

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE, SAHARSA

Saharsa, Dated: - 23.05.2026

Present: - Dinesh Sharma, P.D. & S.J., Saharsa

Criminal Appeal No. 10/2026

Rakesh Kumar Yadav Vs The State of Bihar

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE,
SAHARSA

Dated, Saharsa, the 23rd May 2026

Present: - Dinesh Sharma, Principal Sessions Judge, Saharsa

Criminal Appeal No. 10/2026

Rakesh Kumar Yadav Vs The State of Bihar

In the matter of: -

Rakesh Kumar Yadav S/o Late Mahadev Yadav

Resident of Village Kashimpur, Ward No. 4, P.S. Nauhatta, District Saharsa.

.....**Appellant**

Vs

The State of Bihar

.... Opposite Party

Appearance: -

For the Appellant

:- Sri Randhir Kumar Sinha, Advocate

For the State

:- Sri Krishna Murari Prasad, Ld. P.P.

ORDER

1. The instant criminal appeal has been filed by the appellant challenging the judgment of conviction and order of sentence dated 19th January 2026 passed by Sri. Bhawane Prasad, Ld. J.M. 1st Class, Saharsa passed in Nauhatta P.S. Case No. 273/2023, whereby and whereunder the learned trial court has convicted the appellant under Sections 25(1-B) a, 26 of the Arms Act.
2. By the impugned order of sentence, the appellant has been sentenced to undergo simple imprisonment of 3 years and to pay a fine of Rs. 2,000/- and in default of payment of fine amount, the appellant shall have to serve S. I. for 30 days for his conviction for the offence under section 25 (1-B)a of the Arms Act and suffer further simple imprisonment of for a terms of 3 years and to pay a fine of Rs. 2,000/- and in default of payment of fine, the appellant shall undergo S.I. of 30 days for his conviction for the offence under section 26 of the Arms Act. All the sentences were ordered to be run concurrently and the period undergone by the appellant was ordered to be set off from the sentences awarded as per section 428 of the Cr.PC.
3. Heard learned the submissions of the Ld. Counsel for the appellant and learned Public Prosecutor for the State. Trial Court Records have been carefully perused.
4. The prosecution case, in brief, is that during the course of investigation of Nawhatta P.S. Case No. 257 of 2023 dated 02.11.2023, the appellant allegedly made a confessional/disclosure statement on 21.11.2023 leading to the recovery of a country made pistol from near a toilet/ditch. On the basis of such alleged recovery, Nawhatta P.S. Case No. 273 of 2023 was instituted against the appellant under Sections 25(1-B) (a) and 26 of the Arms Act. Upon completion of investigation, charge-sheet came to be filed, and the appellant was put on trial which culminated in his conviction.

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5. The principal contention advanced on behalf of the appellant is that the learned Trial Court failed to appreciate the evidence in its correct legal perspective. It has been submitted that the alleged recovery was made from an open and accessible place which was neither owned nor possessed by the appellant and, therefore, the essential ingredient of conscious possession has not been established. It is further contended that the prosecution failed to prove the seized weapon in accordance with law and that the ballistic expert admittedly did not conduct any test firing from the alleged weapon, thereby rendering the examination report doubtful and unreliable.
6. On the other hand, the Ld. PP for the State has supported the impugned judgement and order on sentence and submits that the same calls for no interference.
7. Having considered the rival submissions and upon careful scrutiny of the evidence available on record and the impugned judgment, this Court finds considerable force in the submissions advanced on behalf of the appellant.
8. The entire prosecution case fundamentally rests upon the alleged disclosure statement made by the appellant and the consequent recovery of the country made pistol. Therefore, the evidentiary value of such recovery assumes critical importance.
9. **PW-1 Ranjesh Raj** deposed that he accompanied the police party and that upon disclosure made by the appellant, a country made pistol was recovered from a ditch. However, in his cross-examination, the witness categorically admitted that the place from where the pistol was allegedly recovered was an open place. Likewise, **PW-2 Balkant Kumar** also admitted that the place of recovery was an open space accessible to all persons.
10. The admissions made by PW-1 and PW-2 materially affect the prosecution case. Recovery from an open and accessible place, which is not shown to be in the exclusive possession or control of the accused, by itself does not conclusively establish conscious possession. Under the Arms Act, possession must be conscious, exclusive and attributable to the accused beyond reasonable doubt. When the alleged recovery is effected from a place accessible to the public at large, the possibility of the weapon having been kept by any other person cannot be ruled out.
11. The prosecution has failed to adduce any evidence demonstrating that the place from where the alleged recovery was made was under the exclusive dominion or control of the appellant. There is also no evidence to indicate that the appellant had any special knowledge or exclusive access to such place. In absence thereof,

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the essential link connecting the appellant with the recovered firearm remains unproved.

12. **PW-3 Saroj Kumar** deposed regarding the alleged recovery and proved the written application, seizure list and disclosure statement. However, in his cross-examination, he admitted that the recovered material exhibit was not before him in Court. Such admission creates doubt regarding proper identification and proof of the alleged seized article.
13. Further, the manner in which the material exhibit was proved by the prosecution also suffers from serious infirmity. **PW-5 Mangal Prasad Mandal** merely produced the alleged country made pistol before the Court and the same was marked as material **Exhibit-M.01/PW-5**. However, admittedly, this witness was neither a member of the raiding team nor was the alleged recovery made in his presence. Therefore, the formal marking of the material exhibit through this witness cannot be treated as substantive proof of seizure or recovery. The prosecution ought to have proved the recovered weapon through competent witnesses associated with the alleged recovery itself. Failure to do so creates a serious gap in the chain of evidence.
14. Another significant infirmity in the prosecution case relates to the examination of the alleged firearm. **PW-6 Mahendra Sharma**, the examiner of the country made pistol, proved the examination report as **Exhibit-P-6/PW-4: P-6/1/PW-6**. However, in his cross-examination, he admitted that no test firing was conducted from the alleged weapon during examination. The omission to conduct test firing assumes considerable importance. In prosecutions under the Arms Act, the prosecution is required to establish not merely the recovery of an object resembling a firearm, but also that the seized article answers the legal description of a firearm capable of being used as a weapon. In absence of test firing or any convincing scientific examination demonstrating operability, the evidentiary value of the examination report becomes substantially weakened.
15. Moreover, **PW-7 Balram Sah and PW-8 Vidhyanand Sada** merely identified their signatures on the seizure list. Their depositions are completely silent regarding the alleged disclosure statement made by the appellant or the consequential recovery. They have not supported the prosecution on the material particulars necessary to establish the recovery in a trustworthy manner. Their evidence, therefore, does not materially advance the prosecution case.
16. It is trite law that suspicion, however strong, cannot take the place of proof. The burden always lies upon the prosecution to establish the guilt of the accused beyond all reasonable doubt. In the present case, the prosecution evidence suffers

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from material inconsistencies and deficiencies which strike at the root of the case.

Firstly, the alleged recovery was made from an open and accessible place and not from the exclusive possession of the appellant. **Secondly**, the prosecution failed to satisfactorily prove the material exhibit through proper witnesses. **Thirdly**, the ballistic examination itself becomes doubtful in view of the admitted fact that no test firing was conducted. **Fourthly**, the independent witnesses did not support the prosecution on the material aspects of disclosure and recovery. This Court is surprised to know the manner in which PW-7 and PW-8 have been examined by the prosecution and how the relevant questions have not been put to them.

17. The above facts and circumstances cumulatively create serious doubt regarding the prosecution version and render it unsafe to sustain the conviction of the appellant. The learned Trial Court, in the considered opinion of this Court, failed to appreciate these material deficiencies in their proper perspective and consequently fell into error in recording the conviction.

18. Accordingly, the appellant is entitled to the benefit of doubt. Resultantly, the appeal is allowed. The impugned judgment of conviction and order on sentence passed by the learned Trial Court against the appellant under Sections 25(1-B) (a) and 26 of the Arms Act are hereby set aside.

19. The appellant is acquitted of all the charges. He shall be released forthwith, if not required in any other case.

20. Pending applications, if any, stand disposed of. Let the Trial Court Records be transmitted back forthwith along with a copy of this judgment.

21. The appellant has not furnished bail bonds in terms of section 481 of the BNSS. He is directed to furnish bail bonds in the sum of Rs. 5,000/- with one surety in the like amount in terms of section 481 of the BNSS. The bonds shall be furnished before the Ld. Trial Court.

22. Announced in open Court today on this 23rd of May 2026. File be consigned to Record Room as per rules.

Dictated & corrected by:
Sd/-
(DINESH SHARMA)
Sessions Judge, Saharsa

23.05.2026

Judgment delivered by:
Sd/-
(DINESH SHARMA)
Sessions Judge, Saharsa

23.05.2026

Date of Judgement/Order	23.05.2026
Date of Reserving Judgement/Order	11.05.2026
Uploading Date	23.05.2026
Uploaded by	Javed Haider