

CRIMINAL APPEAL No. 1053 OF 2006

Changdev Baburao Bansode	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Deepak S. Jadhav, for the Applicant.
Ms. Veera Shinde, APP for the Respondent-State

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 06TH MARCH, 2019

P.C.:

1. By this appeal, the appellant challenges the judgment and order passed by the Sessions Judge, Pandharpur dated 06/10/2006 thereby convicting the appellant for the offences punishable under section 39 and 44 of The Indian Electricity Act, 1910 and sentencing him to suffer imprisonment till rising of the Court and pay the fine of Rs.5,000/- in default to suffer simple imprisonment of three months.

2. The set of the facts necessary for the decision of the case are as follows:

On 1st September, 2003, Mr. Gopal Gaikwad, Junior Engineer of MSEB, PW1 posted at Solapur received a report from the lineman Mr. A.

R. Shaikh, a lineman that the appellant herein is indulging into theft of electricity by breaking the seal of the electricity meter and is using the same for commercial purpose, that is for running a flour mill. In order to verify the said information, Mr. Gopal Gaikwad Junior Engineer of MSEB, (PW1) had reached the residential premises of the appellant. The photographer, the informant lineman and an independent witness Mr. Sayyad Umbar Pathan (PW3) had also accompanied Mr. Gopal Gaikwad, Junior Engineer of MSEB. When they reached the spot they had noticed that seal of the meter was broken and the appellant was transmitting power to use the flour mill. Hence, Mr. Gopal Gaikwad on behalf of the State lodged a report at the Police Station alleging theft of electricity and loss to the Maharashtra State Electricity Board to the tune of Rs.27,540/- as he had used 1,624 units and hence committed the offences punishable under section 39 and 44 of the said Act. On the basis of the said, report Crime No. 3053 of 2003 was registered at Pandharpur Taluka Police Station. After completion of investigation the charge sheet was filed on 28th September, 2003. The offence was triable by Court of Sessions and hence the case was committed to the Court of Sessions at Pandharpur vide order dated 6th June, 2006. The charge was framed on 9th August, 2006. The prosecution examined as many as four witnesses to bring home the guilt of the accused.

3. PW1 Mr. Gaikwad happens to be the complainant. He has proved the contents of the FIR which is marked as Exhibit 9. Accused has not been unable to create a dent in the substantive evidence in the course of cross examination. PW 2, Alam Shaikh is a lineman, he has deposed before the Court that on 1st September, 2003 he had been to the village Bhandi Shegaon. He was accompanied by the photographer, lineman Mr. Shaikh, Dhere, Baraskar. When they were passing from front of the flour mill, they realised that the appellant was misusing the electricity which was given to him for domestic purpose and was putting it to use for commercial purpose that is for running the flour mill. He was subjected to the test of cross examination.

4. PW3 Sayyad happens to be the independent witness that is Panch, who proved the panchnama at Exhibit 12. He has deposed before the Court that at the request of the officer of the MSEB, he had accompanied Mr. Gaikwad, Junior Engineer and other lineman to the house of the appellant and had noticed that the seal of the electricity meter was broken and that there was theft of electricity for commercial purposes. He has proved contents of the panchanama. He could not be shattered in the course of cross examination.

5. PW 4 Hari happens to be the Police Personnel who has proved

the registration of the first information report.

6. Learned counsel for the appellant vehemently submits that according to the statement of witnesses, the Junior Engineer had taken photographs of the broken seal of the electricity meter by engaging a photographer. However, the photographs are not placed on record. There is no material to remotely indicate that the appellant has indulged into theft of the electricity. As against this, learned APP has vehemently submitted that it is true that the photographs have not been placed on record, but in any case in the panchanama this fact was recorded. PW3 happens to be the independent witness. He has proved contents of the panchanama and, therefore, the offence against the appellant has been proved beyond reasonable doubt.

7. Upon perusing the evidence adduced by the prosecution and the submissions advanced across the bar, it is clear that the prosecution has proved the offences against the appellant under section 39 and 44 of the Indian Electricity Act, 1910. Learned APP submits that in fact the sentence awarded is not proportionate to the offence that is committed, and hence, the same can be enhanced while deciding the appeal. However, it is a matter of record that at the time of admission of the appeal, there was no submission for enhancement and hence said submission cannot be taken

into consideration. In view of the above discussion, there is no merit in the appeal and hence, appeal stands dismissed. The conviction of the appellant for the offences punishable under section 39 and 44 of the Indian Electricity Act, 1910 is maintained.

Sd/-
(SMT. SADHANA S. JADHAV, J.)