

GAHC010038252023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.A./76/2023

RAJU ALI
S/O LATE MAMTAZ ALI,
R/O B.G. ROAD, STATION CHARIALI,
P.S.- SIVASAGAR, DIST.- SIVASAGAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : M K BORAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT

12.06.2024

Heard Mr. M.K. Borah, learned counsel for the appellant and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. In this appeal, under Section 374 of the Cr.P.C. the appellant, namely, Raju Ali has challenged the correctness or otherwise of the judgment and order dated 17.01.2023, passed by the learned Sessions Judge, Sivasagar, in Sessions Case No. 41(S-S)/2017, arising out of Sivasagar P.S. Case No. 120/2014, under Sections 3/4/5 of the Explosive Substances Act, 1908. It is to be noted here that vide impugned

judgment and order dated 17.01.2023, the learned Sessions Judge, Sivasagar had convicted the accused/appellant under Section 3(a) of the Explosive Substances Act, 1908 and sentenced him to suffer rigorous imprisonment for 10 years and further sentenced him to pay a fine of Rs. 1000/-, in default of payment of fine, to suffer simple imprisonment for 1 month. Also he was convicted under section 5(a) of the Explosive Substances Act, 1908 and also sentenced him to suffer rigorous imprisonment for 5 years and also to pay a fine of Rs. 500/-, in default of payment of fine, to suffer simple imprisonment for 15 days.

3. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“On 28-01-2014, at about 10-45 a.m. a blast was occurred on the stair of the 2nd floor of the house of one Md. Raju Ali, situated at B.G. Road, Station Chariali, wherein Raju Ali sustained grievous injuries on his persons. On receipt of the said information, the Officer-in-Charge (O.C.) of Sivasagar Police Station (P.S.) had recorded a General Diary Entry (GDE) No. 1140 dated 28.01.2014 and endorsed Sub-Inspector (S.I.) Jitendra Nath Das to take preliminary step. Then S.I. Jitendra Nath Das, along with staff had visited the place of occurrence. i.e. the house of Raju Ali and came to know that injured Raju Ali was immediately shifted to Hospital by his family members for treatment. Thereafter, he had conducted search in the house premises of Md. Raju Ali, and during search he had recovered 5 numbers of handmade suspected bomb, some splinters, 39 numbers of bolt, approximately 200 grams, white coloured powder suspected to be explosive, approximately 200 grams, yellow coloured power, suspected to be explosive, from a room of the house of injured Md Raju Ali, which were kept concealed in the room. He then seized the same by preparing seizure list (Ext.1), in presence of witnesses. He also found human flesh and one

Motor Cycle in the place of occurrence and seized the same preparing seizure list (Ext.3). Then from the recovered suspected explosive, it was doubted that the bomb which went off, was made by the injured Md. Raju Ali himself and it is also presumed that Md. Raju Ali used to supply bombs to the extremist outfit. Thereafter, the bombs, so recovered from the house of Raju Ali were handed over to Army Bomb Expert so as to destroy the same, being dangerous to human life.

Thereafter, S.I. Jitendra Nath Das had lodged one written complaint (Ext.7), with the O.C. of Sivasagar P.S. and endorsed S.I. Bokul Borah to investigate the same. The Investigating Officer (I.O.) then visited the place of occurrence, examined the witnesses and drew sketch map (Ext.8) of the place of occurrence and seized pieces of human flesh, one pair of shoes with blood stain, one piece of burning cartoon, one plastic pipe and one plastic cover with blood stain and one black tape from the place of occurrence and seized the same preparing seizure list (Ext.2). Thereafter, he sent the seized articles to the Forensic Science Laboratory (FSL) for examination through the Superintendent of Police, Sivasagar and collected the report. He also interrogated Raju Ali at Assam Medical College Hospital (AMCH), Dibrugarh where he was undergoing treatment and on being released from the hospital, he arrested accused Raju Ali and forwarded him to the court. Thereafter, he obtained prosecution sanction (Ext.-10) from the District Magistrate, Sivasagar to prosecute accused Raju Ali, under Sections 3/4/5 of the Explosive Substances Act, 1908 and also collected injury report of the accused Raju Ali. Then on completion of investigation and having found a prima-facie case well established against the accused Raju Ali, he laid Charge Sheet (Ext-11) against him to stand trial in the court under Sections 3/4/5 of the Explosive Substances Act, 1908.

Thereafter, the accused/appellant was produced before the court of Sessions Judge, Sivasagar and the learned Sessions Judge, Sivasagar, after hearing learned Advocates of both sides, had framed charges against the accused/appellant under Sections 3(a) and 5(a) of the Explosive Substances Act, 1908 and on being read and explained over the same, he pleaded not guilty and claimed trial. Thereafter, the prosecution side had examined as many as 9 witnesses, including the I.O. to establish the charges against the accused/appellant. After closing the prosecution evidence the learned trial court had examined the accused/appellant under Section 313 of the Cr.P.C. and the accused/appellant had adduced no evidence in his defence, though opportunity was afforded to him.

Thereafter, hearing arguments of learned Advocates of both sides, the learned trial court had found the charges under Sections 3(a) and 5(a) of the Explosive Substances Act, 1908 proved against the accused/appellant and thereafter, vide impugned judgment and order dated 17.01.2023, convicted and sentenced him as aforesaid."

4. Being highly aggrieved and dissatisfied with the said impugned judgment and order dated 17.01.2023, the accused/appellant has preferred the present appeal and contended to set aside the impugned judgment and order on the following grounds:-

I. That, the Learned trial court while passing the impugned judgment and order dated 17.01.2023 had failed to appreciate the facts that the prosecution side had failed to establish the ingredients of the charge under Sections 3(a) and 5(a) of the Explosive Substances Act, 1908, which defines as -

Possession of explosives under suspicious circumstances

(I) A person keeps in his possession or under his control any

explosive substance and such possession must be conscious possession.

(ii) Prosecution has further to prove circumstances to show there is reasonable suspicion that such possession of the explosive was not for lawful object.

But the learned trial court had failed to appreciate the cross-examination of Miss Reshma Begum (PW1) who deposed that "*On that day one person came to our house in search of house rent with one bag and on visiting upper floor, the said man left the bag in our house. While my father has taken the bag to return to the person, the bomb blasted in the hand of my father. The person who came for house rent flew away.*"

That being so and in absence of any cogent evidence, it cannot be said that the ingredients of Section 5(a) of Explosive Substances Act, 1908 is established against the accused/appellant and there was reasonable suspicion that the possession of the explosive substance by the appellant was an unlawful object.

II. That, apart from the PW1, none of the prosecution witnesses deposed that the explosive substances were under the control as well as conscious possession of the appellant. But in this connection the prosecution side had also failed to produce any witness to establish that as to how and by whom the blast was carried out.

III. That, it clearly transpired that evidence of all the witnesses were also hearsay and they knew nothing about the incident, except the story explained to the learned trial court.

- IV. That, it clearly implies that the PW1 and her deposition could have been relied upon during the course of the trial as well as at the time of passing of the judgment and order dated 17.01.2023 but the learned trial court had failed to apply the judicial mind for which the impugned judgment is liable to be quashed and set aside.
- V. That, the learned trial court without considering the infirmity in deposition of witnesses, had passed the impugned judgment which is not sustainable in the eyes of law and as such, the same is liable to be set aside and quashed.
- VI. That, the appellant is the only bread earner of the family and he lost both of his hands because of the incident, so occurred on 28.01.2014, subsequently, amputated and with no hands the appellant is solely dependent on his family members. And on such count he deserves some leniency and he may be allowed to live rest of his life with his family members with their co-operation.

5. Mr. Borah, the learned counsel for the accused/appellant has reiterated the grounds mentioned herein above. Besides, he submits that there is no direct evidence of involvement of the accused/appellant with the offence charged. Mr. Borah further submits that P.W.1 who happened to be the daughter of the accused/appellant, in her cross-examination had narrated as to how the blast took place, but, the learned trial court had disbelieved her version without just ground. Mr. Borah also submits that the element of conscious possession of the explosive substances was proved here in this case and being the ingredients of the charges have not been proved, the impugned judgment and order deserved to be set-aside. Mr. Borah also submits that while conducting search and seizure, the I.O. had not complied with Section 102 of the Cr.P.C. and on this count the impugned judgment and order also deserved to be set aside and quashed. Alternately, Mr. Borah submits that the accused/appellant had

lost both of his hands and now he is totally dependent on others and on this count, he deserves some leniency.

6. On the other hand, Mr. Lahkar, the learned Additional Public Prosecutor has supported the impugned judgment and order. Referring to the materials available on the record, Mr. Lahkar submits that the same are sufficient to bring home the charge under Sections 3(a) and 5(a) of the Explosive Substances Act, 1908 against the accused/appellant beyond all reasonable doubt and that there is no merit in this appeal and therefore, it is contended to dismiss the same.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the memo of appeal as well as the grounds so mentioned therein and also gone through the record of the learned trial court.

8. As the learned trial court had convicted and sentenced the accused/appellant under Sections 3(a) and 5(a) of the Explosive Substances Act, 1908 and as the learned counsel for the accused/appellant has disputed existence of ingredients of the said charges, it would be appropriate to deal with the said aspect before delving a discussion into the factual aspect of the case.

9. It is to be noted here that Section 2(a) of the Explosive Substances Act defines 'Explosive' as under:-

"explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

9.1. Section 3 of the Explosive Act read as under:-

"3. Punishment for causing explosion Likely to endanger Life or

property -

Any person who unlawfully and maliciously causes by-

(a) any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life, or with rigorous imprisonment of either description which shall not be less than (ten years, and shall also be liable to fine;

(b) any special category explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with death, or rigorous imprisonment for life, and shall also be liable to fine.

5. Punishment for making or possessing explosives under suspicious circumstances -

Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,-

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

10. Thus, a cursory perusal of the Section 3(a) of the Explosive Substances Act, 1908 would indicate that it comprises of following ingredients:-

- (i) Causing an explosion of explosive substance;
- (ii) Such explosion should be caused unlawfully and maliciously; and
- (iii) Such explosion should be of such a nature likely to endanger life or cause serious injury to property.

10.1. And a cursory perusal of the Section 5(a) of the Explosive Substances Act, 1908 would indicate that it comprises of following ingredients:-

- (i) Possession or control of any explosive substance;
- (ii) Possession of the same is under suspicious circumstance; and
- (iii) The possession seems to be or appears to be not for a lawful object.

11. Hon'ble Supreme Court in the case of **Mohd. Usman Mohd. Hussain Maniyar v. State of Maharashtra**, reported in **(1981) 2 SCC 443** while dealing with section 5 of the Explosive Substances Act held as under:-

13. In order to bring home the offence under Section 5 of the Explosive Substances Act, the prosecution has to prove:

- (i) that the substance in question is explosive substance;
- (ii) that the accused makes or knowingly has in his possession or under his control any explosive substance; and
- (iii) that he does so under such circumstances as to give rise to a reasonable suspicion that he is not

doing so for a lawful object.

11.1. Further, in the said case, Hon'ble supreme Court has held as under:-

“14. The burden of proof of these ingredients is on the prosecution. The moment the prosecution has discharged that burden, it shifts to the accused to show that he was making or possessing the explosive substance for a lawful object, if he takes that plea.”

11.2. Here in this case, the learned trial court had framed the charge against the accused/appellant under Section 3(a) of the Explosive Substances Act, 1908 as under:-

“That on 28.01.2014, at about 10.45 am, you unlawfully and maliciously caused the explosion on explosive substances on the stair of the 2nd floor of your residence, situated at B.G. Road, Sivasagar Town, as a result you sustained grievous injuries on your person and you thereby committed an offence punishable under section 3(a) of the Explosive Substances Act.”

12. It is to be noted here that the learned trial court had framed the charge against the accused/appellant under Section 5(a) of the Explosive Substances Act, 1908 as under:-

“On 28.01.2014, you knowingly possessed 5(five) numbers of handmade suspected bomb, 39 numbers of bolt approximately 200 grams, white coloured powder approximately 200 grams and yellow coloured powder approximately 200 grams susceptive to be explosive and some splinter in your house and you were keeping explosive substances with intending to endanger the life or property”

13. Now, adverting to the evidence on the record, I find that the prosecution side has examined as many as nine witnesses and exhibited 11 documents during trial. In order to appreciate the submission of Mr. Borah, the learned counsel for the accused/appellant, I deemed it appropriate to briefly refer to the evidence of said witnesses.

14. The prosecution side had examined Smti Reshma Begum as PW1. She is the daughter of accused/appellant Raju Ali. Her evidence reveals that on 28.01.2014, at about 2 p.m., while she was in her house, Police and CRPF party came to her house and conducted search in the house due to bomb blast in her house, which took place at about 10-45 a.m. In the said blast, both the hands of her father severed (amputated) from his body. The blast took place at the staircase of middle floor of three storied building. Immediately thereafter, her father was taken to Hospital in an ambulance. During search Police recovered and seized 39 numbers of iron balls, 200 grams of white coloured powder suspected to be explosive and 200 grams of yellow coloured powder suspected to be explosive, 5 numbers of handmade suspected bomb and 7 numbers of handmade splinters, vide seizure list Ext. 1 and took her signature as Ext.1(i) over the same as witness. It is elicited in her cross-examination that she heard that on that day one person came to her house in search of rented house, with one bag and on visiting upper floor, said man left the bag in her house. Then her father had taken the bag to return to the person and then the bomb went off in the hand of her father and then the owner of the bag fled away. It is also elicited from her cross-examination that police did not show her the seized articles.

15. PW2 is Md. Abu Ali and he is a mechanic by profession. His evidence reveals that on 28.01.2014, at about 2 p.m., while he went to B.G. Road, he saw police party and from the gathering he came to know that bomb was recovered from the house of one Raju Ali. He saw the police taking away bomb like article in police vehicle. Then, as asked by police, put his signature in the seizure list (Ext.2). It is

elicited in his cross-examination that he cannot say what articles were seized by police.

16. The prosecution side had examined Md. Hamidur Rahman as PW3. His evidence reveals that he is familiar with accused Raju Ali and his residence is near to bus stand at Station Chariali, Sivasagar. On 28.01.2014, at morning hours while he was sitting in a bus, near the house of Raju Ali, then suddenly he heard a big noise. On disembarking from the bus, he came to know that some blast had happened. After about 15 minutes police arrived there and as asked by police, he put his signature as Ext.3(i), over the seizure list (Ext.3), by which police seized one motorcycle and some pieces of human body parts. It is elicited in his cross-examination that he cannot say/recognize the article that blasted.

17. The prosecution side had examined one Md. Nizam Ahmed as PW4. His evidence reveals that accused Raju Ali is the father of his class mate. On 28.01.2014, at morning hours while he along with others were preparing go to a meeting at Nazira, then suddenly he heard about a bomb blast at Station Chariali, near Town High School. He then visited the place of occurrence and found that bomb-blast took place in the area. After some time police arrived there and seized one motor cycle, vide seizure list Ext. 3 and took his signature as Ext.3(ii). It is elicited in his cross-examination that he had seen the motorcycle used by son of the accused and the same was seized while kept in front of a shop on the B.G. Road.

18. PW5, Sri Santosh Sonai is a daily wage earner. His evidence reveals that on 28.01.2014, at morning hours, while he was working as labour at Sivasagar town area, he suddenly heard a big noise, like bomb blast. Then he went to the place of occurrence and saw the accused lying with bleeding injuries over his hand and the incident of bomb blast had happened near the road. He saw the accused while some other persons were carrying him out from the place of occurrence. Thereafter, his contractor came there and took him away from there and asked to close the work. It

is elicited from his cross-examination that he cannot say how the bomb had taken place.

19. PW6, Miss Faraha Begum is the neighbor of accused Raju Ali. Her evidence reveals that on 28.01.2014, while she was in the beetle nut shop of her father at Sivasagar Station Chariali, near to the house of the accused, then suddenly she heard a big noise and presumed that gas cylinder might have blasted. Thereafter, hearing hue and cry that one bomb was blasted, she left for her home. Later on, she heard from the people that one bomb blast had taken place in the shop cum residence of accused Raju Ali. This witness is not cross-examined.

20. PW8 is the informant Sri Jitendra Nath Das. His evidence reveals that on 28.01.2014, at about 10:50 a.m. the then O.C. of Sivasagar P.S. had received one information over phone from traffic constable namely, Arup Borgohain regarding bomb blast in a house at B.G. Road, Sivasagar opposite to Thanuram Gogoi Memorial H.S. School and that one person was injured and the said person was taken to hospital for treatment. On getting this information, Sivasagar P.S. G.D. Entry No. 1140 dated 28.01.2014(Ext.-6), was recorded and he was entrusted to proceed to the place of occurrence and to investigate the matter. Accordingly, at about 11:10 AM, he arrived at the place of occurrence i.e. the residence of the accused Raju Ali at B.G. Road, Sivasagar and came to know that a bomb was blasted in the house of Raju Ali, in which Raju Ali sustained injury and that he was taken to hospital for treatment. He then examined the witnesses namely, Reshma Begum, Yasmin Khan, Aftab Ali, Hemidur Rahman, Nizam Ahmed and Abu Ali, found at the place of occurrence. Thereafter, the house of the accused was cordoned and search was conducted and during search, 13 numbers of iron balls, 200 grams of white coloured powder, 200 grams of yellow coloured powder, 5 numbers of hand grenades and 8 numbers of splinters were found and then he seized the same vide seizure list Ext.1. He also found some pieces of human flesh in the house of accused Raju Ali. He also found one

motorcycle there and seized the same vide seizure list Ext.3. Then after conclusion of preliminary investigation he had lodged one written FIR (Ext.7), with O.C. of Sivasagar P.S. and handed over the seized articles to him. It is elicited from his cross-examination that the case was registered at about 3:30 p.m. and the seizure was made at about 12:15 p.m. and seizure list (Ext.3) was prepared at about 1:30 p.m. He denied the suggestion that the articles seized vide Ext.1 does not belong to the accused. It is further elicited that after filing of FIR, subsequent investigation was done by another I.O. He also denied that the search and seizure vide Ext.1 was not as per law and not done in presence of witnesses.

21. PW9 is S.I. Sri Bakul Bora, who had conducted further investigation. His evidence reveals that on 28.01.2014, at about 3:30 p.m., the then O.C. of Sivasagar P.S. had received one written FIR from S.I. Jitendra Nath Das and registered a case being Sivasagar P.S. Case No. 120/2014, under Sections 3/4/5 of the Explosive Substances Act, 1908 and entrusted him to carry out the further investigation. Accordingly, he had recorded the statement of the informant. Then at about 3:55 p.m., he had arrived at the place occurrence i.e. the residence of the accused Md. Raju Ali at B.G. Road, Sivasagar and prepared a sketch map (Ext.8). He had found some pieces of human flesh, one pair power shoes with blood stain, one piece of burning carton, one plastic pipe, one plastic cover with blood stain and one black tape in the house of the accused Raju Ali and seized the same vide seizure list Ext.2. He had also examined the witnesses and also recorded the statement of the accused Raju Ali, his wife and his son at AMCH. Then on 09.02.2014, he had sent the seized articles viz. white coloured powder, yellow coloured powder, 7 numbers of splinters, 30 numbers of small size iron balls etc. to the FSL through Additional Superintendent of Police, Sivasagar. Then on releases of the accused from AMCH after treatment, he had arrested him on 04.03.2014 and forwarded him to the court. Thereafter, he had collected FSL report and medical report (Ext. 9) of the accused from AMCH. It also appears that then PW9 had obtained prosecution sanction (Ext.10) from the District

Magistrate, Sivasagar.

22. It also appears that thereafter, on completion of investigation, he laid charge sheet (Ext.11) against the accused Raju Ali to stand trial under Sections 3/4/5 of the Explosive Substances Act, 1908. A careful perusal of the Ext.10 reveals that the District Magistrate, Sivsagar after careful examination of all the papers, documents and the records furnished by the I.O. i.e. the S.I. Bakul Bora of Sivasagar P.S., and the certified copy of forensic report vide No. DFS.298/2014/Xplo-2096/101(A) dated 19.07.2014, report No. DFS.298/2014/Xplo-2096 dated 15.07.2014, Memo No. DFS.126/14/149(A), dated 06.05.2014 and report No. DFS.126/14/298/Sero-3292, dated 21.03.2014, and on being satisfied, he accorded prosecution sanction against the accused Md. Raju Ali, under Sections 3/4/5 of the Explosive Substances Act, 1908, in connection with Sivasagar P.S Case No. 120/2014 under Sections 3/4/5 of the Explosive Substances Act, 1908. It is to be noted here that Ext.10 is not disputed by the accused/appellant in any manner. And have gone through the same carefully, I find that the sanction was granted in accordance with law.

23. It is elicited from his cross-examination that the informant Jatindra Nath Das had done preliminary investigation and examined the witnesses. It is also elicited that in the sketch map, the place of bomb blast was shown at the staircase. It is also elicited that he had not investigated as to how the explosive substance reached the house of the accused.

24. Indisputably, the Doctor, who had examined accused/appellant Raju Ali, is not examined by the prosecution. But from the Medical Report (Ext.9), it appears that he was admitted in AMCH on 28.01.2014, at about 7 p.m. and was discharged on 04.13.2014 vide Hospital No. MRID-14045/14, ML. No. 4766/14, with the history of blast injury at about 11:30 a.m., on 28.01.2014 at Station Chariali, Sibsagar, with lacerated wound in upper 1/3rd of chest bone deep, without any active bleeding, no air leak, crush injury b/l hand & forearm. Blunt injury on both eyes with multiple

foreign body in the b/l conjunctiva. Then investigation was carried out and on 29.01.2014. B/L amputation guillotine done on 21.01.2014 & GA (1/3rd Mid), on 06.02.2014. Amputation Stmp closure & GA. It is opined that the nature of injury was grievous. It is also stated that Chest tube drainage was done and for eye injury foreign, bodies were removed. It is also stated that the kind of weapon inflicted - Grenade blast and the injury was 7 hrs, old.

25. It is, however, not in dispute that the accused/appellant Raju Ali had sustained grievous injury in the incident that took place in his house on 28.01.2014, at about 11:30 a.m. It is also not in dispute that in the said incident accused/appellant Raju Ali had lost both of his hands. But, there is no eye witness to the said occurrence. The witnesses, examined by the prosecution side, had arrived at the place of occurrence only after the occurrence. The informant (PW8) also reached the place of occurrence only after the alleged blust at about 11:10 a.m. There is no direct evidence to show as to how the explosion took place and whether any explosive was involved in the same or not. The evidence reveals that PW8 had arrived at the place of occurrence accused/appellant was already taken to hospital for treatment. It also appears that PW8, having arrived at the place of occurrence examined the witnesses and thereafter, he had conducted search in the house of the accused/appellant Raju Ali and found 13 numbers of iron balls, 200 grams of white coloured powder, 200 grams of yellow coloured powder, 5 numbers of hand grenades and 8 numbers of splinters in a room and seized the same vide Ext.1. He also found some pieces of human flesh in the house of accused Raju Ali and also found one motorcycle there and seized the same vide Ext.3. Thereafter, he had lodged the FIR (Ext.7) and handed over the seized articles to the O.C. of the P.S. There is, however, no dispute regarding search and recourse of the said articles and the seizure of the same vide Ext.1.

26. But, neither PW8 nor the subsequent I.O. had made any attempt to collect any debris or remains of the alleged explosion from the blast site i.e. the

staircase of the middle floor of the house of the accused/appellant Raju Ali and to send the same to the FSL to obtain opinion of expert regarding involvement of explosive in the said explosion. Though, PW9 had found pieces human flesh, one pair power shoes with blood stain, one piece of burning carton, one plastic pipe, one plastic cover with blood stain and one black tape in the house of the accused Raju Ali and seized the same vide seizure list (Ext.2), but he did not send the same to the FSL for examination. Thus, in absence of such evidence of expert, simply on the basis of oral evidence of prosecution witnesses, it cannot be said with absolute certainty that there was involvement of 'explosive' as defined in Section 2(a) of the Explosive Substances Act, 1908 in the said explosion, not to speak of establishing that such explosion was caused maliciously and unlawfully.

27. Moreover, the evidence of PW1 reveals that on the day of occurrence, one person came to her house in search of rented room, with one bag and on visiting upper floor, said man left the bag in her house. Then her father had taken the bag to return to the person and then the bomb went off in the hand of her father and the owner of the bag fled away. Such a plea was taken by the accused/appellant in his statement under Section 313 of the Cr.P.C. also. If we examine the evidence on record in view of this background, a reasonable suspicion arises for causing an explosion of explosive substance by the accused/appellant unlawfully and maliciously, though, however, the nature is such that it caused grievous injury to the accused/appellant. Thus, in the given factual scenario it cannot be said that the prosecution side had succeeded in establishing the basic ingredients of Section 3(a) of the Explosive Substances Act, 1908.

28. That being so, the finding of guilt, so recorded by the learned trial court cannot be said to have withstand the legal scrutiny and on such count the finding of guilt and consequent conviction and sentence of the accused/appellant under Section 3(a) of the Explosive Substances Act, 1908 requires interference of this court.

29. However, it is apparent from the evidence of PW8 that having cordoned off and carrying out search at the place of occurrence i.e. the house of accused/appellant Raju Ali and found 13 numbers of iron balls, 200 grams of white coloured powder, 200 grams of yellow coloured powder, 5 numbers of hand grenades and 8 numbers of splinters in a room and seized the same vide Ext.1. The evidence of PW8 and PW1 clearly established the same. It also appears that the PW9 on 09.02.2014, had sent the aforementioned seized articles to the FSL through Additional Superintendent of Police, Sivasagar and had collected the FSL report (Ext.4).

30. The prosecution side had examined Sri Upen Bora, Deputy Director, Explosives Division, Directorate of Forensic Science, Assam, Kahilipara, Guwahati as PW7. PW7 who had examined the articles received by the Directorate on 21.02.2014, vide Memo No. SVR/V/2014/FSL/529, dated 05.02.2014, in one wooden parcel(s) through a messenger, in connection with Sivasagar P.S. Case No. 120/2014, under Sections 3/4/5 of the Explosive Substances Act, 1908 he described the articles as under:-

1.	230 gms white coloured powder like substance	Marked as Ex-A
2.	185 gms brown coloured substance	Marked as Ex-B
3.	7 nos. of iron nuts & bolts	Marked as Ex-C
4.	39 nos. of small iron nuts & bolts	Marked as Ex-D
5.	One part of a carton box	Marked as Ex-E

30.1. Then after examination, he (PW7) opined that :-

1. Ex-A is a mixture of Alluminum and Sulphur powder which are ingredient of low explosive.
2. Ex-B is not an explosive.
3. Ex-C and Ex-D can be used as projectiles in an IED.
4. Traces of gun powder (low explosives) have been found in Ex-E.

Nothing tangible could be elicited in cross-examination of this witness and the report, Ext.4 was not disputed by the accused/appellant in any manner.

31. Thus, the evidence of PW7 and his report (Ext.4) goes a long way to establish beyond all reasonable doubt that the articles i.e. 230 grams of white coloured powder like substance marked as Ex-A is ingredient of (low explosives) comprising of mixture of Aluminium and Sulpher powder and also the traces of gun powder marked as Ex-E (low explosives) recovered and seized from a room in the house of the accused/appellant Raju Ali, vide seizure list (Ext.1). Thus, possession or control of the said explosive substance appears to be ex-facie suspicious. Notably while this incriminating circumstance was put to him in his examination under Section 313 of the Cr.P.C., the accused/appellant had failed to offer any explanation let alone a plausible one, which gives rise to a reasonable suspicion that he did not have the same in his possession or under his control for a lawful object. Thus all the basic ingredients of the offence under Section 5(a) of the Explosive Substances Act, 1908 stands clearly established here in this case by the prosecution side. The learned trial court had, thus, rightly convicted the accused/appellant Raju Ali under Section 5(a) of the Explosive Substances Act, 1908. Thus, the accused/appellant failed to show any good or compelling reason to interfere with the finding of the learned trial court in respect of Section 5(a) of the Explosive Substances Act, 1908.

32. It also appears that having convicted the accused/appellant under Section 5(a) of the Explosive Substance Act, 1908 the learned trial court had sentenced him to suffer rigorous imprisonment for 5 years and also to pay a fine of Rs. 500/-, in default to suffer simple imprisonment for 15 days. In the background of aggravating as well as mitigating factors available on the record of the learned trial court the sentence, so handed down, appears to be justified and reasonable and the same requires no interference of this court.

33. I have considered the submission of learned counsel for the

accused/appellant in respect of seizure in contravention of the provision of Section 102 of the Cr.P.C and also in respect of evidence of PW1. But, in view of the discussion and finding so made herein above, this court is unable to record concurrence of the same. It is well settled that defective investigation is not always fatal and it never leads to acquittal in all the cases. Reference in this regard can be made to a decision of Hon'ble Supreme Court in **State of Punjab vs. Gurmit Singh & Ors.**, reported in **AIR 1996 SC 1393**, where it has been held that :-

“Irregularities and illegalities committed by the I.O. would not thereby render the prosecution case untrustworthy and on that consideration otherwise trustworthy and reliable evidence ought not to be cast aside.”

34. In the result, this appeal is **partly allowed**. While affirming the conviction and sentence of the accused/appellant under Section 5(a) of the Explosive Substances Act, 1908, his conviction and sentence under Section 3(a) of the Explosive Substances Act, 1908 stands set aside and quashed.

35. Send down the record of the learned trial court with a copy of judgment and order of this court.

36. The parties have to bear their own cost.

JUDGE

Comparing Assistant