

**CRL.A No. 622 of 2012
C/W CRL.A No. 645 of 2012
AND CRL.A No. 898 of 2012**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19th DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.622 OF 2012

CONNECTED WITH

CRIMINAL APPEAL NO.645 OF 2012

AND

CRIMINAL APPEAL NO.898 OF 2012

IN CRL.A NO.622/2012

BETWEEN:

1. SHAMIULLA
S/O. KHADIR SAB
AGED ABOUT 28 YEARS
OCC:MASON
RESIDING AT SEEGBAGE
BHADRAVATHI, SHIMOGA DISTRICT.
2. MARUTHI
S/O. THIMMEGOWDA
AGED ABOUT 25 YEARS
OCC:AGRICULTURIST
RESIDING AT ASHWATH NAGAR
BHADRAVATHI, SHIMOGA DISTRICT.

...APPELLANTS

(BY SRI P.B. UMESH, ADVOCATE FOR
SRI R.B. DESHPANDE, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY HALEBEEDU POLICE STATION

...RESPONDENT

(BY SRI DIVAKAR MADDUR, H.C.G.P.)

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**CRL.A No. 622 of 2012
C/W CRL.A No. 645 of 2012
AND CRL.A No. 898 of 2012**

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C PRAYING TO SET ASIDE THE CONVICTION AND SENTENCE DATED 30-4-2012 PASSED BY THE ADDITIONAL SESSIONS JUDGE AND SPECIAL JUDGE, HASSAN IN SPECIAL CASE NO.105 OF 2010-CONVICTING THE APPELLANTS/ACCUSED NOS.3 AND 2 FOR THE OFFENCE PUNISHABLE UNDER SECTION 136 OF INDIAN ELECTRICITY ACT, 2003 AND SECTION 379 OF IPC AND ETC.

IN CRL.A NO.645/2012

BETWEEN:

1. MANJUNATHA
S/O. GANGADHARA
AGED ABOUT 38 YEARS
BAR BENDING WORK
SURAGI THOPU
BHADRAVATHI
SHIMOGA DISTRICT.
2. MANJUNATH @ KATHLE MANJA
S/O. SHANKARAPPA
AGED ABOUT 28 YEARS
CARPENTER, HOSAMANE
BHADRAVATHI
SHIMOGA DISTRICT.

...APPELLANTS

(BY SRI B.S. PRASAD, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY HASSAN RURAL POLICE STATION

...RESPONDENT

(BY SRI DIVAKAR MADDUR, H.C.G.P.)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C PRAYING TO SET ASIDE THE CONVICTION AND SENTENCE DATED 30-4-12 PASSED BY THE ADDITIONAL SESSIONS JUDGE, AND SPECIAL JUDGE, HASSAN, IN SPECIAL

**CRL.A No. 622 of 2012
C/W CRL.A No. 645 of 2012
AND CRL.A No. 898 of 2012**

CASE NO.105/10-CONVICTING THE APPELLANTS/ACCUSED NO.1
AND 6 FOR THE OFFENCE PUNISHABLE UNDER SECTION 136 OF
INDIAN ELECTRICITY ACT, 2003 AND SECTION 379 OF IPC AND
ETC.

IN CRL.A NO.898/2012

BETWEEN:

1. ALTAF AHAMAD
S/O. ABDUL KAREEM
AGED ABOUT 35 YEARS
MASON WORK
HANUMANTHANAGARA
BHADRAVATHI.
2. SANTHOSHA
S/O. CHANNAPPA
AGED ABOUT 26 YEARS
AUTO DRIVER
HOSAMANE
BHADRAVATHI.
3. KUMARA
S/O. ELUMALAI
AGED ABOUT 18 YEARS
PAINTING WORK
HANUMANTHANAGARA
BHADRAVATHI.

...APPELLANTS

(BY SRI B.S. PRASAD, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY HALEBEEDU POLICE

...RESPONDENT

(BY SRI DIVAKAR MADDUR, H.C.G.P.)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2)
OF THE CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF
CONVICTION AND SENTENCE DATED 30-4-2012 PASSED BY THE
ADDITIONAL SESSIONS JUDGE, HASSAN IN SPECIAL CASE

**CRL.A No. 622 of 2012
C/W CRL.A No. 645 of 2012
AND CRL.A No. 898 of 2012**

NO.105 OF 2010 - CONVICTING THE APPELLANTS/ACCUSED NOS.4, 5 AND 7 FOR OFFENCES PUNISHABLE UNDER SECTION 136 OF INDIAN ELECTRICITY ACT, 2003 AND SECTION 379 OF IPC AND ETC.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED ON 05-12-2025, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

Criminal Appeal No.622 of 2012 is filed by the appellants/accused Nos.2 and 3, Criminal Appeal No.645 of 2012 is filed by the appellants/accused Nos.1 and 6, and Criminal Appeal No.898 of 2012 is filed by the appellants/accused Nos.4, 5 and 7 praying to set-aside the judgment of conviction and order on sentence dated 30.04.2012 passed by the learned Additional Sessions Judge, at Hassan, in Special Case No.105 of 2010, whereby the accused are held guilty for the offences punishable under Section 136 of the Indian Electricity Act, 2003 (for short, 'Electricity Act') and Section 379 of the Indian Penal Code, 1860 (for short, 'IPC') and are sentenced to undergo simple imprisonment for two years each for the aforesaid offences.

2. Brief facts of the prosecution case are that on 04-9-2010 at about 1.25 a.m., there was interruption in supply of electricity on Hassan-Beluru K.V. Line. Hence, the complainant along with his staff went to inspect the line and found that, within the limits of Moolenahalli, some miscreants had cut and stolen the copper wires, and the total value of the wires was Rs.24,000/-. Hence, on 04-09-2010 at 1:25 a.m., PW1 lodged a complaint. Based on the complaint, the case has been registered and the Investigating Officer laid the charge-sheet against the accused.

3. After receipt of the charge-sheet, the trial Court complied with Section 207 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') by supplying prosecution papers and framed charges against the accused for the aforesaid offences. The accused pleaded not guilty and claimed to be tried. Thus, the prosecution in order to prove its case, examined in all eighteen witnesses as PW1 to PW18, got marked fourteen

documents as per Exs.P1 to P14 and five material objects as per MOs.1 to 5. Assessing the entire evidence, the trial Court arrived at a conclusion that, the accused committed the offences charged against them and thus, convicted them for the offences punishable under Section 136 of Electricity Act and under Section 379 of IPC. Being aggrieved by the same, the accused have preferred these appeals.

4. Heard the learned counsel for the appellants and the learned High Court Government Pleader for the respondent-State.

5. Sri P.B. Umesh, learned counsel and Sri B.S. Prasad, learned counsel for the appellants, have contended that the conviction and sentence passed by the trial Court is contrary to law, evidence and probabilities of the case. The prosecution is guilty of material suppression of evidence and has not come forward with true origin of the incident. There is delay in filing the complaint and the delay has been conveniently used by the prosecution to

foist a false case against the accused. The trial Court has mainly relied on the evidence of PWs.2 to 4, which is full of material omissions, contradictions, and suffers from infirmities. The trial Court also relied upon the evidence of PW7 and PW8 and contents as per Ex.P2-spot mahazar wherein PWs.9 to 11 have not supported the case of the prosecution and thus recovery of articles in the case is not proved. Further, the Investigating Officer has not followed due procedures while seizing the articles and therefore, the recovery itself is doubtful. The trial Court should have given the benefit of doubt and acquitted the accused. The trial Court ought to have extended the benefit available under Sections 3 and 4 of the Probation of Offenders Act, 1958, to the accused. On all these grounds, they prayed to allow the appeals.

6. *Per contra*, Sri Divakar Maddur, learned High Court Government Pleader for the respondent-State, submits that the trial Court convicted the accused based on the material evidence available before it. The recovery of material objects at the instance of the accused is proved

by examining the independent witnesses to seizure mahazars. All the witnesses have supported the case of the prosecution and hence, no interference is called for by this Court. Thus, he prayed to dismiss the appeals.

7. In view of the submissions made by the learned counsel for both parties, the point that arises for the Court's consideration is:

"Whether the judgment and order of conviction and sentence passed by the trial Court requires interference at the hands of this Court?"

8. Firstly, to connect the accused to the theft of copper wires, the prosecution must establish specific legal elements of the offence and provide concrete evidence linking the individual to the crime. The primary burden of proof is on the prosecution to prove the guilt beyond reasonable doubt. Secondly, the prosecution must prove that the accused had willful and dishonest intention in committing theft of electric wires. The act of committing theft of electric wires for personal gain is often considered *prima-*

facie evidence of this intention. Thirdly, the prosecution must prove the physical act of the accused that he performed the physical act of cutting, removing, taking away, transferring, possessing the electric lines or materials without the owner's consent. Fourthly, the act must have been done without the authorisation or consent of the licensee or owner of the property. Fifthly, the property in question must be identified as the specific electric lines or materials that were stolen. Sixthly, if the accused cannot provide a reasonable or legal explanation for possessing the materials, his conduct can fortify the allegations of theft.

9. In the light of the above propositions, it is just and necessary to analyse the evidence of the prosecution witnesses.

10. The complaint was lodged by PW1-Harish Kumar, who was working as Junior Engineer, Beluru Branch, KPTCL. He has stated that on 04-9-2010 at about 1:25 a.m., there was interruption in the electricity supply in line drawn between Beluru and Hassan, and on inspection, he found that

180 meters of copper wires was stolen. Hence, he informed the said fact to his superior Officers and lodged the complaint as per Ex.P1. The Police visited the spot and drew spot mahazar as per Ex.P2 in his presence at the scene of occurrence. He has further stated that, the Police called him to the Police Station, where he saw Tata Sumo vehicle and in the said vehicle, the stolen Copper wires, axe-saw frame, cutting-plier and PVC pipes were kept. PW.1 further states that he has not seen accused persons at that time. He identified MOs.1 to 4. He further stated that approximate cost of copper wires was Rs.24,000/-. He turned hostile to the case of the prosecution. In the cross-examination, nothing has been elicited to discredit his testimony.

11. The evidence of PWs.2 to 4 would reveals that they were working as lineman in the KPTCL department. They further stated that on 04-9-2010, there was theft of electric copper wires. But, when they went to the said spot along with PW1, the said wire was not there and they informed the said fact to the higher Officers. They further stated that, the

Police have not called them to the Police station and they do not know who are the accused persons and they don't know about the converting of Copper wire into ingots. Hence, they have turned hostile to the case of the prosecution and in the cross examination, nothing worthwhile has been elicited. The fact that PW1 to 4 have not stated about seizure of any articles, identity of accused persons and seizure of copper ingots in their presence. Thus, the evidence of PW1 to 4 does not come to the aid of the prosecution. PW.5 Devaraju, Junior Engineer and PW.6 Sathish, Junior Engineer have stated about theft of electric copper wires, but they do not know who has committed theft.

12. PW.7-Mahesha and PW.8-Kantharaju, are the independent witnesses to the mahazar Ex.P2. They have stated that on 04-09-2010 the Police drew mahazar in connection with theft of Wires at Moolenahalli village and seized Wire, PVC Pipe and though, both the witnesses have been cross-examined, nothing has been elicited so as to support the case of the prosecution.

13. PW.9-Mohamad Fasiulla, receiver of stolen properties has also turned hostile to the case of the prosecution.

14. PW.10-Khaleel Ahamad and PW.11-Noushad, are the witnesses for recovery mahazar Ex.P9 for having recovered 44 ingots from the shop of PW.9. However, they have turned hostile to the case of the prosecution. In the cross examination, they have not supported the case of the prosecution.

15. PW.12-Krishna, who is witness to seizure mahazar Ex.P10, in whose presence, the police seized 14 copper ingots and four copper bundles, turned hostile to the case of the prosecution, however, in the cross -examination, he admits that police have seized 14 copper ingots and 4 copper bundles in his presence. PW.12 has not stated that at the time of seizure of copper ingots and copper bundles, the accused persons were present in the police station.

16. PW.13 Venkatesha, another seizure mahazar witness has stated that, the police seized 14 copper ingots in his presence under Ex-P10 seizure mahazar. However, he has not stated that the accused persons were present at the time of seizure of copper ingots.

17. PW.14-Ramachandra, the then P.S.I., of Halebeedu police station has stated that on 16.09.2010, he received further investigation of this case from C.W.15 Kempalingaiah, ASI and perused his investigation. He has further stated that, C.W.15 received complaint from PW.1 on 04.09.2010 and registered the case, drew mahazar as per Ex-P2. At the time of conducting mahazar, C.W.15 seized one and half length copper wire, a axle blade without PVC pipe and recorded statement of PW.5 Devaraju, PW.6 Satish, PW.2 Rangaiah, PW.3 Mahesh Kumar and PW.4 Jayaramu respectively. He has further stated that, himself and PW.15 Raghu visited Hagare forest area on 24.09.2010 and found a Tata Sumo Vehicle bearing registration No.KA-02-B-9024 in the said forest area. On inspection of the said vehicle, they

found copper wire bundles and seven persons. Hence, PW.15 brought the vehicle, seized articles and said seven persons to the police station.

18. In the cross examination, PW.14 admitted that the distance between Hagare sub-police station and the place where Tata Sumo vehicle is parked is about one and half kilometer. He does not know as to whether the Investigating Officer conducted any mahazar where the Tata Sumo vehicle was parked. The IO did not conduct any mahazar in his presence. They did not count the copper bundles near forest place. It shows that PW.14 has stated about the registration of case and investigation done by C.W.15. PW.14 though stated about seizure of copper wire bundles and securing seven persons in his presence, however, in the cross examination, he has given a clear go-bye to his earlier version.

19. PW15, Raghu, The Inspector of Police, Beluru Circle, has stated that on 24-9-2010, when he was on patrolling duty, he received credible information and thus, he

along with his staff went to Hagare Reserve Forest and noticed the accused, who were in Tata Sumo vehicle, bearing Registration No.KA-02 B-9024, and also noticed 14 bundles of electric copper wires. Thus, he enquired the accused and they informed that they committed theft of electric copper wires near Moolenahalli village and said wires were installed to the electric towers. Hence, he secured the accused, Tata Sumo vehicle and came to the Police Station, recorded the voluntary statements of the accused, and drew Ex.P7-seizure mahazar and seized 14 bundles of electric copper wires, weighing 85 kgs 935 grams. He further stated that accused No.1 gave his voluntary statement stating that soon after committing theft, they sold the copper wires to PW.10 Khaleel Ahmed. Pursuant to his voluntary statement, they went to the scrap shop of PW.10 Khaleel Ahmed situated at Chennagiri, where, accused No.1 showed PW.10 to whom, he had sold the copper wires and the copper wires in turn were converted into ingots, thus, he seized the said ingots in the presence of PW.9 M.D. Fasiulla and PW.11 Naushad under Ex-P7.

20. PW.16-Nagesh, Constable, Halebeedu Police Station, PW.17-Somegowda, P.S.I., Halebeedu Police Station and PW.18-K. Kambegowda, Senior Civil Judge and JMFC, Beluru, who are the official witnesses, have supported the case of the prosecution with regard to theft of electric copper wires near Moolenahalli village, same was converted into copper ingots, lodging of complaint-Ex.P1, spot mahazar-Ex.P2, and recording of statements given by the witnesses as per Exs.P12 to P14.

21. In the instant cases, except, the evidence of PWs.14 and 15, who are PSI and CPI, other official witnesses or any independent witnesses have not supported the case of the prosecution. In Special Case No.118/2010, the IO seized 117 kgs of electric copper wires, from the same place and same vehicle and in Spl.CNo.105/2010, the IO seized 85 kgs electric copper wire in the same place and same vehicle. In Spl.C.No.118/2010, the IO seized four copper ingot whereas in Spl.C.No.105/2010, the IO seized 14 copper ingots. There is no clear evidence in the testimony of PW.14 and 15 as to

the seizure of total electric copper wires and copper ingots. There is material contradictions in their testimonies as to seizure of electric copper wires and copper ingots. Their testimonies are not supported by any independent witnesses. None of the prosecution witnesses have identified the accused persons before the Court with their specific names. Though PW.15 recorded voluntary statement of accused No.1, however, the prosecution has not marked such statement in evidence. Further, there was no recovery of subject matter of theft in the manner stated under Section 27 of the Indian Evidence Act. In the absence of proof of recovery in the manner stated above, the trial Court has wrongly connected the appellants to the crime and convicted them on uncorroborated testimonies.

22. The trial Court wrongly appreciated the oral and documentary evidence on record and has not assigned proper reasons and has convicted the accused for the charged offences. Hence, the trial Court by convicting the appellants committed error by convicting the appellants.

Therefore, in the facts and circumstances of the case, the appeals filed by the accused deserve to be allowed. Hence, the following:

ORDER

- i. Criminal appeals are ***allowed***.
- ii. The judgment of conviction dated 30-4-2012 in Special Case No.105 of 2010 passed by the Additional Sessions Judge, at Hassan, against the appellants/accused Nos.1 to 7 for the offences punishable under Section 136 of the Electricity Act, 2003, and under Section 379 of the Indian Penal Code, 1860, is hereby set aside.
- iii. Appellants are acquitted of the charges leveled against them.
- iv. The appellants are set at liberty, if they are not required in any other case.

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- v. The bail bonds, if any, of the appellants shall stand cancelled.

The Registry is directed to return the trial Court record with a copy of this judgment, forthwith.

**Sd/-
(VENKATESH NAIK T)
JUDGE**

AM