position to take otherwise view of the matter by showing any substantive and cogent evidence. Accordingly, the present appeal deserves to be allowed and the impugned judgment and order is required to be set aside.

6. In view of the aforesaid discussion, present appeal succeeds and the impugned judgment and order dated 15/01/2002, passed by the learned Sessions Judge, Mahesana in Sessions Case No. 106 of 2001, is hereby set aside and the appellant - accused is acquitted of the charge for which he is convicted and sentenced by giving benefit of doubt. The appellant - accused is reported to be on bail and accordingly, he needs not to surrender to custody except he requires so in any other offence and his bail bond shall stand cancelled. Registry to return the R&P to the trial Court forthwith.

Result:- Appeal allowed.

ABC 2016 (II) 445 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(G.B. Shah, J.)
Criminal Appeal No. 101 of 2011
Decided on 23 September, 2016

PATEL DILIPBHAI SOMABHAI ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***(A) Electricity Act, 2003 — Section 135(1) — Delay in complaint — No explanation —fatal to prosecution — Acquittal. (Para 5.1)***

(B) Electricity Act, 2003 — Section 135(1) — No tempering found in meter — Admission by witness — neither the meter was checked with accumeter nor was got checked by laboratory — Register kept for keeping records of checks conducted— neither produced before the police nor in the Court— Seizure — No panch witness —No panchnama — No independent witness — No material to disclose the procedure adopted after removing the meter — Serviceability of meter — no report by meter-reader as to whether the meter was running or not —Conviction set aside — Indian Evidence Act, 1872 — Section 3 — Relevant fact. (Para 5.2 & 5.3)

Held:- Referring the deposition of complainant - PW-1 Mukeshkumar Hargovandas Patel at exh. 8, it is clear that he had lodged the complaint on the strength of papers submitted to him and it is the fact that during the course of checking, he was not at the place of incident nor has he any personal knowledge about the incident in question. He has also admitted the fact that, in the complaint at exh. 12, there is no explanation as to the delay caused in filing the complaint. (Para 5.1)

Moreover, if the deposition of PW-2 Mithabhai Ramanbhai at exh. 16 is referred, he has specifically admitted in his cross-examination that in the Checking Sheet at column No. 3, the load was not specified. He has further admitted that, 'it is true that there was no tampering found with meter'. It is also admitted by this witness that 'neither the meter was checked with accumeter nor was got checked by Vijapur laboratory. This witness has also admitted in the cross-examination that, 'they use to keep a register in the office as to conducting checking, which is neither produced before the police nor in the Court. When the meter was seized, no panch witness was called nor had statement of any independent witness recorded'. It is pertinent to note at this juncture that though the seal was not found on the terminal cover as mentioned in column No. 6 of exh. 17 and though, as mentioned in column No. 8, meter was not running, the same was removed during the above-referred checking, in spite of that nothing has come on record that whether the said meter was sent to the laboratory for checking or not and what procedure was adopted after removing the said meter. (Para 5.2)

Now if the deposition of PW-4 Patel Amrutlal Ambaramdas at exh. 23 is considered, he has specifically admitted in his cross-examination that, 'meter-reader had not made report as to whether the meter was running or not; meter was not checked with accu check; it is true that no examination was conducted in the presence of the panchas and the panchnama was not prepared'. (Para 5.3)

Counsel:- ***For Appellant(s):*** *Mr Dhaval N Vakil, Advocate.*

For Respondent(s): *Mr. K.L. Pandya, APP.*

JUDGMENT

G.B. SHAH, J.: - 1. Present appeal assails the judgment and order dated 05/01/2011, passed by the learned Special Judge (Electricity), Mahesana in Special Electricity Case No. 9 of 2010, whereby, the

appellant herein - original accused came to be convicted for the offence under Section 135(1) of the Electricity Act, 2003 and sentenced to undergo rigorous imprisonment (RI) for one year and a fine of Rs.5,500/- and in default of payment of fine, to undergo further SI for three months.

2. Brief facts of the prosecution case are that on 19/12/2009 at about 6:30 a.m. while checking conducted by the officials of the electricity company at the residence of the appellant - accused, situated at village: Bhavsor, he was found to have been committing theft of electricity by taking direct connection from low pressure LT line by 1/18 black wire in his house and thereby, committed theft of electricity for Rs.1,817/96ps. for which, a complaint came to be lodged.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Sessions Court and assigned to the Special Court. The trial Court framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence. In order to bring home the charge against the accused, the prosecution has examined as many as 07 witnesses and produced several documentary evidence

2.2 At the end of the trial, Further Statement of the accused under Section 313 of Code of Criminal Procedure, 1973 (for brevity, 'the Code') was recorded in which he denied the evidence forthcoming on the record and stated that a false case has been filed against him. Thus, after recording above-referred Further Statement and hearing the arguments on behalf of prosecution and the defence, the learned Special Judge came to the aforesaid conclusion by the impugned judgment and order, giving rise to prefer the present appeal by the accused.

3. Heard Mr. Dhaval N. Vakil, the learned advocate for the appellant - original accused and Mr. K. L. Pandya, the learned Additional Public Prosecutor, for the respondent State. 3.1 The learned advocate for the appellant accused contended that the judgment and order of the trial Court is against the provisions of law; the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself, it is established that the prosecution has failed to prove the whole

ingredients of the offence for which the accused is convicted and sentenced and thereby, the learned trial Judge has erred in coming to such a conclusion. He took this Court through the oral as well as the entire documentary evidence on record and submitted that the learned trial Judge has materially erred in law as well as in facts in not properly appreciating the depositions of the witnesses. He submitted that the learned trial Judge has failed to consider the fact that no panchnama, either of the scene of offence or the muddamal seized has been carried out, which is the core necessity in such an offence and only on the basis of the evidence of the prosecution witnesses, the appellant has been convicted, which is improper. Moreover, the trial Judge has failed to appreciate that the present appellant - accused was not the consumer of the electricity company and under the circumstances, implication of Section 135 of the Electricity Act was not at all called for. Moreover, only since the appellant was present while checking was conducted, he could not be implicated in the offence in question. 3.2 The learned advocate for the appellant - accused further submitted that if the deposition of PW-1 Mukeshkumar Hargovandas Patel, the complainant at exh. 8 is referred, he has specifically stated that he had no personal knowledge about the incident and he had lodged the complaint on the basis of the papers submitted to him. Moreover, he has also failed to explain the delay of one month in filing the complaint. 3.3 The learned advocate for the appellant - accused further submitted that considering the deposition of PW-2 Patel Mithabhai Ramanlal at exh. 16, this witness has failed to explain the number of pole and the distance of pole from which the direct connection was alleged to have been taken and the learned trial Judge has erred in observing that there was no need for this witness to show the distance from the pole. He submitted that the prosecution has to prove the case beyond reasonable doubt, leaving no stone unturned which is not so in the case on hand and hence, the conviction imposed upon the appellant is not tenable in the eye of law.

3.4 He further submitted that if for the sake of argument it is believed that the present appellant had committed theft of electricity, as per Section 135 of the Electricity Act it deserves to be mentioned that the load consumed by the appellant did not exceed 10KW and therefore, the learned trial Judge ought not to have imposed the conviction.

3.5 Making above submissions, the learned advocate for the appellant accused requested to allow the present appeal as no ingredients of the said offence have been proved and the prosecution has failed to prove its case against the accused beyond reasonable doubt, setting aside the impugned judgment and order.

4. Per contra, Mr. Pandya, the learned Additional Public Prosecutor for the respondent - State, supported the impugned judgment and order and submitted that the same having been passed in accordance with law, does not call for any interference. It is submitted that the prosecution has successfully proved the case against the accused beyond reasonable doubt and the learned trial Judge, after taking into consideration all the aspects of the matter, has come to such a conclusion, which is just and proper and accordingly, it is requested that this Court should not interfere in appeal. He took the Court through the relevant oral as well as documentary evidence on record and the discussion made by the learned trial Judge in the impugned judgment and order and submitted that the prosecution has successfully proved its case against the appellant and the learned trial Judge has committed no error in convicting the accused after duly evaluating and appreciating the evidence on record and considering the gravity of the offence, he requested that this Court may not interfere in the appeal and eventually, requested to dismiss the present appeal confirming the impugned judgment and order.

5. I have considered the above-referred rival submissions made by the learned advocates for the parties and also gone through the evidence on record and re-appreciated and re-evaluated the same on the touchstone of the latest decisions of the Hon'ble Apex Court.

5.1 The prosecution has, in all, examined seven witnesses out of which, so far as the officials of the electricity board are concerned, they are PW-1 Mukeshkumar Hargovandas Patel, the complainant, whose deposition is recorded vide exh. 8, PW-2 Patel Mithabhai Ramanlal, whose deposition is recorded vide exh. 16, PW-4 Patel Amrutlal Ambaramdas, whose deposition is recorded vide exh. 23 and PW-5 Patel Ramanbhai Joitabhai, whose deposition is recorded vide exh. 26. Referring the deposition of complainant - PW-1 Mukeshkumar Hargovandas Patel at exh. 8, it is clear that he had lodged the complaint on the strength of papers submitted to him and it is the fact that during the course of checking, he was not at the place of incident nor has he any personal knowledge about the incident in

question. He has also admitted the fact that, in the complaint at exh. 12, there is no explanation as to the delay caused in filing the complaint.

5.2 Moreover, if the deposition of PW-2 Mithabhai Ramanbhai at exh. 16 is referred, he has specifically admitted in his cross-examination that in the Checking Sheet at column No. 3, the load was not specified. He has further admitted that, 'it is true that there was no tampering found with meter'. It is also admitted by this witness that 'neither the meter was checked with accumeter nor was got checked by Vijapur laboratory. This witness has also admitted in the cross-examination that, 'they use to keep a register in the office as to conducting checking, which is neither produced before the police nor in the Court. When the meter was seized, no panch witness was called nor had statement of any independent witness recorded'. It is pertinent to note at this juncture that though the seal was not found on the terminal cover as mentioned in column No. 6 of exh. 17 and though, as mentioned in column No. 8, meter was not running, the same was removed during the above-referred checking, in spite of that nothing has come on record that whether the said meter was sent to the laboratory for checking or not and what procedure was adopted after removing the said meter.

5.3 Now if the deposition of PW-4 Patel Amrutlal Ambaramdas at exh. 23 is considered, he has specifically admitted in his cross- examination that, 'meter-reader had not made report as to whether the meter was running or not; meter was not checked with accu check; it is true that no examination was conducted in the presence of the panchas and the panchnama was not prepared'.

5.4 Thus, considering the aforesaid evidence on record, in the considered opinion of this Court, there are serious lacuna in the prosecution case and the prosecution has failed to prove its case against the present appellant - accused beyond reasonable doubt, more particularly, when no panchnama of the muddamal article/s seized was carried out nor has any witness to that effect been examined and the complainant had not personal knowledge about the incident in question as admitted by him, as he had lodged the complaint only on the basis of the papers produced before him and in the circumstances, the conclusion arrived by the learned trial Judge appears to be without considering the aforesaid material aspects and considering all the aspects of the matter in entirety, I am of the view

that the learned trial Judge has committed a grave error in convicting the appellant accused for the offence in question as the prosecution has failed to prove the same beyond reasonable doubt. Moreover, the learned Additional Public Prosecutor is not in a position to take otherwise view of the matter by showing any substantive and cogent evidence. Accordingly, the present appeal deserves to be allowed and the impugned judgment and order is required to be set aside.

6. In view of the aforesaid discussion, present appeal succeeds and the impugned judgment and order dated 05/01/2011, passed by the learned Special Judge (Electricity), Mahesana in Special Electricity Case No. 9 of 2010, is hereby set aside and the appellant - accused is acquitted of the charge for which he is convicted and sentenced by giving benefit of doubt. The appellant - accused is reported to be on bail and accordingly, he needs not to surrender to custody except he requires so in any other offence and his bail bond shall stand cancelled. Registry to return the R&P to the trial Court forthwith.

***Result*:-** Appeal allowed.

ABC 2016 (II) 451 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(G.B. Shah, J.)

Criminal Appeal (Against Conviction) No. 1116 of 2014
Decided on 12 September, 2016

AMARSINH KALUSINH SOLANKI ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860 — Sections 363, 366 & 376— Offence under —Allegation that the victim was taken to different places including temple against her will— Held, the victim ought to have raised alarm when she had enough opportunities — did not do so— Age of prosecutrix — contradiction regarding — Held, conviction cannot be based solely relying on the unreliable and unworthy testimonies of the witnesses and questionable documents regarding age of the victim — Acquittal. (Para 10 & 11)

(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact— Determination of Age —Thumb impression —not identified by proper