

**BEFORE THE SPECIAL JUDGE AT DHUBRI**

**Special Case No.1/2010**

**U/s. 135 of Electricity Act**

**State of Assam**

**-Vs-**

**Md. Mostafizur Rahman**

Present : Mr. A. Bhattacharyya, AJS  
Special Judge, Dhubri

Sri M. Zaman, Public Prosecutor for the State

Sri A.U. Ahmed, Advocate for the accused.

Evidence recorded : 22-03-2011, 27-07-2011, 04-04-2013 and  
21-05-2013,

Date of Argument : 21-05-2013

Date of Judgment : 22-05-2013

**J U D G M E N T**

Shri Upendra Nath the then S.I. of Bogribari Police Station vide an ejahar dated 08-11-2002 states that on 08-11-2002 he along with staffs were performing ante-dacoity patrolling in and around the areas under Bogribari Police Station such as Nayahati, Fakiranijhar area. It is stated that at about 9 p.m. accused named above was found to connect his house by adopting hook means from the A.S.E.B. main line and that was too illegally and unauthorizedly. The wires and the other apparatus in question were seized in the presence of witnesses. Thus the occasions of filing of the ejahar.

2. The Bogribari Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid charge sheet. On the appearance of the accused before this Court the charge U/s.135 of Electricity Act is framed. The charge so framed is read over, explained and interpreted to the accused to which he pleaded not guilty.

3. During trial the prosecution side after examining as many as 5 (five) P.Ws closed their side. Statement of the accused is recorded. I heard the arguments of the case from both the parties.

4. Now, the point for determination in this case will be as to whether the materials surfaced in the testimonies of the P.Ws would justify the conviction of the accused person under section 135 of Electricity Act?

5. To address the aforesaid point for determination, let us have a look at the evidences on record.

**Decisions and reasons there on.**

6. Here in this case altogether 5 (five) P.Ws are examined. P.W-1 Md. Habibor Rahman states during trial and in his examination-in-chief that about 4 (four) years ago the incident had taken place. On the date of incident at about 8 p.m. while he was proceeding to his house after offering Namwaj and in front of the house of Mostafijur, he found police and told him (P.W-1) that wires which was used to connect the house from main line of A.S.E.B unauthorizedly and illegally were found from the house and the same were seized.

However, during cross-examination the aforesaid witness states that he met the police at a place which is at a distance of ½ k.m. from the house of accused and he did not find the police carrying something.

7. P.W- 2 Md. Khoibar Ali states during trial and in his examination-in-chief that 8/10 years ago the incident had taken place. On the date of incident and at about 8 p.m. the police personnel numbering 8 to 10 came to the village and they checked up the electricity line in the village and obtained his signature in the Ext-1 under Ext1 (1).

During cross-examination he states that he does not know anything about the incident. On being told by the police he put his signature.

8. P.W-3 Abdur Rahman could not bring anything in support of the production story.

9. P.W- 4 Md. Harmuj Ali states during trial that on the date of incident he went to Bogribari Police Station. Then he found that the O.C. brought some wires along with the accused to the police station and asked him to put signature in the seizure-list under Ext-1 wherein Ext-1 (2) is his signature.

During cross-examination the P.W-4 deposed that he did not witness as to wherefrom the O.C. brought the wires in question.

10. P.W- 5 Giasuddin Ahmed states during trial and in his examination-in-chief that on the date of incident the then S.I. Upendra Nath brought the accused along with some seized wires to the police station and handed over to him. The S.I. Upendra Nath also laid an ejahar where upon he (P.W-5) registered a case. Ext-2 is the said ejahar wherein Ext-2 (1) is his signature and Ext-2 (2) is the signature of the then S.I. Upendra Nath. During investigation he visited the place of occurrence and also prepared the sketch map. Ext-3 is the sketch map wherein Ext-3 (1) is his signature. Also he recorded statement of the witnesses and at the conclusion of the investigation he laid charge-sheet. Ext-4 is the charge sheet wherein Ext-4 (1) is his signature.

During cross-examination he states that he did not seize anything and the informant S.I. Upendra Nath seized the articles and also recovered the same. The seized articles can be purchased in the market.

So these are all about the evidences on record.

11. Here in this case it is alleged that the accused named above on the date of incident and at the relevant point of time by illegal means and by adopting hook connection had connected his house with the main line of A.S.E.B. and thereby the accused had stolen away power from main A.S.E.B. line and as such according to the prosecution story accused is liable to the convicted U/s.135 of Indian Electricity Act. It is, further, alleged that informant had seized some wires and other apparatus from the possession of the accused name above.

12. The prosecution side during trial exhibited seizure-list under Ext-1 but the seizure-list witnesses did not support the prosecution story.

13. For the aforesaid reasons, it can be observed that the recovery of seized articles from the house of accused has not been established. Thus, it cannot be held that the offence alleged of has been established against the accused beyond all reasonable doubt.

14. Considering the aforesaid aspect it can be finally held that the evidences so far surfaced in the testimonies of the P.Ws would not justify the conviction of the accused under the offence alleged of. Due to the insufficiency of the evidences, the accused is acquitted on benefit of doubts and set at liberty forthwith. His bail bond stands discharged. The seized articles shall be confiscated to the State. Judgment is delivered in open court.

Given under my hand and seal of the Court on this 22<sup>nd</sup> day of May, 2013.

Dictated & Corrected by me

Special Judge, Dhubri

Special Judge, Dhubri.