
(2013) 12 PAT CK 0011

In the Patna High Court

Case No : Criminal Revision No. 830 of 2011

Pawan Kumar and Vijay Kumar

APPELLANT

Vs

The State of Bihar and Rajmangal Singh

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Electricity Act, 1910 — Section 39, 44
Penal Code, 1860 (IPC) — Section 379

Citation : (2014) 1 PLJR 237

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Anjani Pd. Singh, for the Appellant; Rajesh Kumar, APP, for the Respondent

Final Decision : Allowed

Judgement

Aditya Kumar Trivedi, J.—Petitioners challenged the judgment dated 21.05.2011 passed by Additional Sessions Judge, FTC-5th Sheikhpura in Cr. Appeal No. 2/14/2011 whereby and whereunder the judgment of conviction and sentence dated 22.12.2010 passed by Sri Sandeep Singh, Judicial Magistrate, 1st Class-Sheikhpura in G.R. No. 520/1996 convicting the petitioners for an offence punishable under Sections 39, 44 of the Indian Electricity Act, 379 of the IPC and further directing each of them to undergo S.I. for two years u/s 39 of the Indian Electricity Act, S.I. for two years u/s 44 of the Indian Electricity Act and S.I. for two years u/s 379 of the IPC with a further direction to run the sentences concurrently found modified and by such modification the conviction and sentence for an offence punishable under Sections 44 of the Indian Electricity Act as well as 379 IPC have been erased while conviction and sentence u/s 39 of the Indian Electricity Act has been maintained. Rajmangal Singh, PW-5 filed a written report on 07.06.1996 disclosing therein that under the leadership of Rama Shankar Singh, Executive Engineer, Electricity a raiding party was constituted to detect pilferage/theft of electric energy and accordingly, raid was conducted and during course thereof, house of Bijay Kumar, Pawan Kumar, Sakaldeo Singh and

Bachchu Singh were raided and they all were found stealthily consuming the electricity by means of hook. Connecting wires were seized and for that seizure list was prepared. On the basis of the aforesaid written report Barbigha P.S. Case No. 202/1996 was registered whereupon investigation commenced and ultimately, charge-sheet was submitted followed with trial whereunder all the accused were convicted and the same with certain modification is found concurred during course of appeal, hence, this revision petition.

2. While exercising revisional jurisdiction against the concurrent finding of fact, the revisional court is forbidden from reappraising the evidence until and unless there happens to be glaring mistake visualizing from the record itself. That means to say, interference by the revisional court with regard to concurrent finding should not be made in routine as well as casual manner until and unless grave error is found on the record on account of mistake or illegality committed by the successive courts or the successive courts while deciding the case had itself committed such an error during course of appraisal of evidence, or during course of appreciation of law commanding the trial.

3. The present case is one of such illustrations. From the written report (Ext-2), it is apparent that there is absence of disclosure as to how the raiding party had identified the houses where raid was conducted belonging to the respective accused. It is also apparent therefrom that neither presence nor absence of each of accused has been shown thereunder. Moreover, the seizure list (Ext-1 series) prepared by the raiding party did not possess signature of any of the accused.

4. Now coming to the evidence of the witnesses on this very score, PW-7 is the I.O. who had inspected the place of occurrence which he had detailed under para-4, 5, 6 and 7 of his examination in chief. The first place of occurrence which was visited by him happens to be the house of Sakaldeo Singh lying at Mahavir Chowk, the second place of occurrence which was visited by the I.O. happens to be that of Bachchu Singh, the third one, the Daal Mill of Bijay Kumar and the fourth one happens to be that of Pawan Kumar. The raiding party had not mentioned in his prosecution report nor during course of evidence had stated that they ever raided Daal Mill of Bijay Kumar. In likewise manner the house shown to be that of Pawan Kumar having name plate affixed thereupon, Binod Kumar, Raju Rai which have not been incorporated by the raiding party. In paragraph-10 of his cross-examination the I.O. had disclosed that he had inspected the P.O. as pointed out by the Chaukidar as well as complainant with regard to Pawan Kumar and so far remaining houses are concerned, as pointed out by the informant but later on disowned to have mentioned like so, he had further stated in paragraph 12 that he had not inquired during investigation regarding ownership of the house although during course of his inspection the houses were opened but he had not gone inside. In para-20, he had again stated that he had not inquired from the persons whose houses were standing in the boundary to know about ownership of the respective houses.

5. PW-1, one of the members of the raiding party had supported that the

prosecution case, however, he failed to disclose that at the time of raid the accused persons were present at their respective houses. During cross-examination from para-8, he had clearly admitted that they have not tried to know about the ownership of the house where raid was conducted.

6. PW-2 another member of the raiding party who had reiterated the prosecution version during his examination-in-chief but again during course of cross-examination at para-7, he failed to pin point the accused persons to be the exclusive owner of the respective houses.

7. In likewise manner, from evidence of PW-3 under para-8, PW-4 under para-5, PW-5 (informant) under para-10, 13, it is evident that they have not been able to identify the accused persons to be exclusive owner of the house where alleged raid was conducted and on account thereof, identifying the accused to be the culprit on account of stealthily consuming the electric energy could not arise. In likewise manner, from the aforesaid evidences, it is evident that the members of the raiding party have failed to locate and connect the houses in question with the accused persons as well as they have also failed to produce cogent evidence on the point that accused being head of the family was responsible for stealthily consuming electric power. When the evidence of I.O. PW-7 has been taken into account on this very score, his manner of investigation could not get nod over its authenticity because of the fact that the identification of the house belonging to the respective accused happens to be not above board.

8. On account of aforesaid factual inconsistency persisting on the record so coming out from the evidences of the PWs gives a solid plank of genuine benefit of doubt in favour of petitioners. After having perusal of successive judgments, it is apparent that the aforesaid eventualities gone overlooked by the successive courts.

9. As such, the successive judgments are set aside. Petition is allowed. Since petitioners are on bail, they are discharged from the liabilities of bail bond.