

CRA 507 of 2005

In the matter of : **Bistu Mondal**

....Appellant

**Mr. Kaushik Chatterjee,
Mr. Tirthankar Dey,**

....For the Appellant

**Mr. Bidyut Kumar Ray,
Ms. Sema Biswas,
Ms Jonaki Saha,**

....For the State

1. This instant criminal appeal has been filed at the behest of the appellant challenging the impugned judgment and order of conviction dated 30.06.2005 passed by the learned Additional Sessions Judge, 2nd Court, Purulia in connection with G.R. Case no. 123 of 2004 whereby the learned Trial Court convicted this appellant for committing offence under Section 135(1)(a) of the Indian Electricity Act and sentenced him to suffer rigorous imprisonment for one year with a fine of Rs. 1000/- (Rupees One Thousand only) and in default of payment of fine to undergo further rigorous imprisonment for one month.

2. In short campus the story of the prosecution is that-

“On 25.10.2004, the S.E.B personnel along with the police officers conducted a raid in village Gopalpur within P.S. Neturia, district Purulia and found that this appellant was consuming electricity energy in his house by committing theft of electricity

energy. He committed the said offence punishable under Section 135(1)(a) of the Indian Electricity Act.”

3. A written complaint was lodged by the Assistant Engineer, Raghunathpur (O and M), Sub-Division W.B.S.E.B, Purulia relating to the said offence of this appellant. On the basis of the said complaint a case was started being Neturia P.S. case no. 71 of 2004 dated- 25.10.2004 under Section 135(1)(a) of the Indian Electricity Act. Thus, the criminal law was set in motion. Police investigated the case and submitted charge-sheet against this accused appellant under Section 135 (1) (a) of the Indian Electricity Act.

4. In this case six witnesses were cited on behalf of the prosecution and documents were marked as exhibits on its behalf. Neither any oral nor any documentary evidence was adduced on behalf of the defence.

5. By the judgement impugned the learned Trial Court has held the accused appellant guilty and imposed the sentence on him as stated above which is under challenge in this appeal. Being aggrieved and dissatisfied with the impugned judgment and order of conviction the present appeal is preferred on behalf of the appellant.

6. Mr. Kaushik Chatterjee, learned Advocate for the appellant said that he does not challenge the finding of the conviction as the occurrence took place in the year 2004 and this appellant accused has served in custody for three days out of total sentence of one year, therefore, it is submitted that the

substantive sentence awarded to the appellant for the aforesaid offence may be reduced to the period already undergone by him. In support of his contention learned Advocate has placed reliance upon the decision in case of ***Durga Ram Vs. State of Rajasthan passed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur*** in connection with **S.B. Criminal Appeal No. 204 of 2011** and in case of ***Seeta Ram Vs. State of Chhattisgarh*** reported in **2024 SCC Online Chh 1593** and those two judgments were passed relying upon the decision rendered by the Hon'ble Apex Court in case of ***Vaithi alias Vaithianathan Vs. State of Tamil Nadu*** reported in **(2011) 10 Supreme Court Cases 779**. So, it is submitted that the sentence of this appellant for committing the offence under the Electricity Act may be reduced to the sentence to the period already undergone by him.

7. Learned Advocate for the State opposes the submission as made by the learned Counsel for the appellant and submitted that the conviction as passed by the learned Trial Court may be affirmed.

8. I have considered the rival submissions advanced by both the parties. Perused the materials gathered in the case diary as well as have gone through the decisions cited on behalf of the appellant.

9. It is not in dispute that the occurrence took place on 25.10.2004 and the appellant was convicted for commission of offence under the Electricity Act and was sentenced for a period

of one year along with a fine. This appellant has served a period of three days in custody out of total sentence of one year. The offence in question was committed nearly twenty-one years back. It would be just and proper if the sentence awarded by the trial court for the offence under section 135 (1) (a) of the Indian Electricity Act is reduced from one-year rigorous imprisonment to the period already undergone by the appellant.

10. It has been observed by the Hon'ble Apex Court in case of ***Vaithi alias Vaithianathan Vs. State of Tamil Nadu*** reported in ***(2011) 10 Supreme Court Cases 779*** *inter alia* that:

8. The appeal in question was filed through the Supreme Court Legal Services Committee. The learned counsel appearing on behalf of the appellant was also engaged by the Committee only. The requisite documents for filing of the appeal also appear to have been furnished to the counsel by the office of the Committee. The communication to which we have referred above was one of the documents that was furnished to the counsel for the appellant and formed part of the SLP paper book. The original of the communication is in Tamil. The correctness of the English translation was verified by this Court with the help of a Tamil-knowing member of the Bar and found to be accurate. Relevant paragraph from the communication which we have extracted above does create an impression that the appellant was taken into custody on 26.07.2004 and released only on 7.5.2005. This period works out to clearly "eight months". The learned counsel for the appellant was, therefore, misled into making a statement that the appellant had undergone eight

moths' imprisonment on a bona fide assumption which was on further enquiry not found to be factually correct. In the circumstances, we do not consider it necessary to issue any further direction on the matter based on the report received from the High Court.

9. The only other question is whether we ought to recall the order passed by us in the appeal upholding the conviction of the appellant and reducing the sentence awarded to him to the period already undergone.

11. In referred case the Hon'ble Apex Court while maintaining the conviction of the accused for offence under the Electricity Act, reduced the sentence to the period already undergone by the accused which is about thirteen days.

12. The Hon'ble High Court at Chhattisgarh in case of Seeta Ram and the High Court of Judicature for Rajasthan at Jodhpur in case of Durga Ram as stated aforesaid have relied upon the decision rendered by the Hon'ble Apex Court in case of Vaithi alias Vaithianathan and both the High Courts after relying the decisions of the Apex Court reduced the sentence of the accused already undergone.

13. It is submitted by the learned Advocate for the appellant that there is no criminal antecedent of this appellant and as the case was started long before, so, the sentence awarded may be reduced to the period already undergone by him.

14. In view of above facts and circumstances and after relying upon the decision as mentioned above. I am of the opinion that

the conviction of the accused for the offence under the Electricity Act is to be reduced to the period already undergone by the accused.

15. Accordingly, the criminal appeal is **partly allowed**. While maintaining the appellant's conviction for the offence under Section 135(1)(a) of the Indian Electricity Act the sentence awarded to him is hereby reduced to the period already undergone by him. Fine amount and default sentence is to remain as it is.

16. Two months' time is hereby granted to deposit the fine failing which the appellant shall undergo one month's rigorous imprisonment.

17. Appellant is reported to be on bail-bond, his bail bond shall remain in force for a period of six months.

18. Accordingly, the instant appeal being **CRA 507 of 2005** stands disposed of.

19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Prasenjit Biswas, J.)