

Deepak Chawla Vs. the State and ors.

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Court : Delhi

Decided On : Jan-10-2014

Judge : S. Muralidhar

Appellant : Deepak Chawla

Respondent : The State and ors.

Advocate for Def. : Ms. Aashaa Tiwari, Mr. Vikram Nandarajog, Mr. Sushil Jaswal

Advocate for Pet/Ap. : Mr. Shiv Charan Garg, Mr. Imran Khan, Mr. Shashank Mittal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI R-10 + CRL.A. 42 of 2008 & CRL.M.B. 81 of 2008 and CRL.M.A. 4435 of 2008 DEEPAK CHAWLA Through: Appellant Mr. Shiv Charan Garg, Mr. Imran Khan & Mr. Shashank Mittal, Advocates versus THE STATE & ORS. Through: Respondents Ms. Aashaa Tiwari, Advocate for the State. Mr. Vikram Nandarajog and Mr. Sushil Jaswal, Advocates for Respondent No.2-NDPL. CORAM: JUSTICE S. MURALIDHAR %

ORDER

1001.2014 1. This is an appeal filed by Mr. Deepak Chawla against the impugned judgment dated 15th December 2007 passed by the learned Additional Sessions Judge (ASJ), Special Electricity Court in Complaint Case No.10 of 2006 convicting the Appellant of the offence under Section 135 of the Electricity Act, 2003 (EA),

and against an order of the same date sentencing him to undergo rigorous imprisonment for three years and fixing the civil liability to Rs. 3 crores.

2. On 20th May 2005, the complainant North Delhi Power Limited (NDPL) organised a raid at the premises at Khasra No.152, Ram Kumar Ka Gher, Rithala Village, Delhi (hereafter the premises in question). The raiding party was led by Mr. S.K. Das, HOG, Corporate Enforcement Group. Thereafter, an FIR No.489 of 2005 was registered at Police Station Rohini and the investigation of the case was entrusted to Sub Inspector Rajesh.

3. The case of NDPL was that on 20th May 2005 at 11.30, the raiding party found that the Appellant, a tenant under one Shri Virender Singh, was indulging in direct theft of electricity by tapping from NDPL LV mains by laying a cable for the purposes of his softy making business. The connected load was 436.782 KW.

4. Sixteen witnesses were examined by the prosecution. The key witness, Mr. Virender Singh, the supposed owner of the premises was, however, not examined.

5. PW-9, Shri S.K. Das of NDPL, and PW-10, Mr. Mangal Singh, who had taken on rent two shops in Khasra No.152 from Mr. Virender Singh, are supposed to have informed the IO that all the five shops in Khasra Nos. 151 and 152 belonged to Mr. Virender Singh. The raiding party members in the first instance stated that they were informed that the user of the electricity was one Mr. Rajesh. It was further stated that, during the course of the investigation, Mr. Rajesh handed over a photocopy of rent agreement executed between Mr. Virender Singh and Mr. Deepak Chawla. Thereafter, upon receipt of secret information, the Appellant was arrested. In his disclosure statement, the Appellant is said to have admitted that he had taken the premises on rent from Mr. Virender Singh. A photocopy of the rent agreement was also relied upon by the trial court to convict the Appellant.

6. This Court has heard the submissions of Mr. Shiv Charan Garg, learned counsel for the Appellant and Mr. Vikram Nandrajog, learned counsel for Respondent No.2-NDPL.

7. In the complaint filed by NDPL before the police, it was stated that the user of the electricity was Mr. Rajesh. The name of Mr. Deepak Chawla did not appear at that point of time. The evidence of PW-3 Rajeev Gupta, Commercial Manager, NDPL who was part of the raiding party, reveals that there were as many 13 members in the raiding party. He stated:

we came to know that Sh. Rajesh was in occupation of the said premises. In other words, the raiding party did not find any one in the premises and definitely not the Appellant. In his cross-examination, PW-3 stated that None of the workers met us at the spot. The workers might have run away. Vol. But we have not seen any worker running away from the factory. He also stated that No inquiry was made to IO from any of the workers as none of the workers met us at the spot. He added:

I told the IO that the user of the stolen electricity was Rajesh Kumar s/o Ram Kumar..... I do not remember how we came to know or who said Rajesh Kumar is the user.

8. The above evidence shows that the raiding party was itself not directly aware as to who the user of the premises was. The name of the user was presumed to be Rajesh without any verification. Importantly, the name of the Appellant did not feature at the time of the raid. This was confirmed in the cross-examination of PW-4 Mr. Devi Shahay who was part of the raiding party. He stated that it is correct that in the entire inquiry conducted by us, name of Deepak Chawla was not revealed.

9. It is intriguing that how suddenly a photocopy of the rent agreement surfaced. This is relevant because the case made out against the Appellant is based essentially on the fact that there was a rent agreement between Mr. Deepak Chawla and Mr. Virender Singh, the owner of the premises. PW-13 Rajesh Kumar simply states that the raided premises was owned by Mr. Virender Singh s/o Ram Singh although he cannot tell how the raided property owned by Virender Singh. He further states that I do not know the person to whom Virender Singh rented out the property. Interestingly, he did not disclose as to how he came into possession of the rent agreement. He simply states that The Police has taken from me the photocopy of the rent agreement of the premises which was raided by NDPL

officials on 3.6.05. Interestingly, Rajesh admits in his crossexamination that he does not know how to read and write and therefore is unable to state whether the agreement produced in Court was the same which was handed over by him to the IO.

10. In the considered view of the Court, the above rent agreement cannot be relied upon for more than one reason. Apart from the fact that Rajesh himself for some reason did not mention in the first instance the fact that the premises was leased to the Appellant by Mr. Virender Singh, he states in his cross-examination that it is also correct that the rent agreement which I had given to the police was not executed in my presence. He states as under:

The photocopy of rent agreement was given to me by Sunil nephew of Virender Singh after great persuasion and many visits to the house of Virender Singh as I was being harassed by the police. It is correct that I do not know where the original of the said photocopy is. The above statement shows that it is only as a result of police harassment that Rajesh purportedly procured a photocopy of the rent agreement from Mr. Virender Singhs nephew.

11. Strangely, Mr. Virender Singh himself was never examined although there was no impediment to the police examining him. He was in judicial custody in connection with some other case. The Notary Public, who was examined as PW-7, admitted that although every document notarized by him was supposed to be entered in a register, this particular document, i.e., the rent agreement was not entered in the register. He then states as under:

I cannot identify witness Roshan Lal or the parties who has signed before me. Vol. Since it is a matter of two and a half years ago and even in the matter of a week ago also it is not possible to identify the parties. I do not know who presented Ex.PW7/1 before me. It is also correct that I have not verified the identity of the parties before notarizing the document. The person who has signed before me as Virender Singh must be Virender Singh. Clearly, therefore, even the evidence of the Notary Public is not helpful in determining the genuineness of the so called rent agreement.

12. Smt. Guddi, wife of Mr. Virender Singh, was examined as PW-12. She did not support the case of the prosecution and was declared hostile. She stood firm that she did not know anything about the ownership papers of Khasra No.152. She also stated as under:

I also cannot say that the paper, the police taken into possession on 8.7.05 was a rent agreement between my husband and Deepak Chawla for letting out one shed area of which is around 150 sq. yds. out of the Khasra No.152, situated in old Lal Dora Village, Rithala.

13. In light of the above evidence, it was unsafe for the trial court to have proceeded on the basis of the rent agreement which was the principal piece of evidence put forth by the prosecution to connect the Appellant with the premises in question.

14. The retracted disclosure statement of the Appellant could not have been relied upon in the absence of any substantive piece of evidence connecting him with the premises in question.

15. In the circumstances, this Court is of the view that the learned trial court erred in returning a finding of guilt against the Appellant for the offence under Section 135 of the EA. The impugned judgment dated 15th December 2007 of the learned ASJ is accordingly set aside. Consequently the order, determining the civil liability, as well as the order on sentence dated 15th December 2007 are also set aside. The personal bond and surety are hereby discharged.

16. The appeal is allowed in the above terms. All pending applications are disposed of.

17. The trial court record be sent back forthwith. S. MURALIDHAR, J JANUARY10 2014 akg

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