

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1626 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

=====

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 or any order made thereunder ?	

=====

STATE OF GUJARAT
Versus
ASRAFBHAI BABUBHAI BHATTI

=====

Appearance:

MS HB PUNANI, APP (2) for the Appellant(s) No. 1

HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1

MR ATIT D THAKORE(5290) for the Opponent(s)/Respondent(s) No. 1

=====

CORAM: HONOURABLE MR.JUSTICE R.P.DHOLARIA**Date : 29/03/2019****ORAL JUDGMENT**

1. The appellant State of Gujarat has preferred the present appeal under section 378(1) (3) of the Code of Criminal Procedure, 1973

against the judgment and order of acquittal dated 31.8.2017 rendered by learned Special Judge, Amreli in Special (Electric) Case No.17 of 2015.

2. By way of preferring the present appeal, the appellant has mainly contended that learned trial Court has failed to appreciate the evidence on record and wrongly recorded the order of acquittal. It is further contended that learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed, as such.

3. Ms.H.B.Punani, learned APP appearing for the appellant State has reiterated and urged the grounds mentioned in the memo of appeal. Learned APP has taken this Court through the paper-book and evidence on record and argued that though the presence of the present respondent was found at the place of inspection and he was in occupation of the premises in question as his father Babubhai Hajibhai who was customer died and in his presence, entire inspection was carried out and he was found indulging into theft of electricity, learned trial Court wrongly taken hyper technical view and wrongly acquitted the respondent accused.

4. On the other-hand, Mr.Atit Thakore,

learned advocate for the respondent accused has supported the impugned judgment of learned trial Court. He argued that customer Babubhai Hajibhai died on 11.11.2009 whereas inspection was carried out on 9.3.2012 and that there was no mutation entry and the said deceased was shown as customer of the PGVCL and no iota of evidence was produced on record indicating that the present respondent was occupier and committed theft of electricity as alleged.

5. This Court has heard Ms.H.B.Punani, learned APP for the appellant State and Mr.Atit Thakore, learned advocate for the respondent accused.

6. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as the evidence on record in the nature of paper book.

7. The Record and Proceedings clearly indicates that the complaint at Exh.11 was sent to the Police Inspector, Bhavnagar by the complainant indicating the name of the accused as Babubhai Hajibhai Raheman and similarly, thereafter notice as regards to alleged theft was also served upon Babubhai Hajibhai in the year 2012 though said Babubhai Haji was already died on 11.1.2009. In view of the aforesaid factual scenario, entire procedure was wrongfully carried

out against the dead person by the officials of the PGVCL and failed to establish or place on record any iota of evidence to implicate the present respondent to the effect that the son of the deceased was occupier of the aforesaid connection and has indulged into commission of theft of electricity. In absence thereof, the present respondent accused cannot be punished, as such. Under the circumstances, learned trial Court has rightly acquitted the respondent accused considering the nature of evidence on record.

8. It is also a settled legal position that in acquittal appeals, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.

9. In above view of the matter, this Court is of the considered opinion that learned trial court was completely justified in acquitting the respondent of the charges leveled against him. This Court finds that the findings recorded by learned trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by learned court below and hence finds no reasons to

interfere with the same.

10. In the result, this appeal fails and accordingly, it is dismissed. Bail bond, if any, stands cancelled. R & P to be sent back to the trial Court, forthwith.

(R.P.DHOLARIA, J)

H.M. PATHAN