

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.34 of 2011**

Ambika Prasad, aged 55 years, son of Shri Nanhe Singh, resident of Village Rahangi, P.S. Hirri, District Bilaspur, Chhattisgarh

---- Appellant

versus

Chhattisgarh State Electricity Supply Company Limited through Faneshwar Yadav, son of Balram Yadav, aged 43 years, Junior Engineer, C.G.S.E.S.C.L., Chakarbhata, District Bilaspur, Chhattisgarh

--- Respondent

For Appellant	:	Shri Ritesh Verma, Advocate
For Respondent	:	Ms. Shriya Mishra, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board**

17.7.2019

1. The instant appeal has been preferred against the judgment dated 4.12.2010 passed by the Special Judge under the Electricity Act, 2003 and 1st Additional Sessions Judge, Bilaspur in Electricity Criminal Case No.159 of 2009, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 135 of the Electricity Act	Fine of Rs.58,359/- with default stipulation

2. Case of the prosecution, in brief, is that on 7.8.2009, Junior Engineer Faneshwar Yadav (PW3) along with Assistant Lineman Madanlal Chandrakar (PW1) went to the premises of the Appellant for inspection. On inspection, it was found that the Appellant was utilising electricity by direct hooking. Panchnama was prepared. Video recording of the spot was also done. At the time of inspection, sons of the Appellant Kishore and Ajay were present in the house. The Junior Engineer assessed theft of electricity to the

tune of Rs.19,453/-. The matter was informed to the police also. Thereafter, on 30.9.2009, a complaint case under Section 135 of the Electricity Act was submitted before the Special Court. Charge was framed under Section 135 of the Electricity Act.

3. In support of its case, the prosecution examined as many as 3 witnesses. In his examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt. No witness has been examined in his defence.
4. After trial, the Trial Court convicted and sentenced the Appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant submits that the Appellant was not present on the spot. There is nothing on record on the basis of which it could be said that the premises in question was owned by the Appellant or was in his exclusive possession. He further submits that though as stated by the prosecution witnesses, video recording of the spot was done and the Trial Court has also relied upon the footage of the video recording while passing judgment of conviction, CD of the video recording of the spot was not given to the defence in the Court nor was the CD run in the Court nor was any opportunity afforded to the defence to cross-check genuineness and correctness of the CD. Thus, the finding of the Trial Court is not in accordance with the evidence available on record. Therefore, the offence is not proved beyond reasonable doubt and the Appellant is entitled to get acquittal.
6. Learned Counsel appearing for the Respondent supports the

impugned judgment of conviction and sentence.

7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Complainant Junior Engineer Faneshwar Yadav (PW3) has stated that on 7.8.2009 at 1:00 pm, he had gone to the spot along with his employees. At that time, the Appellant, without obtaining any legal connection, was using electricity directly by hooking. They seized the electric wire measuring 2x15 metres and prepared panchnama thereof (Ex.P1) and also did video recording of the entire proceeding. He has further stated that on the spot, son of the Appellant, namely, Dinesh was present and he obtained signature of Dinesh on the panchnama.
9. Madanlal Chandrakar (PW1) and Sushil Kumar (PW2) have supported the statement of Faneshwar Yadav (PW3). In his cross-examination, Faneshwar Yadav (PW3) has admitted that no document that the house in question was owned by the Appellant was available on record. He has also admitted that he did not make any inquiry from the villagers about the ownership of the house in question. He has also admitted that the Appellant was not present at the spot nor did he see the Appellant using electricity by directly hooking nor did he see the Appellant using electricity in his house. All these facts have also been admitted by Madanlal Chandrakar (PW1) and Sushil Kumar (PW2) during their cross-examination. Thus, from the above admissions made by the witnesses, it is clear that at the time of inspection, the Appellant was not present at the spot nor was he seen by anyone using electricity by directly hooking. There is no documentary evidence

available on record to show that the house in question was owned by the Appellant only. There is also nothing on record to show that the said premises was in exclusive possession of the Appellant. In paragraph 12 of the impugned judgment, the Trial Court has relied upon the footage of CD (Article A), but from perusal of the record it is also clear that this CD was not provided to the defence nor was it shown to the Appellant in the Court or at any place nor was any information regarding genuineness and correctness of the CD given or shown to the Appellant and it seems that the said CD was run and seen by the Presiding Judge only. Therefore, the finding arrived at paragraph 12 of the impugned judgment is also not sustainable. From the above discussion, it is clear that there is no evidence on record to establish that the house in question was owned by the Appellant or was in his exclusive possession. There is also no evidence on record to show that the Appellant himself was using electricity by directly hooking. Thus, the Appellant is entitled to get acquittal.

- 10.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him. The amount of fine deposited by the Appellant shall be refunded to him in accordance with law.
- 11.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge