

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.598 of 2012**

Against the judgment of conviction, dated 22.06.2012, and order of sentenced dated 23.06.2012, passed by Mr. Vijay Kumar Singh, Ad Hoc Additional District Judge, III, Munger, in Sessions Trial No. 827 of 2010 arising out of Bariarpur P.S. Case No. 97 of 2009

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Ishwar Sah, son of late Jago Sah, Umi Banbarsa, P.S. Bariarpur, district Munger

.... Appellant

Versus

1. The State Of Bihar

.... Respondent

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**Appearance :**

For the Appellant : Mr. Animesh Kumar Mishra, Adv. as Amicus Curiae

For the Respondent : Mr. Sujit Kumar Singh, APP,

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**CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD**

**ORAL JUDGMENT**

**Date: 09-10-2015**

Heard Mr. Animesh Kumar Mishra, Adv. as Amicus Curiae for the appellant and the State.

2. The appellant has been convicted under Section 5A of the Explosive Substances Act and has been sentenced to undergo rigorous imprisonment for four years and a fine of rupees one thousand.

3. The prosecution case in the first information report by the informant Ranjit Kumar P.W. 1 that he is at present Officer-in-Charge of Bariarpur Police Station and giving his self statement on 15.11.2009 at 06.30 A.M. in village Banbarsa in front of the house of Ishwar Sah on the road that today at about 01.00 A.M. the Officer-in-Charge, Kharagpur, informed that one Manoj Paswan has been arrested and in his confessional statement he has disclosed that one Ishwar Sah, son of Jago Sah, resident of village Ume Banbarsa, P.S. Bariarpur, district Munger, has kept explosive substances and he used to supply explosive substances to Maoist and the explosive substances can be recovered if the raid is conducted. The informant recorded sanha of the said information and informed about this information to the Superintendent of Police, Munger, for verification of report and raiding party of forces

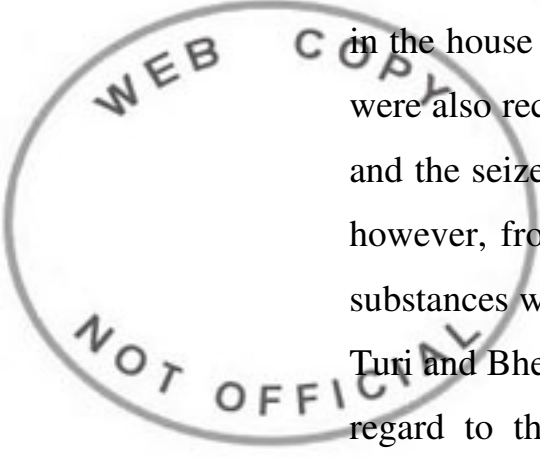
were constituted and under the leadership of Deputy Superintendent of Police as well as Officer-in-Charge, Kotwali Police Station, Officer-in-Charge, Muffasil Police Station, Officer-in-Charge of Quasim Bazar Police Station, Officer-in-Charge, Bariarpur Police Station, Officer-in-Charge, Jamalpur Police Station, Officer-in-Charge, East Company and Assistant Commandant of Kharagpur proceeded under the leadership of Sadaram Singh and reached village Umi Banbarsa and waited for the sun rise and, thereafter, the raid was conducted in the house of Ishwar Sah. The, further, case is that after sun rise while the police was entering into the house to conduct raid in the meantime, one person flee away from the back of the house, the police though tried to catch hold of him, but, in vain. Thereafter, during the search of the house another person also tried to flee, but, he was caught hold of by the police and on enquiry he disclosed his name as Ishwar Sah and from his house, on search ten hand-grenades, fuse wire and gelatin was recovered and the same were seized and seizure list prepared. During the inquiry from said Ishwar Sah, he disclosed that the person who fled away was Dablu Mandal who supplies the explosive to the Maoist. It was, further, disclosed that explosive substances were also in the house of Sunil Turi and Bheem Turi and if the raid is conducted immediately, then, explosive substances will also be recovered from their houses. The raiding party conducted the raid in the house of Sunil Turi and Bheem Turi and explosive substances recovered were seized, seizure list prepared and on the self statement of the informant, first information report lodged. After lodging the first information report the investigation proceeded. During investigation, the sanction was obtained under the Explosive Substances Act, the seized articles were sent to the Forensic Science Laboratory for examination and a report of Forensic Science Laboratory has been received. The police after investigation submitted the charge sheet. After submission of the charge sheet cognizance taken, case committed

to the Court of sessions and, thereafter, the charges were framed for offences under Sections 3, 4 and 5 of the Explosive Substances Act, after framing of the charge the trial proceeded and during the trial eight witnesses were examined by the prosecution.

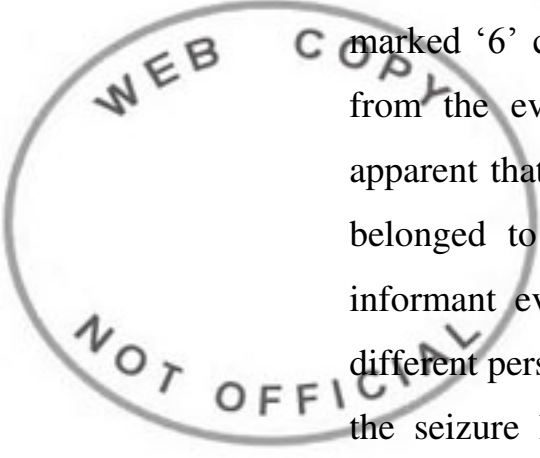
4. P.W. 1 is Ranjit Kumar, the informant. P.W. 2 is Awadh Kishkore Prasad, Assistant in Law Department, Munger, who has come to prove the sanction that prosecution under the Explosive Substances Act. P.W. 3 is the Dharmendra Kumar. He is a Constable and has come to support the prosecution case on search and seizure in the house of appellant and he has proved his signature on the seizure list, marked as Exhibit 4. P.W. 4 is Krishna Bihari Rai. He is the investigating officer of the case and has deposed that the seized articles were sent to the Forensic Science Laboratory and got the sanction for prosecution under the Explosive Substances Act. P.W. 5 is the member of the raiding party and is witness of the seizure list. P.W. 6 is also member of the raiding party and he is witness on recovery of the explosive.

5. The trial Court taking into consideration the evidence of the witnesses that on the secret information raid was conducted and the explosive substances were recovered and the explosive substances has been sent to the Forensic Science Laboratory and were found to be explosive substances, hence, the appellant was convicted and sentenced, as mentioned above.

6. However, going into the evidence of the witnesses P.W. 1 has supported the prosecution case that on 15.11.2005 at 01.00 A.M. he received an information on telephone about the explosive substances in the house of Ishwar Sah, then, he recorded Sanha, intimated the Superintendent of Police and, thereafter, at the instruction of the Superintendent of Police constituted a team and raided the house of Ishwar Sah and from the house of Ishwar Sah some explosive substances were recovered, as mentioned above, and, thereafter, it was disclosed by



Ishwar Sah that explosive substances can also be recovered from the house of Sunil Turi and Bheem Turi and, thereafter, raid was conducted in the house of Sunil Turi and Bheem Turi and the explosive substances were also recovered from their houses for which the seizure list prepared and the seized articles were seized. P.W. 1 also proved the sketch map, however, from the evidence of P.W. 1 it is apparent that the explosive substances were seized from the houses of this appellant as well as Sunil Turi and Bheem Turi and though separate seizure list were prepared with regard to these explosive substances recovered and seized from the houses of appellant as well as Sunil Turi and Bheem Turi, but, there is no mention that the explosive recovered from the house of three accused persons were separately kept in three sealed bags. However, P.W. 2 is only the witness to prove the sanction order, hence, P.W. 2 has only proved the sanction order and he is Assistant of Law Department has no person knowledge of the seized articles. P.Ws. 3, 5 and 6 are the members of the raiding party and they have supported the prosecution case regarding search and seizure from the houses of the three accused persons, including the appellant. However, there is nothing in their evidences that those articles were kept separately or they were in sealed covered. However, the prosecution has proved Forensic Science Laboratory report, which has been marked as Exhibit 6. The Forensic Science Laboratory report suggests that description of article contained in parcel received by Special Messenger, Dashrath Paswan, Chowkidar 7/7 has mentioned that the parcel was in a wooden bag enclosed within clothe cover which was duly sealed with impression of seal corresponding with the seal impression forwarded and it contained one card board dibba and five paper packets marked '1' to '6'. The card board dibba marked '1' contained 145 aluminium tubes. The paper packet marked '2' contained a bundle of safety fuse. The paper packet marked '3' contained three polythene cylindrical cartridges. The paper



packet marked '4' contained a metallic empty cylindrical shell. The paper packet marked '5' contained a base plug. The paper packet marked '6' contained 500 gms of white granular substance. However, from the evidence of the investigating officer and Exhibit 6, it is apparent that there is no demarcation that the sent explosive substances belonged to which accused person. There is no mention that the informant ever sealed the explosive substances recovered from three different persons separately or numbered separately. From the perusal of the seizure list, it is apparent that almost same set of articles were recovered from the accused persons. However, there is no demarcation while sending the article to Forensic Science Laboratory that which articles were recovered from which of the person. There is no evidence that article recovered from the three different accused persons were demarcated as which set of article has been recovered from which accused person. From plain reading of the fact, it appears that four sets of articles recovered from the house of the appellant, three sets of articles recovered from Bheem Turi and two sets of article recovered from sunil Turi. However, comparing the three articles seized from three accused persons, the appellant as well as Sunil Turi and Bheem Turi, it does not correspond to the article described as article seized in the parcel received by the Forensic Science Laboratory.

7. Hence, having regard to the fact that in the entire evidence it is impossible to decide which article, as per report, was found in possession of the appellant, hence, the appellant in such a situation is entitled for benefit of doubt. I give the benefit of doubt to the appellant. I find and hold that the prosecution has not been able to prove the charges beyond reasonable doubt. It is pertinent to mention that the occurrence is of 2009 and the appellant has been convicted for four years, however, from the perusal of the record it appears that the appellant was never bailed out and he has remained in jail since

15.11.2009, hence, it appears that he must have been released after having served the sentences. If he has not been released from jail, he must be released forthwith, if not wanted in any other case.

8. The order of conviction and sentence, recorded by the trial Court, **is set aside**. The appeal is **allowed**.

9. Mr. Animesh Kumar Mishra, Advocate, has assisted the Court as Amicus Curiae and the Court desires that he be paid one fee of hearing by the Patna High Court Legal Services Committee and for that purpose let a copy of the first and last pages of this judgment be made over to Mr. Animesh Kumar Mishra, an Advocate of this Court, appearing in this matter as Amicus Curiae.

**(Gopal Prasad, J)**

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