

IN THE COURT OF ADDL. SESSIONS JUDGE-II, Katihar <i>Present:- Asutosh Rai, Addl. Sessions Judge, II, Katihar</i> <i>[Date of judgment- 05 May 2026]</i> <i>[S. Trial No. 130/2025]</i> <i>Police-station-Falka</i> <i>Falka P.S. case No. 135/2024 F.I.R. u/s 309 (4), 109 of the B.N.S. & u/s 27 Arms Act</i>	
Complainant/Informant	State of Bihar through informant namely Karu Mandal S/O-Sikandar Mandal, R/O-Vill-Turki P.S.-Bhawanipur Distt.-Katihar
Represented By	Sri Md. Ezaj Alam ld. A.P.P.
Accused	1. Munna Yadav aged about 27 years, S/O Umesh Yadav, R/O-Tapwa, P.S.-Falka, Distt-Katihar 2. Ajeet Kumar Mandal @ Ajeet Kumar aged about 30 years, S/O Sudhir Mandal, R/O-Tapwa Govindpur P.S.-Falka, Distt-Katihar 3. Raushan Kumar Mandal @ Raushan Kumar aged about 30 years, S/O Kapildeo Mandal, R/O-Tapwa Govindpur P.S.-Falka, Distt-Katihar 4.Navaneet Kumar, aged about 22 years, S/O Nandkishore Mandal, R/O-Tapwa P.S.-Falka, Distt-Katihar
Represented By	Sri. Tausif Raza, Sri, Manish Kumarld. Sri, B.N. Singh ld. advocates

Date of Offence	22-07-2024 / 23-07-2024
Date of F.I.R.	23-07-2024
Date of Charge-sheet	08-10-2024 / 28-10-2014
Date of Framing of Charge	29-05-2025
Date of Commencement of evidence	25-07-2025
Date of which judgment is reserved	24-04-2006
Date of Judgment	05-05-2026
Date of Sentencing Order, if any	N/A

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest/ Surrender	Date of Release on Bail	Offences Charged with	Whether Acquitted or	Sentence Imposed	Period of Detention

					Convicted		Undergone during Trial for purpose of section 428 of Cr.P.C.
01	Munna Yadav	26-07-2024	N/A	Charges u/s- 309 (4), 109, 317 (2), 317 (4), 317 (5), of the B.N.S. & u/s 25 (1-b) a,/35, 26/35 of the Arms Act	Acquitted	N/A	N/A
02	Ajeet Kumar Mandal @ Ajeet Kumar	26-07-2024	07-12-2024	DO	DO	DO	DO
03	Navanit Kumar	26-07-2024	07-12-2024	DO	DO	DO	DO
04	Raushan Kumar Mandal @ Raushan Kumar	05-10-2024	17-12-2025	DO	DO	DO	DO

JUDGMENT

1. The accused persons namely Munna Yadav, Ajeet Kumar Mandal @ Ajeet Kumar, Navanit Kumar and Raushan Kumar Mandal @ Raushan Kumar stand charged for the offences punishable U/s- 309 (4), 109, 317

(2), 317 (4), 317 (5), of the B.N.S. & u/s 25 (1-b) a, 35, 26/35 of the Arms Act as leveled against them.

CASE OF PROSECUTION/BRIEF FACTS:

2. As per the written report of the informant namely Karu Mandal, the prosecution case in a nutshell is that on 22-07 2024, at around 10:00 P.M. in night, informant was returning to his home from Gedabari on his motorcycle after selling chillies. As soon as he reached the unpaved road which leads from Govindpur Diyara to Tapuwa on his motorcycle-HF Deluxe bearing Reg. No. BR39W-6461, he saw that two persons were already standing on the road. They told to the informant to stop. As soon as he slowed down his motorcycle, one person grabbed the motorcycle from behind and stopped it, while another person caught his collar and put his hand in his pocket, and took out the total Rs.20,000/- twenty thousand ruppes only that he had earned by selling chillies. Informant has further alleged that one accused/miscreant started trying to snatch his mobile phone forcefully. Meanwhile, the informant told that he knows him from much earlier, his name is Munna Yadav and his home is in Rangakol. So, having heard this, Munna Yadav took out a weapon from his waist and shot him in the back, due to which informant got badly injured. Then one of the accused/miscreant pushed him off from his motorcycle, and both of them fled from there by his motorcycle. Informant has further stated that the boy who was with Munna Yadav was of the same build and stature as Munna Yadav and was wearing a sando ganji. The informant has further alleged that he may able to identify him upon seeing him. The informant has further stated that after that he called his family members on the phone, and they came and took him to the Community Health Centre, Falka, for treatment.

INSTITUTION OF CASE/ INVESTIGATION/ ENQUIRY

3. On the basis of fard-e-beyan of informant namely Karu Mandal formal F.I.R. bearing Falka P.S. case No. 135/2025 F.I.R. u/s 309 (4), 109 of the I.P.C. & u/s 27 Arms Act was registered against the accused namely Munna Yadav and after investigation I.O of this case submitted charge-sheet No. 199/24 u/s 309 (4), 109, 317 (2), 317 (4), 317 (5) of the B.N.S. 25(1-b) a, 26, 27, 35 of the Arms Act against F.I.R. named accused namely Munna Yadav and non F.I.R. named accused namely Ajeet Kumar Mandal

@ Ajeet Kumar, Navanit Kumar and Raushan Kumar Mandal @ Raushan Kumar.

4. On receipt of charge-sheet Smt. Monika Mehata Id. J.M. 1st class Katihar took cognizance of the offence u/s 309 (4), 109, 317 (2), 317 (4), 317 (5) of the B.N.S. 25(1-b) a, 26, 27/35 of the Arms Act of the I.P.C. against the accused namely Munna Yadav, Ajeet Kumar Mandal @ Ajeet Kumar, Navanit Kumar and Raushan Kumar Mandal @ Raushan Kumar and having seen that some section of the B.N.S as leveled against the aforesaid accused persons are exclusively triable by the court of sessions, Id. J.M.1st class, Katihar supplied the Xe-rox copy of police papers as per requirement of law to the Id. advocates of aforesaid accused persons and on 18-02-25 Id. court committed the case record to the court of Sessions for further trial. Later on, as per order of the Principal District and Sessions Judge, Katihar case record came to the file of my court for further trial and disposal.

CHARGES AGAINST ACCUSED PERSONS

5. Later on, after completion of the appearance of the aforesaid accused persons namely Munna Yadav, Ajeet Kumar Mandal @ Ajeet Kumar, Navanit Kumar and Raushan Kumar Mandal @ Raushan Kumar before the court and after considering the materials available on record and on hearing the Id. A.P.P. for State as well as Id. counseles for the aforesaid accused persons, court framed the charges U/s- 309 (4), 109, 317 (2), 317 (4), 317 (5), of the B.N.S. & u/s 25 (1-b) a,/35, 26/35 of the Arms Act in written against the aforesaid all accused persons 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 eight (08) witnesses in the support of its case. they are:-

RANK	NAME	NATURE OF EVIDENCE
1	P.W-01-Chhotu @ Chhotelal Mandal	Hostile witness
2	PW-02- Sagar Kumar Mandal	Hearsay witness

3	PW-03-Karu Mandal	Victim and informant to this case
4	PW-04-Dinesh Kumar Tirki	Expert witness
5	P.W.-05-Munna Kumar Patel	The then S.H.O. Falka
6	P.W.-06-Ashwani Kumar	Medical officer
7	P.W.-07-Abhishek Kumar	Formal witness
8	P.W.-08-Samir Kumar Singh	Formal witness

7. Prosecution side has adduced following documentary evidence on the record in the support of its case:-

Sr. no	Exhibit No.	Description
1	Ext-P-1/P.W-2	Signature of P.W.-02 Sagar Kumar Mandal over Fard-e-beyan
2	Ext-PW3/P2	Signature of P.W.-03 Karum Mandal (informant) over Fard-e-beyan
3	Ext-PW4/P3	Examination report of relating to seized five live cartridges
4	Ext-PW4/P4	Examination report relating to seized country made pistol
5	Ext-PW5/P5	Signature of Munna Kumar Patel the then SHO, Falka over formal F.I.R.
6	Ext-PW5/P6	Writing and Signature of Munna Kumar Patel the then SHO, Falka made on endorsement.
7	Ext-P7/PW6	Injury report of Karu Mandal
8	Ext-P8/PW6	Supplementary injury report of Karu Mandal
9	Ext-P9/PW6	Opinion of Dr. Baidnath Rajak relating to injury of Karu Mandal
10	Ext-PW7/P10	Prosecution Sanction order of The D.M. Katihar

11	Ext-PW8/P11	Signature of Ravi Kumar (Police-station-in-charge, Falka) on Forwarding letter
MATERIL EXHIBITS		
1	M to M/3 and M/4 to M/9	Currency of 500 hundred rupees and 20 rupees (total ten currency)
2	M/10 to M/12	Three currency of 500 hundred note
3.	M/13	Empty Cartridge
4.	M/14	Country made pistol
5	M/15 to M/19	Five live cartridges

STATEMENTS OF ACCUSED PERSONS

8. After conclusion of the prosecution evidence, the statement of the accused persons namely Munna Yadav, Ajeet Kumar Mandal @ Ajeet Kumar, Navanit Kumar and Raushan Kumar Mandal @ Raushan Kumar were recorded under section 313 of the Cr.P.C. and all incriminating evidences were put to them but they denied veracity of prosecution evidences with the contentions that they are innocent and have falsely been implicated in this case. But accused persons have neither examined any witness nor adduced any documentary evidence on record in theirs defense.

9. Now, the point for consideration is whether the prosecution has been able to prove the charges as leveled against the accused persons, 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 08 witnesses, out of them P. W-03 Karu Mandal (informant and victim to this case) has stated in his examination-in-chief that it has been one year since this incident occurred. He is the informant of this case. It occurred between 8:00 to 10:00 P.M. of night. At the time of incident he was going his home from Falka and when he reached Takua, someone shot him from behind. The bullet hit him in the back below the neck. He fell down after being shot. He did not know who shot him. He was treated at Sadar Hospital,

Purnia. He had given a statement at the police station. P.W.-03 has further proved his signature over the Fard-e-beyan accordingly same was marked as Ext- PW3/P2. P.W.-03 has further stated that he does not recognize to the accused of this case. While it is noteworthy that accused namely Navneet Kumar and Ajeet Mandal were present before court at that very day P.W.-03 has further stated that he also do not recognize to the accused namely Munna Yadav and Roshan Yadav who are in custody.

During his cross-examination on behalf of all the accused persons P.W.-03 has stated that he did not see who shot him. He did not see the accused persons at the place of occurrence who present before court, today. The statement was not read to him, he simply signed it. P.W.-03 has further stated that compromise has already been taken place between the both parties. He have no objection if this case is dropped on the basis of compromise. P.W.-03 has further stated that there are his signature and photo on the compromise petition. He has gave statement voluntarily in court today.

11. P. W.-05 Munna Kumar Patel has stated that on 23-07-2024 he was posted as the SHO at the Falka Police Station. On that date, he recorded the fard-e-beyan of the injured informant namely Karu Mandal. P.W.-05 has further stated that Fard-e-beyan was written by him and bears the signature of Karu Mandal. An F.I.R. was registered on the basis of the fard-e-beyan. The formal F.I.R. bears his signature, which he recognizes accordingly same was marked as Ext-PW5/P5. P.W.-05 has further proved the endorsement made upon Fard-e-beyan and accordingly samw was marked as Ext – PW5/P6. P.W.-05 has further stated that he has personally taken charge of the investigation of this case. After taking charge of the investigation, he recorded the statement in the case diary and then proceeded to the place of occurrence to inspect the scene. He then proceeded to conduct a raid. Since it was night, the boundaries of the place of occurrence was recorded next day. P.W.-05 has further proved the place of occurrence as:- North, one path which leads to Govindpur Diyara Santhal Tola, South- One path which leads to village-Tapua Govindpur village, East- Markosi River, and to the West-Barren land of Lattu Hembram. P.W.-05 has further stated that

statements of witnesses namely Chhotu Kumar and Sagar Kumar were recorded at place of occurrence. P.W.-05 has further stated that after verifying the name and address of the accused namely Munna Yadav through a spy, he proceeded from police station for the raid. On 25-7-24 he arrested to the accused namely Munna Yadav and during a search, a loaded country-made pistol was recovered from a towel wrapped around his waist.

During his cross-examination P.W.-05 has stated that he came into knowledge of the incident on 22-07- 2024, at about 11:00 P.M. in night. He received the teliphonic information from villagers and same was recorded in the police station General Diary. He does not have the general diary with him. The number of General Dair 498/24. Upon receiving the information, he first of all went to the Primary Health Center, Falaka Hospital, and then recorded the statement. P.W.-05 has further stated that the independent witnesses whose statements he has recorded are all close relatives of the informant. He has not recorded statements from anyone in the vicinity of the place of occurrence. He has not collected blood samples. During the investigation he has not taken the assistance of any Forensic Expert. He obtained the MLC through a doctor. During his investigation, it was not revealed that there was any previous animosity or conflict the both parties. When injured was being treated at that he was not present. He did not record the doctor's statement and, after conducting the investigation, submitted a charge sheet in light of the senior officer's order.

12. P. W.-06-Ashwani Kumar who is expert witness has stated in his examination-in-chief that on dated 22-07-2024 he was posted at C.H.C. Falka. On that very date he Examined to the Karu Kumar Mandal and found following injury.

M.I.- A mole Persent on mid Spinal region.

Injury No.1- Punctured wound present on cervical region. Circular entry measuring about 3/4 cm in diameter and 15 cm in depth. Burn margin present. Exit wound measuring about 1/2 cm in diameter. age of injury within one hours. Nature :- Injury No.1- Kept reserve as patient refered

to GMCH Purnia. P.W.-06 has further proved the injury report and accordingly same was marked as Exhibit P7/PW6. P.W.-06 has further proved the Supplementary Injury report and accordingly same was marked as Ext-P8/PW6.

During his cross-examination P.W.-06 has stated that Injuries as reported to be sustained by victim to this case may occurred due falling on hard surface.

13. P.W.-04 Dinesh Kumar Tirki (expert witness) has stated in his examination-in-chief that on 07-08-2024 he was posted as Arms Inspector in the office of D.I.G., Purnea. This seized exhibit was produced through Memo No. 184/07.08.2024 of Id. Court of Ms. Kavita Kumari, J.M. 1st class, Katihar relating to Falka P.S. Case No. 135/2024 dated 27.07.2024 under 309(4)/109 BNS and 27 Arms Act, one country made pistol, single barrel 4 mm bore, country made, without magazine, barrel length 12 cm, butt length 9.2 cm, total length 25 cm, effective firing pin, effective butt plate made of wood and iron. The seized exhibits were inspected and mechanically tested. The seized exhibit is of 8 mm bore. P.W.-04 has further stated that the trigger, hammer, and firing pin of the seized exhibit are functioning properly. The hammer of the seized exhibit weapon releases with a force exceeding 4 pounds. The seized exhibit weapon is lethal and dangerous to human life. Therefore, the seized exhibit weapon is serviceable. P.W.-04 has further stated that Five round/ 08 mm-bore cartridges were recovered, these are regular cartridges marked KF (Kirki Factory) on the bottom, and five live cartridges with an 08 mm bore. All cartridges are lethal and dangerous to human life. All cartridges are effective. P.W.-04 has further proved his report and accordingly same was marked as Ext-PW4/P3. P.W.-04 has further proved the the signature of Raju Kumar, SI, Falka Police Station over said report and accordingly, same was marked as Ext-PW4/P4.

During cross-examination P.W.-04 has stated that he examined the seized arms and ammunition and prepared a report. He neither arrested anyone nor submitted a final report. The arms and ammunition which he examined are not before him in the court now.

14. P.W.-08 Samir Kumar Singh who is formal witness has stated in his examination-in-chief that today, as per the orders of the Police Station Incharge, Falka, he has presented the seized articles/ exhibit before court relating to Falka Police Station Case No. 135/24 along with the forwarding letter of the Police Station Incharge, Falka. He recognizes the signature Ravi Kumar Rai, Police-Station-In-charge, Falka, accordingly same Farwarding letter was marked as PW8/P11. P.W.-08 has further stated that in this present case, he has adduced before court total 11 currency notes of Rs. 500 and two currency notes of Rs. 20 each, the numbers of which are as follows:- 7GT-760617, 7NU-891283, 3TB-835094 and 9AL-295086 which were marked as Material Ext-M to M/3 respectively. Further, other currency Note bearing no. 1LG-104644, OHU-091681, 4DU-272986, 6DC-834123 and two twenty rupee notes numbered 28D-844078 and 49S-990092 were marked as Material Ext-M/4 to M/9 respectively. Further other three currency note bearing number 6QE-978078, OBB-132905 and 3TB-835093 were marked as material Ext-M/10 to M/12 respectively. P.W.-08 has further adduced fired cartridges and same was marked as material Ext-M/13. Further P.W.-08 has produced one country made pistol and same was marked as material Ext-M/14. P.W.-08 has further produced total five live cartridges and same were marked as material Ext-M/15 to M/19 respectively

During his cross-examination P.W.-08 has stated that all the exhibits presented before the Court today were neither seized in his presence nor were same were sealed. He has no any type involvement in this case. Today, as per direction of his senior officer, he has come to court by taking the material exhibits

15 P.W.-07 Abhishek Kumar who is formal witness who has proved the copy of Prosecution Sanction order issued by the then D.M. Sri Manesh Kumar Meena and accordingly same was marked as Ext- PW7/P10.

During his cross-examination by the defence P.W.-07 has stated that at the time when District Magistrate was posted in Katihar, he was posted in the Law Branch, at Collectorate, Katihar. Original copy of the

letter is not before him and this letter was issued from his office. He recognizes the signature of the then District Magistrate.

16. P.W-01 Chhotu @ Chhotelal Mandal has stated in his examination in chief that this incident occurred 10 months ago. He has no information about it. He has not given a statement to the police.

It would be 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-examined the P.W.-01 but in his cross-examination P.W.-01 has stated that it is not true that he told to the police that on 22-07-24 at around 10:30 P.M., while he was returning home from Lalsinghiya, there was a crowd near the unpaved road which lead to Tapua and on enquiry, he came to know that two or three people forcibly snatched twenty thousand rupees and an HF Deluxe bike from a person and on enquiry, he came to know that the person was Munna Yadav and in the act of snatching the motorcycle, one person was also shot. P.W.-01 has further stated that he does not recognize any of the accused. P.W.-01 has further stated that it is not so that having gone into favour of the accused person he is giving false testimony.

During the cross-examination done by the defense side P.W.-01 has stated that today he is testifying voluntarily before this court.

17. P.W.-02 Sagr Kumar Mandal has stated in his examination-in-chief that this case has been filed by Karu Mandal, upon whom, he does not know. The incident took place one year ago at about 10:00-11:00 P.M. in night. P.W.-02 has further stated that Karu Mandal called him at the place of occurrence. Karu Mandal's deluxe vehicle/motorcycle and money had been snatched. Karu Mandal had sustained bullet/ fire arms injury, the bullet had hit at his Dhawana. He does not know who shot him. From there he took Karu Mandal to the local hospital. The police came and took Karu Mandal's statement, P.W.-02 has further proved his signature on the fard-e-bayan accordingly same was marked as Ext-P-1/P.W-2. P.W.-02 Has refused to identify to the accused namely Navneet Kumar and Ajit Kumar who were present in the court.

During his cross-Examination P.W.-02 has stated that this incident did not occur before him. He cannot say who snatched the bike or who fired the shot. The statement bearing his signature was not taken in his presence. It was not read to him, nor did he read it. He simply signed the statement. The police have never inquired him about this incident. Today, he has given his statement before the court voluntarily without any fear or pressure. There is only hearsay information about the incident.

18 . While at the time of final argument Id. A.P.P. for the state has submitted that from perusal of the case record it is evident that due to compromise between informant and accused persons P.W.-03 Karu Mandal has not fully supported the case of prosecution. Further due to some other reason P.W.-01-Chhotu @ Chhotelal Mandal, P.W.-02-Sagar Kumar Mandal have also not fully supported the case of prosecution. But from perusal of the case record in entirety it is quite clear that prosecution case is true and P.W.-05 Who is the I.O. to this case has fully supported the case of prosecution and has further stated that country made pistol was recovered from the conscious possession of the Munna Yadav who was concealing the said country made pistol in his waist. Further prosecution sanction report issued by the then D.M., Katihar is also on the record and same has been duly proved by the prosecution witness. Further other material just like looted amount were produced before court and said amounts, currency notes were got marked before court as Material Ext-M to M/12. Further Material Ext-M/13 fired cartidge, Material Ext-M/14 country Made pistol and material Ext-M/15 to M/19 five live cartidge were also produced before this court, which all were recovered from the possession of the accused persons. So, from perusal of the oral testimonies of the prosecution witnesses and other documentary evidences available on the record it is evident that prosecution has succeeded to prove its case beyond all reasonable doubt against the accused persons, So, accused persons be held guilty for the commission of the alleged offences as leveled against them.

19. While Id. counseles for the accused persons have argued before this court that from perusal of the case record it is evident that P.W.-03 Karu

Mandal who is informant to this case has clearly stated that that as to who shot him, he did not identify him. P.W.-03 has further stated that he does not recognize to the accused persons to this case. P.W.-03 has further stated that he does not recognize to the accused who are present before court while all the accused persons were present before court at the time of recording oral testimony of P.W.-03 namely Karu Mandal. While P.W.-01 Chhotu @ Chhotelal Mandal has turned to be hostile. Further P.W.-02-Sagar Kumar Mandal is hearday witness. While P.W.-05-Munna Kumar Patel has deposed that he recovered only one pistol from the possession of the Munna Yadav. While P.W.-04 Dinesh Kumar Tirki who is expert witness who has stated that he examined one country made pistol and five live cartridges relating to Falka P.S. case No. 135/24. But P.W.-08-Samir Kumar Singh produced one country made pistol and one fired cartridge and five live cartridge. While as per seizure list one country made pistol and total five live cartridges were recovered from the possession of the Munna Yadav. Further as per seizure list there (03) currency note of 500/- were recovered from the possession of Navaneet Kumar Mandal, further from the possession of Munna Yadav total four (04) currency note of 500/- and two (02) currency note of Rs. 20 rupees and four (04) currency note of 500/- were recovered from the possession of Ajeet Kumar Mandal. But there is no evidence on record to prove that said currency notes were looted currency note. Further prosecution has not examined any witness of seizure list. Further D.W.-06 Ashwani Kumar has never stated that injury sustained by the injured was caused by Fire Arms. Further as per Ext-P9/PW6- Supplementary Injury report-injury sustained by the injured to this case is simple in nature. Further P.W.-06 has clearly stated that Injuries as reported to be sustained by victim/injured to this case may occurred due to falling on hard surface. So it is evident that it can not be definitely concluded that victim to this case namely Karu Mandal sustained fire arms injuries on his body who examined to the injured to this case has also not been examined by the prosecution, so much prejudice has been caused to the defense side because defense side has been deprived to cross-examine to the Doctor on the nature of the injuries sustained by the injured to this

case. So, from the oral testimonies of prosecution witnesses as well as from perusal of the documentry evidence it is quite clear that prosecution has miserably failed to proves charges u/s 309 (4), 109, 317 (2), 317 (4), 317 (5), of the B.N.S. & u/s 25 (1-b) a,/35, 26/35 of the Arms Act as leveled against accused namely Munna Yadav, Ajeet Kumar Mandal @ Ajeet Kumar, Navanit Kumar and Raushan Kumar Mandal @ Raushan Kumar. So accused persons may be acquitted from the charges u/s 309 (4), 109, 317 (2), 317 (4), 317 (5), of the B.N.S. & u/s 25 (1-b) a,/35, 26/35 of the Arms Act as leveled against them.

20. Now in the light of above facts as well as keeping in view of the oral arguments of the ld. AP.P. for the state as well as contentions as raised by ld. defense counsels, court will analyze the merit of evidences available on the record. Now the first question arises before this court as to whether prosecution has succeeded to prove the charge u/s 109 of the B.N.S as leveled against the accused persons. Now coming on the said charge court finds that inorder to prove charge u/s 109 of the B.N.S. prosecution is under obligation to prove first of all that accused persons committed an act amounting to attempt to murder by firing a shot at the informant namely Karu Mandal. No doubt that to prove an offence under Section 109 of the B.N.S. it is must for prosecution to establish that the accused persons committed such an act with such intention or knowledge that if by the said act death would have been caused, it would be murder, and that act was caused by non else but the accused who are facing trial. But from perusal of the oral evidence of P.W.-03 Karu Mandal it is evident that he has nothing stated against the any accused persons. Moreover P.W.-03 has clealry deposed before this court that he did not know who shot him. He has further refused to identify the all accused persons. Further in his cross-examinantion P.W.-03 has stated that he did not see the accused persons at the place of occurrence. While P.W.-01 Chhotu @ Chhotelal Mandal has turned hostile though he was cross-examined by the prosecution but from said cross-examinantion nothing material could be elicited which may support the prosecution case. Further P.W.-02-Sagar Kumar Mandal is a hearsay witness who has clearly admitted that the incident did not occur before him. Further

P.W.-06 Ashwani Kumar, (Medical Officer) has proved the injury report (Ext-P7/PW6) and supplementary injury report (Ext-P8/PW6) as well as (Ext-P9/PW6) opinion of Dr. Baidnath Rajak. But P.W.-06 has stated in his cross-examination that Injuries as reported to be sustained by victim to this case may occurred due falling on hard surface. So, said facts creates a serious doubt whether the injury was caused by a firearm or not. Further P.W.-05 who is I.O. to this case has clearly deposed that he did not collect blood samples or take the assistance of any Forensic Expert. So, it is evident that I.O. has not investigated the case properly. Moreover, the victim (P.W.-03-Karu Mandal) himself has not identified any accused as the assailant/ shooter. While P.W.-04, P.W.-06, P.W.-07 and P.W.-08 are either expert witness or formal witness and admittedly they have not seen the incident. So, from the discussion as made above it is quite clear that prosecution has not succeeded to prove the charge u/s 109 of the B.N.S. as leveled against the all four accused persons beyond the shadows of all reasonable doubt.

21. Now the next question arises before this court as to whether prosecution has succeeded to prove the charge u/s 309 (4) of the B.N.S as leveled against the accused persons. No doubt that to prove the charge u/s 309(4) of the B.N.S. prosecution is under obligation to prove that the accused persons took movable property from another person/victim by force or threat of force. In this case, the prosecution alleged that the accused persons snatched Rs.20,000/- and a motorcycle from the informant namely Karu Mandal. While victim and informant to this case namely P.W.-03 Karu Mandal has deposed before this court that he does not recognize any of the accused persons present before court, and he does not recognize Munna Yadav and Roshan Yadav who are in custody. P.W.-03 has further stated that he did not see the accused persons at the place of occurrence. While P.W.-01 has not supported the case of prosecution at all. While P.W.-02 is hearsay witness. While other witnesses of prosecution are not the eye witness of this case. Further P.W.-05 who is I.O. to this case has not collected any forensic evidence just like fingerprints from the alleged recovered motorcycle. Further any witness of prosecution has not made clear in his oral testimony as to

from whom possession said snatched motorcycle was recovered. Further there is no evidence on record to show that alleged recovered currency notes were snatched by the accused persons from informant to this case namely Karu Mandal. Furthermore, alleged currency notes produced before court as material exhibits (M/1 to M/12) were not identified by P.W.-03 as his stolen money. So, from the discussion as made above it is quite clear that prosecution has miserably failed to prove the charge u/s 309(4) of the B.N.S. beyond reasonable doubt as leveled against the all four accused persons.

22. Now third question before this court arises for consideration as to whether prosecution has succeeded to prove the charges u/s 317(2), 317 (4) and 317 (5) of the B.N.S. as leveled against the accused persons or not. From perusal of the provisions of aforesaid all three sections it is quite clear that said three sections provide punishment for accused who has been involved in receiving or retaining, dealing or concealing the such stolen property about which he knows or having reason to believe about the property that said property is stolen property. While coming on the facts of this case court finds that the prosecution has alleged that some of the accused persons were found in possession of currency notes as well as stolen motorcycle which all have been snatched from the informant namely Karu Mandal. But it is notable that seizure list relating to said currency notes and motorcycle were never proved either by any witness or by the I.O. to this case. Further mode and manner of recovery of currency notes and motorcycle have also not been made clear by any prosecution witnesses. Further there is no evidence on record to show that said motorcycle and currency notes were obtained by the accused persons through robbery or theft. Further P.W.-03 has never stated that his motorcycle or some currency notes were looted or snatched by the accused persons. Further neither said motorcycle was produced before court nor seizure list related with currency note and motorcycle were duly proved by any prosecution witnesses. Moreover in his oral testimony P.W.-03 Karu Mandal has not supported the alleged facts of robbery at all. He did not identify any currency notes as his own stolen money/currency. Further P.W.-08 Samir Kumar Singh who produced

currency notes as material exhibits (M/1 to M/12) before this court but he has clearly admitted that these notes were not seized in his presence and he has no any type involvement in the case. Further P.W.-05 has also never stated that he recovered said motorcycle or currency notes from the possession of the accused persons. While P.W.-01 has not supported the case of prosecution at all. While P.W.-02 is hearsay witness. While P.W.-04, P.W.-05, P.W.-06 and P.W.-07 are either expert witness or formal witness and admittedly they have not seen the incident of alleged recovery of said currency note or said motorcycle. So in the absence of any proof that the currency notes and Motorcycle were recovered from the possession of accused persons it can not be held that accused persons committed robbery or they were dishonestly involved in receiving, retaining, buying, selling, dealing or concealing the stolen property. Moreover, any witness of prosecution has never stated that he saw to the any accused to be involved selling or disposing or concealing of the motorcycle or the alleged currency notes. So from the discussion as made above it is quite clear that prosecution has miserably failed to prove the charges u/s 317(2), 317 (4) and 317 (5) B.N.S beyond the all shadows of reasonable doubt as leveled against the accused persons.

23. Now the fourth question arises before this court as to whether prosecution has succeeded to prove the charge u/s 25(1-b),/ 35 Arms Act against the accused persons or not. First of all, from perusal of the case record it is clear that case of prosecution is that from the possession of the accused namely Munna Yadav one country made pistol and 05 live cartridges were recovered. While P.W.-05 Munna Kumar Patel who is I.O. to this case has deposed before this court that he arrested to the accused namely Munna Yadav and recovered one country-made pistol from a towel wrapped around his waist. But he has never alleged that arms or ammunition are found in any premises, vehicle or other place which is in the joint occupation or under joint control of all accused persons, rather it is the case of the prosecution that the recovery of alleged country made pistol and five live cartridges were made from the conscious possession of the Munna Yadav not from any jointly occupied place or vehicle of the all accused persons. While no doubt that section

35 of the Arms Act is applicable only when arms or ammunition are found in any premises, vehicle or other place which is in the joint occupation or under joint control of several persons. Hence, court finds that section 35 of the Arms Act has no application in this case. But question rests to decide as to whether accused namely Munna Yadav can be held guilty for keeping illegal arms and ammunitions in his conscious possession. While from perusal of the case record it is evident that there is allegation against the accused namely Munna Yadav that he possessed the firearms and five live ammunitions without valid license and he had also concealed the said arms and ammunition in his waist or pocket. So in the light of facts of this case first material question for determination before this court is as to whether prosecution has succeeded to prove the charge u/s 25(1-b)a of the Arms Act as leveled against the accused namely Munna Yadav. No doubt that for secure the conviction under section 25 (1-b)a of the Arms act it is bound duty of prosecution to prove that alleged illegal arms or ammunitions were recovered from the possession of the accused. While from perusal of the case record it is evident that P.W.-05 has stated that one country made pistol was recovered from the possession of the accused namely Munna Yadav but he has nothing stated as to whether five live cartridges were recovered from the possession of Munna Yadav or not. P.W.-05 has further stated that he is I.O. to this case and he recovered the said country made pistol from the possession of the Munna Yadav. But he has never stated that earlier to said recovery he gave his search of his own body before any other independent person. Further P.W.-05 has not made clear that as to which place seizure list was prepared of said seized arms and ammunition. So, from the said facts it is clear that before recovery of the said arms and ammunition P.W.-05 did not follow the rule of seizure as prescribed by law. Further, it is not clear as to which place alleged seizure list was prepared. While in the case of Amarjit Singh v. State of Punjab, 1995 Supp (3) SCC 217 hon'ble court has observed that non-sealing of the revolver at the spot is a serious infirmity because the possibility of tampering with the weapon cannot be ruled out. Further from record it is evident that alleged recovery of firearms and

ammunition were taken place on 25-07-2024 but the I.O. to this case sent the said seized arms and ammunition before the Arms Inspector on 07-08-2024 for the examination of said seized articles. But prosecution has not given any cogent and reliable explanation for such delay. Further any witness of seizure list was not examined before this court. Further seizure-list relating to arms and ammunitions was not exhibited by the prosecution. So, from the discussion as made above it is quite clear prosecution has not succeeded to prove charge u/s 25 (1-b)a/35 of the Arms Act beyond the all shadows of reasonable doubts as alleged against the accused namely Munna Yadav

24. Now coming to the charge u/s 26/35 of the Arms Act court finds that section 35 of the Arms Act does not apply in this case because it is not the case of the prosecution that alleged arms or ammunition are found in any premises, vehicle or other place which is in the joint occupation or under joint control of all accused persons, rather it is clear case of the prosecution that the recovery of alleged country made pistol and five live cartridges were made from the conscious possess of the Munna Yadav not from any jointly occupied place or vehicle of all accused persons. Further neither P.W.-05 nor any witness of prosecution has deposed before court that the accused namely Munna yadav was in to knowledge that police party is coming to arrest him or coming to search his body, so he concealed the said seized country made pistol and said cartridges in his waist or pocket. Further any witness of prosecution has not deposed that after seeing police force or other public servant accused Munna Yadav tried to conceal the said arms and 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 namely Munna Yadav had concealed the said seized arms and ammunition so that a public servant may not come

into knowledge with respect to said arms and ammunition. So, in the light of above facts it is quite clear that prosecution has not succeeded to prove the charge u/s 26/35 of the Arms Act beyond the all shadows of reasonable doubt.

25. So, in the light of discussion as made in previous paragraph as well as from perusal of the oral and documentary evidences, it is evident that prosecution witnesses have not given cogent and reliable oral evidence on the point of recovery of alleged country made pistol and five live cartridge of 8 M.M. bore. Further from perusal of the F.I.R. it appears that P.W.-05 Munna Kumar Patel, who is I.O. to this case was also the member of raiding party, so I.O. to this case appears to be interested in conviction of the accused. While in the case of Bhulan Das @ Bhulan Ravidas vs. State of Bihar Criminal Appeal (DB) No.944 of 2011 hon'ble court observed that since the Investigating Officer in the case was a member of the raiding party, so in such circumstance the investigation made by him cannot be said to be above board. So, having reliance on the aforesaid ruling it may be safely held that investigation in this case is also doubtful. So, in view of the aforesaid discussion, it is held that the prosecution has failed to prove its case beyond reasonable doubt that the accused persons possessed firearm and ammunition in violation either section 3 or 5 of the Arms Act or they intentionally concealed the said arms and ammunition so that a public servant may not come into knowledge with respect to said arms and ammunition. So having consideration the above facts i found and held that prosecution has miserably failed to prove its case under section 25 (1-b)a, 26/35 of the Arms Act beyond all the shadows of reasonable doubts against the aforesaid all four accused persons.

26. So, in the light of discussion as made in previous paragraph as well as from perusal of the oral and documentary evidences and keeping in the mind sagacious contentions of the ld. defense counsels, this court is of this definite view that prosecution has miserably failed to prove the charges u/s- 309 (4), 109, 317 (2), 317 (4), 317 (5), of the B.N.S. & u/s 25 (1-b) a/35, 26/35 of the Arms Act beyond the all shadows of reasonable doubt as leveled against aforesaid accused person namely

Munna Yadav, Ajeet Kumar Mandal @ Ajeet Kumar, Navanit Kumar and Raushan Kumar Mandal @ Raushan Kumar . Hence, it is found and hold that aforesaid all accused persons are entitled for the benefit of doubts in the respect of the charges u/s 309 (4), 109, 317 (2), 317 (4), 317 (5), of the B.N.S. & u/s 25 (1-b) a, 35, 26/35 of the Arms Act.. Accordingly by granting the benefit of doubts aforesaid all four accused persons are acquitted from the charges u/s 309 (4), 109, 317 (2), 317 (4), 317 (5), of the B.N.S. & u/s 25 (1-b) a, 35, 26/35 of the Arms Act as leveled against them. Since accused namely Ajeet Kumar Mandal @ Ajeet Kumar, Navanit Kumar and Raushan Kumar Mandal @ Raushan Kumar are on bail, so aforesaid accused persons and their bailors are hereby absolved from the liabilities of the respective bail bonds. While accused namely Munna Yadav is in custody, so O/C is hereby directed to issue release order at once, and jail authority is hereby directed to release the said custody accused at once if he is not warranted in other case.

27. Office is directed to send a copy of judgment to the D.M., Katihar in compliance of section 406 of the B.N.S.S.

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
05-05-2026

(Asutosh Rai)
Addl. Sessions Judge II
Katihar
05-05-2026

IN the COURT OF ADDL. SESSIONS JUDGE-II Katihar
Sessions Trial Case No.-130/2025

LIST OF PROSECUTION WITNESS

RANK	NAME	NATURE OF EVIDENCE
1	P.W-01-Chhotu @ Chhotelal Mandal	Hostile witness
2	PW-02- Sagar Kumar Mandal	Hearsay witness
3	PW-03-Karu Mandal	Victim and informant to this case
4	PW-04-Dinesh Kumar Tirki	Expert witness
5	P.W.-05-Munna Kumar Patel	The then S.H.O. Falka
6	P.W.-06-Ashwani Kumar	Medical officer
7	P.W.-07-Abhishek Kumar	Formal witness
8	P.W.-08-Samir Kumar Singh	Formal witness

LIST OF PROSECUTION EXHIBITS

Sr. no	Exhibit No.	Description
1	Ext-P-1/P.W-2	Signature of P.W.-02 Sagar Kumar Mandal over Fard-e-beyan
2	Ext-PW3/P2	Signature of P.W.-03 Karum Mandal (informant) over Fard-e-beyan
3	Ext-PW4/P3	Examination report of relating to seized five live cartridges
4	Ext-PW4/P4	Examination reloprrt relating to seized country made pistol
5	Ext-PW5/P5	Signature of Munna Kumar Patel the then SHO, Falka over formal F.I.R.
6	Ext-PW5/P6	Writing and Signature of Munna Kumar Patel the then SHO, Falka made on endorsement.
7	Ext-P7/PW6	Injury report of Karu Mandal
8	Ext-P8/PW6	Supplementary injury report of Karu Mandal

9	Ext-P9/PW6	Opinion of Dr. Baidnath Rajak relating to injury of Karu Mandal
10	Ext-PW7/P10	Prosecution Sanction order of The D.M. Katihar
11	Ext-PW8/P11	Signature of Ravi Kumar (Police-station-in-charge, Falka) on Forwarding letter
MATERIL EXHIBITS		
1	M to M/3 and M/4 to M/9	Currency of 500 hundred rupees and 20 rupees (total ten currency)
2	M/10 to M/12	Three currency of 500 hundred note
3.	M/13	Empty Cartridge
4.	M/14	Country made pistol
5	M/15 to M/19	Five live cartridges

LIST OF DEFENCE WITNESS

RANK	NAME	NATURE OF EVIDENCE
1	N/A	N/A
2	N/A	N/A

LIST OF DEFENCE EXHIBITS

Sr. Number	Exhibit Number	Description
1	N/A	N/A

(Asutosh Rai)
Addl. Sessions Judge-II
Katihar
05-05-2026

<i>Date of which judgment is reserved</i>	<i>24-04-2006</i>
<i>Date of Judgment</i>	<i>05-05-2026</i>
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<i>Uploaded By</i>	<i>Prakash Kumar Singh</i>