

**CRA-S-1313-SB-2016**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT**

**CRA-S-1313-SB-2016**

**Date of Decision: 24.03.2017**

Mohkam

...Appellant

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. Virender Kumar, Advocate,  
for the appellant.

Mr. Parveen Aggarwal, DAG, Haryana.

**INDERJIT SINGH, J.**

The present appeal has been filed by appellant-Mohkam against the judgment of conviction dated 15.10.2015 and order of sentence dated 20.10.2015 passed by learned Additional Sessions Judge-cum-Special Judge(under Electricity Act, 2003), Kurukshetra, whereby the appellant alongwith co-accused was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of 18 months and to pay a fine of ₹10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 03 months under Section 136 of the Electricity Act, 2003.

Notice of motion was issued. Learned State counsel put in appearance on behalf of the respondent-State and contested this appeal. Record of trial Court was also summoned.

**CRA-S-1313-SB-2016**

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the record, I find that challan was presented against accused namely Bhudev, Udham Singh and Mohkam in FIR No.37 dated 03.02.2014, under Section 136 of the Electricity Act, 2003, registered at Police Station Sadar Thanesar. The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Kurukshetra, are as under:

*“2. A complaint Ex.P1 was made by Hari Singh son of Jagar Singh to SDO, UHBVNL Pipli to the effect during the night intervening 30/31.1.2014, transformer installed on his tubewell in his fields was stolen by some unknown persons and hence, prayer was made for taking action accordingly. On this complaint, SDO concerned directed JE Pawan Kumar vide endorsement Ex.P2 to look into the matter. JE Pawan Kumar further marked the application Ex.P1 to ALM Arun Kumar to check the site and report whereupon said official visited the spot and upon making inspection, made a report Ex.P11 to the effect that box of the transformer was lying on the ground and inner parts thereof were stolen. On the basis of this report, the SDO concerned made a complaint bearing memo No.225 dated 31.01.2014 Ex.P3 to SHO, P.S.Pipli whereupon, formal FIR Ex.P14 was registered.*

*3. During investigation, accused persons namely Bhudev, Udham Singh and Mohkam were interrogated and their disclosure statements Ex.P4 to*

**CRA-S-1313-SB-2016**

*P6 were recorded and in pursuance thereof, copper wire and iron strips were recovered at their instance vide recovery memo Ex.P8. Place of theft was got demarcated vide memo Ex.P7. Site plans of the place of theft Ex.P19 and that of place of recovery Ex.P10 were prepared. Case property was got tested from JE Pawan Kumar vide report Ex.P12. Statements of witnesses under Section 161 Cr.P.C. were recorded and after completion of all usual formalities of investigation, challan under Section 173 Cr.P.C. was presented in the court for putting the accused on trial.”*

Copies of challan and other documents were supplied to the accused free of costs under Section 207 Cr.P.C. Finding *prima facie* case, the accused were charge-sheeted under Section 136 of the Electricity Act, 2003, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as ten witnesses. At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution. However, they denied the correctness of the evidence and pleaded false implication and claimed themselves as innocent.

No witness was examined in defence.

The learned trial Court, after appreciating the evidence, convicted and sentenced the appellant alongwith co-accused, as stated above.

**CRA-S-1313-SB-2016**

At the time of arguments, learned counsel for the appellant argued that no independent witness was joined at the time of recovery. There was no identification mark on the recovered property to show that it was the same which was stolen. Learned counsel further argued that wire etc., which were recovered from the accused, are easily available in the market and, therefore, the present appeal may be accepted and the appellant-accused be acquitted. He also argued that the appellant has already undergone the sentence awarded by learned trial Court.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the prosecution witnesses. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

From the record, I find that it is nowhere mandatory that when recovery is to be effected in view of the disclosure statement, then independent witness must be joined. There is nothing on record to show the false implication of the appellant-accused. The enmity or motive of the police officials against the accused neither alleged nor proved by the accused by way of evidence. Secondly, all the prosecution witnesses have consistently deposed regarding the prosecution case and no material contradiction or discrepancy or improbability has been pointed out at the time of arguments.

In the present case, the test report Ex.P-12 has been prepared by PW 4 JE Pawan Kumar. The trial Court held that the test

**CRA-S-1313-SB-2016**

report stands firmly established on the file that the stolen articles were the inner parts of the transformer which was property of UHBVNL. There is no explanation qua the possession of the stolen articles with the accused as to whether they have purchased it from the market or for what purpose, they were keeping it. There is nothing in the cross-examination of the prosecution witnesses to make their statements unreliable as nothing has been pointed out qua the same.

From the above, I find that findings given by learned trial Court are correct, as per evidence and law and, therefore, the same do not require any interference from this Court and are upheld.

Therefore, finding no merit in the present appeal, the same is dismissed.

**24.03.2017**

parveen kumar

**(INDERJIT SINGH)  
JUDGE**

|                           |   |     |
|---------------------------|---|-----|
| Whether speaking/reasoned | : | Yes |
| Whether reportable        | : | No  |