

**(2012) 04 UK CK 0028**

**In the Uttarakhand High Court**

**Case No :** Government Appeal No. 170 of 2006 (Under Section 377 Cr.P.C.)

State of Uttaranchal

APPELLANT

Vs

Istiyag @ Mohd. Salim

RESPONDENT

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**Date of Decision :** 20-04-2012

**Acts Referred:**

Explosive Substances Act, 1908 — Section 4, 5  
Penal Code, 1860 (IPC) — Section 216, 34  
Railways Act, 1989 — Section 151

**Citation :** (2012) 04 UK CK 0028

**Hon'ble Judges :** Servesh Kumar Gupta, J

**Bench :** Single Bench

**Advocate :** G.S. Sandhu, for the Appellant; Pramod Tiwari, Amicus Curiae, for the Respondent

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## **Judgement**

Hon"ble Servesh Kumar Gupta, J.—This appeal has been preferred by the State against the judgment and order dated 17.7.2004, which runs in only one page, and has been passed by the Additional Sessions Judge/I F.T.C., Haridwar in Sessions Trial No. 80/2003, State v. Istiyag @ Mohd. Salim. Facts, in brief, are that the accused Istiyag @ Mohd. Salim, a citizen of Pakistan, who is being represented by an Amicus Curiae before this Court, was tried for the offences u/s 4/5 of the Explosives Substances Act, 1908, Section 216/34 IPC and Section 151 of the Railways Act, pertaining to PS Laksar, District Haridwar. The allegation was that the accused was instrumental in causing an explosion in an army compartment of the train and was also found in possession of explosive substance RDX, a special category explosive substance. The accused Istiyag @ Mohd. Salim confessed his guilt before the learned Additional Sessions Judge. He was arrested on 7.10.1998, and the guilt was confessed by him before the trial court on 17.7.2004. He had already spent 5 years, 9 months and 22 days behind the bars on the date when he had confessed his guilt. By the impugned judgment and order dated 17.7.2004, the learned Additional Sessions Judge was pleased enough to award a consolidated sentence of 5 years and 10 months for all the

aforesaid offences, which was to be completed just after a week of the pronouncement of impugned judgment.

2. It has been argued by the learned GA that the Additional Sessions Judge awarded the aforesaid sentence as if he had already made up his mind to ensure the release of the accused respondent from incarceration just after 8 days of the pronouncement of the impugned judgment and order, which was against the prescribed punishment for the aforesaid offences, and this was not proper on the part of the Additional Sessions Judge. However, since the accused appellant was also wanted in other criminal matters, therefore, he could not be released from the caption and he is still in gaol, presently in Andhra Pradesh, as has been apprised to this Court by the learned GA.

3. It has been further argued that Section 4 of the Explosives Substances Act, in case of any special category explosive substance, envisages rigorous imprisonment for life, or with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine. Same punishment is prescribed u/s 5 of the Explosives Substances Act. However, the Additional Sessions Judge assigned no special reason to award lesser punishment contrary to the provisions of the said Act, as stated above. He should have passed the sentence of imprisonment for life, and if he was not inclined to pass the said sentence, then he should have stated some reason explaining his inclination for reducing the sentence, although that too have been contrary to the provisions of the Explosives Substances Act. Thus, the trial court has committed grave error of law. As such, the punishment awarded to the convict Istyaq @ Mohd. Salim needs to be modified.

4. Resultantly, the Government Appeal is allowed. The sentence, awarded by the trial court, is modified as under:

(i) For the offence u/s 4/5 of the Explosives Substances Act, the accused defendant is awarded ten years" rigorous imprisonment along with fine of rupees five thousand. In default of payment of fine, he will further undergo three months" imprisonment.

(ii) For the offence u/s 216/34 IPC, the accused convict is awarded two years" rigorous imprisonment.

(iii) For the offence u/s 151 of the Railways Act, the accused convict is awarded punishment of one and half year"s rigorous imprisonment.

5. Since the accused convict Istyaq @ Mohd. Salim is in captivity ever since his arrest on 7.10.1998, thus he has already served out the above modified sentences, which shall be deemed to have run consecutively. He shall be released from the jail if not wanted in connection with any other case. In case of his release, the concerned authorities are directed to ensure the deportation of the accused defendant Istyaq @ Mohd. Salim to his country. Let a copy of this judgment and order be sent to the trial court for its compliance. Lower court

record be also sent back.