

IN THE COURT OF ADDL. SESSIONS JUDGE-II, KATIHAR

Present:- Asutosh Rai, Addl. Sessions Judge, II, Katihar

[Date of judgment-30 April 2026]

[ S. Trial No.-66/2003]

Katihar P.S. case No.-156/2001 F.I.R. u/s 307 of the I.P.C. & u/s 25 (1A) (1B), 26 & 27 Arms Act

Informant	State of Bihar through informant namely Suresh Prasad , the then SHO, police-station-Katihar Town Distt.-Katihar
Represented By	Sri Md. Ezaj Alam Id. A.P.P.
Accused	1. Rajesh Singh @ Rajesh Mahto, aged about 49 years S/O Kallar Mahto, R/O-Village-Nanhkar, P.S.-Kharik, Distt.-Bhagalpur
Represented By	For defense : Sri Rajesh Kumar Id. Advocate

Date of Offence	29-05-2001
Date of F.I.R.	29-05-2001
Date of Charge-sheet	27-07-2001
Date of Framing of Charge	07-03-2003
Date of Commencement of evidence	28-05-2003
Date of which judgment is reserved	16-04-2026
Date of Judgment	30.04.2026
Date of Sentencing Order, if any	

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest/ Surrender	Date of Release on Bail	Offences Charged with	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone
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						during Trial for purpose of section 428 of Cr.P.C.
01	Rajesh Singh @ Rajesh Mahto	29-06- 2001	11-11- 2003	Charges u/s- 307/34 of the d I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act	Acquitte N/A	N/A

JUDGMENT

1. The accused persons namely Rajesh Singh @ Rajesh Mahto stand charged for the offences punishable u/s-307/34 of the I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act as leveled against him.

CASE OF PROSECUTION/BRIEF FACTS:

2. As per self written statement of informant namely Suresh Prasad (the then SHO, P.S.-Katihar Nagar) prosecution case in brief is that on dt. 29-05-2003 at about 11:05 O'clock in day Branch Manager of L.I.C. Branch, Katihar informed to the informant through telephonic information that some time before some staffs of his office, having taken some amounts/cash in one VIP Briefcase were going to deposit the said amounts in one Central Bank. When they arrived near the Boarding, four accused persons who were laced with Carbine and country made pistol were standing there from much before, made attack upon them and having snatched one briefcase in containing near about total Rs. 1100000/- (Eleven Lakhs) only fled away. They were fleeing away towards Kulipada. He recorded the such information in the Station dairy.

*He gave this information to the S.P. and D.S.P. After that he along with S.I. Shivdhari Rajak, S.I. Ramnaresh Singh, S.I. Vijay Kumar, A.S.I. Nathuni Paswan, A.S.I. R.K. Sharma and the constables of armed force proceeded for L.I.C. office. From the office of said office it was informed that some time before by riding on two motorcycle miscreants have fled away towards Kulipada. Informant has further stated that he instructed S.I. Ramnaresh Singh and A.S.I. R.K. Sharma to record the complainant's statement and perform other duties, and then he proceeded ahead with other associates. In Kulipada Mohalla, he saw a green-colored motorcycle lying fallen on road. Regarding that motorcycle, the people of that vicinity informed that this motorcycle belongs to the criminals, and two persons were riding on it. The criminals were fleeing away. They were chasing after two motorcycle riders. The motorcycle that was fleeing ahead is of C.D. Zed silver colour, upon which two persons were riding. The person at the back was carrying a briefcase. When the locals people became fully convinced that the fleeing persons were indeed criminals, they tried to stop the motorcycle which was proceeding from back. In that process, the motorcycle riders lost their balance and the motorcycle fell down. When the local people tried to catch the criminals, one criminal started firing from a carbine. One of his bullets hit to the Samasad on the upper side of his left knee.. He has been sent to Sadar Hospital for treatment. After that informant requested to the people to give this information to A.S.I. Ramnaresh Singh so that he could take necessary action. The local people described the appearance of the other criminal and also said that the criminals are fleeing towards the Lalalwati area. Then the informant continued proceeding towards the escape route of the criminals. Some other locals also joined the informant. When the informant reached near the railway line, near the godown, people said that one had a carbine and the other had a pistol, and they had entered the village via the railway line. Upon getting this information, they entered into village- Chhitabari, then information was received that the criminals had crossed over and were fleeing in the northern direction. Then after doing needful in inquiring, when they reached near village- Mogara at that time DSP sir and Sergeant Major*

*P.N. Singh also arrived there. At that very place, information was received that both criminals had entered in The basbari of Javed. Then they divided the raiding party into three parts. The D.S.P. sir proceeded in the western part, informant proceeded in the middle part, and S.I. Shivdhari Rajak along with other members advanced into the eastern side in the said Bansbari. Then from the thicket of the jungle, the criminals started firing indiscriminately. Constable No. 488 Rambahadur Singh and Constable No. 548 Dinesh Thakur, came very close to the criminals, and then bullets were fired from the side. Then, considering themselves surrounded by the criminals and seeing risk to life, Rambahadur Singh fired one shot from his pistol and Dinesh Thakur fired two rounds from his rifle towards the hiding place of the criminals. Meanwhile, one criminal who was carrying a carbine, taking cover of the thicket, fled towards the village, whom DSP sir captured with the help of his armed forces members. When the firing stopped, they advanced and saw that one criminal had become unconscious due to being injured. After that before Ashok Rai and Abdul Bahav, informant gave his body search and after that he searched the injured criminal and found one live cartridge of a .303 rifle from the pocket of his full-pants, on the bottom of which 'k1 f7 11-59' had been found to be written. A seizure list was prepared and signatures of both witnesses were taken. The injured miscreant was sent for treatment to Sadar Hospital, Katihar under the leadership of P.N. Singh. The criminal whom the D.S.P. had caught, disclosed his to be Subodh Yadav. Upon searching him in the presence of the aforementioned two witnesses, one black-colored carbine was recovered from his possession, and one live cartridge was recovered from chamber of said carbine. On being asked about the recovered carbine and live cartridge, he did not give any satisfactory answer nor produced any documents. Later, a seizure list was prepared in the presence of two witnesses and said arms and ammunition were seized, and the witnesses affixed their signatures on the seizure list. Subodh Yadav disclosed the name of his injured associate to be Rajesh Singh and named the other associate who fled with money as Dharmendra Rai Bagga @ Kamando. The residents of Kulipada*

Mohalla, stated that when the criminals were making firing, a chaotic situation was created. Being terrified people closed their doors and windows. People of all ages were seen running and falling on the road. The informant further states that he is accusing Subodh Yadav and Rajesh Singh of firing with intent to kill and for possessing illegal arms.

**INSTITUTION OF CASE/ INVESTIGATION/ INQUIRY**

3. On the basis of self written statement of informant namely Suresh Prasad formal F.I.R. bearing Katihar town P.S. case No. 156/2001 u/s 307 of the I.P.C. & u/s 25 (1A) (1B), 26 & 27 Arms Act was instituted against the accused namely Subodh Yadav and Rajesh Singh and after investigation police submitted charge-sheet no. 258/01 against accused namely Subodh Yadav and Rajesh Singh @ Rajesh Mahto

4. On receipt of charge-sheet Ld..C.J.M., Katihar took cognizance of the offence u/s- 307 of the I.P.C. & u/s 25 (1A) (1B), 26 & 27 Arms Act against the accused namely Subodh Yadav and Rajesh Singh @ Rajesh Mahto and having seen that the section 307 of the I.P.C. as well as some other section of Arms Act leveled against the aforesaid accused persons is exclusively triable by the court of sessions, Ld. C.J.M.- Katihar supplied the Xe-rox copy of police papers as per requirement of section 207 of the Cr.P.C. to the ld. advocate of aforesaid accused persons and ld. court committed the case record to the court of Sessions for further trial. Later on, as per order of the District and Sessions Judge, Katihar case record came to the file of my court for further trial and disposal.

**CHARGES AGAINST ACCUSED PERSON**

5. Later on, after completion of the appearance of the aforesaid accused persons namely Subodh Yadav and Rajesh Singh @ Rajesh Mahto before the court and after considering the materials available on record and on hearing the ld. A.P.P. for State as well as ld. counsel for the aforesaid both accused persons, my ld. Predecessor court framed the charges u/s- 307/34 of the I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act in written against the aforesaid aforesaid accused person and the contents of the same were read over and explained to the

aforesaid accused persons in hindi to which they denied and pleaded to be not guilty and claimed to be tried. Hence the trial.

### PROSECUTION EVIDENCE

6. In order to substantiate its case prosecution side has examined altogether fifteen (15) witness in the support of its case. They are:-

Sr. No..	Pws. Number	Description
01	PW-01-Md. Kasim	Hostile witness
02	PW-02- Faroj Ahamad	Hostile witness
03	PW-03- Ashok Rai	Formal witness of seizure list
04	PW-04- Abdul wahab	Formal witness of seizure list
05	PW-05-Nehal Ansari	Hostile witness
06	PW-06-Samsad Kuraisi	Injured witness
07	P.W.-07-Sheodhari Rajak	Eye witness
08	P.W.-08 Prabhu Nath Singh	Eye witness
09	P.W.-09Jitendra Kumar Singh	I.O. to this case
10	P.W.-10—Dr. Arun Kumar Chaudhary	Expert witness
11	P.W.-11-Dr. R.K. Jha	Expert witness
12	P.W.-12-Suresh Prasad (The then SHO, Katihar town police-station)	Informant to this case
13	P.W.-13- Ranjit Pandey (Searrjent Major)	Expert witness
14	P.W.-14. S.I. Nathuni Pasawan	Eye witness
15	P.W.-15-S.I. Basudeo Pasawan	Eye witness

7. Prosecution side has also adduce following documentary evidences on the record in the support of its case:-

Sr. No.	Ext No.	Description
01	Ext.-1	Signature of P.W.-03 Ashok Rai over seizure list
02	Ext.-1	Signature of P.W.-04Abdul Wahab over seizure list

		<i>relating to seizure of .303 cartridge.</i>
03	<i>Ext.-1/1</i>	<i>Signature of P.W.-04Abdul Wahab over seizure list relating to seizure of Carbine and 24 cartridge of 9 MM.</i>
04	<i>Ext-02</i>	<i>Signature of Sri K.K. Mahto the then D.M. Katihar on prosecution sanction report</i>
05	<i>Ext-03</i>	<i>Injury report of Samasad Kuraisi</i>
06	<i>Ext-03/1</i>	<i>Injury report of unknown person</i>
07	<i>Ext-4</i>	<i>Seizure list relating to seizure of .303 cartridge.</i>
08	<i>Ext04/1</i>	<i>Seizure list relating to seizure of Carbine and cartridge of 9 MM.</i>
09	<i>Ext-/2</i>	<i>Seizure list</i>
10	<i>Ext4/3</i>	<i>Seizure list</i>
11	<i>Ext-05</i>	<i>Fard-e-beyan (self statement of informant)</i>
	<i>Ext-06</i>	<i>Formal F.I.R.</i>
11	<i>Ext-07</i>	<i>Examination report of Carbine and other ammunition</i>
12	<i>Ext-08</i>	<i>Examination report of Government revolver</i>

**STATEMENT OF ACCUSED PERSON**

8. After conclusion of the prosecution evidence, the statement of the accused persons namely Rajesh Singh @ Rajesh Mahto was recorded under section 313 of the Cr.P.C. and all incriminating facts were put to them but he denied veracity of prosecution evidences with the contentions that he is innocent and has falsely been implicated in this case. While accused person neither examined any witnesses nor adduced any documentary evidence on record in his defense.

9. Now, the point for consideration is whether the prosecution has been able to prove the charges as leveled against the accused person, beyond the shadow of all reasonable doubts ?

**FINDINGS**

10. From perusal of the record it is evident that in order to substantiate its case prosecution has examined altogether 15 (fifteen) witnesses and have also adduced some documentary evidences on record. Out of all 15 witnesses it would be expedient to examine to P.W.-12 Suresh Prasad who is non else but the informant to this case, who has stated in his examination-in-chief that on 29.05.2001 he was posted as an S.H.O. at Police Station, Katihar Town. On that very day at about 11:00 O'clock by the manager of L.I.C. Katihar an information received through telephone to this effect that from his staff some miscreants have looted near about 11 Lakhs Rupees/- and they have fled away. P.W.-12 has further stated that he informed aforesaid information to the concerned officers. He along with S.I. Shivdhari Rajak, S.I. Ram Naresh Singh, S.I. Ram Vijay Singh, A.S.I. Nathuni Paswan, A.S.I. R.K. Sharma and armed forces arrived at the place of occurrence. People told about the fleeing away of the miscreants. Along with villagers and police personnel they chased to the miscreants and arrived near the Bans Bitti situated at village Mongara. There local persons told about the hiding of accused persons. In mean time S.D.P.O. Sanjay Kumar Singh and Sarjent Major P.N. Singh also arrived there from another side. P.W.-01 has further stated that by way of planned way they tried to apprehend to the miscreants. Miscreants started firing. In self defence constable Ram Bahadur Singh also made fire. One miscreants was caught hold in injured condition and his name was told to be Rajesh Kumar Singh by the people. He was unconscious. Another miscreants was caught hold with carbine who disclosed his name to be Subodh Yadav. P.W.-12 has further proved two seizure list and same were marked as Ext.-04 and Ext.-04/1. P.W.-12 has further proved fard-e-beyan as well as formal F.I.R. and same were marked as Ext.-05 and Ext.-06 respectively. P.W.-12 has further claimed to identify to the both accused persons.

During the cross-examination P.W.-12 has stated that they were just adjacent to the Basbitti. Basbitti was very densely. He was not able to see miscreants.. From the side of miscreant 5 to 6 rounds live cartridges were fired, in which any injury was not caused to the people of his side. Any empty cartridge were not

found so, any seizure list was not prepared in this regard. before preparing the seizure list he gave search of himself.

11. P.W.-01 Md. Kasim has stated in his examination-in-chief that he does not know anything about this incident. He had not given the statement to the police.

It would pertinent to mention here that on the request of the prosecution P.W.-01 was declared to be hostile by the court after that prosecution cross-examine to the P.W.-01 but in his cross-examination done by prosecution side, P.W.-01 has denied the all suggestion given by the prosecution side. P.W.-01 has further stated that it is not so that he is in collusion with accused persons, that's why he has concealed the true facts. P.W.-01 has further not recognized to the accused who was present before court

During the cross-examination done by the defense side P.W.-01 has stated that after receiving the notice he has come to testify.

12. P.W.-02 Faroj Ahmad has stated in his examination-in-chief that he does not know anything about this incident. He had not given the statement to the police.

It would pertinent to mention here that on the request of the prosecution P.W.-02 was declared to be hostile by the court after that prosecution cross-examine to the P.W.-02 but in his cross-examination done by prosecution side, P.W.-02 has denied the all suggestion given by the prosecution side.

During the cross-examination done by the defense side P.W.-02 has stated that on the alleged date of incident he had gone outside of the village for earning.

13. P.W.-03 Ashok Rai has stated in his examination-in-chief that there is his signature on seizure list, he identifies the same accordingly same was marked as Ext-01.

During cross-examination P.W.-03 has stated that Darogaji had not read and explained over the seizure list to him.

14. P.W.-04 Abdul Wahab has stated in his examination in chief that he does not know anything about this incident. His statement was not recorded by the police. He had heard about this incident. He had told to the police that he does not know anything. P.W.-04 has further identifies his signature on seizure list and accordingly same was marked as Ext-01/1.

It would pertinent to mention here that on the request of the prosecution P.W.-04 was declared to be hostile by the court after that prosecution cross-examine to the P.W.-04 but in his cross-examination done by prosecution side, P.W.-04 has denied the all suggestion given by the prosecution side. P.W.-04 has further not recognized the accused who was present before court and has further stated that he does not recognize any other accused person.

During the cross-examination done by the defense side P.W.-04 has stated that before putting his signature on the seizure-list, nothing had been written on the paper.. Police took his signature at police-station on the paper relating to the seizure-list.

15. P.W.-05 Nehal Ansari has stated in his examination-in-chief that he does not know anything about this incident. His statement was not recorded by the police.

It would pertinent to mention here that on the request of the prosecution P.W.-05 was declared to be hostile by the court after that prosecution cross-examine to the P.W.-05 but in his cross-examination done by prosecution side, P.W.-05 has denied the all suggestion given by the prosecution side. P.W.-05 has further stated that he does not recognize to the accused persons.

During the cross-examination done by the defense side P.W.-05 has stated that his shop is situated at Mangal Bazar, Katihar

16. P.W.-06 Samasad Kuraisi has stated in his examination-in-chief that this incident occurred near about seven years at about 11:00 O'clock in day. He was at his shop. He hear the commotion. From wrong side one bike was going. He though that bike rider is going away after giving dash

to someone, that's why he caught hold him. After holding Bike rider fell down and made firing. He did not see as to who made firing.. P.W.-06 has further stated that he did not recognize to the both accused persons.

During his cross-examination on the behalf of the defense side P.W.-06 has stated that his statement was not recorded by the police.

17. P.W.-07 Shivdhari Rajak has stated in examination-in-chief that on dated 29-05-2001 he was posted at the post of S.I. at Police Station Katihar Town. On said date at about 11:00 O'clock on day any person informed about the incident through telephone then he and other force and police officer went near the L.I.C. office, Katihar. He saw at the place of occurrence that one green coloured motorcycle was lying in the way of Hulipada and people told that two miscreants were fleeing away but due to loosing balance motorcycle fell down on the road and they fled away by foot towards Driver Tola. P.W.-07 has further stated that by chasing they arrived village Mongra, there villagers told that two miscreants have entered into the Banswari of Jawed. From Banswari firing was being done. Police also made counter firing. One miscreants having taken one Carbine started fleeing away. He was apprehended by police from the possession of that person one Carbine and one bullet were recovered. Apprehended persons disclosed his name to be Subodh Yadav and one miscreants was found in Banswari in injured condition. Subodh Yadav disclosed his name as Rajesh Singh. About the looted Amounts/Cash apprehended person told that said amount kept in one V.I.P. Bag has taken away by one another miscreants namely Bagga along with another miscreants. P.W.-01 has further stated that he may recognize to the accused persons.

During the cross-examination P.W.-07 has stated that on arrival to Mongra village total half hour was consumed. Before his arrival other police officer had already arrived there.

18. P.W.-08 Prabhunath Singh has stated in his examination-in-chief that on the day of occurrence he went to village Mongra with armed

forces. Miscreants were hiding in the Banswari of Jawed. Firing was made from both side. One miscreant was caught hold and one another miscreant was laying there in injured condition. From the possession of apprehended miscreants one carbine and one live bullet were recovered. From possession of injured miscreants one cartridges of .303 was recovered. The name of said injured miscreants was Rajendra. Injured miscreant Rajendra was taken to Sadar Hospital, Katihar for treatment. P.W.-08 has further stated that he cannot recognize to the accused persons because incidents has taken place many day ago.

During the cross-examination P.W.-08 has stated that Mongara village is situated at 3 to 4 K.M. Far away from police-line. After half hour of receiving information he had reached at village Mongara. First of all he reached at villager Mongara.

19. P.W.-09 Jitendra Kumar Singh (I.O. to this case) has stated in his examination-in-chief that he conducted investigation of this case from 29.05.2001 to 27.07.2001. He had recorded the statement of the witnesses and he obtained "Sanction" from District Magistrate. After completion of investigation he submitted the charge-sheet. P.W.-09 has further proved the "Sanction Order" and accordingly same was marked as Ext.- 2.

During the cross-examination P.W.-09 has stated that incident of this case is of 29-05-2001. As per order of the then S.H.O. Surendra Prasad he took the charge of investigation.

20. P.W- 10 Dr Arun Kumar Chaudhary (Expert Witness) has stated in his examination-in-chief that on 29.05.2001 at 11:40 A.M., he examined Md. Samsad Kureshi and found the following injuries on his person.

i) 1/2" X 1/4" an oval penetrating wound with inverted margin and charring or surrounding skin on the lateral side of anterior part of left thigh (wound of entry).

ii) 1" X 1/2" an oval penetrating wound with ragged margin and inverted margin on middle part of anterior part of left thigh (wound of exit). Injury No. (i) and (ii) communicating with each other.

X-ray Plate No.- L51 dated 29.05.2001 shows no any lesion with no any foreign body was seen on X-ray plate. Above injury were caused by fire arm with simple in nature. Age- within six hours. P.W.-10 has further proved injury report accordingly same was marked as Ext.-3

During the cross-examination P.W.-10 has further stated that the above injury were caused within 0 to 6 hours, no foreign particles were seen in X-ray plate. He cannot say about the nature of fire arm by which the above injury was caused. This above injury may be caused by heated iron rod.

21. P.W.-11 Dr. R.K. Jha (Expert Witness) has stated in his examination-in-chief that on 29.05.2001 he examined an unknown person brought by Officer-in-charge Town P.S. Katihar and found the following:

i) A bleeding wound placed on left lateral side of chest below auxiliary fossa, oval in shape. Measuring approximately 1/4" X 1/4" upper portion of margin was forming the roof.

ii) one bleeding wound placed in front of chest on left side in fore-medial to nipple measuring about 1" X 1" with tissue loss.

iii) A lacerated wound in front of knee joint on patella measuring about two inch in diameter.

Opinion- Wound no. (i) was wound is entry and wound no. (ii) was wound in exit, caused by fire arm. Nature- Grievous in nature. Wound No. (iii) was simple in nature and caused by hard and blunt substance. Age- within twelve hours. P.W.-11 has further proved injury report accordingly same was marked as Ext.-3/1

During the cross-examination P.W.-11 has stated that injury No. (iii) may be caused by iron rod. He found only two wound of the above injured. He has not written the fact that whether the above unknown person was referred to any other hospital or

*not. He was not found any foreign particles in the wound. He has written the nature of the wound on the basis of seeing the wound. He examined at 01:20 P.M. the above injury cannot be caused by heated iron rod.*

22. P.W.-13 Ranjit Pandey (Expert Witness) has stated in his examination-in-chief that on 02.06.2001, on the request of Sub Inspector Jitendra Kumar Singh, he examined the seized exhibits seized in Katihar P.S. Case No. 156/2001. He has further stated that on examination he found that this is a "Desi Carbine" and length of butt is 17.3 cm and the total length is 46 cm. It may fire 9 mm cartridge. It has an iron clip at the bottom of the barrel and a black clip at the front. One 9 mm cartridge was fired, and it fired effectively. P.W.-13 has further stated that there are 24 cartridges of 9 mm. All of the bullets are effective, as none of the bullets have a dent in the bottom, and all are functional. One of the bullets was test-fired. It is a .303 cartridge, which is live and effective. The exhibit were returned. P.W.-13 has further proved his report and accordingly same was marked as Ext.-7. P.W.-13 has further stated that on the same day, he also examined the government rifle and revolver. The government rifle, whose butt number is 380 and revolver number is Y23760, fires a 303 caliber bullet and it was fired because there was a smell of gunpowder in the barrel. The government revolver, whose butt number is 101 and revolver number is 21610, it fires a 38 caliber bullet and it was fired because there was a smell of gunpowder in the barrel. P.W.-13 has further proved his report and accordingly same was marked as Ext.-8.

*During cross-examination P.W.-13 has stated that any material exhibits which were examined by him are not before him in the court.*

23. P.W.-14 Shri Nathuni Paswan has stated in his examination-in-chief that on 29.05.2001, he was posted as A.S.I. at the Katihar Town Police Station. Around 11:00 A.M., the police station received information that while employees of an LIC company were taking cash to Central Bank for deposit then in the front of L.I.C. office on road some miscreants riding on two motorcycle on the point of Pistol and Carbine

they robbed the cash/amounts. On such information along with S.H.O. Suresh Prasad Singh and other police personnel he arrived near the LIC office. Upon arriving, they came to know that the criminals had fled towards Kulipada Mohalla. After a short distance, they found a green motorcycle belonging to the criminals abandoned and residents of that place told that the criminals had fled on foot toward Chhitabadi after falling the motorcycle. While chasing these people, they reached near village Mongara, where both these criminals entered the Bansbitti. They surrounded the said Bansbitti. Seeing themselves surrounded from all sides in that Bansbitti, both the criminals started firing at the police. In the retaliatory action of the police, one criminal was shot and the other was caught. He disclosed his name as Subodh Yadav. A rifle bullet was found in his full pant's pocket and a carbine loaded with ten live 9 mm bullets were seized from his hand. Its accessories, a carbine's chamber loaded with fourteen live 9 mm bullets were seized from it. The S.H.O. first of all gave his own search before the presence of two independent witnesses and he prepared two seizure lists of these and gave one copy each to the accused Subodh Yadav and got his signature made in front of him, whom he recognizes. On the identification of P.W.-14 the signature of S.H.O. Suresh Prasad was marked as Ext.-4 and Ext.-4/1 further on the identification of P.W.-14 both seizure list were marked as Ext.- 4/2 and Ext.-4/3.

During the cross-examination P.W.14 has stated that the any arms was not recovered from the possession of any miscreant for using the cartridge of the rifle which was recovered from the possession of the miscreant

24. P.W.-15 Shri Basideo Sah has stated in his examination-in-chief that on 29.05.2001, he was posted at the post of Line Babu (S.I.) at Police-line, Katihar. At the same day at about 11:00 O'clock alongwith shri P.N. Singh, five constable and he proceeded from police jeep in that direction in which miscreants were fleeing away. Shri P.N. Singh told that out of four miscreant after committing loot of Rs. 110000/- eleven lakh rupees from the staff of L.I.C., Katihar, were fleeing away in the

northern direction by way of Kupiwada Mohalla. P.W.-15 has further stated that by changing they reached at village-Mongara at that time S.D.P.O. and SHO, Katihar, arrived there with arms force. On the information given by the villagers the Basbitti of Jawed was surrounded by the police. On this with intention to cause murder miscreants made firing 03 to 04 round on the police-party. Police also made firing in self defence. In meantime one accused with carbine started fleeing away towards them who was apprehended. He disclosed his name to be Subodh Yadav,. On the ending of firing, one miscreant was found in the basbitti laying in injured condition. On search, one cartridge of .303 bore was recovered from his pocket. From the possession of the Subodh Yadav one country made carbine, 02 magazine with 14 live cartridges out of them 10 were in loaded condition were recovered. Subodh Singh disclosed that the name injured person/miscreant is Rajesh Singh R/O -village-Chorhat Nanhakar.. Subodh Yadav admitted before them that he was fleeing away after committing loot from the L.I.C. Staff with other associates namely Dharmendra Rai and Bagga @ Kamando. P.W.-15 has further claimed that he may recognize to the accused namely Subodh Yadav and Rajesh Singh after seeing them.

During the cross-examination P.W.15 has stated that SHO, Suresh Prasad Singh seized the arms from the possession of the accused persons. He had not seized any arms.

25. While in his statement recorded u/s 313 of the Cr.P.C. accused has denied the veracity of the prosecution case and has further pleaded to be innocent. But in his defense, accused namely Rajesh Singh @ Rajesh Mahto neither examined any witnesses nor adduced any documentary evidence before this court.

26. While at the time of final argument Id. A.P.P. for the state has fairly submitted that from perusal of the entire case record in entirety it is evident that prosecution has succeeded to prove the charges as leveled against accused namely Rajesh Singh @ Rajesh Mahto. So, he may be held guilty for the all charges as leveled against him.

27. While ld. counsel for the defense has argued before this court that from perusal of the record it is evident that P.W.-01, P.W.-02, P.W.-05 has not supported the case of prosecution at all. While P.W.-06 Samsad Ansari who is one of the injured victim to this case has clearly stated that he did not see as to who made firing. While P.W.-03 who is seizure list witness has clearly stated that Darogaji did not read explain the seizure-list to him. While P.W.-04 who is another witness of seizure-list has also clearly deposed before this court that before his making signature over the seizure-list, nothing has been written on the seizure-list. Police took his signature on the paper relating to seizure-list at police-station. So it is evident that any independent witness of the seizure-list has not supported the case of prosecution. Furthermore it is admitted fact by the prosecution side that when alleged recovery of the cartridges of .303 bor was made at that time accused namely Rajesh Singh was unconscious, while it is well settled law that any person may only be held guilty for the offence punishable u/s 25 (1-b) a & 26 Arms Act when alleged recovery of firearms or ammunition is made in the conscious possession of the accused. But in this case any recovery was not made in the conscious possession of the accused namely Rajesh Singh. Ld. counsel has further submitted that P.W.-07 has never stated that any ammunition was recovered from the possession of Rajesh Singh. While P.W.-08 has never stated that who recovered alleged ammunition from the possession of the Rajesh Singh. While P.W.-09 has nothing stated material facts against the accused namely Rajesh Singh. While P.W.10 and P.W.11 are only expert witness of this case. While P.W.12 Suresh Prasad Singh who is the informant to this case has never stated that accused persons made firing with view to cause murder. P.W.-12 has not stated that he recovered any ammunition from the possession of the accused namely Rajesh Singh. While P.W.13 is the expert witness who examined the alleged recovered arms and ammunition. While P.W.14 has never stated that any ammunition was recovered from the possession of the Rajesh Singh or not. While P.W.15 has stated that accused persons made firing with view to cause murder to the police-staffs. But he has not specifically stated that upon whom constable or police officer accused persons made

firing. While P.W.15 has deposed that from the possession of Rajesh Singh one ammunition of .303 bore was recovered, but he has not made clear as to who recovered the alleged ammunition from the possession of the Rajesh Singh. Further any prosecution witness has never stated that accused petitioner was making firing on the police party or any person with view to cause murder. While one of the injured to this case has clearly stated that he did not see as to who made firing upon him. Further there is no evidence on record to show that in the furtherance of common object or in furtherance of common intention accused named in F.I.R. or in charge-sheet committed alleged offence. So from the facts of this case it is evident that prosecution has miserably failed to prove the charges u/s 307/34 of the I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act as leveled against accused namely Rajesh Singh @ Rajesh Mahto. So, accused person namely Rajesh Singh @ Rajesh Mahto may be acquitted from the charges u/s 307/34 of the I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act as leveled against him.

28. Now from record it is evident that prosecution has relied on oral and documentary evidence. From perusal of the case record it is evident that in order to substantiate its case prosecution has examined altogether fifteen witnesses. Out of total 15 prosecution witnesses P.W.-1 Md. Kasim, P.W.-2 Faroj Ahmad and P.W.-5 Nehal Ansari have clearly stated that they know nothing about this incident and have denied all suggestions put to them by the prosecution side during cross-examination. While P.W.-3 Ashok Rai has stated that police-officer had not read over and explained the contents of the seizure-list to him, while P.W.-4 has stated that nothing was written on the paper before he put his signature and the police took his signature at the police station on blank papers. So, said facts go to raise grave suspicion about the entire recovery process of the arms and ammunition from the possession of the accused namely Rajesh Singh or his other associates. Further P.W.-6 Samsad Kuraisi, who is the injured witness of this case has clearly deposed before court that on the day of incident he was at his shop and he caught hold of a bike rider who was coming from the wrong side, the

rider fell down and made firing. But P.W.-06 has further stated that he did not see as to who made the firing and that he did not recognize either of the two accused persons. Further P.W.-10 Dr. Arun Kumar Chaudhary who medically examined to the P.W.-06 Samasad Kuraishi has stated in his cross-examination that the injury found on Samasad Kuraishi could have been caused by a heated iron rod which creates doubt about the nature of the weapon allegedly used in this alleged incident. While P.W.-11 Dr. R.K. Jha has not made clear as to who was examined by him, he has not made clear the name of injured person which create doubt on the prosecution case. While P.W.-7 Shivdhari Rajak has stated in his cross-examination that before his arrival at village-Mongara, other police officers had already reached there. So it is evident that P.W.-07 did not see all the part of alleged incident. While P.W.-8 Prabhu Nath Singh has stated that he cannot recognize the accused persons because the incident happened many days ago, and he further stated that he reached the village only half an hour after receiving information, which is a significant time gap that casts doubt on the veracity of the alleged recovery and arrest. While P.W.-09 has nothing stated material facts before this court. While P.W.-10 and P.W.-11 are expert witness. While P.W.-12 Suresh Prasad who is non else but the informant to this case has never stated that accused persons made firing on the police party or on some other persons with view to cause murder. P.W.-012 has further stated that they were just adjacent to the Basbitti which was very dense and that he was not able to see the miscreants. He has further stated that though 5 to 6 rounds of live cartridges were allegedly fired from the side of the miscreants, no injury was caused to anyone from the police side and no empty cartridges were found, which is why no seizure list was prepared in this regard. So, it is evident that P.W.-12 never saw as to who made firing upon the police party. Furthermore any prosecution witnesses have never stated that accused made firing with view to cause murder. Further it is admitted fact that accused namely Rajesh Singh was arrested in unconscious condition and it is further admitted fact that any firearms was not recovered from his possession. So, any point of view it can not be held that accused namely Rajesh Singh made firing with view

*to cause murder or in the furtherance of common intention of all his other associate made firing upon the police party.*

*Further on the coming on the charges u/s 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act as leveled against the accused namely Rajesh Singh @ Rajesh Mahto court finds that there is much force in the contention of the Id defense counsel that for an offence under the Arms Act, the prosecution is under obligation to prove that alleged arms and ammunition were recovered from the conscious possession of the accused person and he was concealing the illegal arms in the such manner that any public officer may not come into knowledge about the existence of the alleged illegal arms and ammunition. While from perusal of the case record it is evident that in this present case, it is admitted fact by the prosecution that when the alleged recovery of the .303 bore cartridge was made, at that time accused namely Rajesh Singh was unconscious. While it is well settled law that any recovery made from an unconscious person cannot be considered to be recovery from conscious possession as required by the law. Further coming on the oral evidence of the prosecution witnesses court finds that P.W.-1 Md. Kasim, P.W.-2 Faroj Ahmad and P.W.-5 Nehal Ansari have not supported the case of prosecution. While P.W.-3 Ashok Rai has stated that police-officer had not read over and explained the contents of the seizure-list to him, while P.W.-4 has stated that nothing was written on the paper before he put his signature and the police took his signature at the police station on blank papers. So, said facts go to raise raise grave suspicion about the entire recovery process of the arms and ammunition from the possession of the accused namely Rajesh Singh or his other associates. Further P.W.-7 has never stated that any ammunition was recovered from the possession of Rajesh Singh or he saw that accused was making firing. Further P.W.-8 has also never stated who recovered the alleged ammunition from the possession of the accused namely Rajesh Singh. Further P.W.-12 who is non else but the informant to this case has never stated that he recovered any ammunition from the possession of the accused namely Rajesh Singh. While P.W.13 is the expert witness who examined the alleged recovered arms and ammunition. While P.W.14 has never stated that any*

ammunition was recovered from the possession of the Rajesh Singh or not. While P.W.15 has deposed that from the possession of Rajesh Singh one ammunition of .303 bore was recovered, but he has not made clear as to who recovered the alleged ammunition from the possession of the Rajesh Singh. Further any prosecution witness has never stated that accused petitioner was making firing on the police party or any person with view to cause murder. While one of the injured to this case namely P.W.-06 has clearly stated that he did not see as to who made firing upon him. Further court finds that any witness of prosecution has not deposed that before the alleged searching accused namely Rajesh Singh was in to knowledge that police party is coming to arrest him or for making search to him Further any witness of prosecution has not deposed that after seeing police force or other public servant accused tried to conceal the alleged ammunition. While in the case of Chandan Sonkar versus State of Bihar reported in 1997 (2) PLJR, 171 hon'ble court held that " From bare perusal of the aforesaid section, it is manifest that mere holding or possessing firearms is not enough but the possession of firearms must be in such a manner which would indicate the intention of the person to conceal the same so that the public servant may not know the concealment of the firearms". But from the perusal of the prosecution evidences it is quite clear that any witness of prosecution has never alleged that accused Rajesh Singh concealed the said seized ammunition so that a public servant may not come into knowledge with respect to said ammunition. So, in the light of above facts it is quite clear that prosecution has not succeeded to prove the all required ingredients of section 26 of the Arms Act. Further it is admitted fact that accused namely Rajesh Singh @ Rajesh Mahto was apprehended/arrested in unconscious condition, so, any point of view it can not be held he used illegal arms in unconscious condition. Further it is not the case of the prosecution that alleged arms or ammunition were recovered from such any premises, vehicle or such other place which was in the joint occupation or under the joint control of the accused namely Rajesh Singh @ Rajesh Mahto and his other associate. Further from the discussion as made in previous paragraph as well as from perusal of the oral and

documentary evidences it appears that prosecution witnesses have given much contradictory evidence on the point of recovery of alleged recovery of the arms and ammunition . Further, all the witnesses of the prosecution who has supported the case of prosecution are the member of police-party and any independent witness of prosecution has not supported the case of the prosecution. So, from the discussion as made above it is quite clear that prosecution has not succeeded to prove the charges u/s 307/34 of the I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act as leveled against the aforesaid accused person namely Rajesh Singh @ Rajesh Mahto

29. So, having consideration the above facts and circumstances of this case as well as contentions raised by Id. Counsel for the defence, I find and hold that prosecution has miserably failed to prove the charges u/s- 307/34 of the I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act as leveled against aforesaid accused person namely Rajesh Singh @ Rajesh Mahto. Hence, the aforesaid accused person is hereby found and held not to be guilt for the offence punishable u/s U/S-307/34 of the I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act as leveled against them. Accordingly aforesaid accused person is hereby acquitted from the charges us/-u/s- 307/34 of the I.P.C. And 25(1-A), 25(1-B)(a), 25-(1-B)a 26 & 27 Arms Act as leveled against him. Since aforesaid accused person is on bail, so he and his bailors are hereby discharged from the liabilities of theirs respective bail bonds.

30. Office is directed to send a copy of judgment to the D.M., Katihar in compliance of section 365 of Cr.P.C.

31. Office is further directed to consign the case record to the D.R.R, Katihar after necessary compliance, if any.

Judgment was dictated and corrected by me and same was pronounced by me in open court.

(Asutosh Rai)

Addl. Sessions Judge II

Katihar

30-04-2026

(Asutosh Rai)

Addl. Sessions Judge II

Katihar

30-04-2026

**IN THE COURT OF ADDL. SESSIONS JUDGE-II KATI HAR**

**Sessions Trial Case No.-66/2003**

**LIST OF PROSECUTION WITNESSES**

<b>Sr. No..</b>	<b>Pws. Number</b>	<b>Description</b>
01	PW-01-Md. Kasim	Hostile witness
02	PW-02- Faroj Ahamad	Hostile witness
03	PW-03- Ashok Rai	Formal witness of seizure list
04	PW-04- Abdul wahab	Formal witness of seizure list
05	PW-05-Nehal Ansari	Hostile witness
06	PW-06-Samsad Kuraisi	Injured witness
07	P.W.-07-Sheodhari Rajak	Eye witness
08	P.W.-08 Prabhu Nath Singh	Eye witness
09	P.W.-09Jitendra Kumar Singh	I.O. to this case
10	P.W.-10-Dr. Arun Kumar Chaudhary	Expert witness
11	P.W.-11-Dr. R.K. Jha	Expert witness
12	P.W.-12-Suresh Prasad (The then SHO, Katihar town police-station)	Informant to this case
13	P.W.-13- Ranjit Pandey (Searrjent Major)	Expert witness
14	P.W.-14. S.I. Nathuni Pasawan	Eye witness
15	P.W.-15-S.I. Basudeo Pasawan	Eye witness

**LIST OF PROSECUTION EXHIBITS:-**

<b>Sr. No.</b>	<b>Ext No.</b>	<b>Description</b>
01	Ext.-1	Signature of P.W.-03 Ashok Rai over seizure list
02	Ext.-1	Signature of P.W.-04Abdul Wahab over seizure list relating to seizure of .303 cartridge.
03	Ext.-1/1	Signature of P.W.-04Abdul Wahab over seizure list

		<i>relating to seizure of Carbine and 24 cartridge of 9 MM.</i>
04	<i>Ext-02</i>	<i>Signature of Sri K.K. Mahto the then D.M. Katihar on prosecution sanction report</i>
05	<i>Ext-03</i>	<i>Injury report of Samasad Kuraisi</i>
06	<i>Ext-03/1</i>	<i>Injury report of unknown person</i>
07	<i>Ext-4</i>	<i>Seizure list relating to seizure of .303 cartridge.</i>
08	<i>Ext04/1</i>	<i>Seizure list relating to seizure of Carbine and cartridge of 9 MM.</i>
09	<i>Ext-/2</i>	<i>Seizure list</i>
10	<i>Ext4/3</i>	<i>Seizure list</i>
11	<i>Ext-05</i>	<i>Fard-e-beyan (self statement of informant)</i>
	<i>Ext-06</i>	<i>Formal F.I.R.</i>
11	<i>Ext-07</i>	<i>Examination report of Carbine and other ammunition</i>
12	<i>Ext-08</i>	<i>Examination report of Government revolver</i>

**LIST OF DEFENCE WITNESS**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
1	N/A	N/A

**LIST OF DEFENCE EXHIBITS**

<b>Sr. Number</b>	<b>Exhibit Number</b>	<b>Description</b>
1	N/A	N/A

(Asutosh Rai)

**Addl. Sessions Judge-II**

**Katihar**

**30-04-2026**

S.T. NO.-66/2003  
P.O. -Asutosh Rai  
Addl. Sessions Judge-II, Katihar

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<i>Date of Judgment</i>	30-04-2026
<i>Date of Reserving Judgment</i>	16-04-2026
<i>Date of Uploading</i>	12-05-2026
<i>Uploaded By</i>	Prakash Kumar Singh

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