

(4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

ACQUITTAL APPEAL NO. 80/2010 QF 2008

Case 469/09

APPELLANT :

Executive Engineer (O & M),

COMPLAINANT

Chhattisgarh State Electricity
Board, Sakti, District Janjgir-
Champa (C.G.).

VERSUS

RESPONDENT :

Leeladhar Chandra Son of B. P.

ACCUSED PERSON

Chandra, aged about 30 years,
Resident of Village Beerbhantha
Chowk, Malkharoda, Police Station
Malkharoda, District Janjgir-
Champa (C.G.).

APPEAL UNDER SECTION 378 (4) OF THE CODE OF CRIMINAL
PROCEDURE, 1973 READ WITH SECTION- 156 OF THE
ELECTRICITY ACT, 2003

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQUITTAL APPEAL NO. 80 OF 2010

APPELLANT
(Complainant)

:

Executive Engineer (O&M),
C.S.E.B. Sakti

VERSUS

RESPONDENT
(Accused)

:

Leeladhar Chandra

Present: Mr. M.D. Sharma, Advocate, for the Appellant.
Mr. Sanjay Agrawal, Advocate, for the Respondent.

(Single Bench : Hon'ble Mr. P. Sam Koshy, J.)

JUDGEMENT

(24-12-2014)

(1) The present Acquittal Appeal has been preferred by the Appellant against the judgement of acquittal dated 11.8.2008 passed by the Special Judge (Electricity Act), Janjgir, District Janjgir-Champa, in Special Electricity Criminal Case No.04/2008, whereby the Respondent has been acquitted of the charge under Section 135(a) of the Electricity Act, 2003.

(2) Brief facts giving rise to the filing of the instant Acquittal Appeal as per the complaint are that on 20.11.2006 on a sudden inspection of the premises of the Respondent at Beerbatha Chowk, Malkharouda, by the Executive Engineer (Vigilance), C.S.E.B., Janjgir along with its staff, it was found that the Respondent had taken an electricity connection illegally by hooking from the L.T. Line of the Electricity Board and thereby he was doing fabrication work by using 7HP motor and electrical apparatus of 260watt. In this connection, Spot Inspection report and Panchnama was prepared, seizure proceeding was done and calculation-sheet in respect of consumption of electricity was also prepared and sent to the Respondent. It was held that the Respondent had put the Electricity Board to a loss of Rs.1,36,127/-. Thereafter, a complaint

case (i.e. 'Special Electricity Criminal Case No.04/2008') was filed before the Special Judge (Electricity Act), Janjgir, against the Respondent for having committed the offence under Section 135(a) of the Electricity Act, 2003, and the matter was put to trial.

(3) During the course of trial, three witnesses i.e. PW-1 Rajeshwar Minj, Executive Engineer (Vigilance), PW-2 Satya Prakash Mahilange, Line Attendant Grade-II and PW-3 Vinod Kumar Mahilange, Lineman, were examined by the prosecution in support of its case; all of them were departmental witnesses. Statement of the accused Respondent was recorded under Section 313 of CrPC in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

(4) After completion of the trial, the Court below, i.e., the Special Court constituted under the Electricity Act, vide its judgement of acquittal dated 11.8.2008 reached to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt against the Respondent and, therefore, giving the benefit of doubt the Respondent was acquitted of the charge leveled against him under Section 135(a) of the Electricity Act.

(5) It is this judgement of acquittal dated 11.8.2008 against which the instant Acquittal Appeal has been preferred by the Appellant/Electricity Board.

(6) Learned Counsel for the Appellant, Shri M.D. Sharma, has submitted that in fact the Court below has too technically not accepting the case of the prosecution acquitted the Respondent. Learned Counsel also submits that the Court below has not properly appreciated the oral and documentary evidence adduced by the prosecution and has discarded the admissible evidence and, in the course, the Court below has decided the matter contrary to law. It was also contended by the learned Counsel for

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the Appellant that the third proviso to Section 135 of Electricity Act, 2003 clearly gives a benefit of presumption to be made and the Court below has totally ignored the said third proviso to Section 135 of the Electricity Act, 2003 that unless the contrary is proved it has to be presumed that the accused/Respondent was dishonestly using the electricity of the Appellant/Electricity Board. So far as the non-availability of independent witness to prove the case of the prosecution is concerned, learned Counsel for the Appellant submits that only because any independent witness has not been examined to prove its case by itself would not vitiate the prosecution case if the other prosecution witnesses have been able to prove its case by leading proper evidence before the Court below and that from their evidence if the Respondent has not been able to bring out any substance to the extent of creating a doubt in the mind of the Court bringing out such facts so as to disbelieve the entire version of the prosecution witnesses. For the above stated reasons, learned Counsel for the Appellant submits that the instant Acquittal Appeal deserves to be allowed and by setting aside the order passed by the Court below, the Respondent be convicted for the offence under Section 135(a) of the Electricity Act, 2003 सत्यमेव जयते

In support of his contentions, Counsel for the Appellant has relied upon the judgements reported in 2001 Cr.L.J. 504; 2009 Cr.L.J. 4100; 2008 Cr.L.J. 4034; 2013 Cr.L.J. (NOC) 441; 2006 (2) Cr.L.J. 1121; AIR 2002 SC 1621 and 2006 (10) SCC 617.

(7) Per contra, Shri Sanjay Agrawal, learned Counsel for the Respondent, opposing the submissions put forth by the learned Counsel for the Appellant, has vehemently argued that a plain perusal of the finding arrived at by the Court below itself would reveal that the entire prosecution case is done in a half hearted manner and no efforts have been made by the prosecution to prove the case beyond all reasonable doubt. Learned Counsel for the Respondent also submitted that even if we peruse the records to assess the manner in which the investigation was conducted it

would reflect that the prosecution has not made any serious efforts for proving the charge levelled against the Respondent in a manner as is required under the provisions of law. According to the Counsel for the Respondent, apparently no witness of the near vicinity was called upon at the time of the surprised check being conducted by the officers of the Appellant/Electricity Board and that since the three witnesses who have been examined on behalf of the prosecution are officer and employees of the same department, it can be safely held that they are interested witnesses and, therefore, the testimony of these witnesses loses its credibility. Similarly, there was no seizure of any electrical equipments which were allegedly being used by the Respondent in his fabrication shop; this itself gives rise to doubt the prosecution story. It was also contended by the learned Counsel for the Respondent that if we peruse the evidences which have come on record it would show that there are a lot of discrepancies, contradictions and omissions in the evidence of the prosecution witnesses and, therefore, the benefit of doubt should be given to the Respondent. Counsel for the Respondent has further submitted that the scope of interfering in an Acquittal Appeal is very limited and that it has to be proved on behalf of the complainant beyond all reasonable doubts in respect of commission of the offence by the accused and that even if there is a slightest of doubt in respect of the case having been proved or not, the benefit would always go in favour of the accused. Learned Counsel for the Respondent, therefore, prayed that the instant Appeal being devoid of merits is liable to be rejected.

(8) Considering the contentions put forth by the learned Counsels appearing for either side and on perusal of the materials available on record as well as the impugned judgement, if we see the evidences that have been lead on behalf of the prosecution it reflects that the prosecution has failed to prove its case beyond reasonable doubt and that there are many lacunas on the part of the prosecution in establishing its case inasmuch

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as according to the prosecution witnesses on the date of inspection i.e. on 20.11.2006 when they had inspected the premises of the Respondent, it was found by them that the Respondent had taken electricity illegally by hooking wires from the main line of the Electricity Board and therefrom he was using a 7HP motor as well as other electrical apparatus of 260watt illegally. However, when we see the cross-examination of PW-1 Rajeshwar Minj, Executive Engineer (Vigilance), he has clearly admitted in Para-6 that he had no information that whether the Respondent had been given an electricity connection by the Electricity Department, Malkharoda, on 10.11.2006, by installing a meter, for using electrical apparatus of 10HP. Further, the said witness PW-1 Rajeshwar Minj in Para-7 of his cross-examination has admitted the certificate (Ex.D-1) issued by Shri Prabhat Sharma, Junior Engineer, Malkharoda. From the perusal of the said certificate (Ex.D-1), it is evidently clear that on 10.11.2006 the Respondent had been given an electricity connection bearing Service No.90-01-000233 for using 10HP welding machine, and from this it is clear that on 20.11.2006 when the inspecting team had inspected the fabrication shop of the Respondent, the Respondent had a legal ~~electricity~~ connection for using welding machine. Thus, from the oral and documentary evidence adduced by the prosecution it is evidently clear that the Respondent had a legal electricity connection for using welding machine of 10HP prior to and on the date of inspection i.e. on 20.11.2006 when the inspecting team had inspected the fabrication shop of the Respondent and that it appears that without obtaining any information in this regard from the Electricity Department, Malkharoda they had straightaway initiated a proceeding u/s 135(a) of the Electricity Act against the Respondent.

In addition, from the cross-examination of PW-1 Rajeshwar Minj, it is clear there was no effort made on the part of the inspecting team for calling any person from the local vicinity, as is required under Section 100 (4) of CrPC. Similarly, in the entire

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case of the prosecution, there was no independent witness to support the case of the prosecution, which also is a procedure contrary to the provisions of law. The said witness PW-1 Rajeshwar Minj has also admitted that he had not seized any electrical appliances which were being used in the fabrication shop of the Respondent and that no separate seizure memo has been prepared by him in respect of the seizure of wires used in the alleged hooking. This also creates a great element of doubt in the inspection proceedings. Similarly, there is also a great element of missing links in respect of entry, search and seizure conducted by the inspecting team at the premises of the Respondent to which there is no satisfactory explanation. Thus, from the oral and documentary evidence adduced by the prosecution, the case of the prosecution in respect of committing the offence of theft of electricity by the Respondent is not established or proved.

(9) For the foregoing reasons and the evidences which have come on record, it can be safely concluded that there is no perversity in the judgment of the Court below as it cannot be said that the impugned judgment is not based on the evidence or the evidence on record has not been properly appreciated by the Court below which may warrant interference by this Court.

(10) In the instant case, learned Counsel for the Appellant has relied upon the matter of *State Govt. of NCT of Delhi Vs. Sunil and Another* [2001 Cr.L.J. 504]. Relying upon Para-19 of the said judgement, learned Counsel for the Appellant submitted that the requirement of calling upon independent and relied upon witnesses to lead evidence to prove the case of the prosecution would not be necessary, particularly, when the proceedings have been drawn under the provisions of the Electricity Act, 2003. But, the same would had been required if it is a case where certain specific seizure to be done from the accused person then the presence of the independent witness would had been relevant.

Similarly, learned Counsel for the Appellant also relied upon the decision rendered by Punjab and Haryana High Court reported in 2009 Cr.L.J. 4100 titled as "*Surinder Pal & Ors. Vs. State of Punjab*", wherein the Counsel for the Appellant stressed upon Para-17, so far as the search and seizure is concerned.

However, the said contention of the learned Counsel for the Appellant cannot be accepted for the reason that a plain perusal of the provisions sub-section 5 of Section 100 of CrPC clearly envisages the fact that the provisions of requirement of an independent witness is for both the instances, i.e., for search as well as for seizure. If we read the entire Section, i.e., Section 100 of CrPC and the said sub-section enumerated therein it would clearly show that the intention of the legislators requiring an independent witness was to show that whatever action has been taken by the team conducting search and seizure act in an unbiased manner and are arbitrary or have made out a false complaint only on papers so as to implicate a person. The persons of an independent and respectable inhabitant of the locality would prove the fact of search as well as the findings made in the course of the search. Hence, the said judgements would also not come to the aid of the Appellant.

(11) Learned Counsel for the Appellant has further relied upon the decision rendered by Gujrat High Court in "*Gopalbhai Chandubhai Rana Vs. State of Gujarat*" reported in 2008 Cr.L.J. 4034, wherein the Counsel for the Appellant relied upon in Para-11 of the said judgement and relying upon the said judgement, learned Counsel for the Appellant tried to emphasize the fact that there was no reason whatsoever to disbelieve the evidence lead by the prosecution witnesses, particularly, the officers of the Electricity Board and, therefore, the judgement of acquittal granted by the Court below deserves to be set aside.

However, in the instant case the said judgement cannot be made applicable for the reason that the finding of the Court below

was not that the witnesses on behalf of the prosecution were not reliable but the finding of the Court was that the deposition of the prosecution witnesses was disbelieved by the Court on account of various contradictions that was there amongst the evidences of the prosecution witnesses and the benefit of which given to the accused person. As such the said judgement cannot be made applicable to the facts of the instant case.

(12) Similarly, learned Counsel for the Appellant in addition has relied upon the following judgements with regard to the disbelieving of the prosecution witnesses:-

- 2013 Cr.L.J. (NOC) 441 (KAR.) - Ningappa Parmanna Curikar Vs. State.
- 2006 (2) Cr.L.J. 1121- Radha Mohan Singh Vs. State of U.P.
- AIR 2002 SC 1621 - Bhagwan Singh & Ors Vs. State of M.P.
- 2006 (10) SCC 617 (Para-5) - V.N. Ratheesh Vs. State of Kerala.

These judgements have been cited by the learned Counsel for the Appellant to show the powers of the High Court to interfere in a judgement of acquittal in the event if the finding arrived at by the Court below is perverse, contrary to evidence. However, if we peruse the finding of the Court below it would clearly show that the Court below in fact has considered the evidences which have come before the Court below very minutely and has reached to a conclusion on the basis of the assessment made. Thus, it cannot be said that the findings are baseless or are contrary to the evidence on record. As such, the judgements cited by the Counsel for the Appellant would not be of any assistance to the Appellant in the facts of the present case.

(13) It is settled position of law that in an appeal against an order of acquittal only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse can the Appellate Court interfere with the order of acquittal. Recently, Hon'ble the Supreme Court in the case of Phula Singh Vs. State of Himachal Pradesh, AIR 2014 SC 1256, in Para-10, has in very categorical term held that: "The

appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

(14) Once there is an order of acquittal in favour of the alleged accused person, the same should not be interfered with very lightly unless there is a prima facie strong case with cogent, sufficient and substantial proof in favour of the prosecution brought before the Court below and which has not been considered or has been overlooked by the Court below, only then can the order of acquittal have a scope of interference.

The law in this regard is by now well settled in a series of judgement of the Hon'ble Supreme Court wherein the Supreme Court has in very categorical terms held that whenever there is an order of acquittal, the higher Courts not to upset the holding without there being very convincing reasons and comprehensive considerations.

That while reappreciating and reconsidering the evidence upon which the order of acquittal is based, certain other principles pertaining to other facets are to be borne in mind.

An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by trial Court.

If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. The High Court is also required to see that unless there are substantial

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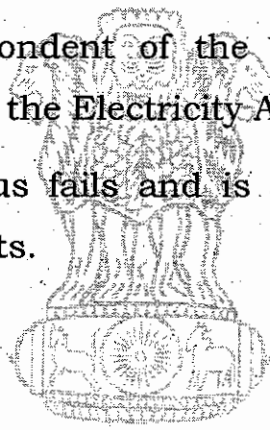
and compelling circumstances, the order of acquittal is not required to be reversed in appeal.

It is trite here to refer to a few decisions in this regard by the Hon'ble Supreme Court:

- 2007 (4) SCC 415 – Chandrappa v. State of Karnataka.
- 2012 (1) SCC 602 – State of Rajasthan v. Shera Ram.
- 2013 (5) SCC 705 – Shivasharanappa v. State of Karnataka.
- AIR 2009 SC 1542 (Para 12) – State of Punjab v. Sukhchain Singh & Anr.
- 2012 (6) SCC 589 (Para-27) – Rohtash v. State of Haryana.

(15) Thus, for the foregoing reasons, this Court is of the considered view that the finding arrived at by the Court below is purely in accordance with law and the Court below has not committed any error of law in reaching to the said conclusion of acquitting the Respondent of the charge leveled against him under Section 135 of the Electricity Act, 2003.

(16) The Appeal thus fails and is accordingly dismissed being totally devoid of merits.



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Sd/-
P. Sam Koshy
Judge

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