

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1328 of 2006

JUDGMENT:

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1. This Criminal Appeal is filed by the accused challenging the judgment dated 19.9.2006 passed in STC No.4 of 2004 by the Special Court under Electricity Act Cases-cum-I Additional Sessions Judge, Ongole.

2. The case of the prosecution is as follows:

On 7.11.2002 at 8 p.m., P.W.1-G. Hari Prasad, Divisional Engineer, DPE Wing, Ongole, L.W.2-B. Guru Diwarkara Reddy, Assistant Engineer, DPE II, Sub-Division, Ongole; P.W.2-T. Chandrasekhara Rao, Additional Assistant Engineer, Operation, C.S. Puram inspected the house premises having service connection No.332 of C.S. Puram village in Prakasam District. One Baireddy Venkata Narayana was the owner of the said house. P.W.1 and others inspected the said house and found theft of energy being committed from the LT line with the help of two numbers black PVC wires by bypassing the meter. The Service connection was earlier disconnected on 22.9.2002 for non-payment of assessment charges and for theft of energy. At the time of inspection Boyala Parvathi,

B. Lakshmi Narayana and the accused were present. On the report given by P.W.1, a case in Crime No.1947 of 2002 for the offence under Section 44 of the Indian Electricity Act was registered. During the course of investigation, it was established that the service connection No.332 was released to Baireddy Venkata Narayana and he had been to Tamil Nadu on cattle business, his brother-accused was residing in that house along with his family members. The said premises were earlier inspected by P.W.1 on 29.8.2002 and found theft of energy by bypassing the meter. The wife of the present accused was present and she signed in the inspection notes. The

accused subsequently paid 50% of the assessed amount i.e., Rs.5,170/- and compound fee of Rs.1000/- and therefore, earlier criminal proceedings were dropped. Against he committed the same offence by directly tapping the power from the LT lines with the help of PVC wire and caused loss of Rs.337/-. The Inspector of Police, Vigilance and APTRANSCO Ongole filed charge sheet against the accused for the offences punishable under Sections 39 and 44 of the Indian Electricity Act. The trial Court took the charge sheet on file for the offence punishable under Sections 39 and 44 r/w 49(B)(A) of the Indian Electricity Act and numbered it as STC No.4 of 2004. After appearance of the accused, the trial Court examined him under Section 251 Cr.P.C. The accused denied the offence and pleaded not guilty.

3. During the course of trial, P.Ws.1 to 4 were examined and Exs.P1 to P12 and M.O.1 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

4. The trial Court after considering the oral and documentary evidence, found the appellant-accused guilty for the offence punishable under Section 39 of the Indian Electricity Act and convicted and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a period of one month. However, the trial Court found the appellant-accused not guilty for the rest of the offences. Aggrieved by the conviction and sentence imposed by the trial Court, the appellant-accused filed this appeal.

5. Heard and perused the material available on record.

6. From the material on record and the evidence, it is obvious that the accused committed theft of electricity. The appellant did not adduce any evidence to rebut the case of the prosecution. Further, it is

evident that the appellant committed similar offence prior to the present case. In view of the same, this Court is of the view that the trial Court has rightly convicted the appellant for the offence above offence.

7. At this stage, the learned Counsel of the appellant prayed that the appellant is doing coolie work and he is the only earning member of his family and therefore a lenient view may be taken.

8. According to the prosecution, the appellant-accused caused loss of Rs.337/- in the present case. As can be seen from the record, it is apparent that appellant-accused paid Rs.337/- by way of a demand draft. In view of the same and in view of the above submission made by the learned Counsel for the appellant, this Court is inclined to modify the sentence.

9. In the result, the conviction recorded by the Special Court under Electricity Act Cases-cum-I Additional Sessions Judge, Ongole, against the appellant-accused for the offence under Section 39 of the Indian Electricity Act is confirmed. However, the sentence of six months imprisonment imposed by the Special Court is set aside and the sentence of fine with default sentence is confirmed.

10. With the above modifications, the Criminal Appeal is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:21st July, 2016
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