

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 28th October, 2010
Date of Order: 22nd December, 2010

+ Crl.Appeal No. 1060/2010 & Crl.M.(B) No. 1253/2010

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22.12.2010

Sushil Sharma

... Appellant

Through: Mr. R.S.Malik & Mr. Ashok Ahlawat, Advs.

Versus

BSES Rajdhani Power Ltd. & Anr.

... Respondents

Through: Mr. Sunil Fernandes, Standing Counsel
for BSES with Mr. Deepak Pathak, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this appeal the appellant has assailed judgment dated 20th August, 2010 whereby the appellant was convicted under Section 135 of Electricity Act, 2003 and order on sentence dated 25th August, 2010 whereby the appellant was sentenced to undergo RI for a period of two years and a fine of Rs.87,03,303/-.

2. On 14th July, 2006 a team of enforcement officials inspected the premises belonging to Shri Sushil Sharma, appellant. The premises was situated in village Baprola, near Khate Wala Sub-Station, Nangloi. An industrial unit was running in the premises. There was no authorized electricity supply in the premises. There was an electric pole of LV main located within the premises and the electric supply to the industrial unit was

taken by direct tapping of electricity from the electric pole using heavy duty electric cables. It was found that it was a case of direct theft of electricity by tapping electricity from complainant's LV main line running through the premises of the accused with the help of cable. Since there was no legal connection, no meter was there. The team took photographs showing theft of electricity and drew sketches depicting electricity being stolen from BSES LV mains line. The inspection team after inspection seized the material with help of which theft was being committed including distribution board installed by the appellant to distribute stolen electricity to different machines. At the time of raid, the accused/appellant, his workers and manager were found present and the industrial unit was functioning. However, during inspection accused slipped away from the site and therefore the inspection note was not signed by the accused. The total load found connected in the industrial unit for which electricity was being illegally drawn was 290.062 KW. After detecting this theft of electricity for running an entire industrial unit, a complaint was filed before learned Special Judge for trial of the accused. During trial, the inspection team members appeared in the witness box and proved the direct theft of electricity from LV mains pole of the complainant. The cables wires and distribution board seized from the spot were exhibited. The photographs and sketch showing connection having been taken from the pole directly into the factory premises and going up to distribution board and machines were proved.

3. The appellant's main contention before the trial Court was that he had nothing to do with the premises and the complainant has not brought on record evidence to show that he was the owner of the premises or he was

the user of the stolen electricity. It was argued that he was made accused only on the basis of hearsay evidence of workers and manager and workers and manager were not examined in the Court. However, the trial Court turned down this argument and found there was enough evidence to show that it was the 'accused/appellant' who had indulged into theft.

4. In appeal, the appellant has argued that the inspection team had taken many photographs but in none of the photographs, the focus was on the appellant thus, the presence of the appellant on the site was not proved. The appellant or the workers present at the site were not apprehended by the police. If the appellant was indulging in theft he would have been arrested on the spot itself since the inspection team was accompanied by the local police. Non-arrest of the appellant shows that he was not present on the spot and he had nothing to do with the premises. The next ground taken is that the assessment of the connected load was not done on the spot since the column of total connected load was left blank and connected load was assessed on speculation basis in the office of the complainant. Trial Court also failed to appreciate that no independent person was examined as a witness in this case. It is further submitted that since there was no evidence to connect the appellant with the theft of electricity, there was no proof of ownership, no proof of khasra/girdawari therefore, the conviction of the appellant was liable to be set aside.

5. The plea taken by the appellant about him not being the real accused must fail. The appellant was found present at the premises when the inspection team reached the premises and started inspection. The inspection started in his presence, this fact was proved by PW-1 who testified that when

the inspection team reached the premises of Village Baprola, Nangloi, it found manufacturing of PVC packing strip activity going on. The appellant was present there in the factory besides workers and the machines were working. In cross examination he further testified that appellant Sushil Sharma was owner and user of the factory and this fact was confirmed by the inspecting team from the workers as well from the person found present in the factory premises, who appeared to be in-charge (of production). PW-2 also testified to the same fact that the appellant was present in the factory and was the owner of the factory.

6. Apart from oral testimonies of witnesses, who were members of the inspection team, there is intrinsic evidence to show that it was the appellant who was running this factory and indulged into theft of energy. The summon to the appellant, in respect of this complaint of theft of electricity, was served on the appellant at the same premises where theft had taken place. When the appellant filed his bail bond in the Court, the appellant did not give any other address except this address. The appellant is a resident of village Baprola where this factory was found existing, in the surety bond his surety also gave address of the appellant as the same i.e. Village Baprola Nangloi. Had the appellant not been owner of this premises and had nothing to do with the premises, the first thing the appellant would have done was to inform the Court as to who was the owner of the premises. The very fact that the appellant was served summons of the Court at the same premises and he did not inform the Court any other of his address nor he informed despite being resident of village Baprola as to who else, if not he, was the owner of this premises shows that the appellant took a false plea that he was not the owner

of the premises. Even in appeal, the appellant has given his address that of village Baprola only and he has not given any other address. He has not stated if he was not the owner then who was the owner of the premises.

7. Under Section 135 of Electricity Act the onus on the complainant was to prove abstraction of electricity by artificial means or means not authorized by the complainant. It is not the case of the appellant that he was having authorized meter or authorized electricity connection in the premises. The complainant discharged its onus of proving abstraction of electricity by examining members of inspection team, producing the devices through which electricity was being abstracted and proving the mode of abstraction. Once this onus was discharged, the onus was on the appellant to show that he was not indulging into abstraction of electricity. The appellant failed to discharge this onus and the trial court rightly convicted the appellant.

8. The plea taken by the appellant that the total load was not assessed on the spot is also baseless. The total load being used in Industrial Unit is a total sum of loads of all machines found installed in the Industrial unit. The inspection note gives details of all the machines found installed there with their respective loads. Merely because a sum total has not been written does not mean that total load was wrongly stated. Inspection report had annexure 'C' being Exh. CW-2/B running into three pages where load of each machine is specified and total has been written at the end of the calculation as 290.062 KW. Merely because this total sum was not mentioned in the other part of the report does not mean the total load was not calculated on the spot. Even otherwise that makes not much of the difference whether the total connected load was 290 or 250 or 340 KW. The issue is

whether the appellant was indulging into theft of electricity and that was proved beyond reasonable doubt.

9. The fact that appellant was not arrested on spot does not disprove the case of complainant/respondent. In fact the cognizance of an offence of theft of electricity can be taken only by special court constituted under Electricity Act and that also on a written complaint. That explains why police does not arrest electricity thieves. Non-examination of independent public witness is no infirmity. The members of inspection team, who testified in Court were having no enmity against the appellant and their testimony is trustworthy.

I find no force in the appeal. The appeal is hereby dismissed.

December 22, 2010
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SHIV NARAYAN DHINGRA, J.