

Bhanudas Wani Vs Maharashtra State Electricity Board

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: March 3, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) & Section 357(3)
Electricity Act, 2003 & Section 135

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

Bench: Single Bench

Advocate: M.G. Kolse Patil, 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. 11 of 2005.

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

On 15th September, 2004, complainant Prakash Karmarkar along with Jr. Engineer Gyandeo Mansaram Dhande, Mukti Branch, G.N. Patil -

wireman, Raju Sanaf - Clerk from flying squad and panchas, namely, Pandit Ananda Gadave and Dilip Dada 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 3 bulbs of 60 watts each, one fan of 60 watts, one

T.V. of 100 watts and electric Shegadi of 100 watts, thus total 1340 watts were connected and daily use of these electrical equipments was for

five hours. The complainant and the staff prepared panchanama vide Exh.6. It is found as per the tariff of the Board that the accused committed

theft of total 2010 units worth Rs. 14,070/-. Thereafter, the complaint was filed in the Court of II Ird 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. 14,100/(Rupees Fourteen

Thousand One 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 name of the Appellant herein is Bhanudas s/o. Supadu Wani. On perusal of

panchanama Exh.6, name of the Appellant does not find place. According to him, no panchanama is carried out about the house of the present

Appellant Bhanudas s/o. Supadu Wani. To read panchanama of one Bhanudas s/o. Mahadu Wani, in another Criminal matter would be something

beyond judicial scope. Therefore, the learned Counsel would submit that when the panchanama is not prepared in respect of the house of the

Appellant, there is no question of fastening liability of fine and compensation or sending him to jail for three months. He further submitted 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.6 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.6 and the discussion in

the impugned judgment and order, I find that the learned Judge has discussed that in spot panchanama Exh.6 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.6 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. On careful

perusal of Exh.6, it appears that, name of one Bhanudas Mahadu Wani is given and name of Appellant - Bhanudas Supadu Wani is not mentioned

in said panchanama. 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.6.

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.6 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. 14,100/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.