



CNR No-UPKJ010019942021

Date of Institution	Date of Judgement:	Age:
08-10-21	08-07-25	3 Y, 11 M, 28 D
MM/DD/YY	MM/DD/YY	

**In The Court of Sessions Judge, Kannauj**

Presiding Officer- Shri Chandroday Kumar (HJS)-UP06553

Session Trial Number-611 of 2021

State of Uttar Pradesh

... Prosecution

Versus

- 1. (Late) Smt. Bismillah, wife of Midhai [*Proceedings abated*]
  - 2. Smt. Anjum, wife of Shamsuddin,
  - 3. Shamsuddin, son of Late Midhai
- All residents of village Daulatpur, Police Station Thathiya, District Kannauj  
... Accused.

Crime Number-216/2019  
Under Sections 304, 427 IPC  
& Section 3/4/5 Explosive Substances  
Act 1908  
Police Station- Thathiya,  
Distt. Kannauj.

Prosecution Counsel: Shri Tarun Chandra, DGC (Criminal),  
Defence Counsel: Shri Ashok Chandra Jain, Advocate.

**JUDGMENT**

**Introduction:**

1. The accused Smt. Anjum and Shamsuddin have been charged with and tried for offences punishable under sections 304, 427 of the Indian Penal Code (IPC) & Section 3/4/5 Explosive Substances Act. Accused **Smt. Bismillah** (Accused No.1) died, and accordingly, the case abated against her. The trial proceeded against the remaining two accused (Accused Nos. 2 & 3).

**Factual Matrix:**

2. This case arises from a devastating explosion that occurred on October 13, 2019, at the residential house of the late Smt. Bismillah in village Daulatpur, P.S. Thathiya, District Kannauj. Smt. Bismillah (Accused No.1, now deceased) was a licensed manufacturer of firecrackers. It is alleged that she unlawfully stored explosive substances (firecracker materials) in her house, leading to an explosion. The explosion destroyed the house and caused multiple casualties, including the death of Km. Khushboo (Bismillah’s granddaughter) and injuries to several others. Anjum (Accused No.2, Bismillah’s daughter-in-law) and Shamsuddin (Accused No.3, Bismillah’s son) – who resided in the house – were themselves injured in the incident. They have been prosecuted on the premise that they

participated in or had knowledge of the illegal storage of explosives, which caused the fatal blast. Smt. Bismillah having expired during the trial, the proceedings against her were duly abated.

3. According to the prosecution's story, the brief facts related to the case are as follows: As per the recovery memo/Tahrir, on October 13, 2019, the complainant/Inspector Vijay Bahadur Verma was present at Jainpur, Police Station Thathiya along with his accompanying police team, when at about 08:35 AM, a sudden loud explosion was heard coming from the direction of village Daulatpur. Upon reaching the spot and summoning the constables, it was found that the house of the license-holder, Smt. Bismillah, daughter of Rahmat, resident of village Daulatpur, Police Station Thathiya, District Kannauj, had been completely destroyed due to an explosion of firecrackers. It was revealed that the license-holder, Smt. Bismillah had been manufacturing and storing firecrackers at her private residence, in violation of **the terms and conditions of the licence**, which mandated a different designated location. By flouting these licence conditions and statutory rules, she caused an explosion resulting in human casualties. From the debris of the collapsed house, the following injured persons were rescued and sent for treatment via ambulance to the Government Medical College, Tirwa. Sohail (son of Shamsuddin), Shabbo (daughter of Ghulam Rasool), Anjum (wife of Shamsuddin), Zoya (daughter of Shamsuddin), Shamsuddin (son of Midai) and Khushboo (daughter of Jalaluddin). Out of these, Khushboo (daughter of Jalaluddin) succumbed to her injuries and died. Information was conveyed to the senior officers by phone. A forensic team arrived at the scene. In the presence of witness Kammaluddin (son of Midai), who is the brother of the owner of the house, a search was conducted, and the following items were recovered from the debris of the house. One bundle of fireworks, a roll of blank paper, shiny substances, a brick laced with gunpowder, blood-stained clothes & from the incident, torn pieces of paper, 1.260 kg of black gunpowder, 1.150 kg of white gunpowder. The recovered items were taken into police custody, and the recovery memo was prepared on the spot in the light of a torch by Sub-Inspector Rajesh Kumar, who dictated the contents, which were then read aloud and prepared in the presence of witnesses and accompanying police personnel. The recovered articles were packed in separate cloth pieces, sealed, and stamped. A sample seal was also prepared. A copy of the recovery memo was provided to Kammaluddin, the brother of the house owner.

#### **FIR:**

4. Based on the recovery memo, a First Information Report (FIR) was registered at the Thathiya Police Station in Kannauj District, under Sections 304, 427 of the Indian Penal Code (IPC) and Sections 3/4/5 of the Explosive Substances Act. This FIR, assigned Crime No. 216 of 2019, was filed against the accused individuals, Smt. Bismillah, Samsuddin and Smt Anjum on October 14, 2019, at 20:31.

5. At the same time, the same extract was entered into General Diary (GD)

No. 66, dated October 14, 2019. The inquest of this case was assigned to SI Harish Kumar at Thathiya Police Station, District Kannauj.

**Inquest:**

6. SI Harish Kumar visited the occurrence place and conducted an inquest regarding the death of Km. Khushbu. After the inquest proceedings, the report Panchayatnama, Exhibit Ka-1, was prepared. The Panchayatnama mentioned the cause of death as burns and injuries. To determine the exact cause of death, a postmortem was suggested. Accordingly, a letter to the CMO, Exhibit Ka-2, a photo of the corpse, Exhibit Ka-3, a challan, Exhibit Ka-4, and a challan from No.33, Exhibit Ka-5 of the corpse were prepared.

**Postmortem Examination:**

7. On October 14, 2019, Dr A.K. Singh conducted the post-mortem between 12:45 P.M. and 01:20 P.M. and prepared the post-mortem report, Exhibit Ka-9. The findings of the postmortem are as follows:

**General Examination:**

8. The body measured 120 cm in length, of well-built physique and obese frame. Postmortem rigidity was present in all four limbs. No postmortem staining was observed. The eyes and mouth were closed. **Both legs below the knees and the right arm were missing.** The scalp hair was found to be burnt.

**Antemortem Injuries:**

9. The entire body was found to be burned.

**Internal Examination:**

10. The brain and its meninges were congested. Dentition was 15/16. Both lungs were congested. The right chamber of the heart was full, and the left chamber was empty. The stomach contained approximately 200 ml of pasty matter. The small intestine contained gases and pasty matter, while the large intestine contained gases and faecal matter. The liver and spleen were ruptured. Both kidneys were congested. The urinary bladder contained about 20 ml of urine.

11. In the doctor's opinion, the death of the deceased occurred approximately half to one day prior to the postmortem examination. It was caused by burn injuries sustained ante-mortem, resulting in shock and excessive haemorrhage.

**Recovery:**

12. The following items were recovered from the debris of the house. One bundle of fireworks, a roll of blank paper, shiny substances, a brick laced with gunpowder, blood-stained clothes from the incident, torn pieces of paper, 1.260 kg of black gunpowder, 1.150 kg of white gunpowder.

**FSL Report:**

13. The articles recovered from the scene of occurrence were sent for

examination to the Forensic Science Laboratory (FSL) (Ex Ka-12), and the analysis report is as follows:

- Exhibit 1: Potassium chlorate was detected.
- Exhibit 2: Explosive constituents such as potassium, nitrate, sulfur, and charcoal were found.
- Exhibit 3: Explosive constituents, including potassium, nitrate, aluminium, and sulfur, were found.
- Exhibit 4: Aluminium was detected.
- Exhibit 5: Explosive and decomposed explosive constituents such as potassium, chlorate, chloride, sulfur, sulfide, and aluminium were found.
- Exhibit 6: No explosive substance was detected upon examination of the empty tube.

Per Forensic Science Laboratory (FSL) (Ex Ka-13), the blood was found on 1. Paijami, 2. Bra, 3. Pieces of cloth, 4. Pieces of cloth, 5. Pieces of paper, but it was disintegrated.

**Investigation:**

14. The Investigating Officer, Shailendra Kumar, visited the scene, prepared the site map (Exhibit Ka-10), collected the inquest and post-mortem reports, and recorded the statements of the witnesses. Upon completion of the investigation, a charge sheet was submitted against the accused, Smt. Bismillah, Samsuddin and Smt Anjum, under Sections 304 and 427 of the IPC and Section 3/4/5 of the Explosive Substances Act before the Chief Judicial Magistrate, Kannauj.

15. The prosecution examined the following witnesses to substantiate the charges against the accused:

**Witness of facts:**

PW4, Mohd Parvej; Independent witness,  
PW6, Shabbo Bano; victim/injured, and  
PW7, Soheli, victim/injured.

**Formal witnesses:**

PW1, Constable Jagveer Singh Chahar, proved the Recovery Memo.  
PW2, SI Harish Kumar, prepared Panchayatnama, Letter to CMO for postmortem, Photo Corpse, and Challans Corpse.  
PW3, Vijay Bahadur Verma, proved the Recovery Memo.  
PW5, Constable Deepanshu Bajpai; proved FIR and GD,  
PW8 Dr A.K. Singh conducted the post-mortem of the deceased.  
PW9 Inspector Shailendra Kumar prepared the site map and submitted the chargesheet, and  
PW10, SI Rajesh Kumar, proved the Recovery Memo and Material Exhibits 1 to 25.

16. The prosecution produced the following papers under documentary evidence:

Exhibit Ka-1, Panchayatnama; proved by PW2,

Exhibit Ka-2, Letter to CMO for postmortem; proved by PW2,  
Exhibit Ka-3, Photo Corpse; proved by PW2,  
Exhibit Ka-4, Challan Corpse; proved by PW2,  
Exhibit Ka-5, Challan Corpse from 33 ; proved by PW2,  
Exhibit Ka-6, Recovery Memo; proved by PW3,  
Exhibit Ka-7, FIR; proved by PW5,  
Exhibit Ka-8, GD; proved by PW5,  
Exhibit Ka-9, Postmortem report; proved by PW8,  
Exhibit Ka-10, Site Map; proved by PW9,  
Exhibit Ka-11, Charge sheet proved by PW9.  
Exhibit Ka-12, FSL Report, and  
Exhibit Ka-13, FSL Report.

**Defence Version:**

17. During the examination conducted under Section 313 of the Criminal Procedure Code, the accused stated that Smt. Bismillah was the license holder. The incident occurred **due to a gas explosion** in the house. At the time of the incident, no firecracker material was brought into the house. A false recovery has been shown from Bismillah's house. The accused claimed to be innocent.

18. No oral evidence has been produced in defence.

**Arguments:**

19. I heard the arguments of the learned District Government Counsel (DGC) (Criminal) and learned counsel for the defence. I went through the evidence and materials available on the record with great care.

**Charges and Plea:**

20. The surviving accused were charged with culpable homicide not amounting to murder (for Khushboo's death) punishable under Section 304 IPC, mischief causing extensive damage (the demolished house and adjacent property) under Section 427 IPC, and for causing an explosion and possessing explosive substances under Sections 3, 4, and 5 of the Explosive Substances Act, 1908. They pleaded not guilty and claimed a trial. The defence set up by the accused is that the incident was an accidental **gas cylinder explosion**, not caused by any illicit firecracker materials, and that no explosives were stored in the house at the time. They contend that Smt. Bismillah alone held the fireworks license, and both accused had no role or knowledge in storing any explosive substance at the premises. The accused maintain their innocence and assert that the police showed a false recovery of explosives after what was a gas-related accident.

**Trial Proceedings:**

21. The prosecution examined ten witnesses in support of its case. These included three injured eyewitnesses (PW-4 Mohd. Parvez – an independent witness from the village; PW-6 Shabbo Bano – injured victim/niece of Bismillah; and PW-7 Sohail – injured victim/son of Accused Shamsuddin) and formal witnesses such as police officers, the doctor, and the forensic



analyst. Material documentary evidence was adduced, including the FIR (Ex. Ka-7), site plan (Ex. Ka-10), recovery memo of explosives (Ex. Ka-6), forensic science laboratory (FSL) report of the seized substances (Ex. Ka-12 & 13), and the postmortem report of the deceased Khushboo (Ex. Ka-9). The defence did not present any evidence. The statements of Accused Nos. 2 and 3 were recorded under Section 313 CrPC, wherein they reiterated that the blast was caused by a leaking LPG cylinder and not due to any fault of theirs. Having heard the learned District Government Counsel and the defence counsel and carefully examined the entire evidence on record, the Court now proceeds to determine the points in controversy.

**Points for Determination:**

22. From the pleadings and evidence, the following points for determination arise for adjudication:

**Cause of the Explosion:**

23. Whether the explosion that occurred on 13.10.2019 in Smt. Bismillah's house was caused by the detonation of illegally stored gunpowder/firecracker materials (as alleged by the prosecution) or by an accidental gas cylinder blast (as claimed by the defence)? This point directly affects the nature of offences, if any, made out under the law.

**Knowledge/Participation of Accused:**

24. If it is proved that the explosion resulted from stored explosive substances (firecracker materials), whether the surviving accused, Smt. Anjum and Shamsuddin knowingly participated in the illicit manufacture or storage of such explosive substances in the house, or had knowledge thereof, so as to render them liable for:

- a. Culpable homicide and mischief – by causing the death of Khushboo and destruction of property (offences under Sections 304 and 427 IPC); and
- b. Offences under the Explosive Substances Act, 1908 – namely, causing an explosion likely to endanger life (Section 3), attempting to cause an explosion or keeping explosives with the intent to endanger life/property (Section 4), or knowingly making/possessing explosives under suspicious circumstances (Section 5).

**Legal Sanction for Prosecution under the Explosive Substances Act:**

25. Whether the prosecution of the accused for offences under the Explosive Substances Act is sustainable in law, given Section 7 of the Act, which mandates previous sanction/consent of the appropriate authority before any court can proceed with a trial for such offences. In particular, the Court must determine whether the absence of the District Magistrate's consent (if not obtained in this case) bars the trial/conviction of the accused under Sections 3/4/5 of the Act.

Each of these points is addressed in turn, in light of the evidence, applicable law, and arguments advanced.

**Appreciation of Evidence and Discussion:****Point 1: Cause of the Explosion – Gas Cylinder or Gunpowder?**

26. The first and fundamental question is what caused the blast. The defence version is that a domestic LPG gas cylinder exploded, whereas the prosecution asserts that stored gunpowder meant for firecracker manufacture ignited. This is a crucial factual issue because a gas accident, while tragic, might point to negligence at best, whereas an illegal stockpile of explosives invokes the Explosive Substances Act.

27. **Eyewitness Accounts (Injured Victims):** Two injured family members – PW-6 Shabbo and PW-7 Sohel (a niece and a grandson of Bismillah, respectively) – were present in the house at the time and survived the blast. Notably, both of them testified against the prosecution's theory, instead supporting the cylinder-blast narrative.

28. PW-6 Shabbo Bano stated that on the evening of the incident (around 8 PM, near Diwali festival time), she was sitting and talking with her aunt Anjum (Accused No.2) inside Bismillah's house when "suddenly there was an explosion and the roof and walls collapsed." She lost consciousness and later awoke in the hospital. In her deposition, Shabbo categorically denied that any firecracker materials were stored in the house at that time. Under cross-examination, she insisted that "the blast occurred due to a gas cylinder kept in Bismillah's house exploding," which caused the house to fall, injuring her and killing Khushboo. She further asserted that no explosive substances or firecracker materials were stored or found in the house when the incident occurred. According to her, Smt. Bismillah did possess a valid license for firework manufacture, but all such activities and storage were done at a designated place outside the village (near a pond) – never in the residential house.

29. PW-7 Sohel (son of Accused Shamsuddin and grandson of Bismillah) corroborated Shabbo's version in material respects. He testified that on the fateful evening, he was present in his grandmother Bismillah's house when a sudden loud blast occurred, bringing down the roof and walls and burying him in debris. He sustained injuries and fell unconscious until the hospital. Sohel stated that his grandmother's business was making and selling fireworks, but he maintained that the actual manufacturing and storage were done outside the village at a licensed location and "never in the house". In cross-examination, he reiterated that "the explosion was caused by a gas cylinder burst," not by any firecracker or gunpowder ignition. He also mentioned that at the time of the incident, Bismillah and his father Shamsuddin were not at home – they were away and only arrived after hearing about the blast.

30. **Observation:** The testimony of PW-6 and PW-7 attempts to negate the presence of any illicit explosives in the house and attributes the tragedy entirely to a gas cylinder accident. However, the Court notes that these two witnesses are close relatives of the accused and the deceased license-holder.

Their version, while given on oath, appears aligned with the defence theory and is inconsistent with the physical evidence recovered. Their credibility is therefore subject to scrutiny, especially since their statements on the cause of the explosion directly conflict with the forensic and recovery evidence discussed next. It is not unusual in such cases for family members to downplay wrongdoing by one of their own; hence, the Court must seek corroboration from independent evidence.

**31. Recovery of Physical Evidence from Scene:** The most compelling evidence about the cause of the blast comes from what was (and was not) found in the debris of the collapsed house. The initial responding officer (PW-1 Constable Jagveer Singh) and the Investigating Officer (PW-10 SI Rajesh Kumar) documented an extensive search of the rubble in the presence of witnesses and a forensic team. Their testimony and the Recovery Memo (Ex. Ka-6) reveal the following:

**32. No Remnants of Any Gas Cylinder:** Despite meticulous clearing of debris using JCB machines over two days (13th and 14th October 2019), *no metallic remains of a burst LPG cylinder were found*. This is significant because an LPG cylinder, even if exploded, would typically leave some identifiable shrapnel or fragments of the cylinder. PW-1 testified that local residents initially speculated about a cylinder blast, and even Bismillah's brother Kamaluddin (who was on site) opined at first that the explosion was due to a gas cylinder. However, acting on these claims, the police and forensic team made specific efforts to locate any cylinder remains, employing extra excavation – *“but even after considerable effort, no cylinder debris was recovered”*. The complete absence of any cylinder evidence strongly undermines the theory of an LPG blast. It is noted that the defence did not produce any contrary evidence (for instance, showing that a cylinder was in use or exploded).

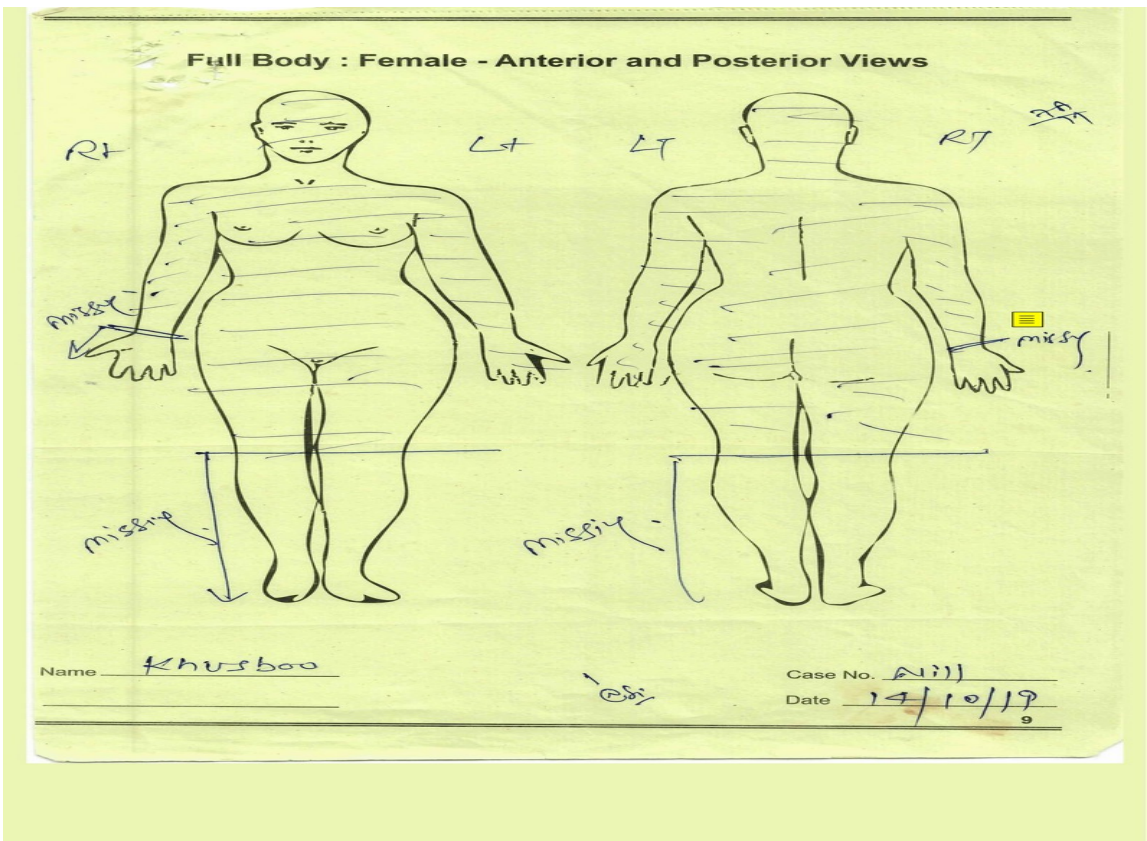
**33. Presence of Firecracker Materials and Gunpowder:** On the other hand, the search under the collapsed roof yielded copious evidence of firework manufacturing materials. The police recovered, inter alia, **1.260 kg of black gunpowder and 1.150 kg of white gunpowder** (potassium nitrate/chlorate mixtures), a bundle of finished firecrackers, rolls of paper for making fireworks, **a brick laced with explosive powder**, charred pieces of cloth and paper smelling of gunpowder, and other ingredients used in pyrotechnics. These were all documented in the recovery memo prepared on the spot and later confirmed by forensic analysis. The FSL report (Ex. Ka-12 and 13) found that samples from the seized black and white powders contained *potassium, nitrates, sulfur, charcoal, aluminium*, etc. – all typical constituents of low-grade explosive mixtures used in fireworks. One exhibit had potassium chlorate (a strong oxidiser), and another contained a partially exploded mix of potassium chlorate and sulfur/aluminium. Such forensic findings conclusively indicate the presence of explosive substances at the site. Notably, **PW-1** in cross-examination acknowledged that by the end of the search, it became *“clear that the explosion in Shamsuddin's house occurred because license-holder Smt. Bismillah was secretly manufacturing and storing firecrackers in that house, in breach of the licence conditions, and that some stored*



*gunpowder ignited, causing a powerful blast*". This admission aligns with the physical evidence and contradicts the injured witnesses' denials.

**34. Extent of Damage:** The magnitude of the destruction also supports the gunpowder explosion theory. Photographs and the site plan depict that Bismillah's pucca house was razed entirely: the roof collapsed and the walls crumbled. Interestingly, adjacent houses (one belonging to Jalaluddin, another to Kammaluddin, on either side) suffered damage, but their roofs did not collapse. An LPG cylinder blast in a kitchen typically causes fire and localised explosion, but the shattering of a whole house and grievous shrapnel-like injuries (Khushboo's legs and an arm were severed in the blast) are more consistent with a gunpowder explosion in an enclosed space. Moreover, witnesses noted there was *no post-blast fire*- the scene had smoke and dust but no ongoing flames, whereas a gas explosion often leads to a fire. These circumstantial indications bolster the conclusion drawn from the forensic evidence.

**35. Injuries to the deceased and others:** Both legs below the knees and the right arm of the deceased were missing. This suggests that the deceased was carrying a sack of firecrackers or explosives in the right hand, and in this course, a blast occurred either due to the sack falling or colliding with an object or due to friction within the sack. Due to the blast, inmates Anjum, Joya, Sabbo (witness), and Sohail (witness) also mainly received burn injuries.



**36. Analysis:** Upon weighing the above, the Court finds the prosecution has convincingly established that the *explosion was caused by the ignition of stored explosive substances (firecracker gunpowder)*, not by a gas cylinder. The direct evidence of recovered gunpowder and firework materials, corroborated by scientific analysis, far outweighs the oral claims of PW-6 and PW-7, which appear motivated by a desire to protect their kin. It is also

telling that **PW-1 (the police witness) conceded that initially “it was not clear whether Shamsuddin and Anjum were at fault because people said it was a cylinder blast”**, but as evidence unfolded, that theory was debunked. In fact, PW-1 clarified that under the terms of the fireworks licence, *the licensee (Bismillah) would be responsible for any such accident, and other injured persons would not be held directly accountable*. This statement underscores that the prime responsibility for the mishap lay with the license-holder who stored the explosives, implicitly confirming that explosives were indeed stored in the house (else the question of responsibility under the licence would not arise).

Therefore, **Point 1 is answered in favour of the prosecution**: the explosion on 13.10.2019 was caused by the accidental ignition of illegally stored gunpowder/firecracker materials in Bismillah’s house, rather than by a gas cylinder burst.

### **37. Point 2: Involvement and Culpability of Accused Anjum and Shamsuddin:**

Given the finding that the blast was due to unlawful storage of explosives, the next issue is whether Accused Nos. 2 and 3 (Anjum and Shamsuddin) can be held criminally liable for the consequences of that explosion – i.e., the death of Khushboo and the property damage (invoking IPC sections), and the possession/mishandling of explosives (invoking the ESA). The prosecution’s theory seemed to be that these accused, being family members living in the house, were complicit in Bismillah’s illicit storage of fireworks, or at least had knowledge of it, thereby attracting liability. The defence, conversely, argues that they were mere victims of the accident with no role in storing the explosives, and that the law does not impute “strict liability” on them solely by association or relationship.

**38. Evidence of Knowledge or Participation:** It is noteworthy that the prosecution did not produce any direct evidence that Anjum or Shamsuddin actively assisted in the illegal manufacture or storage of firecrackers at the house. No independent witness testified to seeing them making or hiding fireworks. In fact, the key independent witness to the recovery, Kamaluddin (Bismillah’s elder son and Shamsuddin’s brother), was not examined in court. However, according to PW-1’s testimony, when questioned on site, Kamaluddin himself admitted that “clandestine firework manufacturing in violation of the licence was being carried on in that house” by Bismillah and Shamsuddin, which resulted in the explosion. This hearsay statement (recorded in the recovery memo) was not corroborated by Kamaluddin in the witness box, as he was not called – perhaps because he would not support it under oath. Therefore, the only direct evidence regarding the accused’s involvement comes from their own statements and the circumstances:

**39. Accused Shamsuddin:** He is Bismillah’s son, and the house in question was their joint residence. As per the evidence, the fireworks licence was in

Bismillah's sole name. PW-1 in cross-exam admitted that "if any accident occurs, the licence-holder is responsible; injured persons other than the licence-holder are not directly responsible". Shamsuddin himself was injured in the blast (though relatively less, as he did not require a medico-legal examination). Importantly, PW-7 Sohel testified that Shamsuddin (his father) was not present at home when the blast occurred, and only arrived later. Any prosecution evidence did not specifically rebut this. Thus, **there is no indication that Shamsuddin triggered or was handling the explosives at the critical moment.** The prosecution's implicit contention is that since he lived there and the quantity of gunpowder was large, he must have been aware of the storage. However, mere presence or relationship cannot substitute for proof of conscious possession or mens rea. No materials (licence documents, prior incidents, etc.) were produced to show that Shamsuddin dealt with the firecracker business. In fact, the licence conditions (as gleaned from evidence) prohibited storage at the house, and Bismillah appears to have flouted these secretly. It is quite plausible that an aged lady (Bismillah) was conducting her trade quietly at home despite rules – a fact she might conceal even from family, or which they might overlook. The Court thus finds the evidence of Shamsuddin's knowing participation to be tenuous and insufficient. At best, suspicion arises, but suspicion is not proof.

**40. Accused Anjum:** She is Shamsuddin's wife and Bismillah's daughter-in-law, also residing in the same household. She was injured in the explosion. There is even less to implicate Anjum – no witness alleged she partook in the firecracker making. When the blast happened, she was conversing with Shabbo (PW-6) inside the house. If anything, she appears as another victim of Bismillah's negligence. The prosecution did not establish any motive or action on Anjum's part connecting her to the explosive materials. Her Section 313 CrPC statement denied any knowledge of stored fireworks, consistent with her stance throughout. In the absence of contrary proof, Anjum's lack of complicity is evident.

**41. Strict Liability and Vicarious Liability Considerations:** It was argued by the prosecution that the offences under the Explosive Substances Act are of such a nature that anyone in the premises could be held liable regardless of specific intent (a form of strict liability). This is a misapprehension of the law. Sections 3, 4, and 5 of the ESA each contain a mental element: Section 3 requires the act to be done "unlawfully and maliciously" (which imports intention or knowledge); Section 4 requires intent to endanger or cause harm; Section 5 penalizes one who "knowingly has in his possession or under his control" any explosive under suspicious circumstances. Thus, knowledge and intent are key. The Supreme Court has held that an accused cannot be convicted for such offences in the absence of proof of conscious possession or mens rea, and indeed not merely based on guilt by association or on a co-accused's confessions. in the case of [Union of India v. Bal Mukund & Ors. \(2009\) 12 SCC 161](#), it was emphasised that for stringent criminal provisions, courts must insist on scrupulous compliance with



statutory requirements and proof, especially regarding mens rea. In the present case, there is a dearth of independent evidence that Anjum or Shamsuddin knowingly kept the explosives or participated in Bismillah's unlawful acts. The evidence instead indicates that Bismillah, as licensee, had dominion over the firecracker enterprise. Indeed, PW-1's testimony logically implies that the legal and moral blame was intended to fall on the licence-holder primarily. No rule or law was cited that any other family member automatically incurs criminal liability simply by being present or related, absent proof of their own illicit intent or action.

**42. Evidentiary Gaps and Benefit of Doubt:** There are also notable inconsistencies: The FIR named all three (Bismillah, Shamsuddin, Anjum) as accused, likely on the assumption that the household collectively undertook the illegal storage. However, by the end of the trial, the prosecution's case against the surviving two rests on circumstantial inference rather than concrete evidence. Key witnesses like Kammaluddin (who allegedly implicated Shamsuddin on site) did not testify; PW-4 Parvez (an independent witness) did not provide any incriminating account against the accused – he was mainly a panchayatnama witness for identifying the corpse. The Court is mindful that in criminal law, grave suspicion can never take the place of proof. Given that the accused also suffered in the tragedy (which tends to suggest they were not perpetrators but victims), any ambiguity in the evidence must benefit them.

**43. Accordingly, Point 2 is answered in the negative:** the prosecution has failed to prove beyond a reasonable doubt that Smt. Anjum or Shamsuddin had the requisite knowledge or participation in the unlawful storage of explosives at the premises. They cannot be held guilty of the resultant offences under IPC Sections 304/427 or under ESA sections 3/4/5 on the evidence presented.

**44. Point 3: Sanction for Prosecution under the Explosive Substances Act**

Although Point 2 already undercuts the liability of the accused, Point 3 raises a critical legal bar to their prosecution under the Explosive Substances Act. Section 7 of the ESA unequivocally mandates: "No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate." This is a statutory safeguard requiring previous sanction (consent) from the competent authority (the District Magistrate, as amended in 2001) before a court can try offences under this Act. The object is to prevent vexatious or unauthorised prosecutions in sensitive matters involving explosives by ensuring scrutiny by a senior executive officer.

**45.** In the present case, the record is silent on any sanction obtained. The charge-sheet was filed and the trial proceeded as if it were an ordinary case, but neither the prosecution nor the papers mention that the District Magistrate consented to this prosecution. When queried, the learned DGC acknowledged that no such sanction order was produced in evidence. In

fact, during arguments, the prosecution candidly conceded (and rightly so) that this was an oversight. This omission has serious consequences. The law is well-settled that the requirement of sanction under special acts like the ESA is mandatory and jurisdictional. A trial without sanction is a nullity in respect of those offences. The Hon'ble High Court of Kerala in [Babu v. State of Kerala \(Crl. Appeal No. 1430 of 2005, judgment dated 10.11.2020: 2020:KER:40686\)](#) faced a similar scenario where no sanction under Section 7 was obtained for an ESA charge; the Court held that in the absence of the requisite sanction, the conviction under the Explosive Substances Act could not be sustained, and it accordingly set aside the conviction. It was observed that this defect alone was sufficient to accord the benefit of doubt to the accused. Likewise, the Hon'ble Jharkhand High Court in [Ajibure Sheikh v. State of Jharkhand: 2008 \(1\) AIR JHAR R 974](#) has termed the framing of a charge under the ESA without prior consent of the DM as "illegal and invalid," reiterating that "no trial can proceed unless the District Magistrate accords consent".

46. The Hon'ble Supreme Court has underscored the imperative nature of such statutory sanctions in analogous contexts. In [State Of Punjab vs Balbir Singh on 1 March, 1994: \(1994\) 3 SCC 299](#) – dealing with the NDPS Act – the Court held that when the Legislature prescribes certain safeguards in statutes with stringent punishments, those conditions are mandatory, and non-compliance vitiates the trial itself. The rationale is to ensure that procedural protections are not sacrificed in the zeal to enforce the law. By parity of reasoning, Section 7 of the ESA is such a condition precedent; proceeding without it is not a mere irregularity but an incurable illegality. This Court is bound to give effect to that legislative mandate.

47. In the case at hand, since no District Magistrate's consent was obtained or placed on record, the prosecution of Accused Nos. 2 and 3 under Sections 3, 4, and 5 of the Explosive Substances Act cannot be sustained in law. The Court had no jurisdiction to try them for those charges in the absence of a sanction ([Ajibure Sheikh vs The State Of Jharkhand And Ors. on 14 September, 2007: 2008 \(1\) AIR JHAR R 974](#)). This finding operates as an additional ground (apart from the lack of evidence of guilt) to acquit the accused of the ESA offences. It also reflects a serious lapse on the part of the investigating agency, which ought to have secured the sanction before filing the charge sheet. This lapse has ultimately proved fatal to that part of the case.

## Findings

48. In summary, the Court's findings on the Points for Determination are as follows:

**Cause of Explosion:** The October 13, 2019, explosion was caused by the ignition of illegally stored explosive substances (firecracker gunpowder) in the house, not by a gas cylinder blast. The prosecution proved this through the recovery of gunpowder and firework materials from the debris and



corresponding FSL results, which conclusively refute the defence's gas leak theory.

**49. Liability of Accused Anjum and Shamsuddin:** Although the explosion was unlawful in origin, the prosecution failed to prove that Accused 2 and 3 knowingly participated in or consented to the storage of explosives. There is no credible evidence of their mens rea or active involvement. They themselves were victims of the blast, and the primary culpability lies with Smt. Bismillah (the licence-holder, now deceased). In the absence of proof beyond a reasonable doubt against Anjum and Shamsuddin, they cannot be held guilty of causing Khushboo's death or the property damage under the IPC, nor of the offences under the ESA. Indian criminal jurisprudence does not permit attributing strict liability to them on these facts, especially given the mandatory proof requirements for possession and knowledge in the ESA.

**50. Sanction under Explosive Substances Act:** The prosecution under Sections 3/4/5 of the ESA is unsustainable for want of the District Magistrate's consent under [Section 7](#) of that Act. The trial of the accused for those charges was itself without jurisdiction, as no sanction was obtained. This legal defect independently mandates that the accused cannot be convicted of the ESA offences.

51. In reaching these findings, the Court has kept in mind the principle that the burden of proof rests on the prosecution and that any reasonable doubt must enure to the benefit of the accused. The evidence as a whole leaves considerable doubt about the accused's guilt, and additionally, the legal bar on the ESA charges forecloses their conviction on those counts. The ends of justice thus require their acquittal.

## **Final Order**

**52. Abatement as to Accused No.1:** At the outset, it is recorded that the case against Accused No.1, (Late) Smt. Bismillah, stood abated upon her demise during the trial. No findings are therefore entered against her, except to observe that the evidence indicates she bore primary responsibility for the unlawful act that led to this unfortunate incident.

**53. Acquittal of Accused Nos. 2 and 3:** For the reasons elaborated above, this Court finds that the prosecution has not established the guilt of Smt. Anjum (Accused No.2) and Shamsuddin (Accused No.3) for the offences charged, namely Sections 304 and 427 IPC and Sections 3, 4, 5 of the Explosive Substances Act, 1908. They are hereby acquitted of all the said charges under Section 235(1) of the Code of Criminal Procedure, 1973. The accused are on bail; their bail bonds are cancelled and sureties discharged.

**54. Disposition of Seized Articles:** The explosive substances (gunpowder) and firecracker materials recovered (Exhibits 1 to 25), which were produced before the Court, are to be dealt with as per law. Since these are hazardous in nature, it is directed that they shall be forfeited and destroyed safely

under the supervision of the District Magistrate, after the expiration of the appeal period or, if an appeal is filed, subject to orders of the appellate court. Any other case property (e.g., the remains of the house debris, if any retained) may be released or disposed of as per the rules.

55. Before parting, this Court must observe that this tragic incident resulted in the loss of an innocent young life and injuries to many. It underscores the importance of strict adherence to licensing conditions for explosive materials. While Smt. Bismillah, the licence-holder, has since passed away (placing her beyond the reach of earthly justice); the lessons from this case should not be lost on authorities and licence-holders alike: the statutory safety conditions are there to prevent precisely such disasters. It is equally a lesson for investigators to meticulously follow legal prerequisites like sanctions, to ensure that culpable offenders (if any) do not escape on technical grounds.

56. One copy should be sent to the District Magistrate, Kannauj, for information (particularly regarding paragraph 20 above). The file will be consigned to the record room.

57. Judgment pronounced in open court on this 7th day of August, 2025.

(Chandroday Kumar)

Sessions Judge, Kannauj