

Bombay High Court

Devidas Janoji Gopnarayan vs State Of Mah. Thru Pso on 12 December, 2017

Bench: R. B. Deo

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apeal683.06

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 683 OF 2006

Devidas Janoji Gopnarayan,
Aged about 60 years,
Occupation - Labour,
R/o Achalpur, Abbaspura,
Tq. Achalpur, District Amravati.

.... APPELLANT

VERSUS

State of Maharashtra,
through P.S.O. Achalpur, District
Amravati.

.... RESPONDENT

None for the appellant,
Shri A.V. Palshikar, Additional Public Prosecutor for the respondent.

CORAM : ROHIT B. DEO, J.

DATED : 12
DECEMBER, 2017
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ORAL JUDGMENT :

Challenge is to the judgment and order dated 03-11-2006 passed by the learned Ad hoc Additional Sessions Judge (Court 2), Achalpur in Sessions Trial 68/2006, by and under which the appellant is convicted for offence punishable under Section 135 of the Electricity Act, 2003 ("Act" for short) and

is sentenced to suffer rigorous 2 apeal683.06 imprisonment for two months and to payment of fine of Rs.6,000/-.

2. None appears for the appellant. However, with the fair assistance of the learned Additional Public Prosecutor Shri A.V. Palshikar, I have scrutinized the record and having done so, I find the conviction wholly unsustainable.

3. The case of the prosecution is that in the morning hours at 1-00 a.m. on 21-9-2005, pursuant to information received P.W.1 Satish Kanade raided the house of the accused. It was noticed that the accused was committing theft of electricity by diverting electricity from the low tension line with the aid of a hook, P.W.1 Satish and P.W.2 Shamrao called out the accused, a panchanama was prepared, the hook and a wire was seized and a police report lodged at 4-00 p.m., on 21-9-2005

4. The panchas to the spot panchanama and the seizure have not been examined.

5. P.W.2 Shamrao fairly states that in view of darkness, he did not see the face of the accused. On the morning of the raid ten to 3 apeal683.06 fifteen houses were raided, is the deposition. However, neither of the two witnesses is in a position to disclose the details muchless the location of the house of the accused or for that matter the details of the other houses reaided. Neither P.W.1 nor P.W.2, have concededly seen the accused before the raid or visited the house of the accused. The witnesses are not in a position to disclose even the very bare particulars pertaining to the house which they claim to have raided. P.W.1 also admits, that several other houses were raided although he limits the number to four to five whereas P.W.2 deposes that ten to fifteen houses were raided on that day.

6. The deposition of P.W.1 is that the copy of the spot panchanama was handed over to the police at the time of lodging the first information report. However, there is nothing on record to substantiate this version of P.W.1.

7. In view of the fact that neither P.W.1 nor P.W.2 are in a position to depose as to the particulars of the house of the accused and the undisputed position that neither P.W.1 nor P.W.2 visited the residence of the accused or saw the accused prior to the raid, there is no cogent or reliable evidence on record to prove that that accused was 4 apeal683.06 committing the theft of the electricity. It may be noted that P.W.1 has not identified the accused. P.W.2 does depose at the fag end of the examination-in-chief that the accused present in the Court is the same, however, the said statement is of no significance since fairly admits not to have seen the face of the accused in view of the darkness.

8. The judgment and order impugned is unsustainable and is set aside.

The accused is acquitted of offence punishable under Section 135 of the Act.

Fine paid by the accused, if any, shall be refunded to him. The appeal is allowed accordingly.

JUDGE adgokar