

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 58 of 2009**

Ram Singh S/o Bhajpal Singh, aged about 49 years,
Occupation- Contractor R/o village- Jhalmala, P.S. Pusaur,
District Raigarh (CG)

---- Appellant

Versus

Assistant Engineer, Chhattisgarh Electricity Board, Kodatarai,
District Raigarh (CG)

---- Respondent

For Appellant : Shri M.K. Sinha, Advocate
For Respondent/State : Smt. M. Asha, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****15/11/2018**

1. This appeal is preferred against the judgment dated 31.12.2008, passed by the Special Judge under the Electricity Act 2003, Raigarh (CG) in Special Case No. 133/2007, wherein the said Court has convicted the appellant for commission of offence under Section 135 of the said Act and sentenced to undergo R.I. for 6 months and to pay fine of Rs.25,000/- with default stipulation.

2. As per the case of prosecution, the appellant illegally installed an electricity pump in his land and consumed electricity by connecting service wire or any other device whereby electricity is

stolen. On 4.8.2007 at about 4.30 pm, Assistant Engineer of Power Distribution Company Kodatarai entered into the place where pump was operating and it was used for irrigation in the field of the appellant. It is alleged that the Power Distribution Company sustained a loss of Rs.9,258/-.

3. Learned counsel for the appellant submits that the prosecution witnesses namely- Balram(PW5), Gunmani Yadav (PW3) and Pritam Singh (PW6) have not supported the version of the Assistant Engineer, S.K. Sahu (PW1) and other witnesses of the Electricity Department, therefore, charges levelled against the appellant are not established. He further submits that version of independent witnesses is not supporting the prosecution case and there are material contradictions in the statements of the witnesses adduced by the prosecution, therefore, finding arrived at by the trial Court is not sustainable.

4. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. S.K.Sahu (PW1) was Assistant Engineer posted at Sarangarh at the time of incident. As per version of this witness, he entered into the premises of the appellant and found that a pump of 5 Horse Power was operating in which no connection was sanctioned by the department. As per version of this witness, the appellant confessed

before him that he has not taken any connection from the department and no application was filed before the department by him. From the statement of this witness it is clear that wires were attached from the LT line upto the pump and thereby electricity was stolen. Version of this witness is subjected to searching cross-examination but nothing could be elicited in favour of the defence. Version of this witness is supported by the version of Junior Engineer, N.P. Patel(PW2) and Assistant Engineer, R. Demasi (PW4). As per version of R. Demasi (PW4) he calculated the consumption of electricity stolen by the appellant and it comes to the tune of Rs.9258/-. A bill was issued against the appellant and matter was reported to the authorities. All these witnesses are subjected to cross-examination but were unshaken. There is nothing on record to discard their testimony.

6. Though Kotwar- Balram (PW5), Pritam Singh (PW6) and Gunmani Yadav (PW3) have not supported the version of these witnesses but the fact remains that if these witnesses were not present at the time of trap then they are not the real witnesses of the proceedings and if they were present at the time of trap and suppressing the fact before the trial Court, their version is not reliable. In any case, statements of these witnesses is not damaging to the statement of other witnesses which is clinching in nature. The trial Court has elaborately discussed the entire evidence and came to the conclusion that it is a case of theft of electricity which is punishable under Section 135 of the Electricity Act 2003.

The finding recorded by the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material, therefore, this Court has no reason to reverse the finding recorded by the trial Court. The conviction of the appellant for the said offence is hereby affirmed.

7. Heard on the point of sentence.

Corporeal punishment for the offence is not compulsory, therefore, purpose would be served if the appellant is awarded only for sentence of fine. Accordingly, the jail sentence i.e. R.I. for 6 months awarded to the appellant is hereby set aside. The fine amount of Rs.25,000/- imposed by the trial Court shall remain intact.

8. With the aforesaid modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)
JUDGE