

BEFORE THE SPECIAL JUDGE AT DHUBRI

Special Case No.10/2008

U/s. 135 of Indian Electricity Act, 2003

State of Assam

-Vs-

1. Md. Dilder Hussain

2. Md. Rasid Ali

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

Sri M. Zaman, Public Prosecutor for the State

Sri Y.A. Bepari, Advocate for the accuseds

Evidence recorded : 08-04-2009, 04-07-2011, 23-05-2012,
06-07-2012 & 17-01-2013.

Date of Argument : 28-01-2013

Date of Judgment : 30-01-2013

J U D G M E N T

Shri Ratneswar Das, the then S.I. of police of Bogribari Police Station vide an ejahar dated 08-11-2002 states before the Bogribari Police Station that on 08-11-2002 he was along with staff was busy in the patrolling in and around Nayahat area. Then it came to light that the accused persons named above, being the resident of village Fakiranihar were found to consume power illegally and unauthorizely by adopting hooking mechanism. Thereafter, in the presence of witnesses electric wires, bulbs were seized and the aforesaid persons were brought to the police station. Thus the occasion of filing of the instant ejahar.

2. The Bogribari Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid the charge sheet U/s.379 I.P.C. R/W Sec. 39/40 of the Electricity Act.

3. On the appearance of the accused persons before this Court, the charge U/s.135 of Indian Electricity Act, 2003 was framed against the accused persons. The charge so framed is read over, explained and interpreted to the accused to which they pleaded not guilty.

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

5. Now, the point for determination in this case will be as to whether the materials surfaced during trial would justify the conviction of the accused persons under the offence alleged of?

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

7. Here in this case P.W-1, Md. Hoibor Ali appears to be the witness of the seizure. But, during trial he did not support the story of the prosecution. However, he admitted his signature in the seizure list (Exhibit-1) under Ext-1 (1). He was declared hostile by the prosecution.

8. P.W-2, Rofiquil Islam did not support the prosecution and during trial he declined to know about the incident in question as such he was declared hostile by the prosecution.

9. P.W-3, Md. Abdur Rahman also did not support the story of the prosecution and he was also declared hostile by the prosecution.

10. In this case the aforesaid P.Ws are the independent and disinterested witnesses. Among the aforesaid P.Ws, two of them appear to be the witness of the seizure list but they did not support the story of the prosecution.

11. P.W-4 P.W-4, Ratneswar Das is the informant of the case. During examination-in-chief he narrated the story as he unfolded in the ejahar under Ext-3 wherein Ext-3 (1) is his signature. During examination-in-chief, he stated that seeing the aforesaid hooking connection, they seized the electric wire bulb etc. They seized the aforesaid hook connection and wires vide two seizure lists. Ext.1 is the aforesaid seizure list wherein Ext. 1 (2) is his signature. By the Ext.2 some wires were also seized from the house of accused Dildar Hussain's house wherein Ext.2 (1) is his signature.

During cross examination, P.W-4 states that he did not receive any complaint about the theft of the power from A.S.E.B. authority and after the seizure of the wires he also did not inform the A.S.E.B. authority about the seizure and about the incident. He did not make any enquiry as to the ownership of the house in the Panchayat Office and prior to the incident the accused persons were not known to him.

12. P.W-5, S.I. Deben Ch. Nath is the I.O. of this case. According to him on 08-11-2002, he was posted at Bogribari Police Station in the capacity of S.I. of Police. S.I. Ratneswar Das of the same Police Station laid an ejahar before the O.C. and then the O.C. registered a case and entrusted him with the investigation of the case. Accordingly, he took up the investigation and during investigation he visited the place of occurrence, prepared sketch map. Ext-4 is the sketch map wherein Ext-4 (1) is his signature. Also he examined the witnesses. The complainant of this case had already seized some articles and during investigation, the complainant handed over him the seizure list alongwith seized articles and finally he laid the charge sheet under Ext-5 wherein Ext-5 (1) is his signature.

During cross examination the P.W-5 admitted that he did not examine Anowar Hussain, Tosiran Bewa, Hamed Ali and Roshid Ali, whose names are mentioned in the sketch map as the neighbours of the P.O.

So these are all about the evidences on record.

13. Here in this case it is alleged that the accused persons consumed the power by adopting hooking mechanism. According to the informant (P.W-4) the aforesaid activities of the accused persons came to his notice while he was performing patrolling duty. P.W-4 went to the houses of the accused persons and seized some articles used in the commission of the offence. The articles were allegedly recovered from the houses and the same were seized but the seizure list witnesses did not at all support the story of the P.W-4. The neighbours of the place of occurrence were not examined by the Investigating Officer of this case as has been admitted by the Investigating Officer (P.W-5) himself. This apart, it has been admitted by the investigating agency that the houses wherefrom the seized articles were allegedly recovered and seized were not known to the seizing officer prior to the incident.

14. Under the aforesaid circumstances, it can not be said that the identity of the house has been established as no independent witnesses has supported the story of the prosecution.

15. Considering the entire circumstances, from all angle and the reasons as stated above, it is not felt safe to convict the accused persons under the offence alleged of. As such, at this critical juncture, the accused persons are entitled to get the benefit of doubt. Accordingly, they are acquitted on benefit of doubt due to the insufficiency of evidences and set at liberty forthwith. The seized articles shall be destroyed in due course of law. Accordingly, P.I, Dhubri be informed. Judgment is delivered in open court.

Given under my hand and seal of the Court on this 30th day of January, 2013.

Dictated & Corrected by me

Special Judge, Dhubri

Special Judge, Dhubri.