

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

Special (Electricity) CASE NO. 01 of 2017

Under section 135 of Electricity Act, 2003.

State of Assam (ASEB)

–Vs–

1. Pisra Orang

...Accused Person

**Present: Sri C.B. Gogoi,
Sessions Judge,
Sonitpur :Sonitpur.**

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For the State : Mr. M.C. Baruah, Public Prosecutor

For the accused : Mr. S. Das, Advocate.

Date of Argument : **19-04-2021**

Date of Judgment : **26-04-2021.**

JUDGMENT

1. The brief fact of the prosecution case is that on 16-01-2019 the Manager of Rangapara Electrical Sub Division, APDCL (CAR) Rangapara lodged an FIR in Tezpur Police station alleging inter-alia that accused Pisara Orang was found committing theft of power in the month of December, 2013 even after disconnection of line due to non payment of electricity bill. Hence it is stated that accused committed offence u/s 135,136, 137, 138, 139, 140 and 147 of Electricity Act, 2003.

2. Following the information, Tezpur PS got a case registered being Tezpur PS case No. 03 of 2014 u/s 135 of Electricity Act and took up the investigation of the case.

3. During the course of investigation, police visited the place of occurrence, recorded the statement of witnesses, seized one PVC wire 20 meters long vide MR No. 3/2014 marked as Ext. 1 and on completion of investigation having found prima facie materials charge-sheet was laid against accused Pisra Orang u/s 135 of Electricity Act with a view to stand trial.

4. In the course of trial, when accused entered appearance in Court, the learned Judicial Magistrate, 1st class, Tezpur Miss Aklima Begum vide order dated 23-12-2016 committed the case record to the Court of Sessions for trial after due compliance of Section 207 of Cr.P.C.

5. Having received the case record on committal, a case being Special (Electricity) Case No. 01/2017 was registered and thereafter, vide order dated 03-04-2018 charge u/s 135 of Electricity Act was framed. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial.

6. During the course of trial, the prosecution in order to bring home the guilt of the accused person examined only 6 witnesses including the informant and the Investigating Officer. Then, hearing the learned PP further prosecution evidence stands closed.

7. Accused was examined u/s 313 Cr.P.C. in which accused denied the evidence as false and concocted. However, on being asked accused declined to adduce defence witness.

8. **POINT FOR DETERMINATION :**

"Whether on 26-12-2013 accused committed theft of electricity even after disconnection by the

***authority due to non payment of electricity bill
and thereby committed offence punishable u/s
135 of Electricity Act as alleged ?”***

Discussions, Decisions and reasons thereof :

9. I have heard the argument of the learned lawyers appearing for both sides.

10. The learned PP appearing for the State contended that the contents of FIR reveals that accused committed theft of electricity from the power land even after disconnection by authority and the fact narrated in the FIR (Ext. 2) has been duly corroborated by the evidence of prosecution witnesses. PW 1 Sri Parag Gogoi, PW 2 Bhaskar Pratim Kalita, PW 3 Bhuban Pokhrel, PW 4 Utpal Nath and PW 5 Ramesh Pasowan who were all the members of the anti theft drive team and staff of APDCL were present when they detected the commission of theft of electricity by accused. All the aforesaid witnesses are eye witnesses and there is no reason to disbelieve or discard their evidence as unworthy of credit. The evidence of PW 1 to PW 5 have been duly corroborated by the evidence of PW 6 Md. Abdul Momin who is the Investigating Officer of the case who seized one piece of PVC electric wire from the spot vide Ext. 1. Therefore, it is a fit case to record the Judgment of conviction.

11. On the other hand, learned counsel for accused, disputed the submission of the learned Public Prosecutor contending that the accused was framed falsely for commission of theft of electricity whimsically and arbitrarily knowing it well that accused is a poor person unable to fight against the might of the electricity officials. According to learned defence counsel mere seizure of one piece of PVC wire from the house of accused do not suggest that accused committed theft of electricity, as, such kind of electricity wire is usually found available in every household.

12. Learned defence counsel further contended that all the witnesses are official witnesses and there is every likelihood of deposing falsely against the accused. No independent witnesses have been cited or referred by the prosecution even though the alleged inspection/raid was carried out in broad day light and in village, where people are easily available on call but no such witnesses have been present at the time of alleged seizure of one piece of PVC wire from the house of the accused which raises serious doubt about the authenticity of such seizure. The learned defence counsel further contended that the evidence of PW 4 Utpal Nath and PW 5 Ramesh Paswan have no evidentiary value because during their cross examination they clearly stated that during investigation I.O. did not record their statements u/s 161 Cr.P.C. Therefore, whatever they have stated have been stated by them in court for the first time. Moreover, the I.O. in his cross examination stated that PW 2 did not state before him that PVC wire were seized from the place of occurrence. Moreover, I.O. stated that accused was not previously a consumer of electricity and he did not collect any documentary proof to establish the ownership of the house. The PW 1 and 3 also did not adduce any evidence to establish the fact that accused was previously a consumer of APDCL. In the absence of proof of ownership of the house, it is also highly doubtful where the alleged theft of electricity was committed by accused. Hence, it is argued that it is a case in which prosecution miserably failed to substantiate the charge. So accused deserves to be acquitted.

13. Having heard the rival contention of the learned counsel, this Court has given its anxious consideration into the evidence on record so as to arrive at a just decision in the case. It is to be noted that in order to constitute the offence of theft of Electricity as alleged by the prosecution it is to be proved that accused taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee;

..... as provided under section 135 of Electricity Act.

14. In the present case, the evidence of PW 1 reveals that on 26-12-2013 he went to anti theft drive to Bindukuri Khelmati and found that accused was deriving electricity from the main line by hooking and on enquiry he learnt that accused was previously a consumer but his line was disconnected because he was a defaulter in payment of bill. In cross-examination, PW 1 clearly stated that he did not seize any document to show that the house belongs to accused. He did not give any statement before police that he measured the length of the PVC wire at the place of occurrence. Similarly PW 2 Bhaskar Pratim Kalita also deposed in his cross examination that in the seizure memo the distance between the house of the accused and the place from where electricity was derived by hooking was not measured and they also did not collect any document to show the ownership of the house where the alleged illegal connection was found. They also did not seize any hook along with the PVC wire. The colour of PVC wire was also not mentioned in the seizure list. PW 3 Bhuban Pokhrel, PW 4 Utpal Nath and PW 5 Ramesh Paswan also stated that they did not collect any document to establish the ownership of the house. The evidence of PW 5 further raises doubt about ownership of the house because he deposed that they disconnected electricity line in the house of one Puspo Orang as they found unauthorised electric connection in the house of Puspo Orang not in the house of Pisra Orang which is vital inconsistency in the evidence of prosecution witnesses.

15. Therefore, from the evidence of vital prosecution witnesses it is crystal clear that the ownership of the house where the alleged theft of electricity was committed is not at all established.

Secondly, prosecution miserably failed to establish the fact that accused was previously a consumer of electricity. Not a single document has been proved by prosecution to substantiate this fact.

Thirdly, the alleged hook was not seized, the distance between the house of accused and the place from which the alleged theft of electricity was committed was not measured. The only evidence that seized PVC wire was 20 metres long is not sufficient because such wires, are normally available in every household. Therefore, prosecution miserably failed to prove the fact with credible and trustworthy evidence that accused taps, makes or causes to be made any connection with overhead, lines or cables or service wires or service facilities of a licensee i.e. APDCL in illegal manner.

16. Moreover, there is gross non-compliance of Section 100(4) Cr.P.C. by the prosecution as no independent or respectable inhabitants of the locality were made witnesses at the time of seizure. All the witnesses are official witnesses which caste a serious doubt about the truthfulness of their evidence.

17. On overall consideration of the prosecution evidence available on record, this court has come to definite findings that prosecution has miserably failed to establish the case against accused Pisra Orang for sustaining conviction u/s 135 of Electricity Act.

18. In the result, accused Pisra Orang is acquitted from the charge u/s 135 of Electricity Act on the ground of insufficient evidence.

19. His bail bond is however, extended till next six months in view of section 437 A of Cr.PC.

Seized item be disposed off in accordance with law.

20. Send back the GR Case No. 336/14 to the learned committal court.

21. Judgement is pronounced and delivered in open court under the hand and seal of this Court on the **26th day of April, 2021.**

(C.B.Gogoi)
Sessions Judge,
Sonitpur::Tezpur.

Dictated and Corrected by me.

(C.B. Gogoi)
Sessions Judge
Sonipur:Tezpur

APPENDIX

Prosecution Witness

- | | | | |
|----|--------------------------|----|----------------------------------|
| 1. | Prosecution Witness No.1 | :- | Sri Parag Gogoi |
| 2. | Prosecution Witness No.2 | :- | Informant Bhaskar Pratim Kalita, |
| 3. | Prosecution Witness No.3 | : | Sri Bhuban Pokhrel |
| 4. | Prosecution Witness No.4 | :- | Sri Utpal Nath. |
| 5. | Prosecution Witness No.5 | :- | Sri Ramesh Paswan |
| 6. | Prosecution Witness No.6 | :- | Md. Abdul Momin, I.O. |

EXHIBITS.

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|-----------|---|---------------|
| Exhibit 1 | : | Seizure list |
| Exhibit 2 | : | F.I.R. |
| Exhibit 3 | : | Seizure list. |
| Exhibit 4 | : | Charge sheet. |

Material Exhibit.

- | | | |
|------------------|---|-----------|
| Material Exhibit | : | PVC wire. |
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(C.B. Gogoi)
Sessions Judge,
Sonitpur:Tezpur