

IN THE COURT OF THE SPECIAL JUDGE: BHUBANESWAR.

PRESENT:-

Sri I.K. Das, LLB
Special Judge, Bhubaneswar.

T.R No. 10 of 2010

Date of argument- 29.10.13
Date of Judgment- 06.11.13S t a t e
Vrs.Rushan Nayak, aged about 40 years
S/o Late Dukha Nayak, resident of Mukundapasad
PS/Dist: Khurda

....Accused person

Advocate for the prosecution-

Sri A.K. Sahu, Addl. P.P. BBSR

Advocate for Accused

Shri R. Naik, Advocate

Offence Under Sections:-

135 of Electricity Act.

J U D G M E N T

The accused stands charged for the offence u/s 135 of Electricity Act 2003.

2. Prosecution has started against the accused on the report of one Saroj Kumar Sarab, AMC, Jatni South Division before IIC Energy Police Station Khurda on dt.22.6.09. As per the FIR on the same day at about 3.30 PM, the informant alongwith other staff were on dehooking checking at village Mukundaprasad, he noticed that the accused was availing power supply unauthorizedly by hooking from LT. Line by means of one PVC wire. Police registered the case, examined the informant and rushed to the spot. A spot map was prepared. The PVC wire used for this hooking and one electric bulb was seized at the spot and witnesses were examined. During investigation of the case it was ascertained that the accused is responsible for hooking in the electric line and therefore charge sheet is filed against him warranting his trial.

3. Plea of the defence is complete denial to the allegation and of false allegation.
4. Point for determination in this case is whether on dt. 22.6.09 at about 3.30 PM, the accused dishonestly consumed electricity from the L.T. Line by hooking at Village Mukundaprasad ?
5. Prosecution examined 4 witnesses out of which P.Ws.1,2 and 3 are electrical Staff and P.W.4 is the IO of the case.
6. The informant of the case being the Asst. Manager (Commerce), CESU, Jatni Section has been examined as P.W.1. In his evidence he said that on 22.6.09, he alongwith other staff were on dehooking checking at village Mukundaprasad. He noticed that the accused was consuming electricity unauthorizedly by hooking process from the LT line. Therefore, he lodged FIR marked as Ext.1. In his cross examination, P.W.1 said that he cannot say the number of pole from which the accused was dragged the electric wire. Moreover, he has not verified any document in order to ascertain the ownership of the case house. P.W.2, the lineman said on the relevant date, he accompanied P.W.1 to the spot and found the accused was consuming electricity by hooking from the LT line. P.W.3, the staff of electrical department has not supported the case of the prosecution. He said he cannot say the name of the person who consumed electricity unauthorizedly. The IO of the case examined as P.W.4 said that during investigation he seized the black PVC wire, one electric bulb and prepared seizure list. His evidence further reveals that the accused was consuming electricity unauthorizedly by hooking process from the LT line.
7. This being the evidence available on record, learned Addl. PP urged that the evidence is sufficient to hold conviction against the accused and learned counsel for the accused submitted that in absence of material regarding illegal hooking, the accused is entitled for acquittal. Under Sec. 135 of Electricity Act, a person who illegally consumed electricity by hooking and thereby caused loss to the Government is liable for the offence. In the instant case, admittedly, the IO seized the black PVC wire and one electric bulb from the house of the accused. The IO has categorically admitted that he has not verified any document in order

to establish that the accused was the owner of the case house. There is at all no evidence on record to show that the accused hooked the electric line and unauthorizedly consumed electricity. Nobody has seen when the accused hooked the electric wire. There cannot be any presumption regarding culpability of the accused with the offence as the IO has failed to examine any adjacent owners of the case house. Moreover, no independent witness from the locality has been examined in order to ascertain that the accused was consumed electricity illegally. Under such circumstance, it cannot be said that the accused is exclusively responsible for hooking.

Taking into consideration the available evidence on record I believe that prosecution has miserably failed to prove that the accused is responsible for hooking or he caused the hooking in any manner beyond reasonable doubt. Accordingly, the accused is found not guilty for the offence u/s 135 (1) (a) of Electricity Act, 2003 and is acquitted thereof U/s.248 of Code of Criminal Procedure. He be set at liberty forthwith. His bail bond be canceled and sureties discharged.

8. The seized articles if any be destroyed after four months of appeal period if no appeal is preferred or if appeal is preferred the same be dealt with in accordance with the direction of the Appellate Court.

Pronounced in the open Court to-day the 6th day of November, 2013

Special Judge, Bhubaneswar.

Typed to my dictation and corrected by me.

Special Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1:- A. Saroj Kumar Sarab

P.W.2:- Parsuram Martha

P.W.3:- Pradeep Kumar Martha

P.W.4:- Pramod Kumar Jaisingh

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1: FIR

Ext.1/1: Signature of P.W.1

Ext.2: Seizure list

Ext.2/1: Signature of P.W.2

Ext.2/2 : Signature and endorsement of P.W.3

Ext.1/2: Signature of P.W.4

List of exhibits marked for the defence

Nil

Special Judge, Bhubaneswar.