

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

CRA-S-798-SB-2012

Date of decision:- 10.10.2017

Harbilas Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.P. Kaushal, Advocate
for the appellant.

Ms.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

This appeal is directed against the judgment dated 1.2.2012 passed by Special Judge, Mansa vide which accused Harbilas Singh was convicted for offence under Section 135 of Electricity Act, 2003 (hereinafter referred to as '*the Act*') and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one month.

The accused-convict – Harbilas Singh, who is appellant before this Court prays that the appeal be accepted, the impugned

judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the facts of the case as per prosecution story are that on 14.7.2009, a team of officials of PSPCL, Maur headed by Sh.Dev Raj, AJE had conducted a raid at the shop of Harbilas Singh son of Sukhdev Singh and found him stealing electricity from service line of Gurudwara Sahib of 2 core PBC; that the raid was conducted in pursuance of secret information received by Sh.Dev Raj, AJE; that Harbilas Singh disclosed to the team that an electric meter had already been applied for, however, he did not allow the raiding team to take cable in possession through which the electricity was being stolen; that then checking register serial No.173 page No.49 was filled at the spot and a report was prepared which was submitted before Sh.Ashok Kumar, AEE, PSEB, Maur. A notice was sent to Harbilas Singh accused regarding theft of electricity committed by him to the tune of Rs.66,858/-. In addition to that a written complaint was sent to Police Station Anti Power Theft Bathinda for registration of case against the accused. FIR was accordingly registered. Accused was arrested in this case on 4.2.2010 and was released on bail in terms of order passed by learned Additional Sessions Judge, Mansa. The case was investigated.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Special Judge, Mansa.

On presentation of challan in the Court of Special Judge, Mansa, he supplied copies of documents relied upon in the challan to the

accused free of cost as provided under Section 207 Cr.P.C.

Learned Special Judge, Mansa finding that charge for offence under Section 135 of the Act was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as six witnesses, namely, PW1 Dev Raj, AJE, PSPCL, Maur, PW2 Gurmail Singh, ALM, PSPCL, Maur, PW3 Ashok Kumar, AEE, Sub Urban, Sub Division, PSPCL, Maur, PW4 Inspector Gursharan Singh, PW5 Prem Chand, ALM and PW6 ASI Balraj Singh, PS Nakodar.

Thereafter, the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case. Further, he pleaded that he has no connection with any shop of Gurudwara Kharak Singh Wala; that actually disputed shop was taken on rent by Nachatter Singh and writing was executed in this regard; that he has been falsely implicated and PW Prem Chand gave statement under pressure of the officer who remained sitting in the Court during his statement.

During his defence, accused examined Darshan Singh as DW1 and Kaka Singh as DW2.

After hearing arguments, learned Special Judge, Mansa convicted and sentenced the accused as mentioned supra, which left appellant – accused aggrieved and he has filed the present appeal.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Punjab besides going through the record and I find that there is absolutely no merit in the appeal.

Learned trial Court had formulated following points for determination:

1. Whether accused committed the theft of electricity by way of Kundi?
2. Whether accused has no connection with the shop in question where the alleged theft of electricity was committed?

In the instant case, PW1 Dev Raj, AJE, PSPCL repeated on oath case of the complainant as given in the written complaint submitting that on receipt of secret information by him on 14.7.2009 that one person in the shop complex Gurudwara of village Kharak Singh Wala was stealing electricity by way of Kundi connection, he along with Gurmail Singh, ALM, Prem Kumar, ALM and Didar Singh, ALM left for conducting raid at the mentioned place and found that Kundi connection was operating in the shop of Harbilas Singh son of Sukhdev Singh from service line of Gurudwara Sahib of 2 core PBC. He proved his report as Ex.PA stating that he had submitted it before Sh.Ashok Kumar, AEE. PW2 Gurmail Singh corroborated the version given by PW1 Dev Raj, AJE. PW5 Prem Chand also lent support to the case of the prosecution. It is stated that they had removed the kundi and wire and when they tried to lift the kundi and wire, accused did not allow to take the same and

threatened them. PW3 Ashok Kumar, AEE deposed regarding going to the shop in question of accused Harbilas, finding him stealing electricity by way of kundi connection, giving threats to the officials. He also deposed that accused did not allow the officials to take cable in their possession. He further stated that notice Ex.PW3/A for fine of Rs.66,858/- was issued to accused and office letter No.37 dated 17.7.2009 for registration of the case was sent.

These PWs were cross-examined at length on behalf of the accused but their credibility could not be shaken on any material point. They had no reason to depose against the accused wrongly. Although PW1 Devraj, AJE and PW2 Gurmail Singh could not identify the accused in the Court and PW2 Gurmail Singh had not fully supported the prosecution version and was declared hostile witness but then in the light of the fact the maxim "*falsus in uno falsus in omnibus*" i.e. false in part, false in whole is not made applicable by the Courts in India, rather the Courts are required to separate grain from the chaff i.e. truth from the falsehood, which the trial Court did coming to the inference that both the witnesses have specifically stated that on 14.7.2009, they along with Didar Singh, ALM and Prem Chand, ALM had gone to village Kharak Singh Wala and checked the shop of Gurudwara Sahib finding that kundi connection was operating in the shop of Harbilas Singh from the service line of Gurudwara Sahib. The witnesses had identified their signatures on Ex.PA vide which matter was reported to Ashok Kumar, AEE for taking necessary action against the accused. PW1 and PW2 have stated that report Ex.PA was produced before Sh.Ashok Kumar, AEE and thereafter,

their statements were recorded, as such mere non-identification of accused by PW1 and PW2 in Court does not adversely affect the prosecution story.

Furthermore, PW5 Prem Chand has testified that on 14.7.2009, he along with Didar Singh, ALM and Gurmail Singh was present at Kharak Singh Wala, where they had gone in connection with checking since they had received information regarding theft of electricity; that at about 10:00 a.m., when they reached near Gurudwara Sahib, they found that direct kundi was laid from Gurudwara Sahib to shop of Harbilas Singh; that they removed the kundi and wire, however, when they tried to lift the kundi and wire, accused did not allow them to take the same and held out threats. Then the matter was reported to police vide written complaint Ex.PA. This witness identified accused Harbilas Singh.

PW6 ASI Balraj Singh had arrested accused in this case having been identified by PW5 Prem Chand. There was no necessity of holding of test identification parade as he was identified by PW5 Prem Chand and PW6 ASI Balraj Singh. Though PW1 and PW2 had not identified the accused but from the remaining part of their statements, accused gets nailed. PW4 Inspector Gursharan Singh and PW6 ASI Balraj Singh had investigated the case in part. PW6 Balraj Singh stated that on 4.2.2010, accused was formally arrested by him.

In para Nos.19 and 20 of the judgment passed by the trial Court the defence version of the accused and defence evidence adduced having been discussed coming to the conclusion that the same were not

plausible. Neither accused himself had moved an application regarding his alleged false implication to the higher authorities nor did he examine President of the Gurudwara Sahib and Nachatter Singh, who is said to be tenant of the shop in question.

The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity in the impugned judgment as far as conviction part is concerned and the same is upheld.

However, coming to the sentence part, it is stated that the accused appellant has already deposited the amount of electricity charges, copy of receipt in that regard has been placed on file. The appellant is stated to be of young age, married having minor children and sole bread winner of his family. No previous conviction is alleged to have been proved against him. Considering the facts and circumstances, I am of the view that ends of justice would be squarely met if the sentence of two years of appellant – accused Harbilas Singh is reduced to one year, whereas the part of conviction relating to payment of fine is kept as intact.

As such the appeal challenging the impugned judgment stand disposed of with above modification in sentence.

Harbilas Singh appellant – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Mansa is directed to issue non-bailable warrant to get him arrested so as to make him undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

10.10.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No