

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1118 of 2014**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE Z.K.SAIYED**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT....Appellant(s)

Versus

ILIYAS MIYAULLAKHAN PATHAN & 1....Opponent(s)/Respondent(s)

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Appearance:

MR HS SONI, APP for the Appellant(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE Z.K.SAIYED**

**Date : 28/11/2014**

ORAL JUDGMENT

1. The present acquittal Appeal has been filed by the appellant – original complainant, State of Gujarat under Section 378(1)(3) Cr. P.C., against the Judgment and order dated 14.6.2014 rendered by the learned Special Judge, Court No.3, City Sessions Court, Ahmedabad, in Special Electricity Case No.18 of 2011. The said case was registered against the present respondents original accused for the offence under Sections 135(1) (a) of the Electricity Act.
2. According to the prosecution case, on 3.4.2007 at 11:00 hours Checking Squad of Torrent Power Ltd., has checked electric connections in Wajavala's Chali, Hathi Khai, beside Police Lines, near Petrol Pump, D-25 Dispensary, in the compound of clinic, Gomtipur, Ahmedabad. The Raiding Officers have noticed that accused have illegally connected their private wires in overhead electric lines and illegally obtained connections in Mini Section Pillar No.Q/106/001 and were using puncture machines and tailoring machines and consumed electricity worth Rs.2,50,845/- and thereby the accused have committed the offences punishable under Sections 135(1)(a) and 150

of the Electricity Act, 2003. The complainant – Mohmedaftab Abdulla Topiwala has filed an FIR on 17.8.2005.

3. Thereafter, investigation was carried out and statements of several witnesses were recorded. During the course of investigation, accused persons were arrested and, ultimately, charge-sheet came to be filed against them in the Court of learned Magistrate. As the case was sessions triable the same was committed to the Court of Sessions.
4. Thereafter, charge came to be framed and explained to the accused persons, to which the accused persons pleaded not guilty and claimed to be tried.
5. In order to bring home the charges against the accused persons, prosecution has examined several witnesses and also produced documentary evidence.
6. Thereafter, after filing closing pursis by the prosecution, further statements of accused person under Section 313 of the Code of Criminal Procedure, 1973 were recorded. The accused persons have denied the case of

the prosecution and submitted that a false case is filed against them.

7. At the conclusion of trial and after appreciating the oral as well as documentary evidence, the learned Judge vide impugned Judgment, acquitted the respondents – accused.
8. Being aggrieved by and dissatisfied with the said judgment and order of acquittal dated 14.6.2014 rendered by the learned Special Judge, Court No.3, City Sessions Court, Ahmedabad, in Special Electricity Case No.18 of 2011 the appellant – State has preferred the present appeal before this Court.
9. Heard Learned APP Mr.H.S.Soni, appearing on behalf of the appellant – State. He has contended that the judgment and order passed by the learned Judge is contrary to law and evidence on record. He has contended that the learned Judge has not properly appreciated oral as well as documentary evidence adduced by the party in its proper perspectives.
10. He has contended that the prosecution has failed to prove beyond reasonable doubt that on 3.4.2007 at 11 O'clock in Wajavala's Chali

when checking squad of Torrent Power Ltd., have checked electric connections, they have found that the accused have illegally connected their private wires in overhead electric lines and obtained illegal electric connections in Mini Section Pillar No.Q/106/001. He has contended that evidence of PW No.3 complainant Mr.N.K.Shah, Raiding Officer, who was examined at Ex.22 on behalf of the prosecution. In his evidence he has fully supported the case of the prosecution as narrated in the complaint.

11. He has contended that employee of the Account Section prepared a checking-sheet which was produced at Ex.19 and on the basis of the same, assessment bill was prepared which was produced at Ex.27. In the said checking sheet and assessment bill he identified his signature. He also identified signature on complaint produced at Ex.26.
12. He has contended that evidence of PW No.1 Mr.M.B.Chauhan, member of raiding party who was examined at Ex.18 on behalf of the prosecution. In his evidence he has fully supported the case of the prosecution. The learned Judge has failed to appreciate evidence of this important witness. He has

contended that evidence of PW No.2 Mr.Bharatbhai Punjaram Prajapati, who was examined at Ex.21 on behalf of prosecution. In his evidence he has fully supported the case of prosecution. The learned Judge has failed to appreciate evidence of this important witness. Lastly, he has read observations of the learned Judge and contended that observations made by the learned Judge are not proper in the eye of law and therefore, judgment and order of the learned Judge is required to be set aside.

13. Heard learned APP for the appellant - State. I have gone through the papers produced in the case. Looking to the charge framed against the respondents accused and the offence under Sections 135(1)(a) and 150 of the Electricity Act, 2003 is concerned, the prosecution has to prove case beyond reasonable doubt. I have gone through the observations made by the learned Judge in para 9.13 to to 10 I am of the view that the learned Judge has rightly considered evidence of the prosecution and has rightly acquitted the accused.

14. In a recent decision of the Apex Court in the case of **State of Goa V. Sanjay Thakran &**

**Anr. Reported in (2007)3 SCC 75**, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

15. Similar principle has been laid down by the Apex Court in the cases of **State of Uttar Pradesh Vs. Ram Veer Singh & Ors**, reported in **2007 AIR SCW 5553** and in **Girja Prasad (Dead) by LRs Vs. state of MP**, reported in **2007 AIR**

**SCW 5589.** Thus, the powers which this Court may exercise against an order of acquittal are well settled.

16. It is settled legal position that in an acquittal Appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondents – accused and adopting the said reasons as well as the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this Appeal requires to be dismissed.

17. In the result, the Appeal is hereby dismissed. The impugned Judgment and order dated 14.6.2014 rendered by the learned Special Judge, Court No.3, City Sessions Court, Ahmedabad, in Special Electricity Case No.18 of 2011 acquitting the respondents – accused, is hereby confirmed. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.



**(Z.K.SAIYED, J.)**

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