
(2013) 06 KAR CK 0015
In the Karnataka High Court
Case No : Criminal Appeal No. 3629 of 2009

The State	Vs	APPELLANT
Mohd. Moulana and Babu Miyan		RESPONDENT

Date of Decision : 05-06-2013

Acts Referred:

Electricity Act, 2003 — Section 135, 138(B)
Penal Code, 1860 (IPC) — Section 379

Citation : (2013) 06 KAR CK 0015

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : S.S. Aspalii, HCGP, for the Appellant;

Final Decision : Dismissed

Judgement

Ravi Malimath, J.—Aggrieved by the judgment of acquittal dated 3.2.2009 passed by I Addl. Sessions Judge, Gulbarga, in Special Case No. 22/2008, the prosecution has filed the present appeal. The case of the prosecution is that on 6.4.2006 at about 3.30 p.m., the KPTCL vigilance squad, Gulbarga conducted a raid on the flourmill of the accused. They found that the accused have made a hole in the left side of the meter and had inserted a small stick to stop the running of the meter. While doing so the accused have dishonestly committed theft of electricity and caused loss to the tune of Rs. 27,681/-. In the presence of the panchas a report was prepared. The lineman removed the meter and service wire and seized them under mahazar. He came back to his office and lodged a complaint in terms of Ex. P-4 which was registered in Cr. No. 174/2006 for the offences punishable under sections 135, 138(B) of the Electricity Act, 2003 r/w section 379 of the Indian Penal Code. On the investigation being completed, the charge-sheet was filed against both the accused. On trial, the trial court by impugned judgment acquitted the accused No. 2 for the offences alleged against him. Accused No. 1 is shown as dead in the FIR itself. The prosecution has examined 6 witnesses, marked 6 documents as well as MOs 1 & 2. The trial court

by the impugned judgment acquitted all the accused. Hence the above appeal by the State.

2. PVV 1 is the Asst. Engineer, GESCOM who is the complainant. PW 2 is the lineman. PW 3 is the Head constable. PW 4 is the panch witness. PW 5 is the Head constable who registered a case against the accused. PW 6 is the Section officer.

3. Sri S.S. Aspalli, the learned HCGP appearing for the Appellant State contends that the impugned order is bad in law and liable to be set aside. That the trial court has not appreciated the evidence on record. That the evidence would show that the accused is guilty of the charges levelled against him. That his acquittal is improper. Hence, he pleads that the appeal be allowed and the accused be convicted.

4. Heard the learned HCGP and examined the records.

5. The incident took place on 6.4.2006 when the raid was conducted on the flourmill of the accused. The complaint was lodged on 13.04.2006. The prosecution has failed to show any substantial reason for the delay. Therefore, the trial court was of the view that in view of the substantial delay in filing the complaint, the case of the prosecution cannot be accepted. On considering the same, I am of the considered view that the reasons assigned by the trial court are just and proper. The inordinate delay in filing the complaint will render the prosecution case doubtful. Hence, the findings of the Trial Court on this issue is sustained.

6. Yet another aspect which goes to the root of the prosecution case is the fact that the accused No. 1 was the owner of the premises and the electric meter stood in his name in terms of Ex. P-3. In fact he is shown as dead in the FIR itself. The case stood abated against him. Apparently he is the main accused. The evidence collected would show that he being the owner has made a hole in the meter and put a stick into the meter to prevent the running of the meter. When the entire allegations are against the accused No. 1, it cannot be said that there is any material so far as accused No. 2 is concerned. The accused No. 2 was an employee under accused No. 1. There are no allegations against him. There is no plea put-forth by the prosecution alleging any case against him. The trial court therefore while considering the evidence on record was of the view that in view of the inconsistency in the prosecution case, the charges levelled against the accused are not substantiated. On hearing the learned counsel and examining the material on record, I am of the considered view that the trial court has not committed any error that calls for interference. The inordinate delay in lodging the complaint, the death of the main accused who was responsible for the theft of electricity and there being no overt-act allegations so far as accused No. 2 is concerned, I am of the considered view that the judgment of acquittal passed by the trial court is just and proper. The Hon'ble Supreme Court has time again held that, only because a second view is possible,

it would not be a sufficient ground to reverse an order of acquittal. That established grounds of perversity, misreading the evidence etc., must exist. The same is absent herein. For the aforesaid reasons, the appeal being devoid of merits, is dismissed.