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(04)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CR.M.P. NO. 439 OF 2009

Agg A 196 of

APPELLANT :

COMPLAINANT

Executive Engineer (O & M)

Division Chhattisgarh State

Electricity Board, Sakti, District

Janjgir-Champa (C.G.).

P.R. No. 3843/09
Presented by Shri R. Tiwari
Dated 18/8/09
11:07 AM

RESPONDENT :

ACCUSED PERSON

VERSUS

Ram Krishna

Shri Ramadhar Nishad, aged about

40 years Son of Kanhairam Nishad,

through Gulabbai Binobanagar,

Raigarh, District Raigarh (C.G.).

APPLICATION FOR GRANT OF SPECIAL LEAVE TO APPEAL UNDER
SECTION 378 (4) OF THE CODE OF CRIMINAL PROCEDURE,
1973

8/5/15

44

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQUITTAL APPEAL NO. 196 OF 2009

APPELLANT
(Complainant)

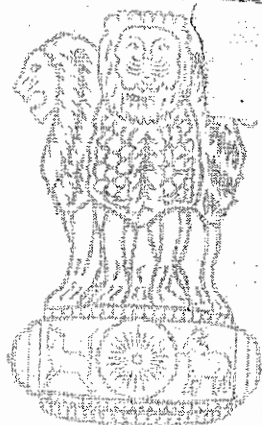
Executive Engineer (O&M),
Division, C.S.E.B. Sakti

VERSUS

RESPONDENT
(Accused)

Shri Ramkrishna Nishad

POST FOR PRONOUNCEMENT OF JUDGEMENT ON 05-01-2015



सत्यमेव जयते

Sd/-
P. Sam Koshy
Judge

05-01-2015

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQUITTAL APPEAL NO. 196 OF 2009

APPELLANT
(Complainant)

:

Executive Engineer (O&M),
Division, C.S.E.B. Sakti

VERSUS

RESPONDENT
(Accused)

:

Shri Ramkrishna Nishad

Present: Mr. M.D. Sharma, Advocate, for the Appellant.

(Single Bench : Hon'ble Mr. P. Sam Koshy, J.)

JUDGEMENT
(05-01-2015)

(1) The present Acquittal Appeal has been preferred by the Appellant against the judgement of acquittal dated 4.4.2009 passed by the Special Judge (Electricity Act), Janjgir, District Janjgir-Champa, in Special Electricity Criminal Case No.03/2008, whereby the Respondent has been acquitted of the charge under Section 135(a) of the Electricity Act, 2003.

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(2) Brief facts giving rise to the filing of the instant Acquittal Appeal as per the complaint are that on 14.9.2006 on a sudden inspection of the premises of the Respondent by the Executive Engineer (O&M), C.S.E.B., Sakti, along with other officers of the Electricity Board, it was found that the Respondent had taken an electricity connection illegally by directly hooking 10mm aluminium wire measuring 150mtr in length from the Low Tension line of 100KVA and therefrom he was using a submersible pump of 5HP for agriculture purpose illegally. In this connection, it is said that Panchnama and seizure memo was prepared at the spot. It was held that the Respondent had put the Electricity Board to a loss of Rs.10,250/-. Thereafter, a complaint case (i.e. 'Special Electricity Criminal Case No.03/2008') was filed before the Special Judge

(Electricity Act), Janjgir, against the Respondent for having committed the offence under Section 135(a) of the Electricity Act, 2003, and the matter was put to trial.

(3) During the course of trial, four witnesses i.e. PW-1 V.R. Mourya, Executive Engineer; PW-2 P.K. Sharma, Junior Engineer; PW-3 Phoolranjan Tigga, Junior Engineer and PW-4 Maheshram were examined by the prosecution in support of its case. Statement of the accused Respondent was recorded under Section 313 of CrPC in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

(4) After completion of the trial, the Court below, i.e., the Special Court constituted under the Electricity Act, vide its judgement of acquittal dated 4.4.2009 reached to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt against the Respondent and, therefore, giving the benefit of doubt the Respondent was acquitted of the charge leveled against him under Section 135(a) of the Electricity Act.

(5) It is this judgement of acquittal dated 4.4.2009 against which the instant Acquittal Appeal has been preferred by the Appellant.

(6) Learned Counsel for the Appellant, Shri M.D. Sharma, has submitted that in fact the Court below has too technically not accepting the case of the prosecution acquitted the Respondent. Learned Counsel also submits that the Court below has not properly appreciated the oral and documentary evidence adduced by the prosecution and has discarded the admissible evidence and, in the course, the Court below has decided the matter contrary to law. Learned Counsel for the Appellant further submitted that it was the duty of the Respondent to prove the case of the disputed premises not being his own or at least the Respondent could have put some questions to the prosecution.

witnesses in respect of the ownership and title of the premises being that of the Respondent. It was also contended by the learned Counsel for the Appellant that the third proviso to Section 135 of Electricity Act, 2003 clearly gives a benefit of presumption to be made and the Court below has totally ignored the said third proviso to Section 135 of the Electricity Act, 2003 that unless the contrary is proved it has to be presumed that the accused/Respondent was dishonestly using the electricity of the Appellant/Electricity Board. Learned Counsel for the Appellant also submits that only because the independent witness has turned hostile and has not supported the case of the prosecution by itself would not vitiate the prosecution case if the other prosecution witnesses have been able to prove its case by leading proper evidence before the Court below and that from their evidence if the Respondent has not been able to bring out any substance to the extent of creating a doubt in the mind of the Court bringing out such facts so as to disbelieve the entire version of the prosecution witnesses. For the above stated reasons, learned Counsel for the Appellant submits that the instant Acquittal Appeal deserves to be allowed and by setting aside the order passed by the Court below, the Respondent be convicted for the offence under Section 135(a) of the Electricity Act, 2003.

In support of his contentions, Counsel for the Appellant has relied upon the judgements reported in 2001 Cr.L.J. 504; 2009 Cr.L.J. 4100; 2008 Cr.L.J. 4034; 2013 Cr.L.J. (NOC) 441; 2006 (2) Cr.L.J. 1121; AIR 2002 SC 1621 and 2006 (10) SCC 617.

(7) Considering the contentions put forth by the learned Counsel appearing for the Appellant and on perusal of the materials available on record including the impugned judgement, if we see the evidences that have been lead on behalf of the prosecution it reflects that the prosecution has failed to prove its case beyond reasonable doubt and that there are many lacunas on the part of the prosecution in establishing its case inasmuch

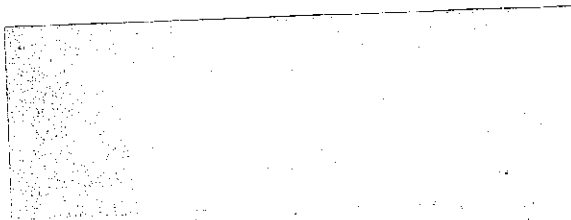
as from the cross-examination of PW-1 V.R. Mourya itself it is clear that prior to the inspection, the inspecting team had not given any written notice in respect of the search and also in respect of the entry to the premises of the Respondent, as is required under Section 135 (3) of the Electricity Act. Further, according to the prosecution witnesses, the Respondent was present during the course of inspection proceeding and that the Respondent had refused to sign the documents and run away from the spot, but the independent witness PW-4 Maheshram has stated that at the time of incident the Respondent was not present at the village and further according to the said independent witness the Respondent was working as Mason at Raigarh. Thus, the presence of the Respondent at the inspected premises during the inspection proceeding appears to be doubtful. Similarly, the independent witness PW-4 Maheshram has not supported the case of the prosecution in any manner and has turned hostile and, therefore, the case of the prosecution cannot be said to have been proved with the support of any independent witness.

Another element of doubt is in the seizure made by the prosecution inasmuch as according to the complaint the Respondent was committing theft of electricity by taking direct connection from the post of the Electricity Board with the aid of 150mtr long aluminium wire, however, when we see the evidence of the prosecution witnesses as well as the Panchnama (Ex.P-1) and Seizure Memo (Ex.P-2) it reflects that the seizure was made only for 40mtr wire. The prosecution has failed to give any satisfactory explanation as to why the whole 150mtr wire was not seized by the inspecting team and that the whereabouts of the remaining 110mtr wire has also not been disclosed by the prosecution. Similarly, from the evidence of the prosecution witnesses, it also reflects that there was no seizure of submersible pump or any other electrical apparatus which were being used in the alleged theft of electricity and thus as regards

the assessment of the inspecting team that the Respondent had committed a theft of 5HP of electricity, the same cannot be said to have been properly done as there was no equipment/machinery was seized on the basis of which it could be said that the theft was that of 5HP. This act on the part of the prosecution also gives rise to a great element of doubt on the alleged story of theft.

In addition, the prosecution has failed to establish the fact that it was the Respondent who had installed the said 5HP submersible pump. Similarly, the prosecution has also failed to establish the fact that the inspected premises where the said submersible pump was allegedly being used by the Respondent in-fact belonged to the Respondent. No articles alleged to have been used in the theft were seized in the course of inspection. From the evidence of the prosecution witnesses, particularly, PW-1 V.R. Mourya, it is clear that they have not verified as to whether the inspected premises where the said pump is said to have been used was in fact belonged to the Respondent or not. The prosecution has also failed to establish by producing any document/revenue record to ascertain the fact that the inspected premises belonged to the Respondent. No revenue record or the evidence of Patwari has been adduced by the prosecution in this regard. Thus, the ownership of the premises where the alleged theft of electricity was committed has also not been established by the prosecution.

(8) If we peruse the provisions of the Electricity Act, 2003, it is evidently clear that Section 135 deals with the theft of electricity offences and penalties therein. After report of the theft of electricity, cognizance of the offence under the Electricity Act is taken as per the provision of Section 151 of the said Act which deals as to how cognizance of an offence has to be taken. For ready reference, the provision of Section 151 is reproduced herein under:



"151. Cognizance of offences.- No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

1 [Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]"

(9) After taking cognizance of the offence, the matter is placed before the Special Court constituted for this purpose by the State Government as per the provision of 153 of the Electricity Act. Further, if we see the Rules framed under the Electricity Act, 2003, known as Chhattisgarh State Electricity Rule, 2006 (for short, 'the Rules of 2006') which came into force with effect from 22.03.2006, Rule 5 deals with entry, search and seizure in respect of the unauthorized use and theft of electricity, which is reproduced below:- सत्यमेव जयते

"5. (i) For the purpose of detection of theft as defined in Section 135 of the Act the officer of Board/distribution licensee are authorised to carry out functions of the entry, search and seizure as per Section 135 of the Act. Assistant Electrical Inspector or Chief Electrical Inspector of Government of Chhattisgarh shall also be authorised for making entry, search and seizure for the purpose of detection of theft.

(ii) The officers, entering, inspecting, breaking open, searching any place shall record the reasons for doing so in Form-2.

(iii) In case the inspection, search and seizure of any domestic place or domestic premises is to be carried out as per sub-section (2) of Section 135 of the Act, the reasons for doing so shall have to be recorded in Form 3 by the officer not below the rank of Assistant Engineer of Distribution Licensee or Assistant Electrical Inspector of the Chief Electrical Inspectorate. A Panchnama shall also be made in Form 4."

Similarly, Rule 7 of the said Rules of 2006 lays on the procedure as to how assessment of charges for unauthorized use and theft of electricity and payment thereof has been enumerated. For ready reference, the relevant portion of Rule-7 is reproduced herein under:

- "7. (i) On inspection of the premises, if any consumer or person is found to indulged in unauthorized use of electricity, the assessing officer, taking into consideration the facts and circumstances of the case, shall may a provisional assessment of the charge payable by the owner or occupier the premises who is benefited by indulging in unauthorized use of energy may have given benefit to any other person.
- (ii) The provisional assessment shall be made by the assessing officer and the provisional assessment order shall be served upon the person in occupation or possession or incharge of the place or premises in Form 5.
- (iii) For the purpose of assessment, the following officers shall be the assessment officers:-
- (a) Chief Electrical Inspector or an officer authorized by the Chief Electrical Inspector not below the rank of Assistant Electrical Inspector.
 - (b) Following officers of Board or distribution licensee:- सत्यमेव जयते
 - (i) Officers of the rank of Assistant Engineers for all LT connection up to 15 KW connected load.
 - (ii) Officers of the rank of Executive Engineers for all LT connections of more than 15 KW connected load.
 - (iii) Officer of the rank of Superintending Engineers and above for all HT connections:
 - (iv) The provisional order of assessment made by the assessing officer shall be served upon the person within a period of three (3) days from the date of inspection. Assessment shall be made as per the provisions contained in Section 126 of the Act.
 - (v) The person to whom the order of provisional assessment has been served upon may file his objections or acceptance

or partial acceptance within 7 days from the date of receipt of the provisional order. The assessing Officer may finally pass a final order in Form 6 after taking into consideration the objections/acceptance/partial acceptance of the person/consumer within one month of the date of the order of provisional assessment. However, the assessing officer if he considers so necessary may allow personal hearing to the person/ consumer assessed."

(10) On perusal of the evidences and the documents that have been brought before the Court below, it is evidently clear that on the date of inspection i.e. on 14.9.2006, the inspecting squad has not given intimation to the Respondent as is required under Form-2 of the Rules of 2006 nor had the inspecting squad intimated the Respondent or his family members about the purpose of inspecting their premises as is required under Form-3 of the Rules of 2006, which is a mandatory requirement under the said Rules as is envisaged under Part-III of the said Rules. Further, the provisions of Section 7 of the Rules of 2006 clearly deals with the steps to be taken immediately after the inspection when it is found that there was an unauthorized use of electricity. As per Section 7 of the Rules of 2006, the assessing officer taking into consideration the facts and circumstances of the case shall make a provisional assessment of the charge payable by the owner or occupier of the premises on account of the unauthorized use of electricity and the same has to be served upon the person in occupation or possession of the said premises within a period of three days. Thereafter, the concerned violator/ user of the unauthorized electricity shall be given an opportunity to file his objection to the provisional assessment within a period of seven days whereby the person concerned may either accept the assessment in whole or in part and thereafter the Officer may pass a final order taking into consideration the objections of the person using unauthorized electricity. This provision as is required under Section 7 of the Rules of 2006 also does not appear to have been complied with/ followed by the officers of the Electricity Board and it appears that straightway they had initiated a proceeding u/s 135(a) of the Electricity Act, 2003.

The prosecution has not been able to establish that as to how the requirements of the mandatory provisions of the Electricity Act, 2003 and the Rules of 2006 framed therein have been complied with. In view of the fact that there is a clear non-compliance of the mandatory compliance of the provisions of the Rules of 2006 framed under the Electricity Act, 2003, the entire proceeding allegedly initiated by the officers of the Electricity Board gives rise to a great element of doubt.

(11) Thus, taking into consideration all these facts and circumstances of the case, the Court below has reached to the specific finding that firstly the prosecution has miserably failed to establish its case and secondly the prosecution has failed to comply many mandatory requirements of the provisions of the Electricity Act, 2003 and the Rules of 2006 framed therein and, therefore, giving the advantage of it to the accused Respondent, the Court below vide impugned judgment acquitted the Respondent of the charge under section 135(a) of the Electricity Act, 2003.

(12) For the foregoing reasons and the evidences which have come on record, it can be safely concluded that there is no perversity in the judgment of the Court below as it cannot be said that the impugned judgment is not based on the evidence or the evidence on record has not been properly appreciated by the Court below which may warrant interference by this Court.

(13) In the instant case, learned Counsel for the Appellant has relied upon the matter of *State Govt. of NCT of Delhi Vs. Sunil and Another* [2001 Cr.L.J. 504]. Relying upon Para-19 of the said judgement, learned Counsel for the Appellant submitted that the requirement of calling upon independent and relied upon witnesses to lead evidence to prove the case of the prosecution would not be necessary, particularly, when the proceedings have been drawn under the provisions of the Electricity Act, 2003. But, the same would had been required if it is a case where certain

specific seizure to be done from the accused person then the presence of the independent witness would have been relevant. Similarly, learned Counsel for the Appellant also relied upon the decision rendered by Punjab and Haryana High Court reported in 2009 Cr.L.J. 4100 titled as "*Surinder Pal & Ors. Vs. State of Punjab*", wherein the Counsel for the Appellant stressed upon Para-17, so far as the search and seizure is concerned.

However, the said contention of the learned Counsel for the Appellant cannot be accepted for the reason that a plain perusal of the provisions sub-section 5 of Section 100 of CrPC clearly envisages the fact that the provisions of requirement of an independent witness is for both the instances, i.e., for search as well as for seizure. If we read the entire Section, i.e., Section 100 of CrPC and the said sub-section enumerated therein it would clearly show that the intention of the legislators requiring an independent witness was to show that whatever action has been taken by the team conducting search and seizure act in an unbiased manner and are arbitrary or have made out a false complaint only on papers so as to implicate a person. The persons of an independent and respectable inhabitant of the locality would prove the fact of search as well as the findings made in the course of the search. Hence, the said judgements would also not come to the aid of the Appellant.

(14) Learned Counsel for the Appellant has further relied upon the decision rendered by Gujarat High Court in "*Gopalbhai Chandubhai Rana Vs. State of Gujarat*" reported in 2008 Cr.L.J. 4034, wherein the Counsel for the Appellant relied upon in Para-11 of the said judgement and relying upon the said judgement, learned Counsel for the Appellant tried to emphasize the fact that there was no reason whatsoever to disbelieve the evidence lead by the prosecution witnesses, particularly, the officers of the Electricity Board and, therefore, the judgement of acquittal granted by the Court below deserves to be set aside.

However, in the instant case the said judgement cannot be made applicable for the reason that the finding of the Court below was not that the witnesses on behalf of the prosecution were not reliable but the finding of the Court was that the deposition of the prosecution witness was disbelieved by the Court on account of various contradictions that was there amongst the evidences of the prosecution witnesses and the benefit of which given to the accused person. As such the said judgement cannot be made applicable to the facts of the instant case.

(15) Similarly, learned Counsel for the Appellant in addition has relied upon the following judgements with regard to the disbelieving of the prosecution witnesses:-

- 2013 Cr.L.J. (NOC) 441 (KAR.) - Ningappa Parmanna Curikar Vs. State.
- 2006 (2) Cr.L.J. 1121- Radha Mohan Singh Vs. State of U.P.
- AIR 2002 SC 1621 - Bhagwan Singh & Ors Vs. State of M.P.
- 2006 (10) SCC 617 (Para-5) - V.N. Ratheesh Vs. State of Kerala.

These judgements have been cited by the learned Counsel for the Appellant to show the powers of the High Court to interfere in a judgement of acquittal in the event if the finding arrived at by the Court below is perverse, contrary to evidence. However, if we peruse the finding of the Court below it would clearly show that the Court below in fact has considered the evidences which have come before the Court below very minutely and has reached to a conclusion on the basis of the assessment made. Thus, it cannot be said that the findings are baseless or are contrary to the evidence on record. As such, the judgements cited by the Counsel for the Appellant would not be of any assistance to the Appellant in the facts of the present case.

(16) It is settled position of law that in an appeal against an order of acquittal only in exceptional cases where there are compelling circumstances and the judgment under appeal is

found to be perverse can the Appellate Court interfere with the order of acquittal. Recently, Hon'ble the Supreme Court in the case of Phula Singh Vs. State of Himachal Pradesh, AIR 2014 SC 1256, in Para-10, has in very categorical term held that: *"The appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."*

(17) Once there is an order of acquittal in favour of the alleged accused person, the same should not be interfered with very lightly unless there is a prima facie strong case with cogent, sufficient and substantial proof in favour of the prosecution brought before the Court below and which has not been considered or has been overlooked by the Court below, only then can the order of acquittal have a scope of interference.

The law in this regard is by now well settled in a series of judgement of the Hon'ble Supreme Court wherein the Supreme Court has in very categorical terms held that whenever there is an order of acquittal, the higher Courts not to upset the holding without there being very convincing reasons and comprehensive considerations. सत्यमेव जयते

That while reappreciating and reconsidering the evidence upon which the order of acquittal is based, certain other principles pertaining to other facets are to be borne in mind.

An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by trial Court.

If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. The High Court is also required to see that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal.

It is trite here to refer to a few decisions in this regard by the Hon'ble Supreme Court:

- 2007 (4) SCC 415 - Chandrappa v. State of Karnataka.
- 2012 (1) SCC 602 - State of Rajasthan v. Shera Ram.
- 2013 (5) SCC 705 - Shivasharanappa v. State of Karnataka.
- AIR 2009 SC 1542 (Para 12) - State of Punjab v. Sukhchain Singh & Anr.
- 2012 (6) SCC 589 (Para-27) - Rohtash v. State of Haryana.

(18) Thus, for the foregoing reasons, this Court is of the considered view that the finding arrived at by the Court below is purely in accordance with law and the Court below has not committed any error of law in reaching to the said conclusion of acquitting the Respondent of the charge leveled against him under Section 135(a) of the Electricity Act, 2003.

(19) The Appeal thus fails and is accordingly dismissed being totally devoid of merits.

Sd/-
P. Sam Koshy
Judge