

(2011) 03 BOM CK 0257

Bombay High Court (Aurangabad Bench)

Case No: Criminal Appeal No. 239 of 2007

Santosh Datta Chitalkar

APPELLANT

Vs

Maharashtra State Electricity
Board and State of Maharashtra

RESPONDENT

Date of Decision: March 3, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 357(3)
- Electricity Act, 2003 - Section 135

Citation: (2011) 1 Crimes 702

Hon'ble Judges: S.S. Shinde, J

Bench: Single Bench

Advocate: R.P. Khadkikar, holding for C.R. Deshpande, for the Appellant; H.M. Karwa, for the Respondent

Final Decision: Allowed

Judgement

S.S. Shinde, J.

This appeal is directed against judgment and order dated 11.06.2007, passed by the Adhoc Additional Sessions Judge, Dhule, in Special Case No. 7 of 2005.

2. The case of the prosecution in short is as under:

On 15th September, 2004, complainant Prakash Karmarkar along with Jr. Engineer Dhande - Branch Mukti, G.N. Patil - wireman, Raju Sanaf - Clerk and panchas, namely, Pandit Gadave and Dilip Sarag visited house of the accused. It is case of the complainant that the accused was not a regular consumer of the Board. No electric meter was installed in his house. However, by putting wire on L.T. line, the accused was found to have committed theft of electricity to which 1 bulb of 60 watts each, one fan of 60 watts, a tube light of 40 watts and a T.V. of 100 watts, thus total 260 watts, were connected and daily use of these electrical equipments was for five hours. The complainant and the staff prepared panchanama vide Exh.8. It is found

as per the tariff of the Board that the accused committed theft of total 390 units worth Rs. 2730/-. Thereafter, the complaint was filed in the Court of IIIrd Jt. J.M.F.C., Dhule, which in turn, issued process against the accused vide order dated 19.10.2004, u/s 135 of the Electricity Act, 2003. Since the offence was exclusively triable by the Special Judge, the case was committed to the Sessions Court.

3. The Appellant/accused pleaded not guilty and claimed to be tried and therefore after recording evidence and hearing arguments and after framing the points, the Special Judge convicted the Appellant for the offence punishable u/s 135 of the Electricity Act, 2003 and sentenced to suffer simple imprisonment for three months and to pay a fine of Rs. 500/(Rupees Five Hundred), in default of payment of fine, the Appellant is directed to suffer further simple imprisonment for 15 days. The Appellant is also directed to pay compensation of Rs. 2800/(Rupees Two Thousand Eight Hundred) to the complainant M.S.E.B. Board, vide Section 357(3) of Code of Criminal Procedure and in default of payment of compensation, the Appellant is directed to suffer simple imprisonment for one month.

4. The Counsel appearing for the Appellant submits that the learned Adhoc Court relied upon evidence of only two witnesses and relying on said evidence, the learned Judge convicted the Appellant/accused. Even if it is assumed that the panchanama Exh.8 is in respect of the Appellant herein, in that case the very said panchanama is not proved by the prosecution. Therefore, without having been proved the panchanama, merely relying on the evidence of the prosecution witnesses, no conviction could be sustained. Therefore, the appeal may be allowed. The learned Counsel for the Appellant further submitted that out of 14 accused, 11 accused are acquitted.

5. On the other hand, the Counsel for the Respondent submitted that the evidence of two witnesses came to be recorded. There was no cross-examination on behalf of the Appellant. Therefore, their evidence went unchallenged. There is no requirement of corroboration, if the evidence of witnesses is found to be trustworthy. He submits that the appeal is devoid of merit and the same may be dismissed.

6. I have given due consideration to the submissions of the learned Counsel appearing for the parties. Upon perusal of Exh.8 and the discussion in the impugned judgment and order, I find that the learned Judge has discussed that in spot panchanama Exh.8 specific boundaries of the house of the accused have been given and electrical equipments which were connected to the illegal supply of the electricity was taken by putting wire hook on L.T. line. Except this observation there is nothing in the impugned judgment that Exh.8 has been duly proved by the prosecution. That apart, there is observation of the learned Judge regarding witnesses who have given statement on behalf of the prosecution that as they are public servants, they cannot have personal grudge against the accused. In my opinion, in such matter, unless sufficient and cogent evidence is brought on record,

no conviction can be given. In the impugned order, there is also direction to pay compensation to M.S.E.B., in absence of any calculation or in absence of having assessment sheet placed on record. The Special Court was in error in accepting the case of the prosecution. Even the prosecution has not examined independent witness like Gramsevak, to ascertain that the house in which there is alleged illegal electrical supply, belongs to the Appellant/accused. As stated hereinbefore, the prosecution has not proved panchanama at Exh.8. Except statement of P.W.1 & P.W.2, nothing has been brought on record by the prosecution.

7. Therefore, for all these reasons, in my opinion, the impugned judgment cannot be sustained, merely relying on two witnesses, who are from the department. It would not be out of place to mention that those are interested witnesses to see the result of the case, on complaint filed by their department. Therefore, merely relying on their evidence, no conviction can be sustained. On careful perusal of the original record I find that panchanama Exh.8 is not proved by the prosecution. There is no discussion in the impugned judgment about the said panchanama. There is no exercise of calculating how much units have been consumed and how figure of Rs. 2800/towards compensation has been arrived by the learned Judge. There is no basis to assume that, electricity is consumed five hours in a day.

8. For all these reasons, the impugned judgment and order is set aside. The Appellant is acquitted from the offence punishable u/s 135 of the Electricity Act. The fine amount of Rs. 500/(Rupees Five Hundred) which is deposited by the Appellant should be returned to him. As a result, there is no question of paying compensation by the Appellant as directed by the 1st Adhoc Additional Sessions Judge to the M.S.E.B. The appeal is allowed and stands disposed of. Bail bond of the Appellant stands cancelled.

9. It is made clear that in the Criminal matter, strict standard of proof is required and in the present matter evidence brought on record by the prosecution is not sufficient to convict the Appellant and therefore the impugned judgment is quashed and set aside and this has nothing to do with the civil liability, if any.