

(2010) 05 GUJ CK 0047
In the Gujarat High Court
Case No : Criminal Appeal No. 2105 of 2004

State of Gujarat	Vs	APPELLANT
Bhanbhai Jivabhai Varu		RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Electricity Act, 1910 — Section 39

Citation : (2010) 05 GUJ CK 0047

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : C.M. Shah, app, for the Appellant; Premal S. Rachh, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties.

2. The State of Gujarat, appellant, hereinabove, has preferred this appeal u/s 378 of the Code of Criminal Procedure, 1973, challenging the order of acquittal dated 20.9.2004 passed by the Judicial Magistrate First Class, Rajula in Criminal Case No. 14 of 2003 acquitting the accused respondent hereinabove of the charge of committing the offence punishable u/s 39 of the Indian Electricity Act, 1910 (hereinafter referred to as "the Electricity Act" for the sake of brevity).

3. The facts, in short, leading to filing of this appeal deserve to be set out as under:

3.1 On 23.9.2002, a written complaint came to be lodged with the Police Sub-Inspector, Nageshri Police Station, Jafrabad by Deputy Engineer, Gujarat Electricity Board (hereinafter referred to as "the G.E.B. for the sake of brevity), Jafrabad, inter alia alleging that during the checking on 14.9.2002 at village Koli-Kantharia for nabbing electricity theft, it was found that one Bhanabhai Jivabhai Varu, aged 28 years, had taken illegal connection unauthorizedly from their low

tension line into his house. Thus, committing theft of electricity which according to the prevalent rules of G.E.B were accounting for Rs. 9811.51 ps. and committed offence punishable u/s 39 of the Electricity Act. The Court registered the case as Criminal Case No. 14 of 2003. The Magistrate framed the charge on the said basis on 20.1.2004 at Exh.8 and recorded the plea of not guilty at Exh. 9 and the trial commenced. The prosecution has examined 7 witnesses and produced documentary evidence for bringing home the guilt on the part of the accused. The Court, after appreciating the same, came to the conclusion that prosecution has failed to establish its case beyond any reasonable doubt and hence, acquitted the accused of the charge of committing the offence punishable u/s 39 of the Electricity Act vide its order dated 20.9.2004 which is impugned in this proceedings u/s 378 of the Code of Criminal Procedure, 1973.

4. Ms. C.M. Shah, learned Additional Public Prosecutor, submitted that the Court ought to have appreciated the fact that the testimony of the complainant, other accompanying witnesses at the time of raid and the testimony of the Talati-cum-Mantri should have been accepted by the Court for convicting the accused respondent hereinabove. However, the learned Additional Public Prosecutor could not point out anywhere from the memo of the appeal or in her submission that there was any incorrect recording of facts or that the trial court recorded the facts contrary to the evidence on record.

5. Shri Premal C. Rachh, learned advocate appearing for the opponent contended that this being acquittal appeal, the Court ordinarily would be slow in interfering with the order of acquittal. He further submitted that though the Panchnama is exhibited, the panch witnesses have not supported the case of the prosecution. So far as the signature of the panch is concerned, the recording of the consent of the learned advocate for the defence cannot be construed to be admitting the content of the panchnama. He further submitted that the prosecution has not cared to explain the discrepancies and lacuna in their case in any manner. He submitted that, therefore, the order of acquittal need not be interfered with u/s 378 of the Code of Criminal Procedure, 1973.

6. This Court has heard the learned advocates for the parties and perused the record and proceedings.

7. The following indisputable facts emerge from the record and proceedings, which deserve to be set out as under for appreciating the order impugned, namely:

7.1 The original complainant is examined at Exh.10, who has stated before the Court during his testimony that the statement was prepared on the spot but the said statement was not signed by the accused despite being requested to sign the same. The Rojnama and the statement have come on record by way of Exhs.11 and 12. He has admitted in his testimony that wire alleged to have been employed for taking electricity connection, had not been collected from the place. He had also admitted that on that day during the checking, they had visited

three villages and checked many houses and premises. In his cross-examination it is categorically come out that on the day of the incident, they had started at around 8: 30 a.m. from Jafrabad and reached Kagwadar for checking, from Kagwadar they reached Bhatwadar for checking and from Bhatwadar they reached Kolikantharia village, wherein allegation of theft by the accused is made.

7.2. He has admitted that during the course of checking, he had not obtained any documentary evidence with regard to ownership of the house in question.

7.3. He has also admitted that he does not know the number of the house.

7.4 He has admitted in his cross-examination that in the customer statement, the house number is not mentioned (the statement is not signed by the accused). He has admitted that at the time of checking Lineman and helper had accompanied him. He has also admitted that neither Lineman nor Motor-reader had ever filed complaint or report against the accused that the accused was indulging in power theft or any energy theft. He has admitted in his cross-examination that he does not know the pole number from which the accused has taken the unauthorized electricity connection. He has admitted in his cross-examination that he has not taken any neighbour's statement with regard to the premises wherein the unauthorized connection was taken belonging to accused. He has admitted that diary, wherein they make note before they go for checking, is not produced nor any copy thereof is produced. He has said that no electricity gadgets or other apparatus were recovered from the place of the accused. He admitted that it is not mentioned in the Rojkam that the premises of the accused is in which direction. He has admitted that on the day of the incident. He had made 10 cases of power theft and checked many connections. He admitted that the customer's statement is in a printed form and only blank space and columns are to be filled-in. He denied the suggestion that they were prepared in the office. He has admitted that there was a newspaper item that the residents of villages Kagwadar, Bhatwadar, Balawani Vav were not given electricity supply by the G.E.B. However, he denied the suggestion that as there was representation against the G.E.B. by this people, the cases were got up against them. Arvind Dhirubhai Vasava, Junior Engineer has deposed at Exh.16 being P.W. No. 2. In his cross-examination also the admission with regard to distance between pole and the place of the accused is not certainly mentioned nor there is mentioning with regard to direction. It has also come out in his cross-examination that there is no evidence with regard to the ownership of the house of the accused, which is taken or produced. No pole number is mentioned from which the connection was taken. He said in his statement that he has not mentioned that when the checking was done, the electricity supply was going on.

8. It is pertinent to note that the order of conviction cannot be passed unless and until the guilt on the part of he accused is established beyond doubt. The testimony of the witnesses and accused thereof as it is discussed hereinabove were not able to inspire any confidence at all. As the trial Court, has recorded acquittal, which, in my view, finds no disturbance u/s 378 of the Code of Criminal

Procedure, 1973, the appeal, therefore, requires to be dismissed.

9. For the aforesaid discussion, this Court is of the view that the order of acquittal cannot be said to be so perverse as to call for any interference. Hence, appeal fails and is hereby dismissed.