged recovery was made from beneath a pillow lying upon a machan. Thus, the prosecution was required not only to prove the recovery but also to establish that the machan and the place from where the alleged recovery was made were under the conscious and exclusive possession of the appellant. It is well settled that mere recovery of an incriminating article from an open place or from a place accessible to others does not by itself establish conscious possession unless the prosecution further proves the nexus between the accused and the place of recovery.

15. First of all, I shall consider the evidence of P.W.1 Amarnath Singh, who has been examined as an Arms Expert. He deposed that on the order of the Court he examined the firearm and cartridges produced before him and found them to be dangerous and capable of use. He proved his report which has been marked as **Exhibit-1**.

16. However, on careful scrutiny of his cross-examination, I find that in Paragraph-2 he categorically admitted that the firearm allegedly examined by him was not present before him at the time of his deposition. He further admitted in Paragraph-5 that the firearm examined by him did not bear any specific identification mark, number or distinguishing feature. He also admitted that he did not remember the length, width or other physical characteristics of the firearm examined by him.

17. These admissions assume considerable significance. The prosecution was required to establish that the firearm allegedly examined by P.W.1 was the very same firearm which was allegedly recovered in the present case. In absence of any identification mark or distinguishing feature, the possibility of confusion regarding identity of the firearm cannot be completely ruled out. Consequently, the evidence of P.W.1 merely proves examination of some firearm but does not conclusively establish that the same firearm was connected with the present case.

18. I now proceed to consider the evidence of P.W.2 Mumtaz Ali, who is the informant as well as a member of the raiding party. According to him, he had gone to arrest Ramsewak Tanti and during the course of raid the accused persons allegedly fled away and thereafter one country-made pistol and two live cartridges were recovered.

19. However, upon careful scrutiny of his cross-examination, I find several material admissions which strike at the root of the prosecution case. In Paragraph-2 of his cross-examination, he admitted that he did not know Raj Kumar Tanti and Ramsewak Tanti prior to the occurrence. He further admitted that although he had gone to arrest Ramsewak Tanti, he had not found him in the house and nearby persons informed him

that he had fled away. Thus, his knowledge regarding the presence of the accused persons at the alleged place of occurrence was not based entirely upon his own observation.

20. In Paragraph-5 of his cross-examination, P.W.2 admitted that he had not actually seen Ramsewak Tanti escaping from the place. He further admitted that he could not say whether Ramsewak Tanti and Raj Kumar Tanti were actually present upon the alleged machan. These admissions materially weaken the prosecution case because the entire prosecution story seeks to connect the appellant with the alleged firearm on the basis of his alleged presence near the place immediately prior to recovery.

21. P.W.2 further admitted in Paragraph-6 of his cross-examination that he did not put any identification mark upon the alleged seized firearm and cartridges. He further admitted that the firearm and cartridges were not sealed at the place of occurrence. The purpose of marking and sealing seized articles is to preserve their identity and sanctity and to exclude the possibility of tampering or substitution. Failure to follow these safeguards creates a serious doubt regarding the identity of the articles subsequently produced before the Court.

22. P.W.2 further admitted that the recovered firearm was not present before him during his deposition. He also admitted that he could not disclose the boundaries of the alleged place of occurrence. He further admitted that he had no documentary basis to show that the place from where the recovery was made belonged to the appellant. Thus, the evidence of P.W.2 fails to establish conscious and exclusive possession of the alleged firearm by the appellant.

23. At this stage, it is important to mention here that the defence case throughout has been that the alleged machan was situated in the Banskhatta of Phuleswar Singh and neither the machan nor the land belonged to the appellant. Once such defence was raised and the alleged recovery was admittedly not from the person of the appellant, the burden heavily shifted upon the prosecution to establish the nexus between the appellant and the place of recovery. However, no such evidence has been brought on record.

24. I shall now consider the evidence of P.W.3 Ram Kumar Paswan, the Investigating Officer. According to him, he conducted the investigation, recorded statements of witnesses and submitted charge-sheet against the appellant.

25. However, in Paragraph-3 of his cross-examination, he admitted that the written report did not mention that the accused persons had started running after seeing the police or that the police party had chased them. These facts surfaced subsequently during evidence. Such material improvements and embellishments create doubt regarding the truthfulness and consistency of the prosecution version.

26. P.W.3 further admitted in Paragraph-3 of his cross-examination that he did not record the statements of Natho Sahni and Udgar Mahto whose houses admittedly formed part of the boundaries of the alleged place of occurrence. These persons were the most natural and independent witnesses regarding the actual place of occurrence and possession thereof. Their non-examination creates a serious lacuna in the prosecution case.

27. P.W.3 further admitted in Paragraph-4 of his cross-examination that the seized articles were not present before him during his deposition. He also admitted that no document relating to ownership or possession of the place of occurrence was collected during investigation. Consequently, the prosecution failed to establish the most vital circumstance connecting the appellant with the alleged place of recovery.

28. At this juncture, I further find that although eight witnesses were cited in the charge-sheet, only four witnesses have been examined. The independent seizure witnesses namely Brahmadev Sahni and Phoolchandra Sahni have not been examined. Likewise, official witnesses namely Om Prakash Paswan, Awadhesh Das and Ram Prasad Sah, who according to the prosecution were present during the alleged raid and seizure, have also not been examined.

29. The prosecution has not assigned any explanation whatsoever for withholding these material witnesses. It is a settled principle that where material witnesses are available but are not examined without sufficient cause, an adverse inference may legitimately be drawn against the prosecution. This principle assumes greater significance where the entire prosecution case rests upon an alleged recovery.

30. I shall now consider the evidence of P.W.4 Amarjit Paswan. His evidence merely shows that he produced the alleged firearm and cartridges before the Court on 08.04.2025, almost twenty years after the occurrence.

31. During cross-examination, P.W.4 admitted that he had no written authorization for carrying the articles from the police station to the Court. He further admitted that the articles were not sealed in his presence and that he had no personal knowledge regarding their custody prior to their production before the Court.

32. Thus, P.W.4 was not in a position to establish the chain of custody of the alleged firearm. The prosecution has failed to prove where the firearm remained from the date of seizure till its production before the Court, under whose custody it remained and whether it remained protected against tampering. Consequently, the identity of the material exhibits becomes doubtful.

33. Upon cumulative appreciation of the entire evidence available on record, I find that the prosecution has failed to establish (i) conscious possession of the alleged firearm by the appellant, (ii) ownership or possession of the alleged place of occurrence, (iii) proper seizure and sealing of the alleged firearm, (iv) examination of independent seizure witnesses, and (v) safe custody and identity of the material exhibits.

34. I further find that the learned Trial Court did not properly consider these material contradictions, omissions and legal infirmities appearing in the prosecution case. The evidence brought on record creates suspicion at best, but suspicion, however strong, cannot take the place of legal proof. The prosecution was required to establish the guilt of the appellant beyond all reasonable doubts, which it has failed to do.

35. Therefore, in view of the discussions made above, I am of the considered opinion that the findings recorded by the learned Trial Court are against the weight of evidence available on record and suffer from perversity and non-appreciation of material evidence. Accordingly, I find that the prosecution has failed to prove the charges under Sections 25(1-b)(a), 26 and 35 of the Arms Act beyond all reasonable doubts and the appellant is entitled to the benefit of doubt.

Accordingly, it is hereby

ORDER

The Criminal Appeal is hereby allowed. The judgment of conviction and order of sentence dated 20.09.2025 passed by the learned JMFC, Ballia in connection with Ballia P.S. Case No. 55/2005 are hereby set aside. The appellant Raj Kumar Tanti @ Bahra is acquitted of the charges under Sections 25(1-b)a, 26 and 35 of the Arms Act by giving him the benefit of doubt. The appellant is discharged from the liabilities of his bail bonds.

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Let the Lower Court Records be sent back forthwith along with a copy of this judgment.
Dictated, Corrected and Signed by me.

Sd/-
(Rishi Kant)
Principal Sessions Judge, Begusarai
16.06.2026

Sd/-
(Rishi Kant)
Principal Sessions Judge, Begusarai
16.06.2026

Date of Judgment/Order	16.06.2026
Date of Reserving Judgment/Order	09.06.2026
Uploading Date	17.06.2026
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