

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.146 of 2014**

Arising Out of PS. Case No.-32 Year-2001 Thana- BAJPATTI District- Sitamarhi

Mahesh Sah S/O Late Mahabir Sah Resident of Village- Madhurapur, P.S- Bajpatti, Distt- Sitamarhi.

... ... Appellant/s

Versus

The State of Bihar.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Mahendra Thakur, Advocate

Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT**

Date : 29-08-2025

The present appeal has been filed on behalf of appellant, Mahesh Sah, against the judgment of conviction dated 11.03.2014 and sentence dated 15.03.2014 passed by learned 1st Additional Sessions Judge, Sitamarhi (hereinafter to be referred as 'Trial Court') in connection with Sessions Trial No. 229 of 2003 (112 of 2013) arising out of Bajpatti P.S. Case No. 32 of 2001 whereby and where under the learned Trial Court convicted the appellant under Section 3/5 of the Explosives Substances Act, 1908 and sentenced him R.I. for 10 years and fine of Rs. 10,000/- under Section 5(a) of Explosives Substances Act and in default of payment of fine to further undergo R.I. for 6 months.

2. Heard learned counsel for the appellant and learned



A.P.P. for the State.

3. The prosecution case, in short, is that on 27.04.2001 at about 8 A.M., the informant *Chowkidar* Ram Ekbal Rai (P.W.2.) was moving in his area and came to Madhurapur village where the villagers informed him that bomb was exploded in the bamboo clump. The informant sent another *Chowkidar* Gonu Das (P.W.3.) to inform the police station. The villagers told him that Mahesh Sah (the appellant) and his two associates were manufacturing bomb in bamboo clump and during manufacturing, bomb was exploded and Mahesh Sah and his two associates were badly injured and they fled away anywhere for their treatment.

4. On the basis of aforesaid *fardbeyan* of the informant (P.W.2.), Bajpatti P.S. Case No. 32 of 2001 has been registered against the appellant and two other unknown persons. After investigation, charge-sheet was submitted against the appellant under Section 3/5 of Explosives Substances Act. The cognizance was taken on 04.02.2003 and after cognizance, the case was committed to the Court of Sessions on 30.04.2003 and the charges were framed against the appellant who pleaded not guilty and claimed to be tried.

5. Prosecution has examined altogether eight witnesses in



this case to prove charges against the appellant who are as under:-

P.W's.

Names

P.W.-1	Baidyanath Mahto, who was a seizure list witnesses.
P.W.-2	Ram Ekbal Rai who is informant.
P.W.-3	Gonu Das (<i>Chowkidar</i>), who was a seizure list witness.
P.W.-4	Tapeshwar Sah @ Ram Taleshwar Sah (Hostile).
P.W.-5	Hari Narayan Sah (Hostile).
P.W.-6	Dr. Anil Kumar Singh, who had prepared injury report of the accused.
P.W.-7	Kalika Ram, who was first Investigating Officer.
P.W.-8	Ram Pravesh Ram (subsequent Investigating Officer).

6. Prosecution has also produced following documentary evidence.

Ext's.

Particulars.

Ext-1	Seizure List.
Ext-2	Signature of informant on the <i>Fardbeyan</i> .
Ext-3 & 3/1	Injury report of appellant and requisition on injury report.
Ext-4	<i>Fardbeyan</i> of informant.
Ext-5	Seizure List.
Ext-6	Sanction Order.
Ext-7	Report of F.S.L.

7. After prosecution evidence, the statement of the accused/appellant was taken under Section 313 of Cr.P.C. on



28.06.2012 who denied the allegation.

8. The defence has also examined one witness, namely, Janki Sharan Mandal as DW-1 and also adduced documentary evidence. Exhibit-A is carbon copy of application of I.O. dated 16.02.2002 and Exhibit-B is carbon copy of order dated 05.05.2001 in Bajpatti P.S. Case No. 32 of 2001.

9. The learned Trial Court on considering the evidence on record given finding that the injury of accused was sustained in bomb explosion as specified by the doctor who treated him and was found during treatment in a private hospital as private patient. These are the facts and circumstances collectively considered and entire facts and circumstances lead only conclusion that the accused sustained injuries due to bomb explosion while preparing the bomb.

10. The learned Trial Court on the basis of aforesaid finding came to conclusion that the prosecution is able to prove charge under Section 3/5 of the Explosives Substances Act against the accused/appellant Mahesh Sah beyond all reasonable doubts, hence the appellant was convicted thereunder as stated above.

11. Being aggrieved by the said judgment of conviction and sentence, appellant preferred the present appeal.



12. Learned counsel for the appellant submitted that conviction and sentence passed against the appellant is bad in law and facts. The learned Trial Court did not consider that admittedly there is no eye-witness of the occurrence and only upon the evidence of P.W.6. (doctor) who has stated that the injuries were caused by explosive substances convicted the appellant. The learned Trial Court did not consider the defence evidence who clearly stated that the appellant had sustained burn injuries due to stove burst on 27.04.2001, the appellant became blind. There is no single independent witness who has disclosed the name of appellant in the occurrence. Also, there was litigation between the appellant and *Mukhia Sita Ram Mandal*, and on the instance of Sita Ram Mandal, the appellant has been implicated in this case. Learned counsel for the appellant further submitted that the case is based on circumstantial evidence but the chain of circumstances is not complete and the prosecution failed to prove the case against the appellant and the impugned judgment of conviction and sentence is liable to be set aside.

13. On the other hand, learned A.P.P. for the State supported the impugned judgment of conviction and sentence and submitted that the prosecution has proved the charges



against the appellant and learned Trial Court has rightly passed the impugned judgment of conviction and sentence and are not liable to be interfered by this Court in this appeal. He further submitted that the facts proved by the prosecution witnesses give rise to a reasonable inference that the appellant was involved in the manufacturing of bomb which was exploded and the appellant was seriously injured. The said inference does not appear to be rebutted by the appellant. He lastly submitted that the appeal has no merit and is liable to be dismissed.

14. I have carefully perused the records and considered the submissions advanced by the learned counsel for the parties. At this stage, I would like to appreciate the relevant extract of entire evidence led by the parties before the learned Trial Court.

(i) P.W.1. Baidyanath Mahto has deposed that he came to know that there is bomb explosion in Mandal Tola in the night and three persons including Mahesh Sah and two other unknown were injured. Thereafter, he went there and found some blood in the bamboo clump and also seen the blood stained cloth, one pair of sandle stained with yellow material, remnant of bomb and six bundles of *sutari* in which there are five pieces of sulphur (*gandhak*) and there was nail in a container having smell of *Kerosene* oil, pieces of glass and



stoves were scattered. Some burnt materials were also seen. Police came and prepared seizure list on which he and *Chowkidar* Gonu Das had signed. He came to know that bombs were prepared to be used in election for terrorising and also for the purpose of sale. Due to this bomb explosion, both eyes of accused Mahesh Sah were damaged. In his cross-examination, he admitted that wife of Sitaram Mandal is *Mukhia* of the *Gram Panchayat* of his village.

(ii) P.W.2. Ram Ekbal Rai, *Chowkidar*, who is informant of this case, deposed that at about 8 A.M. during moving in his area, he reached near Village Madhurapur where he got information regarding explosion of bomb in a bamboo clump and he sent a *Chowkidar* Gonu Das to inform Police Station. He came to know from the villagers that Mahesh Sah and two others were manufacturing bomb and due to explosion of bomb during that time they (Mahesh Sah and two others) sustained injuries. Thereafter, police came at bamboo clump of Jagdish Sah with Baidyanath, Gonu Das and he himself where they found exploded bomb and some white chemicals, stone chips and also found some blood on that place. Those materials were seized and seizure list was prepared which was signed by the witnesses and his *fardbeyan* was recorded and signed by him.



In his cross-examination, he admitted that there was litigation between Mahesh Sah and Sitaram Mandal. Mahesh Sah instituted a case against him. At the time of explosion of bomb, case was pending against Sitaram Mandal who is presently *Mukhia*. He had seen blood on the place of occurrence. In para-3 of his cross-examination, he has stated that *Daroga jee* had come at 9 A.M. and with *Daroga jee*, Sitaram Mandal was also present. He does not remember that who had told him the name of accused Mahesh Sah that he had exploded the bomb. He also admitted that before the occurrence of bomb explosion, there was no case against the accused Mahesh Sah.

(iii) P.W.3. Gonu Das, *Chowkidar* deposed that he went to the police station for giving information about bomb explosion on instruction of *Chowkidar* Ram Ekbal Rai (P.W.1.) and he informed the police and police came along with him. Thereafter, the police took statement of P.W.1. and also seized materials. It came to be known that Mahesh Sah, the accused, was preparing bomb which exploded, Mahesh Sah and others fled away.

In his cross-examination, he has admitted that entire materials were seized on place of occurrence. He could not give description of the seized materials. He also stated that eyes of



Mahesh Sah were damaged since before. He also admitted that Sitaram Mandal is a *Mukhia* of *Panchayat* and there is litigation term with Mahesh Sah and said *Mukhia*. He cannot say that who had told him the name of Mahesh Sah.

(iv) P.W.4. and P.W.5. have stated nothing with respect to occurrence and they have been declared hostile.

(v) P.W.6., Dr. Anil Kumar Singh, proved the injury report. He has deposed that on 27.04.2001, he was posted at Jialal Kalawati Hospital, Sitamarhi and on that day at about 10 A.M., he examined Mahesh Sah and found following injuries in his person.

a. Burnt injury by dry hit characterized by roasted patches of a skin, singeing and burning of hair of body and deposit of carbonaceous material on the body. Vessels and blisters present on the circumference of burnt area.

b. Percentage of burn- 42%

c. Age of burn- More than three hours.

d. Nature of injury- Grievous caused by dry hit such as explosion of bomb.

In his cross-examination, he has stated that accused Mahesh Sah was not treated at the instance of police rather he



was treated as a private patient. He admitted that carbonaceous material may be found on the back by burst of stove.

(vi) P.W.7. Kalika Ram, who is first I.O. of the case deposed that *Chowkidar* Gonu Das had informed at Police Station that Ram Ekbal Rai had told about bomb explosion at village Madhurapur Mandal Tola on which he made S.D. entry and proceeded for verification to Madhurapur where he came to know that Mahesh Mandal @ Mahesh Sah was preparing bomb with the help of his two friends. During that time, bomb exploded due to which they were injured and went outside for their treatment. He recorded *fardbeyan* of *Chowkidar* Ram Ekbal Rai, seized six bundles of *sutari*, one plastic old container containing some nails having smell of *Kerosene* Oil. Five pieces of *Mishri* white colour sulphur (*gandhak*), white stones, pieces of glass, blood stained clothes, one pair of plastic sandles stained with yellow bomb powder, one blood stained and burnt *gamchha*, one steel *lota*, stain of *barood* and remnants of exploded bomb. Seizure list was prepared and was signed by two witnesses viz., Baidyanath Mahto and Gonu Das. He inspected the P.O. in presence of witnesses, taken the statement of witnesses. Thereafter, he received information from control room, Sitamarhi that accused Mahesh Sah is admitted in injured



position at Jialal Kalwati Hospital, Mehsaul, Sitamarhi on which he along with *Chowkidar* went there and saw the accused in injured condition whose face was burnt and there was black patches. Accused Mahesh Sah was arrested and his treatment was going on in his custody. He was transferred and he had handed over the charge of this case to O/C, Bajpatti P.S.

In his cross-examination, he has admitted that there is litigation between the candidate of *Mukhia* Sitaram Mandal and accused Mahesh Sah and Bajpatti P.S. Case No. 100 of 1997 under Sections 342, 307, 379/34 of I.P.C. and Section 27 of the Arms Act and a complaint case are pending between them. He has not got comparison of blood of the accused and the blood found on the seized clothes. He has admitted that he had not seized blood stained earth from the place of occurrence. He further admitted that no eye-witness was found. He denied the suggestion that the investigation is incorrect and has been conducted on the saying of *Mukhia* candidate Sitaram Mandal.

(vii) P.W.8., Ram Pravesh Rai is subsequent I.O. who has proved sanction (Ext. 6) letter for prosecution of accused. He also received the F.S.L. Report (Ext. 7) and submitted charge-sheet against the accused.

(viii) D.W.1., Janki Sharan Mandal, examined on behalf



of defence/appellant stated about the injury of accused Mahesh Sah due to stove burst on 27.04.2003. In his cross-examination, he stated that he heard sound of explosion at 6 hours where he had gone and found uneasiness of accused who got burn injury.

15. In this appeal, the issue which comes up for consideration is “*whether the prosecution has proved the charges against the appellant beyond reasonable doubt or not?*”

16. In the present case, admittedly, no one has seen the accused/appellant manufacturing the bomb and the injury of accused at the place of occurrence. The case is based on circumstantial evidence and inference drawn from established facts. The law is well-settled that the Court must draw inference with respect to whether chain of circumstances is complete and when circumstances are collectively considered, same must lead only to irresistible conclusion that accused alone is perpetrator of crime. The circumstances so established must be of conclusive nature and consistent only with hypothesis of guilt of accused.

17. The law is well settled that when there is no eye witness, then the entire case of prosecution depends upon circumstantial evidence. The circumstances from which the



conclusion of guilt is to be drawn should be fully established.

18. The Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116: (AIR 1984 SC 1622) laid down five golden principles (Panchseel) which govern a case based only on circumstantial evidence and has observed:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahab Rao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and



(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

19. The Hon’ble Supreme Court in a recent judgment, **Pradeep Kumar vs. State of Haryana, AIR 2024 SC 518** in paragraph 28 has quoted the aforesaid judgment and observed:

“28. In a recent decision, Pritinder Singh v. State of Punjab, (2023) 7 SCC 727 : (AIROnline 2023 SC 575) one of us (Justice Gavai) has taken note of the judgment in Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116: (AIR 1984 SC 1622) and observed:

17. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned "must or should" and not "may be" established. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

18. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the light of



these guiding principles, we will have to consider the present case."

20. In the present case, there is no eye-witness to the occurrence, and the prosecution witnesses, including the informant, have merely deposed that they heard the name of the appellant, Mahesh Sah, being involved in the preparation of the bomb, without disclosing the source from whom such information was received, thereby rendering all of them hearsay witnesses so far as the involvement of the appellant is concerned. Further, P.W.7, Kalika Ram, has candidly admitted that no comparison was made between the blood of the accused and the blood found on the seized cloth, and hence, there is no evidence to establish any link between the seized articles at the place of occurrence and the accused. It has also come on record that there existed litigation between the accused, Mahesh Sah, and Sitaram Mandal, the *Mukhia* of the concerned *Panchayat*, and P.W.2, Ram Ekbal Rai, the *Chowkidar* and informant, has admitted that the Investigating Officer had reached the place of occurrence at 9 A.M. and that Sitaram Mandal was also present with him. The admitted previous enmity between the appellant and Sitaram Mandal further casts a shadow of doubt on the prosecution case. Additionally, though the accused was admitted



to a private hospital with the claim that he had sustained injuries due to a stove burst, the Investigating Officer failed to conduct any investigation on this aspect, which weakens the prosecution story. The chain of evidence is not complete and the circumstances cannot be said to be of conclusive nature and tendency.

21. In the light of above discussions and taking into consideration the facts and circumstances of the case and the evidences available on record, I am of the considered view that the prosecution has miserably failed to prove the charges levelled against the accused/appellant beyond all reasonable doubts thereby entitling the accused/appellant for acquittal.

22. In the result, the instant appeal deserves to be **allowed.**

23. The impugned judgment of conviction dated 11.03.2014 and order of sentence dated 15.03.2014 passed by learned Trial Court in connection with Sessions Trial No. 229 of 2003 (112 of 2013) arising out of Bajpatti P.S. Case No. 32 of 2001 convicting the appellant and sentencing him, is accordingly, set aside.

24. The appellant is acquitted of the charges levelled against him and held to be proved against him by the learned



Trial Court and the appellant, who is on bail, is discharged from liabilities of his bail bonds and sureties.

25. The aforesaid appeal, accordingly, stands allowed.

26. The Trial Court records of the instant appeal be returned to the Trial Court forthwith.

27. Interlocutory application(s), if any, also stand(s) disposed off, accordingly.

(Sunil Dutta Mishra, J)

utkarsh/-

AFR/NAFR	NAFR
CAV DATE	07.08.2025
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