
(1963) 01 PAT CK 0007
In the Patna High Court

State of Bihar and Others

APPELLANT

Vs

Ram Chandra Prasad Sharma and Others

RESPONDENT

Date of Decision : 23-01-1963

Acts Referred:

Electricity Act, 1910 — Section 2, 26, 37, 39, 44
Penal Code, 1860 (IPC) — Section 201, 379

Citation : (1963) CriLJ 579

Hon'ble Judges : G.N. Prasad, J;Anant Singh, J

Bench : Division Bench

Judgement

G.N. Prasad, JJ.—These appeals and revisions involve similar questions of law and fact, and they have been heard together with the consent of the parties and for the sake of convenience. They arise out of four separate trials, in each of which the charges framed against the various accused persons were mainly for offences under Sections 39 and 44 of the Indian Electricity Act (Act X of 1910), 1910 (hereafter to be referred to as the Act) and Rule 138 read with Rule 56 of the Indian Electricity Rules (hereafter to be referred to as the Rules) framed by the Central Electricity Board u/s 37 of the Act.

2. All the four prosecutions were launched on different dates in June and July, 1958, at the instance of the Chief Engineer of the Patna Electric Supply Company Limited, who at the relevant time, was Sri B.S. Ramaswami, and in the following circumstances:

3. The Patna Electric Supply Company Limited (hereinafter to be referred to as the PESCO) generates electrical energy and also purchases such energy from the Bihar State Electricity Board. The total quantity of the energy so generated and purchased by the PESCO came to about forty lacs units per month in 1958. In that year the PESCO supplied electrical energy to about 20,000 consumers in Patna, Patna City and Dinapur, about 900 of whom were industrial power consumers. u/s 26. of the Act read with Rule 57 of the Rules, the PESCO was under a duty to supply to their consumers what are known as "correct meters",

that is to say, meters capable of recording consumption of electrical energy within a limited margin of error, not exceeding three per cent, above or below absolute accuracy, at all loads in excess of 1/10th of full load and up to full load. Rule 57(2) of the Rules lays down that no meter shall register at no load, The system followed by the PESCO was to test the meter before its installation in the premises of its consumers, with a view to ensure that it was capable of recording consumption within the margin of error permissible under Rule 5/. Only such meters used to be supplied to the consumers which passed the above test.

4. It is necessary to have some idea of the mechanism of a meter. Inside the meter there is a disc, which rotates when the current passes through the meter and the consumption of energy is registered by a set of dials. The outer cover of a meter is known as the meter cover. It is designed to prevent the free movement of the disc or the dials from being obstructed or interfered with by any artificial means or device from outside. Every meter has 4 nuts, two on each side of it, with corresponding stud holes through which the meter cover can be fixed, and after placing the meter cover in position, the nuts of each of the four stud holes are tightened up fully. When fully tightened up, stud holes are blocked completely by the lower projection of the stud nuts, thus not permitting anything, not even dust or moisture, to pass inside the meter. Each stud and each nut has a hole in it, which is meant for sealing the meter. For the purpose of sealing the meter, a piece of wire has to be passed through the stud hole and the corresponding nut on each side. Then the wire is twisted, and one end of it is passed through the holes of the opposite stud and nut, and the same end of the wire is then joined with the loose end of it and twisted. Thereafter both the ends are sealed together by means of special kind of lead, seals. So long as the wires and seals are intact, the nuts cannot be screwed up or loosened and, therefore, the stud holes cannot be exposed.

In order to expose the stud-hole of a sealed meter, it would be necessary first to break the seal and to take out the sealing wire after untwisting it, and then to take it out from the holes of the nut and the stud. Thereafter, the nut can be screwed up or loosened, thereby exposing the stud-hole. Once the stud-hole is exposed, it is possible to insert a wire, or dust or moisture, inside the meter through the stud-hole and thereby to prevent the disc of the meter from rotating and failing to register the consumption of electrical energy either fully or partially, depending upon the means adopted, even though the current might continue to pass on to the consumers' installation. Rule 56 lays down that no person other than the supplier shall break any such seal, and it enjoins upon the consumer to use all reasonable means in his power to ensure that no such seal is broken otherwise than by the supplier". Contravention of this Rule is punishable under Rule 138.

5. Any interference with the meter or its index or any act which damages it or prevents it from duly registering the consumption of electricity is an offence punishable u/s 44 of the Act. (Sa) Section 39 of the Act reads:

Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code and the existence of artificial means of abstraction shall be prima facie evidence of such dishonest abstraction.

6. In the normal process of transmission, transformation and distribution of electrical energy, there used to be a normal loss of energy in the PESCO to the extent of 15 to 16 per cent.; but sometime in 1958, Ramaswami noticed that the loss was mounting up and In some months it went up to about 24 per cent. The abnormal percentage of loss led Ramaswami to suspect that energy was being stolen; and accordingly he directed his subordinate officers to make a systematic and careful check of the consumers' installations, specially of the industrial power consumers.

7. In pursuance of the directive of the Chief Engineer, Section Chatterji, who was the Assistant Engineer (Mains) of the PESGO, checked several industrial power Installations in Dinapur area on different dates in June 1958.

8-46. (After setting out the prosecution case to the effect that the meters installed in the four industrial installations in question were tampered with, with the result that theft of energy was committed, His Lordship proceeded:)

47. There can be no room for doubt that tampering had been discovered in the meters of all the four industrial installations with which we are concerned in these cases, and, indeed, the same stand proved by the evidence adduced by the prosecution in each case. Such evidence consists, firstly, in the testimonies of the various officers of the PESCO who had inspected the meters of the four installations on the various dates mentioned by the prosecution, and, secondly, in the evidence of the Assistant Electric Inspector in all the four cases and the investigating police Officer in three of them. Their evidence is also supported by certain contemporaneous materials on the record, including the tampered meters themselves together with their seals which have been brought as material exhibits on the records of each case.

48-49. (After giving the names of witnesses who had given evidence His Lordship proceeded;)

50. I may state at the outset that I have carefully gone through the evidence given by the various prosecution witnesses in all these cases and I do not find any reason whatsoever to think that the evidence of any of them can be discarded on any valid ground. There is absolutely no reason to think that those officers of the PESCO bore any animus towards any of the various accused persons or that they had combined to falsely implicate any of the people concerned or associated with any of the four Mills. Nor do I think that they are a group of corrupt men who could have thought of perjuring themselves in Court. They could not possibly have entered into any conspiracy against the accused persons without any advantage to themselves,

XX XX XX XX XX XX 51-54. (After setting out the evidence in Govt. Appeal 1 of 1960 and Cri. Rev. No. 1256 of 1959 His Lordship proceeded:)

It is true that there is no direct evidence to the effect that Ramchandra (the accused) personally had broken the seal and inserted the wire inside the meter causing the disc from stopping to rotate. But the meter was undoubtedly under his custody and control, and the tampering must have been done with his consent or connivance, for, it was he who stood to gain by the dishonest abstraction of electrical energy. Whoever may have brought the means of abstraction into existence, the fact remains that it was the respondent (Ramachandra) who was consuming the electrical energy which the meter had been prevented from registering by reason of the existence of the artificial means of abstraction. u/s 39 of the Act, it is not the creation, or the existence of the artificial means of abstraction which constitutes the offence of theft, but the dishonest abstraction, consumption or user of the energy by such means, the existence of the artificial means of abstraction being only prima facie evidence of such dishonest abstraction. From the very nature of things, the prosecution cannot be expected to adduce direct evidence that the consumer was responsible for bringing into existence the artificial means of abstraction, and in the majority of such cases, the offence of theft of electrical energy can only be proved by circumstantial evidence. Where the consumer is shown to be in custody or control of the meter, he is undoubtedly the person who stands to profit by dishonest abstraction, user or consumption of electrical energy, and the existence of an artificial means of device of abstraction must inevitably lead to the conclusion that it is he who is responsible for having brought it into existence, and that would be sufficient proof of his guilt u/s 39 of the Act. The inference of guilt arising from such circumstances may, no doubt, be rebutted, if the consumer is able to bring some material on the record to show that he had no personal knowledge of the existence of the artificial means of abstraction, which, for example, had happened at a time when he was out of touch with his business, either because he was ill or out of station at the relevant time. But in absence of any such material, the inference of his guilt u/s 39 of the Act must be drawn from the chain of circumstantial evidence referred to above.

55. The view which I have taken is in accord with the decision of a learned Single Judge of the Allahabad High Court in Banwari Lal Vs. Emperor, . There an artificial means of abstraction was found to be in existence in the installation of the consumer, but there was no direct evidence to show that it was the consumer who had set up the artificial means of abstraction. Young, J. held that the charge of theft of electrical energy had been proved from the circumstantial evidence that the consumer was the only person who stood to gain from the theft of electricity. Referring to section 39 of the Act, his Lordship observed that while it did not absolve the prosecution from the burden of proving the offence against the consumer, yet such proof must of course largely be circumstantial in character, and where the person charged is the only person, who would gain advantage from the theft of the electricity, the charge must be deemed to have

been proved.

56. In an unreported decision of this Court given on the 22nd December 1961 in State of Bihar v. Parsu Ram Sao, Govt. Appeal No. 20 of 1959, (Pat) similar question arose before Misra and Section P. Singh, JJ. In that case three joint partners of an industrial installation were charged u/s 39 of the Act read with Section 379 of the Indian Penal Code, besides u/s 44 of the Act and Rule 138 of the Rules. There was no direct evidence to the effect that the artificial means of abstraction found to exist in that case had been resorted to by any of the three partners of the Mill who were the consumers within the meaning of Section 2(c) of the Act. Dealing with the question as to whether the partners were liable u/s 39 of the Act, their Lordships observed as follows: "Section 39 of the Indian Electricity Act provides that whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code; and the existence of artificial means for such abstraction shall be prima facie evidence of such dishonest abstraction. "Means" which are unauthorised will come within the purview of "artificial means" as contemplated under the Act, and an abstraction of energy through that "means" will mean "unauthorised abstraction". In the present case There can be no manner of doubt that the interchange of the wires of the central phase was an "artificial means", and the existence of such a means shall be prima facie evidence of dishonest abstraction. Under the provisions of this section, therefore, The prosecution has merely to prove the existence of artificial means for dishonest abstraction on the premises where the alleged offence has taken place. The burden would then shift to the accused to show that the artificial means on their premises was not for purposes of dishonest abstraction in order, to avoid a conviction. In the present case the artificial means did exist and it was used evidently with a view to benefit the owners of the mill, and, therefore, they must be held guilty of the commission of an offence under this section.

With respect, I am in complete agreement with this view.

57. In the instant case, there can be no doubt that Ramchandra Prasad Sharma was the owner of the Mill and the consumer who was in custody or control of the meter, and he was liable for the payment of the bills in respect of consumption of electricity in the Ramji Mills. Therefore, it was he who stood to gain by the dishonest abstraction of electrical energy inasmuch as electricity was being consumed without being recorded in the meter and as such without having to be paid for. In my opinion, the circumstantial evidence on the record is incompatible with the innocence of Ramchandra Prasad Sharma, who is, therefore, guilty u/s 39 of the Act read with Section 379 of the Indian Penal Code.

58. The decision of Dhavle, j, in Bhagalpur Electric Supply Co. Ltd. Vs. Profulla Kumar Ghosal and Others, relied upon by the learned Counsel for the respondent, is not in point. In that case the prosecution had failed to prove that the accused was the consumer. Therefore, one of the essential links in the chain of circumstantial evidence was absent. That is, however, not the situation in the

instant case.

59. It was next urged on behalf of the respondent that, as admitted by Chatterji, the meter in question was an old one and the same had been installed in the Ramji Mills as far back as 1948, whereas the respondent had acquired interest in the Mill sometime in 1957, and there is no evidence to show that the meter had been checked by the PESCO authorities all these years. It was, therefore, contended that the tamperings detected in the meter might as well have taken place before the respondent had purchased the Mill. But this contention is entirely without force. The failure of the PESCO people to have checked the meter can by no means account for the breakage of the seals thereof or of the insertion of the wire through the stud-hole. It is inconceivable that these tamperings could have occurred long before the 11th June 1958 or prior to the time of the respondent's purchase of the Mill in 1957.

60. It was next urged on behalf of the respondent that u/s 39 of the Act, the existence of an artificial means of abstraction can at best raise a presumption that there was a theft of electrical energy, but that would not necessarily constitute a conclusive proof of such theft. Reliance was placed upon *Rash Behari Shaw (Handa) and Others Vs. Emperor*, in which the following observation occurs at page 766:

In dealing with this line of argument one must bear in mind that the words of Section 39 are "shall be deemed to have committed theft", not shall have committed theft or shall be guilty of theft. Therefore, the section means no more than that the offender is to be treated in the same way as if he had committed the offence of theft. In this connection we would refer to the case in *Emperor Maung Pu Kai ILR 7 Rang 329 per Heald, J.* at p. 336: (AIR 1929 Rang 203). But this argument ignores the fact that if the presumption contemplated by the section is not rebutted in any manner on behalf of the accused, then a finding of theft may safely be arrived at on the basis of such presumption alone. As was pointed out in the unreported decision or this Court already referred to the prosecution has merely to prove the existence of an artificial means for dishonest abstraction on the premises where the offence has taken place. Thereafter the burden would shift to the accused to bring some material on the record to show that the artificial means in question was not for purposes of dishonest abstraction, or despite the existence of such artificial means, there was in fact no dishonest abstraction of electrical energy. For example, the accused might show that the means for abstraction had not in fact interfered with the correct record of consumption of energy in the meter, or that it was the outcome of a child's pranks. But if no attempt is made to prove any of these facts for the purpose of rebutting the presumption which must arise u/s 39 of the Act, then there is no reason why a conviction for theft of electricity cannot be based upon such presumption alone.

61. The question, however, is purely academic so far as Ramchandra's case is concerned, because in this case there is clear evidence of Chatterji as well as of

Ramaswami to the effect that they had found the disc of the meter stationary at the time when they had inspected it during their respective visits to the Mill on the 11th June 1958, when the Mill was working, which must be held to constitute direct proof of theft of electrical energy.,

62. A point was also raised on behalf of the respondent that the respondent having already been convict u/s 44 of the Act is not liable to be further convicted for an offence u/s 39 of the Act, since, the offence under the former section embraces the offence under the latter section as well. But this contention cannot be accepted as correct. In AIR 1938 130 (Privy Council) , a point was raised that a specific offence u/s 39 of the Act was wrongly charged and the accused could only have been legally charged u/s 44(c) of the Act, but the contention was repelled by the Privy Council with the following observation:

No doubt a charge could have been preferred under that section, if the condition of the jurisdiction of the Magistrate that an order should be made by the Local Government consenting to the initiation of the proceedings (Section 196A Criminal P.C.), had been satisfied, as in fact it was not. But the existence of Section 44(c) does not prevent the charge which was made u/s 39 from being properly made. Section 39 is in fact the major offence. That offence was clearly established, because the user of electric current without the intention of paying is beyond question a dishonest user. That is all that is required under S, 39 which creates a statutory theft sufficiently established against whoever dishonestly abstracts, consumes or uses the energy. The technical rules applicable to proving the theft of a chattel do not apply to proof of this special offence.

63. From what I have stated above, it is manifest that the learned Additional Sessions Judge has taken an entirely erroneous view of this case inasmuch as he has set aside the conviction of the respondent u/s 39 of the Act without at all considering various circumstances on the record, to which I have referred. The order of acquittal is, therefore, perverse and it cannot be allowed to stand.

64. For the aforesaid reasons, I set aside the acquittal of Ramchandra Prasad Sharma u/s 39 of the Act and restore the order of the learned trying Magistrate convicting him u/s 39 of the Act read with; Section 379 of the Indian Penal Code. But considering the fact that the Mill of the respondent was installed with a motor of 15 H. P. only, I sentence him to undergo rigorous imprisonment for eighteen months and to pay a fine of Rs. 1000/- with a further sentence of four months rigorous imprisonment in default. Government Appeal No. 1 of 1960 and Criminal Revision No. 1256 of 1959 are accordingly allowed.

65-71. (After examining the evidence on record in Criminal Appeal No. 42 of 1959 His Lordship observed:)

72. Upon the evidence on the record, the conclusion is irresistible that the prosecution case as to the tampering found in the meter of Shankarji Mills on the 18th and the 19th June 1958 and further signs of tampering subsequently found in the meter and the seals after their seizure and production in Court is

substantially true, and it must be held that offences in respect of which charges had been framed against the three respondents, Durga Prasad, Chandra Mohan Prasad and Musan Lai, had been committed in relation to the meter of Shankarji Mills. The tampering with the meter-door seal accompanied with the loosening of the top right sealing nut which necessarily had the effect of exposing the stud holes and the accumulation of sufficient quantity of dust on the meter disc are proof positive of the fact that the consumers are guilty of offences u/s 44 of the Act and Rule 138 read with Rule 56 of the Rules, as well as of an offence u/s 39 of the Act, since, the loosening of the stud and allowing sufficient dust to accumulate on the meter disc constituted artificial means for dishonest abstraction of electrical energy by impeding the free movement of the meter disc. Such artificial means for abstraction must raise a presumption of dishonest abstraction of electrical energy which amounts to commission of theft within the meaning of the Indian Penal Code, and in the absence of any material to rebut this presumption, it must be held that there was in fact theft of electrical energy in the premises of Shankarji Mills. It is also clear that the subsequent tamperings constituted an offence u/s 201 of the Indian Penal Code.

73-89. (The rest of the judgment except the following has been omitted as it contains no points of law worth reporting:)

90. Since I find no reason to reject any part of the evidence of Ramaswami (P. W. 1), I feel satisfied that he has truly deposed that when he had questioned Krishna Prasad Sao (accused in Govt. Appeal No. 19 of 1959), about the tamperings in the meters, the latter had confessed before him that they had been done by one of the Meter Readers in lieu of some illegal gratification which he had paid to the Meter Reader whom he had subsequently pointed out to be respondent Jainarain Singh. Krishna Prasad Sao, no doubt, retracted his confession in Court, but an extra judicial confession, even though subsequently retracted, may well form the basis of conviction of the maker, if it is found to be voluntary and true, even though it is not corroborated by any other evidence. As to the true character of the confession, it is enough to point out that it has been deposed to by a responsible person like Ramaswami, the Chief Engineer of the PESCO. As to the voluntary character of the confession, I find nothing on the record to show that it was not so. All that was pointed out on behalf of the respondent in this connection was that in his cross-examination Ramaswami stated that there were some outsiders present at the time when he had questioned Krishna Prasad Sao and two of them had "told him to disclose the facts". But there is no suggestion whatsoever that these two persons, whoever they may have been, had brought any inducement, threat or promise to bear upon the respondent, in consequence of which, he made the confession about which Ramaswami has deposed. Reliance was also placed upon the further evidence given by Ramaswami which was to the effect that Krishna Prasad Sao had refused to give him anything. In writing though he was prepared to come with him in his car "after refusing to write". But this also cannot indicate that the confession was not voluntarily made by Krishna Prasad Sao.

On the contrary, it indicates that he was under nobody's influence at the time he had made the confession to Ramaswami orally and he did not want to commit himself in writing, and at the same time he sought to deny his own hand in the matter while throwing the blame on another person. In other words, there is not the slightest indication in the evidence on record that it was on account of any external influence or inducement that the confession was made by Krishna Prasad Sao.

91. The learned Magistrate has observed, referring to Krishna Nandan Prasad Verma Vs. The State, , that it is an established law that a retracts confession must be corroborated by independent evidence in material particulars, otherwise it has no legal weight. But the learned Magistrate has really not understood the actual decision in the case, 1958 BLJR 6: Krishna Nandan Prasad Verma Vs. The State, lays down no such proposition of law. Sahai, J, who delivered the leading judgment in. that case reiterated the proposition which is well-known, as pointed out by their Lordships of the Supreme Court in Balbir Singh Vs. State of Punjab, that a retracted confession, if believed to be true and voluntarily made, may form the basis of a conviction. But the Rule of practice and prudence requires that such a confession should be corroborated by independent evidence.,

92. In the instant case, such corroboration is furnished by the very circumstance under which Ramaswami was able to locate Jainarain Singh as the Meter Reader, whom. Krishna Prasad Sao had described as the person to whom he had paid illegal gratification for the purpose of making the tamperings with the meters of their seals. This, in my opinion, is ample corroboration of the extra judicial confession, and, therefore, there is no reason why it cannot form a basis of Krishna Prasad Sao's conviction.

93. From the materials on the record I, therefore hold that it was at the instance of Krishna Prasad Sao that the seals of the meters were tampered with while they were under his custody of control. The cutting of the sealing wires were obviously designed to be a device or means for abstraction of electrical energy, a fact amply proved from the circumstance that at least one of the three meters had shown no advance whatsoever between the 19th and the 22nd July 1958, when it should have shown an advance of at least 49 or 50 units as registered by the other two meters. It has thus been proved that the artificial means of abstraction, namely the cutting of the sealing wires of the meters in question had been fraudulently brought into existence with a dishonest intention, namely that of committing theft of electrical energy, and in the absence of any rebutting evidence, it must further be held that there was in fact a theft of electrical energy on the part of Krishna Prasad Sao, in whose custody or control the meters were. Thus all the charges -framed against him have been brought home to him,

94. On behalf of the respondents Mr. B. K. Banerji contended that the present prosecution is invalid since it was started on the report submitted to the police by A. B. Bhattacharya (P. W. 3), who was not one of the persons mentioned in

Section 50 of the Act, which provides:

No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an Electric Inspector or by a person aggrieved by the same.

But this contention is entirely without force. Section 50 does not contemplate that the prosecution should be instituted "by the person aggrieved". What it lays down is that it should be done "at the instance of" such a person. The present prosecution was undoubtedly instituted at the instance of a person aggrieved, namely Ramaswami, who was the Chief Engineer, and as such the principal officer of the PESCO who stood to suffer by reason of the offences found to have been committed in this case.

95. In the result, therefore, I set aside the acquittal of Krishna Prasad Sao and convict him of the offences u/s 39 of the Act read with Section 379 of the Indian Penal Code, Section 44 of the Act and R. 138 read with Rule 56 of the Rules. The materials on the record do not, however, justify his conviction on the charge of conspiracy framed against him, This mill also had a 10 H. P. motor. Taking this into consideration, I sentence the respondent to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/-, with three months' rigorous imprisonment, in default, u/s 39 of the Act. I impose no separate sentence upon him on the other two counts, since he had confessed his guilt, though, later, he retracted his confession apparently under legal advice.

96-97. X X X Anant Singh, J

98. I agree.