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**(2025) 12 GUJ CK 0067**

**Gujarat High Court**

**Case No:** R/Criminal Appeal No. 412 Of 2010

State Of Gujarat

APPELLANT

Vs

Rameshbhai Lakhabhai Vekariya

RESPONDENT

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**Date of Decision:** Dec. 3, 2025

**Acts Referred:**

- Electricity Act, 2003-Section 135, 151
- Code Of Criminal Procedure, 1973-Section 153, 173, 378, 379

**Hon'ble Judges:** Sanjeev J.Thaker, J

**Bench:** Single Bench

**Advocate:** Yuvraj Brahmbhatt, Shailesh Mahir

**Final Decision:** Dismissed

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**Judgement**

Sanjeev J.Thaker, J

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 7.12.2009, passed by the learned Special Judge, Jamnagar, in Special (GEB) Case No.115 of 2006, for the offences punishable under Section 135 of the Indian Electricity Act, the appellant - State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short, "the Code").

2. The prosecution case as unfolded during the trial before the lower Court is that on 28.8.2004, the complainant, along with other staff members, carried out the inspection at the premises of the respondent-accused and found that MMB seal was not present on the meter, and thereby committed theft of electricity; the supplementary bill of Rs.55,982.85 ps., was prepared and issued to the respondent, which was not paid within the stipulated time and therefore, the complaint was filed against the respondent-accused.

3. After usual investigation, sufficient prima facie evidence was found against the accused person/s and therefore charge-sheet was filed in the competent criminal Court. Since the offence

alleged against the accused person/s was exclusively triable by the Special Court, the learned Magistrate committed the case to the Special Court where it came to be registered as Special (GEB) Case No.115 of 2006. The charge was framed against the accused person/s. The accused pleaded not guilty and came to be tried.

4. In order to bring home the charge, the prosecution has examined the witnesses and also produced various documentary evidence before the trial Court, which are described in the impugned judgment.

5. After hearing both the parties and after analysis of evidence adduced by the prosecution, the learned trial Judge acquitted the accused for the offences for which they were charged, by holding that the prosecution has failed to prove the case beyond reasonable doubt.

6. Learned APP for the appellant - State has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the prosecution has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

7. As against that, learned advocate for the respondent/s would support the impugned judgment passed by the learned trial Court and has submitted that the learned trial Court has not committed any error in acquitting the accused. The trial Court has taken possible view as the prosecution has failed to prove its case beyond reasonable doubt. Therefore, it is prayed to dismiss the present appeal by confirming the impugned judgment and order passed by the learned trial Court.

8. I have heard the submissions made by the learned advocates for the respective parties and also gone through the oral and documentary evidence, independently and dispassionately.

8.1. This Court has gone through testimony which were before the Trial Court, Mr.Shailesh Ambalal Solanki, who has been testified as P.W.-1, at Exhibit-9, in his cross-examination he has stated that he does not have any personal knowledge about the incident and he has deposed in his official capacity and in his cross-examination he has stated that he has not taken any permission from the higher authorities and that, he does not have any authority to file the said complaint. The said witness in his testimony has also stated that he has not deposited the muddamal and has not handed over the said muddamal to the Police.

8.2. The prosecution has testified Jaydipbhai Jayantkumar Bhatt as P.W.2, vide Exhibit-14 and in his cross-examination also it is transpired that before checking, he has not taken any permission

from the higher authorities, the panchnama has also not been carried out in his presence. He has also admitted in his cross-examination that he has not taken any statement from the other neighbors. In his cross-examination it is also coming on record that incident has happened at residential area. It has also come on record that the said witness has also not taken any document with respect to proving the ownership and possession of the accused of the ownership of the said factory. The prosecution has also testified P.S.O. Prahladray Govindram Valera as P.W.3, at Exhibit 16 and in his deposition also he has stated that he has only registered the complaint and has stated that the complainant did not have any muddamal and that he has not done panchnama of the place of the incident and / or taken evidence of any independent witnesses.

8.3. The Court has taken into consideration Section 151 of the Electricity Act, 2003, which reads as under:

*“Section 151. Cognizance of offences:*

*No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.*

*[Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:*

*Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]”*

8.4. In the present case, the complaint is not made by any of the authorized officer. It has also come on record that the panchnama has not been done before the independent panchas, the prosecution has also failed to prove that the ownership and possession of the property was of the accused, other than the deposition of the P.S.O. Mr.Valera, there is no other document that has been proved by the prosecution of the alleged theft.

8.5. Moreover, it appears from the record that the prosecution has failed to prove the ingredients of the alleged offence and no iota of evidence is produced to prove the same.

8.6. In the present case, the Trial Court after appreciation of the evidence has found that the prosecution has not produced any documentary evidence of the ownership of the property. Moreover, there are no independent witnesses that have been examined by the prosecution. In the facts of the present case, the Special Court has found that there are serious lacuna in the prosecution's case and the prosecution has failed to established the case against the respondent. Therefore, the Trial Court has given benefit of doubt to the accused and this Court does not find any reason to interfere with the same.

9. Further, learned APP is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is perverse or that the Court below has ignored the material evidence on record. In above view of the matter, we are of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

10. Considering the impugned judgment, the trial Court has recorded that there was no direct evidence connecting the accused with the incident and there are contradictions in the depositions of the prosecution witnesses. In absence of the direct evidence, it cannot be proved that the accused are involved in the offence. Further, the motive of the accused behind the incident is not established. The trial Court has rightly considered all the evidence on record and passed the impugned judgment. The trial Court has rightly evaluated the facts and the evidence on record.

11. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is down by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

*"... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."*

12. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence at length is not necessary.

13. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:

*"The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."*

14. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the judgment of acquittal, unless reasoning by the trial Court is found to be perverse, the acquittal

cannot be upset. It is further observed that High Court's interference in such appeal in somewhat circumscribed and if the view taken by the trial Court is possible on the evidence, the High Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view.

15. In the case of Chandrappa v. State of Karnataka, reported in (2007) 4 SCC 415, the Hon'ble Apex Court has observed as under:

*"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:*

*(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*

*(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

*(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

*(4) 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 the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

16. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973 no case is made out to interfere with the impugned judgment and order of acquittal.

17. In view of above facts and circumstances of the case, on my careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly acquitted the respondents - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

18. In view of the above and for the reasons stated above, the present Criminal Appeal fails to prove its case and the same deserves to be dismissed and is **dismissed**, accordingly. Record & Proceedings be remitted to the concerned trial Court forthwith.