
(2021) 10 RAJ CK 0085
In the Rajasthan High Court
Case No : S.B. Criminal Appeal No. 256 Of 2021

Bhimsen

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 374(2)
Electricity Act, 2003 — Section 135

Citation : (2021) 10 RAJ CK 0085

Hon'ble Judges : Manoj Kumar Garg, J

Bench : Single Bench

Advocate : N.K. Sharma, Pradeep Sharma

Final Decision : Partly Allowed

Judgement

Manoj Kumar Garg, J

Instant criminal appeals have been filed by the appellant under Section 374(2) Cr.P.C. against the judgment dated 30.01.2021 passed by learned Special Judge (Electricity Theft Cases) and Additional Sessions Judge No.1, Sriganganagar in Sessions Case No. 05/2019 by which the learned Judge convicted the appellant for offence under Section 135 Electricity Act and sentenced him for a period of two years simple imprisonment with fine of Rs. 10,000/- and in default of payment of fine, to further undergo 15 days S.I.

Brief facts of the case are that on 19.05.2018, the Executive Engineer, Jodhpur Discom, Sriganganagar made a sudden inspection of the house of appellant and found him having illegal wire connection from the main electric line.

The police registered the FIR and started investigation. After investigation, the police filed challan against the present appellant for offence under Section 135 Electricity Act. Thereafter, the charges of the case were framed against the appellant. He denied the charges and claimed trial.

During the course of trial, the prosecution examined nine witnesses and various documents were also exhibited. Thereafter, statement of appellant under section 313 Cr.P.C was recorded. No witness was examined on the defence side.

Upon conclusion of the trial, the learned trial court vide impugned judgment dated 30.01.2021 convicted and sentenced the appellant for offence under Section 135 of Electricity Act as mentioned earlier.

At the threshold, learned counsel for the appellant does not challenge the finding of conviction but it is submitted that the appellant has been awarded two years sentence for offence under Section 135 of Electricity Act and he has already served the substantive sentence and only the sentence in default of payment of fine is left. It is prayed that the amount of fine imposed upon the appellant may be waived and the appellant may be ordered to be released.

On the other hand, the learned counsel for the respondent JVVNL opposed the submissions made by the learned counsel for the appellant. Counsel submitted that there is neither any occasion to interfere with the sentence awarded to the accused appellant nor any compassion or sympathy is called for in the said case.

Since the appellant's counsel does not challenge the appellant's conviction, this Court need not go into the merits of the case and accordingly, the conviction of the appellant as recorded by the learned trial court for the offence under Section 135 of Electricity Act is maintained.

I have perused the evidence of the prosecution as well as defence and the judgment passed by the trial court regarding conviction of the accused-appellant. It is not disputed that the appellant has already served the substantive sentence so also suffered the agony and trauma of protracted trial. Thus, looking to the over-all circumstances and the fact that the appellant has remained behind the bars for considerable time, it will be just and proper if the sentence awarded by the trial court for offence under Section 135 of Electricity Act is reduced to the period undergone by him while waiving the amount of fine.

Accordingly, the appeal is partly allowed. While maintaining the appellant's conviction and sentence for offence under Section 135 of Electricity Act, the sentence awarded to him is reduced to the period already undergone and the amount of fine is hereby waived. Since the appellant has also served the period of imprisonment, he may be released forthwith, if not required in any other case.

The record of the trial court be sent back forthwith.