



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 662 OF 2005

1) Shivdas Badu Kokani,
Age : 42 years, Occupation
R/o Borkikhadi, Taluka Sakhri,
District Dhule

2) Vasant Ragho Patil,
Age 48 years, Occ.Agr.,
R/o Malangaon Tal. Sakhri,
District Dhule.

...**APPELLANT**
(Orig. Accused)

Versus

State of Maharashtra

...**RESPONDENT**

....
Advocate for the Appellants : Mr. Joydeep Chatterji.
APP for the Respondent/State : Mr. C. V. Bhadane

...

CORAM : SUSHIL M. GHODESWAR J.,

DATE : 10.12.2025

ORAL JUDGMENT :

1. Heard Mr. Joydeep Chatterji, learned counsel on behalf of the appellants and Mr. C. V. Bhadane, learned APP on behalf of respondent/State.
2. This appeal was admitted and the appellants have been released on bail on 04.10.2005.
3. The appellants have challenged the judgment and order dated 29.08.2005 passed in Special Case No. 92/2004 by the learned 1st Ad-

hoc Additional Sessions Judge, Dhule thereby the appellants came to be convicted under Section 135 of the Electricity Act, 2003 and sentenced to suffer simple imprisonment for one year and to pay a fine of Rs. 5,000/- each (Rs. five thousand only), in default to suffer three months S.I.

4. The brief facts of the prosecution story are as under :-

The complainant Arvind Anandrao Wagh has lodged the F.I.R. No.141/2003 on 11.12.2003 under Section 135 of the Electricity Act, 2003 at Sakri Police Station. As per the contents of the said F.I.R. while he was performing his duty along with staff in the department of M.S.E.B., being a member of flying squad, he visited the agricultural field belonging to the Kesarbai w/o Chaitram Kokani, and he found running threshing machine of accused No.2 by putting hook on MSEB operation and an illegal supply line attached to the motor machine from LT Line. Accordingly, he carried out the panchanama of the said unauthorized threshing machine and found that the appellant / accused No.2 with the help of said illegal threshing machine by putting hooks of MSEB wire has committed theft of energy amounting to Rs.1,19,306.00/-. After registration of abovesaid F.I.R., the police machinery visited the spot of the raid and drawn the spot panchanama and recorded the evidence of certain witnesses. After completing the

investigation, the Investigating Officer filed charge-sheet. Since the appellant/accused pleaded not guilty, therefore he came to be tried.

5. A plea at Exh. 7/A against the appellants accused about theft of electric energy of 30240 units worth Rs. 1,19,306-00/-. The prosecution has examined two witnesses, i.e. P.W. 1 – Yunus Shaikh Vajir, who is Investigating Officer i.e. Head Constable at Exhibit 10, P.W.2 – Prasad Madhukar Patil who is examined at Exhibit 12.

6. After recording the evidence and hearing learned counsel for the parties, the learned Sessions Judge has passed the conviction order against the appellant as follows :

“1. Accused No.1 Shivdas Badu Kokani and accused No. 2 Vasant Ragho Patil are hereby convicted of the offence punishable under section 135 of the Electricity Act, 2003, and they are sentenced to suffer simple imprisonment for one year and to pay a fine of Rs. 5000/- each (Rs. Five thousand only), in default of payment of fine, to suffer simple imprisonment for three months.

2. It is further made clear that the offence punishable under section 135 of the Electricity Act, is compoundable as per sec. 152 of the Act, and if after pronouncement of the Judgment the accused deposited the electricity bill and compounding charges then the sentence of imprisonment will automatically be stand cancelled. If the accused fail to deposit the amount of theft of electricity of Rs. 1,19,306/-, then the complainant M.S.E.B. is entitled to recover the

amount from the accused by way of electricity charges.

3. Muddemal property be returned to the Maharashtra State Electricity Board Office, for disposal, after appeal period is over.”

7. According to Mr. Joydeep Chatterji, learned counsel for the appellants / accused, the prosecution has miserably failed to prove its case beyond reasonable doubt. According to him, the prosecution has not established that the field, on which there is connection of the illegal electric wiring, belonged to the appellants/accused. He further submitted that the complainant Arvind Wagh, who had lodged the complaint has expired. Only his signature on the report is tried to be proved by examining P.W.2 Prasad Patil. He further submitted that the prosecution has also failed to prove that the alleged electric connection was having the running current and due to the said live electric supply, they had caused loss of Rs. 1,19,306/-. He further submitted that the evidence is not sufficient to convict the appellants/accused and, therefore, he prayed for acquittal of the appellants/accused.

8. Per contra. Mr. Bhadane, learned APP for the respondent/State vehemently opposed the said appeal. According to him, the prosecution by examining the witnesses has sufficiently proved its case beyond reasonable doubt. He further submitted that though the complainant had expired even prior to recording his evidence, however, his report

has been proved through P.W.2- Prasad Patil who was also a member of the flying squad during the raid. He further submitted that since the low tension wire was found to be connected with illegal electric installation that itself is sufficient to assume that the appellants have committed theft of property belonging to the Maharashtra State Electricity Board. He further submitted that the assessment carried out by the complainant Shri Arvind Wagh is correct and proper and therefore, the sentence imposed by the learned Sessions Court is justified which requires no interference and accordingly, he prayed for dismissal of this appeal.

9. After hearing the learned counsel for both the parties and going through the record, it is clear that the prosecution has tried to prove its case on the basis of evidence of two witnesses. If the evidence of P.W. 2- Prasad Madhukar Patil is seen, he has nowhere stated that the appellants / accused at the time of raid were present. It is also not brought on record that concerned field on which the raid took place was belonging to appellants/accused. This witness has not stated the gut number. However, they have raided the field, that itself is not sufficient to establish that the said gut number is belonging to the present appellants/accused. Further it is also required to be seen that the panchanama is carried out by the members of flying squad. It is

also not proved by the prosecution witnesses. There is also no evidence to show that the alleged illegal threshing machine of accused No.2 in operation and illegal supply line attached to the electric connection wire was carrying any live electric current or not. In absence of the live current wire, it is very difficult to assume that the same was used for illegal theft of the energy. There is also no record to suggest that the said illegal electric wiring was installed by the appellants themselves. Since the evidence is short of all the above aspect, therefore it is very difficult to base their conviction upon the appellants /accused. Therefore, this appeal succeeds. Hence, I pass following order :

ORDER

- [i] The appeal is allowed.
- [ii] The impugned order dated 29.08.2005 passed by the learned 1st Ad-hoc Addl. Sessions Judge, Dhule in Special Case No. 92/2004 is hereby quashed and set aside and the appellants are acquitted from the charge levelled against them.
- [iii] Fine be refunded to the appellants.

(SUSHIL M. GHODESWAR)
JUDGE

shp/-