

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.109 of 2015

Arising Out of PS.Case No. -10 Year- 2011 Thana -CIVIL LINE District- GAYA

Manoj Kumar, S/o Late Doman Sah, Resident of Baraji, P.S. Delha, District Gaya.

.... Appellant/s

Versus

- 1. The State of Bihar.
- 2. The Bihar State Power Holding Company Ltd. (Formally known as Bihar State Electricity Board), Patna.

.... Respondent/s

with

Criminal Appeal (SJ) No. 144 of 2015

Arising Out of PS.Case No. -10 Year- 2011 Thana -CIVIL LINE District- GAYA

Bipin Bihari Prasad, Son of Shiv Shankar Prasad, Resident of Village / Mohalla - Anand Bihar Colony, Mustafabad, P.S. Rampur, District - Gaya

.... Appellant/s

Versus

- 1. The State of Bihar through Assistant Electrical Engineer, Electric Supply Sub-division No.-1, Gaya Urban.

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.109 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur- Advocate
Mr. Sanjeet Kumar-Advocate
Mr. Amir Alam-Advocate
Mr. Vijay Anand-Advocate
Mr. D. N. Tiwari-Advocate

For the Res. No.2 : Mr. Vinay Kirti Singh-Advocate
Mr. Vijay Kumar Verma-Advocate
Mr. Akhileshwar Singh-Advocate

For the State : Mr. S. A. Ahmad-A.P.P.

(In CR. APP (SJ) No.144 of 2015)

For the Appellant/s : Mr. Ajay Kumar Thakur-Advocate
Mr. Sanjeet Kumar-Advocate
Mr. Amir Alam-Advocate
Mr. Vijay Anand-Advocate
Mr. D. N. Tiwari-Advocate

For the Res. No.2 : Mr. Vinay Kirti Singh-Advocate
Mr. Vijay Kumar Verma-Advocate
Mr. Akhileshwar Singh-Advocate

For the State : Mr. Abhay Kumar-A.P.P.



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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 22-09-2017

Cr. Appeal (S.J.) No.109 of 2015 wherein Manoj Kumar is the appellant while Cr. Appeal (S.J.) No.144 of 2015 wherein Bipin Bihari Prasad is the appellant commonly originate against the judgment of conviction and sentence dated 29.01.2015 passed by the Special Judge, Electricity, Magadh Area, Gaya in Trial No.100 of 2014, G. R. No.78 of 2011, whereby and whereunder both the appellants have been found guilty for an offence under Section 135(1)(a) of the Indian Electricity Act, 2003 and each one has been sentenced to pay fine, with regard to Bipin Bihari Prasad to a tune of Rs.94,500/- and in default thereof, to undergo S.I. for three months, Manoj Kumar to pay fine of Rs.2,92,401/- and in default thereof, to undergo S.I. for seven months.

2. PW-3 filed written report on 10.01.2011 disclosing therein that under leadership of Avinash Kumar, Senior Deputy Collector, Gaya, a raiding party was constituted consisting of electricity officials, police personnel for detecting power theft and during course thereof, at the premises of Madhur Restaurant situated at Swarajpuri Road, raid was conducted. During course thereof, stealthily consuming the energy by means of hook has been found whereupon, wire was seized under the proper seizure list. It has also



been found that the restaurant was consuming energy of 6 kilo watt (commercial). On the same road, the place of Bihari Science Tutorial having in front of S.C./S.T. Police Station was raided and during course thereof, its proprietor Bipin Bihari Prasad was found stealthily consuming the electric energy by means of hook, which was also seized, for which seizure list was prepared. The premises was found consuming electric energy of 2 K.W. Both the accused persons seeing the police fled away.

3. On the basis of the aforesaid written report, Gaya Civil Line P. S. Case No.10 of 2011 was registered under Section 135 of the Indian Electricity Act, whereupon investigation commenced and concluding the same, chargesheet was submitted paving way for trial which ultimately concluded in a manner, as indicated above, the subject matter of instant appeal.

4. Defence case, as pleaded by the appellants/ accused is that of complete denial. However, neither ocular nor documentary evidence has been adduced on their behalf.

5. In order to substantiate its case, prosecution had examined altogether six PWs, who are PW-1 Sajid Ali, PW-2 Shamim Akhtar, PW-3 Amitesh Kumar Sinha, informant, PW-4 Shashi Bhushan Ram, PW-5 Pranav Kumar Mishra and PW-6 Girish Kumar. Side by side, had also exhibited, Exhibit-1 formal F.I.R., Exhibit-2



written statement filed by Amitesh Kumar Sinah and Exhibit-3 Seizure list.

6. From the record, it is evident that neither police official nor the Magistrate has been examined. I.O. has also not been examined and no explanation has been adduced on behalf of prosecution on that very score. It is also evident that seized wire, which was allegedly seized during course of raid from different premises has also not been produced before the Court during course of trial. Only officials of electricity department have come up to substantiate the case of the prosecution. PW-6 is formal witness, who had exhibited formal F.I.R.

7. After going through the evidence of PW-1 to PW-5, it is evident that though they have narrated the prosecution case, but during course of cross-examination, virtually they have completely ruined the prosecution case by their own conduct. PW-1 at Para-7, during cross-examination had said that he had not seen any document to connect these accused persons with the respective premises. He had not seen these accused persons stealthily consuming the energy. In Para-8, he had stated that whatever he had said, that was based upon instruction of the officials of the department. PW-2 at Para-4 had said that he is unable to say what has been scribed in the written report and in likewise manner, he is unable to say what has been incorporated in



the seizure list. He had not seen anybody stealthily consuming the power. In Para-6, he had further stated that he is unable to say conclusively with regard to proprietorship of the respective premises. In Para-7, he had further stated that whatever been disclosed by the officials of the department, he had deposed on that very score. PW-3 is the informant, who had reiterated the allegation in terms of written report as well as exhibited the seizure list, written report. During cross-examination at Para-8, he had stated that he is unable to link the accused Manoj Kumar to be proprietor of Madhur Restaurant. In Para-9, he had further stated that Manoj Kumar fled away after seeing the police, but who had shown him Manoj Kumar while fleeing or Manoj had fled seeing the police, he is unable to disclose. In Para-10, he had stated that he had not seen Manoj Kumar stealthily consuming the power. When hook was there and through the aforesaid hook power was being consumed at Madhur Restaurant of which, he had identified Manoj to be proprietor, then in that event, such evidence happens to be prejudicial to the interest of the prosecution case. In Para-12, he had further stated that whatever been told by the persons of the locality, on that very basis, he had incorporated the same. In likewise manner, he had deposed with regard to Bipin Bihari Prasad at Para-14.

8. PW-4, during course of his examination-in-chief, had supported the case of the prosecution, but during course of cross-



examination, he had completely demolished the case of the prosecution wherein at Para-7, he had stated that seized hook wire is not before the Court. In Para-10, he had further stated that he had not seen anybody stealthily consuming the electricity. In likewise manner, in Para-12, he had deposed that he did not come to know anything was being done by anybody rather whatever people of the locality had said, on that very basis, he had deposed. In Para-14, he had deposed in similar way regarding Bipin Bihari Prasad.

9. PW-5 at Para-6 had stated that he had not seen anybody putting hook over the main line. In likewise manner, he is unable to connect Manoj Kumar to be proprietor of Madhur Restaurant as well as Bipin Bihari Prasad to be proprietor of Bihari Science Tutorial,

10. None of the witnesses have identified both the accused in dock. The criminal jurisprudence cast an obligation upon the prosecution to prove its case. In the aforesaid background, when accused has not been identified in Court, then in that event, there was no substantial evidence against the accused. In the aforesaid background, there should have been an effort at the end of the prosecution to connect proprietorship of the premises with the concerned accused/ appellants. True it is that appellants have not suggested anything during course of cross-examination, but after all it



happens to be an obligation on the part of the prosecution. Because of the fact that no documentary evidence has been adduced on behalf of prosecution to connect Manoj Kumar with the proprietorship of the Madhur Restaurant and in likewise manner, Bipin Bihari Prasad to be proprietor of Bihari Science Tutorial, on account thereof, their identification in that capacity could not be presumed. Moreover, non-examination of the I.O. that aspect remained unresolved coupled with the fact that seized hook wire had also not been produced before the Court which, at least prosecution would have taken care of.

11. That being so, prosecution suffers from inherent defect whereupon, the judgment of conviction and sentence recorded by the learned lower Court would not survive. Consequent thereupon, same is set aside. Appeal is allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N. A.
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