

Jwala Prasad Vs. Emperor

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Court : Allahabad

Decided On : Dec-05-1933

Reported in : AIR1934All320

Appellant : Jwala Prasad

Respondent : Emperor

Judgement :

ORDER

Young, J.

1. This is an application in revision from the decision of the learned Sessions Judge of Agra. Sita Ram and Jwala Prasad were charged in the Court of the learned City Magistrate of Agra under Sections 379 and 411, Penal Code. The learned Magistrate sentenced each of the accused to six months rigorous imprisonment under Section 379, and also inflicted a fine of Rs. 35 upon each of them under section 411. The learned Sessions Judge acquitted Sita Ram on both charges, but upheld the conviction of Jwala Prasad. He however reduced the sentence under Section 379 to one of three months' R. I. Jwala Prasad applies in revision to this Court.

2. Apparently the Electric Supply Co. of Agra has suffered from the depredations of the citizens of that town. The company has therefore very properly taken steps to discover and have punished those guilty of stealing their electricity. Mr. Rose,

the Assistant Resident Engineer, together with the main Superintendent, went to the premises occupied by Sita Ram's flour mill in the city of Agra. For that mill Sita Ram had an electric motor. The Electric Supply Company had entered into an agreement with him to supply him with energy for power only. On 20th June 1933, Mr. Rose and his assistant, on entering the premises of Sita Ram, found an electric lamp burning in a back room of the mill where the motor was situated. The police were sent for, and on their arrival, the lamp and the wire connection to the supply wire were removed. Jwala Prasad was charged with stealing the electric energy of the Supply Company, and, as the lamp belonged to the company, he was charged with receiving it knowing it to be stolen, under Section 411. The prosecution having proved that this lamp was burning in the premises of Sita Ram, this would raise, under the circumstances, a presumption that Jwala Prasad was dishonestly abstracting the energy of the company within the meaning of Section 39, Electricity Act. The onus of showing some reasonable excuse for the use of the lamp would lie upon Jwala Prasad. Once however he gave a reasonable excuse, the onus of proving the offence of stealing would again lie upon the prosecution. A defence was put forward in the cross-examination of Mr. Rose and by a written statement and also by two witnesses called by the accused, that sometime before the day in question the motor engine of the mill was not running properly and the company was asked to attend to it. On that occasion an employee of the company made a test to see whether the defect lay in the engine or in the energy supplied by the company. For that purpose it was necessary to use a lamp by attaching it to the supply wire. If the light from the lamp was steady and not fluctuating, the fault would not lie in the current, but in the motor. On the other hand, if the light was intermittent and fluctuating, the fault might be expected to be in the supply of electricity. It was further alleged that during this test the employee broke a lamp belonging to the mill, and to replace it he gave Jwala Prasad a lamp belonging to the company. It was also alleged by the defence that on the 20th June the engine again was not running satisfactorily and so Jwala Prasad proceeded to test it in the same manner as the employee of the company had done, and that while engaged in this test Mr. Rose came in.

3. Both the lower Courts have failed to come to a definite finding as to whether the story of the test raised in defence was true or false. Neither of the lower Courts

came to a definite finding whether the lamp was used for light or for a test. Both Courts were under the impression that whether the lamp was used for a test or illumination made no difference as regards the guilt of the accused. They thought that the use of a lamp for the purpose of a test would be stealing within the meaning of Section 379, Penal Code. For this reason there is no finding on this very important question of fact.

4. In my opinion, there is a clear distinction between the use of a lamp for lighting the premises and using it for testing the electric machinery of the consumer, Mr. Rose giving evidence for the prosecution, admitted that within the premises of the consumer, that is, as he said after the cut-out,' if there was any defect, the consumer himself should attend to it. He said one way of testing was to use a lamp. Further on he says 'there is no explicit rule that such a test is barred.' He did contend in his evidence, as has been contended here by counsel for the Electric Supply Company, that if there was no light or fan connection, the consumer was not entitled to make any test with a lamp without the permission of the company. I look in vain in the Electricity Act for any authority for this proposition. Section 23(2), Electricity Act, which is the basis of the argument, is as follows:

No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.

5. The higher method of charging is for the use of electricity for light or fans. There can be no question that if this lamp had been used for illuminating purposes, Section 39 would apply and the accused would be guilty of the offence of stealing. But the whole question in this case, to which the lower Courts have supplied no answer, is, was the lamp used for lighting or was it used for testing the electric supply? If it was used for a test; Section 23, in my opinion, does not apply. There is no charge on a higher method of charging for the use of electricity for testing the supply and therefore there is no need to obtain in writing the consent of the Electric Supply Company, before using electricity for this purpose.

6. If the case for the prosecution had been properly presented, there ought not to have been any difficulty in discovering whether the lamp was in fact being used for

testing purposes or for illumination. As it is, the evidence itself leaves this point in doubt. The visit of Mr. Rose was at 2 O'clock in the after, noon. There is not the slightest evidence that the room, in which this lamp was required illumination at that time of the day. The engine itself was there, and therefore there being no evidence as to the natural light in the room, there is a possibility that the lamp was used for the purpose of testing the supply. Further, if this lamp was used for illuminating purposes, there would have been no difficulty in Mr. Rose giving evidence to the effect that he was present in the room for sometime; that the motor was running perfectly smoothly with no obvious or audible defect, Mr. Rose was cross-examined as to the test. He was also asked questions about the previous test by the company, and he did not know whether there had been a previous test or not. Another point which might have been put to Mr. Rose on re-examination, was whether the defence of a test was raised at the time either to Mr. Rose himself or when the police arrived. On this most vital point the record is silent. There is nothing in the evidence to exclude the possibility that the lamp had been newly lit for the purpose of a test. In my opinion therefore both on the evidence of Mr. Rose and in law a consumer of electricity employing electrical machinery would be entitled within his own premises to use all reasonable tests which might be necessary to discover a defect. It is not obligatory on anyone, whatever machinery he may happen to use, to call in an expert on every occasion when something goes wrong. A man is entitled, if he is able, to remedy defects himself in his own plant. If, in the case of electric supply, it is, as it appears to be, a reasonable test for a consumer to use an electric lamp and he bona fide uses a lamp for this purpose, I can see nothing in the Electricity Act, or in law to prohibit him from doing so. It might even, in my opinion, be an implied term of the contract between the company and the consumer that the consumer may use any reasonable test to discover and put right any defect. Of this I am satisfied that before a test of this nature can result in a conviction, it must be clearly declared to be punishable in the Act or barred in the contract between the company and the consumer.

7. With regard to receiving the lamp, the only evidence is on the side of the defence. The defence is not unreasonable. It may well be that the lamp did come into the possession of Jwala Prasad in the manner indicated. At any rate, it is

impossible to say that the prosecution case has been definitely proved on this point. The learned Judge in the lower Court came to the conclusion that, assuming the defence story to be true, there would still be an offence of receiving stolen goods on the ground that the lamp was the property of the Electric Supply Company, and the employee of the company had no authority to give the lamp to Jwala Prasad. I doubt if the lower Court is correct in law on this point. A servant of the company, employed in the business of the company, must be considered to be vested with such reasonable authority as may be requisite for the carrying on of his work for the company. It would, in my opinion, be difficult to say that if that servant in the course of his duty broke a lamp belonging to a consumer, it would be outside his implied authority to replace that lamp. In any event, the consumer could not know the employee had no authority and receiving the lamp under such circumstances could not amount to an offence.

8. Counsel for the Electric Supply Company, has further contended that, assuming the defence story is accepted, there would still be the offence of dishonestly abstracting energy within the meaning of Section 39, Electricity Act; it is said that the mere fact that the lamp was being used for the purpose of testing is enough to prove an offence under this section. Apart from what I have said above this is, in my opinion, an impossible construction to put upon the section. The word which is stressed in the section is 'dishonestly.' If the defendant, as it is alleged, believed that he had a right to use a lamp for the purpose of a test, and used it for that purpose alone, it would be impossible to say that what he did amounted to dishonest abstraction of the company's electric energy.

9. From all these points of view therefore I am of opinion, that this application in revision must be allowed. I therefore set aside the conviction of, and sentence passed upon, Jwala Prasad. His bail bonds will be cancelled. The fine, if paid, will be refunded.