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

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CRA-S-2371-SB-2014

Date of decision : 23.08.2023

Punjab State Power Corporation Limited

..... Appellant

versus

Naresh Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Meena Bansal, Advocate
for the appellant.

Mr. Amit Shukla, AAG, Punjab.

Mr. Rohit Kataria, Advocate for
Mr. Manu K. Bhandari, Advocate
for respondents No.1 and 2.

PANKAJ JAIN, J. (Oral)

1. PSPCL is in appeal. Challenge is to the judgment of acquittal in FIR No.95 of 11.09.2009, registered for offences punishable under Section 135 of the Electricity Act, 2003.

2. As per the contents of the FIR, raid was conducted in the premises owned by accused by Senior Executive Engineer Enforcement, Sangrur on 10.09.2009. Raiding party found that the accused were committed theft of electricity by attaching 11 KV 3 CXLPE wire to the bushes of 25 KVA transformer. The said wire was attached to another 200 KVA private transformer kept in the premises of the accused.

3. Trial Court after appreciating the evidence on record found that out of four witnesses stated to be present at the time when raid was

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conducted in the premise none except PW-2 Er. Raminderjit Singh have in their cross examination admitted that they reached the spot only after raid had already been conducted and thus the statement of PW-2 Er. Raminderjit Singh remained uncorroborated. Trial Court further found that there are discrepancies and contradictions in the statements of prosecution witnesses and found as under:

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24. Furthermore, as pointed out by learned counsel for accused, there are several discrepancies and contradictions in the statements of prosecution witnesses. PW1 JE Gurjant Singh had stated in his cross examination that he along with his SDO Satish Kumar reached at the spot where Raminderjit Singh Executive Engineer and MP Singh Dhillon, ASE were already present whereas PW2 Er Raminderjit Singh had stated that MP Singh Dhillon, ASE, SDO Satish Kumar alongwith other staff came to the factory premises. PW 3 Satish Kumar stated that he was called by Er Raminderjit Singh through telephone and thereafter be along with Gurjant Singh JE reached at the spot. On the other hand, PW 4 M.P. Singh Dhillon, ASE stated that he along with Satish Kumar, SDO and JE Gurjant Singh reached at the spot where Er Raminderjit Singh was already present. PW 2 Raminderjit Singh had stated that SDO Satish Kumar, JE Gurjant Singh and MP Singh Dhillon, ASE reached at the spot along with their staff and thereafter they conducted the raid. On the other hand, all the other witnesses examined by the prosecution had stated that they had reached at the spot after the checking had already been completed.

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Further PW 1 JE Gurjant Singh had stated that box in which wire was kept was arranged through Satnam Singh. PW2 Er Raminderjit Singh had stated that wooden box in which wire was kept was arranged through field staff. PW 3 Satish Kumar had stated that both the accused arranged the wooden box in which wire was kept whereas PW 4 Mohinder Partap Singh Dhillon had stated that SDO Satish Kumar and JE Gurjant Singh had brought the wooden box in which the cable was packed. Similarly, all the witnesses had given different versions regarding sealing of the box in which wire was kept. PW 1 JE Gurjant Singh even stated that police party had sealed the wooden box and brought the same to their office whereas as per the case of prosecution, sealed wooden box was handed over to Investigating Officer by JE Gurjant Singh. Above said discrepancies pointed out by learned counsel for accused are material discrepancies which go to the root of the case and are sufficient to create a serious dent in the entire prosecution case. It is a settled law that prosecution is required to prove its case beyond shadow of reasonable doubt and benefit of doubt in the prosecution case would go to the accused.”

5. Even though the photographs as well as the video recording is stated to have been produced on record, but the same cannot be said to have been proved in view of absence of certificate under Section 65B of the Evidence Act. Thus, Ex.PW2/C1 to Ex. PW2/C-9 and compact disc produced on record as Ex.PW2/D cannot be looked at being secondary evidence in the absence of certificate as per the statutory mandate. Resultatly, the said evidence cannot be considered for

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upsetting the findings recorded by the Special Court.

4. Counsel appearing for the appellant has not been able to point out as to how the view taken by the Special Court can be said to be improbable. The scope of exercising appellate jurisdiction has been well laid down by Apex Court in the case of '**Bansidhar Mohanty vs. State of Orissa, reported as AIR 1955 Supreme Court 585**', wherein it has been held as under:-

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4. The principles on which the High Court should act in an appeal from an order of acquittal have been quite clearly laid down by the Privy Council in the case of '**Sheo Swarup vs. Emperor, AIR 1934 Privy Council 227 (2)**' at pp. 229-230. The same principles have been so often reiterated by this Court that it is hardly necessary to restate them 'in extenso'.

It will be sufficient to refer to the decisions of this Court in '**Surajpal Singh v. The State, AIR 1952 Supreme Court 52; - Puran vs. State of Punjab, AIR 1953 Supreme Court 459 and - 'Narayan Ittiravi v. State of Travancore-Cochin, Air 1953 Supreme Court 478**'. It is now well settled by the abovementioned decisions that while in an appeal under Section 417, Criminal Procedure Code the High Court has full power to review the evidence upon which the order of acquittal was founded, nevertheless, in exercising the power conferred by the Code the High Court will give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of witnesses; (ii) the presumption of innocence in favour of the accused reinforced by the fact of his

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acquittal at the trial, (iii) the right of the accused to the benefit of any doubt and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

5. Same view has been reiterated in ‘*Siddhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*, 2010(2) RCR (Criminal) 692 : JT 2010(4) SC 107’, wherein it has been held as under:-

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13. The following principles have to be kept in mind by the Appellate Court while dealing with appeals, particularly, against the order of acquittal:

(i) There is no limitation on the part of the Appellate Court to review the evidence upon which the order of acquittal is found.

(ii) The Appellate Court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The Appellate Court can also review the Trial Court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the Appellate Court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the Appellate Court is first required to seek an

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answer to the question whether finding of the Trial Court are palpably wrong, manifestly, erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the Trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of Ballistic Experts etc., the Appellate Court is competent to reverse the decision of the Trial Court depending on the materials placed.”

6. The same was again reiterated by the Apex Court in the case of ***V.S. Achuthanandan Vs. R. Balakrishna Pillai and others*** (2011) 3 SCC 317, holding as under:-

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It is settled principle that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure (in short 'Criminal Procedure Code') puts no limitation, restriction or condition on exercise of such power and an Appellate Court is free to arrive at such conclusion, both on questions of fact and of law. An Appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. The

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presumption of innocence is available to a person and in the criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. It is also settled law that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.”

7. In view of above, this Court does not find any reason to interfere in the well reasoned judgment passed by the Special Court as the view taken is the more probable one. Resultantly, the present appeal is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

23.08.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No