

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.895 of 2022**

Arising Out of PS. Case No.-106 Year-2014 Thana- Kharagpur District- Munger

Chandan Bhagat @ Laden Son of Vindeshavari Bhagat Resident of Village -
Dariyapur, P.s.- Gangta , Distt.- Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ajit Kumar Singh

For the Respondent/s : Mr.Satya Narayan Prasad

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 18-02-2026

1. Heard the parties.

2. The present appeal preferred by appellant,

namely, Chandan Bhagat @ Laden against judgment of conviction dated 31.01.2022 and order of sentence dated 03.02.2022 passed by learned Additional Sessions Judge Vth, Munger in connection with Sessions Trial No. 114 of 2015, whereby appellant has been convicted and sentenced to undergo rigorous imprisonment of three years and fine of Rs. 2,000/- under Section 25(1)(a) of the Arms Act and further sentenced to undergo R.I. for five years and fine of Rs. 2000/- under Section 26(11) of the Arms Act, in default of payment of fine, the learned trial court ordered the appellant



to undergo simple imprisonment of one month and further ordered that all the sentences shall run concurrently.

3. Case of prosecution in brief as it appears that ASI recorded his self-statement alleging that on 26 April 2016 he received secret information that appellant was illegally manufacturing and selling firearms from his house and could be arrested if a raid was conducted. Acting on this tip-off, the informant reached the accused house at about 3:30 PM and saw a person closing the gate, who escaped despite police efforts to apprehend him. Through local *choukidar* Anil Mishra and Md. Akul, the person was identified as appellant. As no one agreed to act as a witness, the police entered and searched the house, recovering from the courtyard several mini gun factory instruments, including a drill machine, *bhanti*, half-manufactured barrel, iron chisel, *reti*, 25 grams of gunpowder, two iron triggers, and a gas cutter, after which a seizure list was prepared.

4. On the basis of aforesaid written information, Kharagpur P.S. Case No. 106 of 2014 was lodged under under Section 25(1-A), 25(1-AA),25(1-B)c, 25(1)(11)(111)



of the Arms Act and 3/4/5 of Explosive Substance Act against the appellant.

5. To substantiate its case, the prosecution has examined altogether four witnesses. They are:-

Prosecution Witnesses No(s).	Names
P.W. 1	Shambhu Kr. Paswan, In-charge of Gangta P.S.
P.W. 2	Mukesh Paswan, I.O
P.W. 3	Dinesh Kr. Singh
P.W. 4	Girjan Prasad
P.W. 5	Indrajeet Singh
P.W. 6	Md. Abul (Choukidar)
P.W. 7	Anil Kr. Mishra (Choukidar)
P.W. 8	Prem Nandan Prasad

6. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Seizure list
Exhibit-1/1	Signature of witness Md. Abdul on Seizure list
Exhibit-1/2	Signature of witness Anil Kr. Mishra on Seizure list
Exhibit-2	Self written statement
Exhibit-3	Endorsement of self



	written statement
Exhibit-4	Formal FIR
Exhibit-5	Weapon inspection report
Exhibit-6	Signing of Prosecution Sanction order

7. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all incriminative evidences as surfaced against him during trial and claimed his complete innocence and false implication.

8. Neither any defence witness nor any document was exhibited in support of defence by appellant/convict.

9. Upon the basis of evidences as surfaced during the trial and also by taking note of the argument as advanced by the learned counsel appearing on behalf of the parties, the learned trial court convicted appellant/convict and passed order of sentence, as stated hereinabove.

10. Being aggrieved with aforesaid judgment of conviction and order of sentence, the appellant/convict preferred the present appeal.



11. Hence the present appeal.

**Argument on behalf of the
appellant/convict:**

12. It is submitted by learned counsel appearing on behalf of the appellant/convict that maximum seized materials during the course of raid appearing household materials and, therefore, allegation *qua* manufacturing of fire-arms is completely baseless against the appellant. It is submitted that during trial, PW-4 namely, Girjan Prasad and PW-5 namely, Indrajeet Singh, who are seizure list witnesses, categorically deposed that nothing was recovered before them, even PW-4 stated that no seizure list was prepared before him. He, even, failed to identify the appellant/convict. Interestingly, these two witnesses are from the same department, but did not supported the factum of raid and seizure, as alleged, against the appellant/convict.

13. It is submitted that learned Trial Court ought to have held that the prosecution has miserably failed



to prove its case beyond all reasonable doubts. The entire prosecution case rests solely upon the testimonies of police personnel, with no independent witness coming forward either to support the alleged occurrence or the seizure. Such absence of independent corroboration seriously dents the credibility of the prosecution story and renders the conviction unsustainable in the eyes of law. It is further submitted that the learned trial court failed to appreciate the material contradictions and discrepancies appearing in the oral testimonies of the material witnesses and the informant, particularly regarding the manner of occurrence and the alleged seizure of articles. These inconsistencies go to the root of the prosecution case. Moreover, no FSL report has been produced to establish that the seized powder was in fact gunpowder. In the absence of any scientific confirmation, the prosecution's claim regarding seizure of 25 grams of gunpowder remains unsubstantiated and doubtful. It is also submitted that several police witnesses themselves admitted that the seized articles are capable of domestic use and bore no specific identifying marks. This



admission further weakens the prosecution case. Additionally, the alleged recovery was made from a joint house, making it highly difficult to ascertain from whose exclusive possession or room the articles were recovered. The learned Trial Court failed to properly consider these vital aspects, thereby causing grave miscarriage of justice.

14. In support of submission, learned counsel for the appellant relied upon the judgments of Hon'ble Supreme Court as available through ***Sukhjit Singh v. State of Punjab, (2014) 10 SCC 270*** and ***Mohmed Rafiq Abdul Rahim Shaikh vs. State of Gujarat*** reported in ***(2018) 10 SCC 501***.

Argument on behalf of State:

15. Learned APP appearing on behalf of State categorically submitted that recovery was made from the house of the appellant/convict, but fairly conceded that said house appears joint property in view of deposition of PW-1.

16. I have perused the trial court records carefully and gone through the evidences available on record and



also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

17. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

18. PW-1 namely, Shambhu Kr. Paswan deposed that on 26.04.2014 while posted as Officer-in-Charge of Gangta Police Station, he received secret information regarding illegal arms manufacturing by the accused. Acting upon the information, he conducted a raid along with police personnel and *Choukidars*, during which one person allegedly fled and was identified as the accused. Certain manufacturing items were seized from the house. However, in cross-examination, he admitted that the accused had a brother but he did not know their names or whether they lived jointly. He further stated that no documentary label was attached to the seized articles, only marker identification was used, and he was unaware



whether the seized items were produced before the Court or sent for expert examination. He also admitted that the seized tools could be used for domestic purposes such as making agricultural implements or drilling walls/doors.

19. PW-2 namely, Mukesh Paswan in his cross-examination, deposed that no FSL report had been furnished to him. He further stated that statement of persons residing near the boundary were not recorded, suggesting lack of independent corroboration. He also admitted that the seized articles were kept in the *Malkhana* where many other articles were already stored, raising doubt regarding identification and preservation of the alleged seized materials.

20. PW-3 namely, Dinesh Kr. Singh stated in his cross-examination that the seized articles were of the type commonly used for general domestic purposes and that no identifying marks were inscribed on them. This testimony cast doubt on the exclusive linkage of the articles with illegal arms manufacturing.



21. PW-4 namely, Girjan Prasad deposed that no seizure was made in his presence. He further stated that tools such as chisel and hammer, allegedly seized, are capable of being used for various ordinary works, thereby weakening the prosecution claim regarding their specific illegal use.

22. PW-5 namely, Inderjit Singh stated in cross-examination that he could not say in whose house the raid was conducted. He further admitted that he had not seen any seized item during the raid and was unable to identify the accused, which seriously affected the credibility of the prosecution's version.

22. PW-6 namely, Md. Abul deposed that on 26.04.2014, while posted as *Chowkidar* at Gangta Police Station, he accompanied the Station House Officer, a Saif Bal personnel, and Chowkidar Anil Mishra to raid the house of accused at Dariyapur. During the raid, semi-finished firearm parts and manufacturing materials were recovered, and a seizure list was prepared in his presence bearing his



signature (Exhibit 1/1). He also identified the accused in court. In his cross-examination, PW-6 admitted he remained outside the house during the raid, did not see the actual recovery, and did not know the contents of the seizure list, identifying the accused mainly because he was from his village.

23. PW-7 namely, Anil Kumar Mishra similarly stated that he joined the raid with the police team on secret information about illegal arms manufacturing, recovery of weapons-making materials was made, and he signed the seizure list (Exhibit 1/2) and identified the accused. In his cross-examination, PW-7 also admitted he was outside the house, did not witness the recovery, and could not say from which room the items were seized, though he maintained the incident occurred.

24. PW-8 namely, Prem Nandan Prasad proved the prosecution sanction, stating that on 09.08.2014 sanction for prosecution under relevant Arms Act sections against the accused was granted by the then



District Magistrate, whose initials he recognized on the sanction order (Exhibit-6). In his cross-examination, PW-8 stated the sanction order was neither typed nor signed in his presence; no police reports were attached; he did not know who obtained the District Magistrate's signature; and the order lacked the DM's full signature, though he denied fabrication and affirmed receiving court summons.

25. In this context, it would be apposite to reproduce para 10 to 13 of ***Sukhjit Singh case (supra)*** which reads as follows:-

"10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in Ranvir Yadav v. State of Bihar [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92] . Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in Tara Singh v. State [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30)

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is



misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. *In Hate Singh Bhagat Singh v. State of Madhya Bharat [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] , Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)*

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. *The aforesaid principle has been reiterated in Ajay Singh v. State of Maharashtra [(2007) 12 SCC 341 :*



(2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

26. It would be apposite to reproduce *para no.*

20 of *Mohmed Rafiq Abdul Rahim Shaikh case*

(Supra) which is as under :-

20. *In Gunwantlal v. State of M.P. [Gunwantlal v. State of M.P., (1972) 2 SCC 194 : 1972 SCC (Cri) 678] , this Court held that a person cannot be charged with the offences unless it can be shown that he had the knowledge that any sort of prohibited item was present in his house.*

“5. ... In some cases under Section 19(f) of the Arms Act, 1878 it has been held that the word “possession” means exclusive possession and the word “control” means effective control but this does not solve the problem. As we said earlier, the first precondition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly, that possession need not be physical possession but can be constructive, having power and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the



dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question.”
(SCC p. 198, para 5)

28. Considering aforesaid discussions it appears that prosecution failed to answer several questions during the trial, which creates a serious doubt *qua* crime in question, benefit of which must be extended to the appellant.

29. Considering the aforesaid discussions and by taking note of fact in particular that even the seizure list witness P.W.-6 and 7 failed to support the seizure and denied any recovery in their presence, prosecution failed to establish recovery of alleged fire arms from conscious physical possession of this appellant on the basis of available evidence.

30. Accordingly, appeal stands allowed.

31. The impugned judgment of conviction dated 31.01.2022 and order of sentence dated 03.02.2022 passed by learned Additional Sessions Judge Vth, Munger in Sessions Trial No. 114 of 2015 arising out of Kharagpur P.S. Case No. 106 of 2014 is hereby set aside/quashed.

32. Accordingly, above named appellant is acquitted from the charges leveled against him.



33. Appellant is on bail, upon his acquittal, bailors and sureties stands discharged from their liabilities.

34. Office is directed to send back the trial court records along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.02.2026
Transmission Date	18.02.2026

