
(2019) 08 CAL CK 0040

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 831 Of 2004

Abdul Aziz & Anr

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Indian Electricity Act, 1910 — Section 39
Code Of Criminal Procedure, 1973 — Section 313
Indian Penal Code, 1860 — Section 346, 366, 376
Prevention Of Damage To Public Property Act, 1984 — Section 3(2a)

Citation : (2019) 08 CAL CK 0040

Hon'ble Judges : Tirthankar Ghosh, J

Bench : Single Bench

Advocate : Milon Mukherjee, Mohinoor Rahaman, Aniket Mitra

Final Decision : Allowed

Judgement

Tirthankar Ghosh, J

The revisional application has been preferred against the judgment and order No.6 dated 25.02.2004 passed by the learned Additional Sessions Judge, 4th Court, Barasat, North 24 Parganas, in Criminal Appeal No.30/2001, whereby the learned Court was pleased to dismiss the appeal and affirm the judgement and order of conviction and sentence passed by the learned SDJM, Barasat in G.R. case No.468/92, (T.R. Case No.1935/92). The learned SDJM, Barasat, on conclusion of trial after appreciation of evidence by the said judgement dated 25.02.2004 was pleased to hold the petitioners guilty for commission of offence punishable under Section 39 of the Indian Electricity Act, 1910 and accordingly convicted them and sentenced them to suffer simple imprisonment for 1 (one) year and to pay fine of Rs.1,000/- (one thousand) each i.d. to suffer simple imprisonment for another 1 (one) month.

The prosecution case was initiated on the basis of a complaint lodged by D. Sen Assistant Engineer, Barasat (Sub Division) with the Officer-in-charge of Deganga

Police Station to the effect that on 19.03.1992 at about 14:00 hours, the complainant along with the Station Superintendent and sramik held inspection at the shop of Abdul Aziz and Zakir Hossain and found them abstracting, consuming and using electric energy dishonestly from the overhead three phase L.T. line situated at Jibanpore Bazar, Kuti Para by using 25 HP motor for saw mill causing loss of revenue to the tune of Rs.5,000/- (five thousand) per annum in committing such dishonest abstraction, consumption or use of electric energy as above mentioned. The accused persons used 7 Swg AAC about 6 ft. with solid tapping arrangement. The complainant further alleges that the act of the accused persons also amounted to mischief with the Board properties as enunciated in Section 3(2a) of Act III/84 and as such lawful action may be taken against the accused person under the aforesaid sections.

On the basis of the aforesaid complaint Deganga Police Station registered a case being Deganga P.S. Case No.48 dated 19.03.1992 under Section 39 of the Indian Electricity Act.

The investigating officer on completion of investigation submitted charge-sheet being charge-sheet No.12 dated 4.04.1992 under Section 39 of the Indian Electricity Act thereby implicating the petitioners and prayed before the learned Court for trying them for commission of the alleged offences.

The Prosecution in the charge-sheet relied upon 5 witnesses to prove its case. The learned SDJM, Barasat by an order dated 24.09.2001, was pleased to take cognizance of the offence and the petitioners thereafter surrendered before the learned Court and were released on bail. On or about 17.03.1993 the learned Magistrate was pleased to frame charge against the accused/petitioners under Section 39 of the Indian Electricity Act and the charge was thereafter read over to the accused persons to which they pleaded not guilty and claimed to be tried.

It is seen from the records of the case that the prosecution in order to prove its case relied upon four witnesses namely D. Sen, Assistant Engineer (PW-1), Swapan Ranjan Dey, Station Superintendent of West Bengal State Electricity Board (PW-2), Santi Ranjan Podder, Sub-Inspector of Police then attached to Deganga Police Station (PW-3) and Sunil Chandra Dey then attached to Deganga Police Station (PW-4).

The prosecution witness No.1 was the complainant being an Assistant Engineer at the relevant point of time who conducted the raid, in his evidence he has corroborated the complaint, the original complaint was admitted in evidence and marked as Exhibit-1. PW-2 is the Station Superintendent, Berachampa Group Electricity Supply, he corroborated the version of PW-1, and stated that police seized 7 Swg AAC wire measuring about 6 ft. on the spot as per seizure list. He further stated that he signed in the seizure list and his signature on the seizure list was marked as Exhibit-2. PW-3 is sub-inspector of police who accompanied the officers of the electricity board and seized the 6 ft. aluminium wire as per seizure list, he also prepared the seizure list which was admitted in evidence

along with his hand-writing and signature which was marked as Exhibit-2/1. This witness also proved the formal FIR which was prepared by him where his hand-writing and signature was admitted in evidence and marked as Exhibit-3. PW-4 is the investigating officer of the case who also accompanied the raiding party and submitted charge-sheet against the accused persons under Section 39 of the Indian Electricity Act.

The learned SDJM, Barasat on conclusion of evidence of the prosecution witnesses was pleased to fix date for examination of the accused persons under Section 313 of the Code of Criminal Procedure and thereafter fixed date for arguments of the case. After hearing both the parties the learned SDJM, Barasat was pleased to hold the accused persons guilty of commission of offence punishable under Section 39 of the Electricity Act and thereafter convicted and sentenced them as above.

The accused/petitioners being aggrieved by the order of conviction and sentence preferred criminal appeal before the learned Sessions Court, being Criminal Appeal No.30/2001 and the learned Appellate Court after considering the evidence and the arguments advanced by both the parties was pleased to dismiss the appeal and affirm the order of conviction and sentence passed by the learned SDJM, Barasat.

I have taken into account the submissions advanced on behalf of the petitioners by the learned senior counsel Mr. Milon Mukherjee wherein he has questioned the non-production of the seized 7 Swg AAC wire measuring about 6 ft. with solid tapping arrangement before the Court in course of trial and submitted that it would be fatal to rely upon incomplete evidence for arriving at a conclusion of guilt so far as the accused/petitioners are concerned. Mr. Aniket Mitra, learned Advocate appearing for the West Bengal State Electricity Board Distribution Co. Ltd. opposes such contention of Mr. Mukherjee and submits that there is no infirmity in the Judgement and order of conviction and sentence passed by the learned SDJM, Barasat and as such the learned Appellate Court did not commit any error in confirming such order of conviction and sentence.

Having considered the oral and documentary evidence relied upon by the prosecution I have found that the three documents so relied upon are the letter of complaint, formal FIR and the seizure list, no material exhibits have been found to be admitted in evidence in this case. Keeping in mind the fact that the offence relates to illegal abstraction of electricity and the link between the running of the saw mill and overhead 3 phase L.T. line is a 7 Swg AAC wire measuring about 6 ft., which may apparently seem to be a simple devise but the non-production of which is bound to create a dent in the prosecution case.

I find from the judgement of the Appellate Court that this point was argued by the accused/petitioners but the learned Appellate Court dealt the same as a lacuna in the investigation. I beg to differ with the Learned Appellate Court in view of the fact that 7 Swg AAC about 6 ft. with solid tapping arrangement was

seized in course of the investigation which was not produced in the court in course of trial. I consider this to be a material evidence and a connecting link for the offence of illegal abstraction of electricity and the non-production of which is bound to raise a doubt so far as the standard of proof required in a criminal case, is concerned. The learned Appellate Court while dealing with the issue relied upon the judgement being 2003 C. Cr. LR (SC) 680. I have gone through the said judgement being Visveswaran Vs. State Rep. By SDM, it is a case under Sections 346/366/376 of the Indian Penal Code wherein the test identification parade of the appellant was not conducted and the Hon'ble Apex Court was pleased to hold that crimes of such nature are committed under the cover of darkness when none will be able to identify the accused, as such the commission of such crime can be proved by circumstantial evidence also. I find the said judgment has no application to the present case which is under Section 39 of the Electricity Act, as a case for illegal hooking or abstraction cannot be proved by mere oral evidence and substantial material evidence and documentary evidence are required to prove the case beyond all reasonable doubt.

In Jagannath Singh alias Jainath Singh Vs. Ramaswamy & Anr.; AIR 1966 SC 849, it was held that:

"The effect of the last part of Section 39 is that the existence of the unauthorised means for abstraction is prima facie evidence of dishonest abstraction by some person. The special rule of evidence goes no further. The prosecution must prove aliunde that the accused made the abstraction. The fact that the accused is in possession and control of the artificial means for abstraction coupled with other circumstances showing that he alone is responsible for the abstraction may lead to the inference that he is guilty of the dishonest abstraction."

Having due regard to the ratio laid down by the Hon'ble Apex Court, if the materials collected by the investigating agency and relied upon by the prosecution, in order to prove the case against the accused/petitioners are taken into account it is found that except oral evidence there is nothing on record to connect the accused/petitioners with the crime. It was incumbent to bring on record and prove that the meters which were installed and were not functioning, the 7 Swg AAC wire about 6 ft., the arrangement made for affixing such wire and the H.P. motor which were in operation, before the learned Court in order to prove the prosecution case beyond reasonable doubt. In this case what we find is that no material exhibits have been relied upon only the seizure list relating to 7 Swg AAC wire about 6 ft has been marked as a documentary evidence and as such the material relied upon by the prosecution cannot be held to be reasonable for coming to a conclusion of guilt. As held by the Hon'ble Apex Court that existence of the unauthorised means for abstraction or dishonest abstraction by the accused/petitioners must be proved absolutely or alternatively there must be other circumstances showing that the accused were solely responsible for the abstraction which can only lead to the inference of guilt regarding dishonest abstraction.

I have applied my mind to the materials relied upon by the prosecution and the judgments delivered by both the Courts below and I find that the prosecution have failed to bring on record in the form of evidence the preliminary necessities for proving a case under Section 39 of the Electricity Act which should have included the non-operational electrical meters, 7 Swg AAC about 6 ft., the arrangement made for affixing such wire and the H.P. motor which were in operation, added to this there should have been the sketch map showing the presence of the saw mill at the location, documents relating to ownership of the saw mill. Further, non-examination of the independent witnesses by the investigating officer of the case, has in fact created a lacuna in the evidence. The materials available before the Court are so scanty that it would be very difficult for the court to hold the petitioners guilty for commission of the offence for which they have been charged.

In view of the observations made above the order no.6 dated 25.02.2004 passed by the learned Additional Sessions Judge, 4th Court, Barasat, North 24 Parganas, in Criminal Appeal No.30/2001, wherein the learned Appellate Court was pleased to affirm the judgment and order of conviction and sentence dated 24.09.2001 passed by the learned SDJM, Barasat, thereby holding the petitioners guilty for commission of offence punishable under Section 39 of the Indian Electricity Act, 1910 is hereby set aside.

The accused petitioners are acquitted from the charges levelled against them and if on bail, they are directed to be discharged from their bail-bonds.

The revisional application being CRR No.831 of 2004 is accordingly allowed.

The lower Court records be sent down immediately to the respective courts below.

Department is directed to communicate the order to both the Courts below.

Urgent certified photocopy of this Judgement, if applied for, be supplied to the parties, upon compliance of all requisite formalities.