IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO.168 of 2016
(AGAINST ACQUITTAL)

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE S.V. PINTO Sd/-

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
ABUBAKAR IBRAHIM SAIYAD

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Appearance:
MS DHWANI TRIPATHI, APP for the Appellant(s) No. 1
BAILABLE WARRANT SERVED for the Opponent(s)/Respondent No. 1
MR.WASIM M PATHAN(6802) for the Opponent(s)/Respondent No. 1

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CORAM:**HONOURABLE MS. JUSTICE S.V. PINTO**

Date : 15/04/2025

ORAL JUDGMENT

1. This appeal has been filed by the appellant – State under Section 378(1)(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment and the order dated 27.10.2015 in Special (G.E.B.) Case No.260 of 2014 passed by the learned Special Judge and 3rd Additional Sessions Judge, Jamnagar (hereinafter referred to as 'the Trial Court'), whereby, the learned Trial Court has acquitted the respondent

from the offence punishable under Sections 135 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'). The respondent is hereinafter referred to as 'the accused' as he stood in the original case, for the sake of convenience, clarity and brevity.

2. The relevant facts leading to filing of the present appeal are as under:

2.1. The accused Abubakar Ibrahim Saiyed was a consumer of PGVCL and was given Electricity Consumer No.32207/02402/4. On 03.03.2012, the officers of PGVCL including Deputy Engineer J.B.Saxena went for checking at the residence of the accused situated in Nehru Colony behind Jamnagar police line and found that even though, the accused was a legal customer of PGVCL, he had tapped into the main service line and with a yellow colour wire and a 15 ampere switch and had directly tapped the main line phase and joined it to the wiring of the house in such a way that the meter was by-passed and the consumption of electricity would not be recorded in the meter. The accused had used 3.450 watts of electricity amounting to Rs.82,701.72/ and had committed a theft of electricity, and hence, the complaint was filed by J.B.Saxena,

Deputy Engineer, PGVCL before the GUVNL Police Station, Rajkot on 01.11.2012 under Section 135 of the Electricity Act, which was registered at GUVNL Rajkot Police Station at II-C.R.No.1237 of 2012.

2.2. After registration of the FIR, the investigation was carried out by the concerned Investigating Officer and after having sufficient material against the accused, the chargesheet came to be filed before the concerned jurisdictional Magistrate which culminated into Criminal Case No.8569 of 2013. As the case was exclusively triable by the Court of Sessions, after completion of the process under Section 209 of the Cr.P.C., the case was committed to the Sessions Court and the same was registered as Special (G.E.B.) Case No.260 of 2014 .

2.3. The accused were duly served with the summons and the accused appeared before the learned learned Trial Court and it was verified whether the copies of all the police papers were provided to the accused as per the provisions of Section 207 of the Code and a charge was framed by the learned learned Trial Court at Exh.7 and the statement of the accused was recorded at Exh.8,

wherein, the accused denied all the contents of the charge and the entire evidence of the prosecution was taken on record. The prosecution has examined 04 witnesses and has produced 08 documentary evidences in support of the case.

2.4. After the closing pursis was submitted by the learned APP at Exh.25, the further statement of the accused under Section 313 of the Code was recorded. After hearing the arguments of the learned APP and learned advocate for the accused and after perusing the documents on record, the learned Trial Court, by the impugned judgment and order, has acquitted the accused for the offence punishable under Sections 135 of the Electricity Act, 2003.

3. Being aggrieved and dissatisfied with the impugned judgment and order passed by the learned Trial Court, the appellant – State has filed the present appeal mainly stating that the impugned judgment and order passed by the learned learned Trial Court is contrary to law, evidence on record and principles of natural justice. The learned learned learned Trial Court has erroneously came to conclusion that the prosecution has failed to establish its case beyond reasonable doubt. The learned learned

Trial Court has not properly appreciated the oral as well as documentary evidence on record it its true spirit. The learned learned Trial Court has not properly scrutinized and appreciated the material and evidence on record which suggest that the respondent has committed theft of the electricity illegally. The learned learned Trial Court has wrongly concluded that the complaint has been filed at a belated stage and the prosecution has failed to give plausible explanation with regard to the late filing of the complaint. The learned learned Trial Court has erred in acquitting the accused though there are ample and cogent evidence to connect the accused with the crime and the offence registered against them. The impugned judgment and order of acquittal passed by the learned learned Trial Court is illegal, invalid, improper, perverse and bad in law and the same deserves to be quashed and set aside.

4. Heard learned APP Ms.Dhwani Tripathi for the appellant – State. Though served the respondent, he has not appeared either in person or through an advocate. Perused the impugned judgment and order of acquittal and has re-appreciated

the entire evidence of the prosecution on record of the case.

5. Learned APP Ms.Dhwani Tripathi for the appellant – State has taken this Court through the entire evidence produced by the prosecution and has vehemently argued that the learned Trial Court has not appreciated the evidence properly and the prosecution has produced cogent evidence to prove the the case and has successfully proved the case against the accused but the learned Trial Court has not considered the same and has acquitted the accused. The judgment and order of acquittal passed by learned Trial Court is contrary to law, evidence on record and principles of justice. Learned APP has urged this Court to quash and set aside the impugned judgment and order of acquittal and to find the accused guilty for the said offence and to allow the present appeal and impose maximum sentence on the accused.

6. At the outset, before discussing the facts of the present case, it would be appropriate to refer to the observations of the Apex Court in the case of **Chandrappa & Ors. Vs. State of Karnataka** reported in **2007 (4) SCC 415**, the Apex Court has observed as under:

Recently, in **Kallu Vs. State of M.P. (2006) 10 SCC 313 :**

AIR 2006 SC 831, this Court stated; "While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the learned Trial Court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the learned Trial Court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court". (emphasis supplied)

…….. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;]

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be

presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

7. It is a settled principle of law that in an appeal against acquittal, the Appellate Court is circumscribed by limitation that no interference has to be made in the order of acquittal unless after appreciation of the evidence produced before the Trial Court, it appears that there are some manifest illegality of perversity which could not have been possibly arrived at by the Court. It is also a settled principle that there is no embargo on the Appellate Court to review the evidence but, generally the order of acquittal shall not be interfered with as the presumption of innocence of the accused is further strengthened by the order of acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case of the prosecution i.e. (i) guilt of the accused and (ii) his innocence, the view, which is in favour of the accused, should be adopted, and if the learned Trial Court has

taken the view in favour of the accused, the Appellate Court should not disturb the findings of the acquittal. The Appellate Court can interfere with the judgment and order of acquittal only when there are compelling and substantial reasons and the order is clearly unreasonable and where the Appellate Court comes to conclusion that based on the evidence, the conviction is a must.

8. In light of the above settled principles of law and in acquittal appeals, the evidence produced by the prosecution on record is appreciated and the prosecution has examined PW-1 Johnny Babulal Saxena at Exh.10 and the witness has stated that on 06.02.2012, he along with Junior Engineer Kanji Valji Dangar, Line Staff B.D.Atri and Helper P.C.Vaidya had gone to the Nehrunagar area for checking electricity connections and had gone to the house of the accused and found the 1.8 mm wire of incoming service into the meter was tapped and a 15 ampere switch was joined to the wiring of the consumption of electricity of the house. That even though the electricity connection was on, there was no reading in the meter, and as a theft of electricity was being committed, the service wire and switch were seized and sealed and the electricity

connection of the consumer was disconnected. Checking sheet No.2383 was prepared and the checking sheet was given to the accused on the spot and the muddamal was deposited in the office. The necessary calculations were done and the bill of theft of electricity was prepared and was sent to the accused, but the bill was not paid by the accused. After the sanction to file the complaint was received, the witness had himself gone to the police station and filed the complaint, which is produced at Exh.13. The witness has also produced the rojkam at Exh.11, the FIR at Exh.12, the approval letter of the Executive Engineer, City -1 Division, Jamnagar at Exh.14, the bill of theft of Electricity at Exh.15, Calculation Sheet at Exh.16 and the Consumption Details of the Consumer at Exh.17. During the cross-examination by the learned advocate for the accused, the witness had stated that they did not take the police party with them for checking of electricity and he did not check the house number or survey number and has not mentioned the same in the checking sheet. That no documentary evidence that the house, which was checked, belong to the accused was seized. That he did not inform the police chowki about the theft of electricity and did not inform the G.E.B Police Station,

Rajkot regarding the theft of electricity. The wire and meter were not seized in the presence of any independent witnesses and no independent panch witnesses were called for the rojkam. No photographs of the theft of electricity were taken and no panchnama regarding the theft of electricity was drawn. The complaint was filed on 01.11.2012 and in the complaint at Exh.13, the date of checking is mentioned as 03.03.2012, but he did not go for checking on 03.03.2012. That he did not mention the date of checking as 06.02.2012 in the complaint and even in the checking sheet produced at Exh.12, the date mentioned is 03.03.2012.

8.1. The prosecution has examined PW-2 Kanjibhai Valjibhai Dangar at Exh.18 and the witness was a member of the checking team along with the complainant at the time of the incident. The witness has stated that on 06.02.2012, he had gone along with the Deputy Engineer, Line Staff and Helper for checking electricity connections and found the accused committing theft to electricity at his residence. The witness has supported the complainant and during the cross-examination, he has stated that no checking had taken place on 03.03.2012 and they did not take

the police party along with them at the time of checking. The house number or the survey number, where the theft of electricity, was taking place was not mentioned in the checking sheet and no document to show that the place in which the checking had taken place belonged to the accused was seized. The area was between Bedi Police Chowki and Hanuman Police Chowki, but they did not inform any police chowki about the theft of electricity and they did not inform the G.E.B. Police Station Rajkot about the theft of electricity. No signatures of any pancha witnesses were taken when the wire and the switch were seized and no rojkam was prepared in the presence of any independent panch witnesses. The witness has categorically stated that they did not go for checking on 03.03.2012.

8.2. The prosecution has examined PW-3 Iqbalbhai Allahrakhabhai Shaikh at Exh.21 and the witness is the panch witness of the panchnama of the place of offence, which is produced at Exh.22. The witness has not supported the case of the prosecution and has denied that he had gone to the house of the accused and the panchama of the place of offence was drawn in

his presence. The witness has been declared hostile and has been cross-examined by the learned APP, but nothing to support the case of the prosecution has common record.

8.3. PW-4 Rajendrasinh Bhagwatsinh Jadeja examined at Exh.24 is the Investigating Officer, who has narrated the entire procedure undertaken by him during investigation. During the cross-examination by the learned advocate for the accused, the witness has stated that he did not see any document regarding the ownership of the place where the checking was undertaken. The muddamal that was seized was not sealed and he has not deposited the muddamal along with the chargesheet before the learned trial Court. That when he had gone to visit the place of incident, he did not find the muddamal and he did not verify the muddamal wire along with the pole and the place where the theft of electricity was taking place. That he did not record the statements of any neighbours regarding the ownership of the place where the theft was taking place.

9. On minute appreciation of the entire evidence of the prosecution as per the complaint produced at Exh.13, the checking

was done by the complainant and other team members on 03.03.2012, but in the entire evidence of the complainant and PW-2 Kanjibhai Valjibhai Dangar, the member of the checking team, the checking was done on 06.02.2012. The complaint was filed on 01.11.2012 and there is no explanation regarding the long delay of more than eight months in filing the complaint. The panchnama of the place of offence was drawn by the Investigating Officer on 25.12.2012 and at the time of drawing the panchnama the meter was not found. There is no evidence that the place where the checking took place belonged to the accused and if the bill of theft of electricity produced that Exh.15 is perused, the date on the bill is 07.02.2012. There is no iota of evidence that the place that was checked by the complainant and the other team members on 03.30.2012 was in the ownership of the accused and he had committed theft of electricity.

10. In view of the above, the learned Trial Court has appreciated the entire evidence in proper perspective and there does not appear to be any infirmity and illegality in the impugned judgment and order of acquittal. The learned Trial Court has

appreciated all the evidence and this Court is of the considered opinion that the learned Trial Court was completely justified in acquitting the accused of the charges leveled against them. The findings recorded by the learned Trial Court are absolutely just and proper and no illegality or infirmity has been committed by the learned Trial Court and this Court is in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the Trial Court. This Court finds no reason to interfere with the impugned judgment and order and the present appeal is devoid of merits and resultantly, the same is dismissed.

11. The impugned judgment and the order dated 27.10.2015 in Special (G.E.B.) Case No.260 of 2014 passed by the learned Special Judge and 3rd Additional Sessions Judge, Jamnagar is hereby confirmed.

12. Bail bond stands cancelled. Record and proceedings be sent back to the concerned learned Trial Court forthwith.

Sd/-
(S.V.PINTO,J)

F.S.KAZI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: KAZI FARUKHUSEN(HC01075), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 15/04/2025 14:34:05