

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL NO. 21 of 2010**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

STATE OF GUJARAT  
Versus  
BALVANTSINH AMARSINH RAJ

Appearance:

MS. JIRGA JHAVERI, APP for the Appellant(s) No. 1

MR MM SAIYED(1806) for the Opponent(s)/Respondent(s) No. 1

**CORAM: HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

**Date : 02/08/2022**

**ORAL JUDGMENT**

1. The present Appeal is directed against the impugned judgment and order passed in Special Case No. (Electricity) 58 of 2007, by the learned 2<sup>nd</sup> Additional Sessions Judge and Special Judge, Bharuch, dated 25.8.2009, recording acquittal of the Respondent - Original Accused - Balvantsinh Amarsinh Raj

(hereinafter referred to as “the Respondent”), who was charged with the offence punishable under Section 135 of The Indian Electricity Act 2003 (hereinafter referred to as “the Electricity Act”).

2. The facts of the case briefly as summarized are that the Complainant - Dy. Engineer - Namanbhai Vestabhai Chaudhari of South Gujarat Vij Company Ltd. Sub Division Vagrama has filed a complaint against the Respondent Accused before the GEB Police Station, South Zone, Surat vide CR.No. II-17/2005 for the alleged offence under Section 135 of the Electricity Act. According to the Complainant, it is the case of the prosecution that on 22.12.2004, Junior Engineer Shri N.V.Chaudhari, along with other staff members has carried out inspection at the premises of the Respondent Accused situated at village Vegni, Taluka Vagara and during inspection, it was noticed that though the Respondent Accused was not having any regular connection, he has obtained illegal direct connection from low transmission line of GEB and thereby committed theft of electricity. It is further the case of the prosecution that an average bill of Rs.2,19,817.83 p was prepared and issued to the Respondent Accused, which was not paid by him and accordingly, a complaint was filed before GEB Police Station, South Zone, Surat, vide CR No. II-17/2005 for the alleged offence under Section 135 of the Indian Electricity Act, 2003.

3. Upon such FIR being filed, investigation started and the

Investigating Officer has recorded statements of the witnesses and produced number of documentary evidences. After completion of the investigation, charge sheet was filed against the Respondent for the offence in question, since the I.O. found a prima facie case against the Respondent, charge sheet came to be filed before the learned Chief Judicial Magistrate, Bharuch for the offence under Section 135 of the Electricity Act.

4. As the case was exclusively triable by the Court of learned Special Judge, the learned Magistrate was pleased to commit the case to the Court of learned Additional Sessions Judge & Special Judge, Bharuch, which was numbered as Special (Electricity) Case No. 58 of 2007.

5. On committal, the case was transferred and placed for trial before the learned Special Judge (Electricity), Bharuch, who had initially framed charge against the Respondent for the alleged offence. The charge was read over to the Respondent and the plea of the Respondent came to be recorded, wherein the Respondent pleaded not guilty to the charge and claimed to be tried.

6. In order to bring home the charge leveled against the Respondent, the prosecution has examined as many as 9 witnesses and relied upon their oral testimonies. The prosecution has also produced number of documentary evidences.

7. Thereafter the Court below explained to the Respondent the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section 313 of the Criminal Procedure Code. In his further statement, the Respondent denied the case of the prosecution in entirety and submitted that he has been roped in a false case.

8. At the end of the trial, on appreciation, evaluation, analysis and scrutiny of the evidence on record, the learned Special Judge (Electricity), Bharuch, vide judgment and order dated 25.8.2009 was pleased to acquit the Respondent for the offence under Section 135 of the Electricity Act holding inter alia that the prosecution has failed to prove the charge against the Respondent beyond reasonable doubt.

9. Being aggrieved and dissatisfied by the judgment and order dated 25.8.2009 passed by the learned Special Judge (Electricity), Bharuch in Special Case No. (Electricity) 58 of 2007, the Appellant - State of Gujarat has preferred the present appeal.

10. Heard, learned APP Ms. Jirga Jhaveri for the appellant - State and learned Advocate Mr. M.M. Saiyed for the Respondent - Original Accused.

11. The learned Additional Public Prosecutor has mainly

contended that the learned trial Judge has erred in holding that the prosecution has failed to prove its case beyond reasonable doubt. The learned APP submitted that the impugned judgment of the trial Court is based on presumptions and inferences and thereby, it is against the facts and the evidence on record. The learned APP further submitted that the learned trial Judge has failed to appreciate the evidence on record in its true and proper perspective and thereby, has erred in recording the acquittal of the Respondent.

12. Learned APP Ms. Jirga Jhaveri referred to the judgment and order as well as the testimony of number of witnesses and also the documentary evidence. Learned APP has submitted that the judgment and order of acquittal passed by the learned Judge is contrary to law, evidence on record and principles of justice, hence the same deserves to be quashed and set aside by this Hon'ble Court. It is further contended that the judgment and order of acquittal passed by the learned Special Judge is based on inference not warranted by facts of the case and also on presumption not permitted by law and that the learned Special Judge ought to have seen that there are direct and indirect evidence connecting Respondent with crime produced in this case. In spite of the fact, learned Judge without appreciating oral as well as documentary evidence on record of the case, straight way arrived at the conclusion that the prosecution has failed to prove its case beyond reasonable doubt for the alleged offence under Section 135 of the



## Electricity Act.

13. Learned APP has placed reliance upon the depositions of the prosecution witnesses and has also placed reliance upon number of documentary evidences. So far as evidence of complainant is concerned, he has fully supported the prosecution case, then in that case learned Judge has no reason to disbelieve the prosecution case. Learned APP has submitted that the learned Special Judge has not properly appreciated evidence of PW-1 complainant Namanbhai V. Chaudhari at Exh.17, PW-2 Babubhai Bhagwanbhai Vasava at Exh.25, PW-3 Ashabhai Somabhai Valand at Exh.27, PW-6 Prabhakar Damubhai Kalank at Exh.33, PW-7 Chandreshlal Patel at Exh.40, PW-8 Ramchandra Natthubhai Patil at Exh.41, PW-9 Narendrasinh Ajitsinh Chudasma at Exh.43. Learned APP has submitted that all these witnesses have supported the case of the prosecution to prove the offence committed by the Respondent. However, the learned Special Judge without properly appreciating the evidence of this witness has committed grave error in disbelieving and discarding the evidence of this witness.

14. Learned APP Ms. Jirga Jhaveri has also submitted that the learned Special Judge has not properly considered the oral as well as documentary evidence produced on record and therefore has committed a grave error in acquitting the Respondent for the Officen under the Electricity Act. Learned APP has further submitted

that the learned Special Judge ought to have held that the prosecution has proved the guilt of the Respondent in a conclusive way and therefore ought to have convicted and sentenced the Respondent in consonance with law. Learned APP has submitted that the learned Special Judge ought to have appreciated the fact that there are direct and indirect evidence available on record connecting the Respondent with the crime in question. Learned APP has further submitted that the learned Special Judge ought to have taken into consideration the evidence of the prosecution witnesses. Learned APP has submitted that in the present case though the evidence of all the witnesses are reliable and trustworthy, without any cogent reason, the learned Special Judge has committed grave error by disbelieving and discarding the evidence of these witnesses and acquitting the Respondent for the offence charged against him. Learned APP has further submitted that the learned Special Judge has failed to appreciate the seriousness and the gravity of the offences and should not have adopted a casual and routine approach and thus the impugned judgment and order of acquittal passed by the learned Judge has resulted into serious miscarriage of justice. Learned APP has further submitted that the learned Special Judge has not given cogent and convincing reasons for acquitting the Respondent. Learned APP has therefore submitted that the order of acquittal is illegal, improper and bad in law and the same deserves to be quashed and set aside by this Hon'ble Court. On all such grounds, learned APP has contended that the learned Special

Judge has committed error in appreciating the evidence. Therefore, this Court may reverse the judgment of the learned Special Judge from acquittal into conviction. Learned APP has also taken this Court to the judgment and order passed by the learned Special Judge coupled with appreciation of evidence and contended that the learned Special Judge has committed error in appreciation of evidence.

15. Per contra, learned Advocate Mr. M.M.Saiyed for the Respondent / Original Accused has contended that in the present case, the captioned muddamal is not able to be proved by the prosecution. Further, the ownership of the place of occurrence is equally important which is not proved by the prosecution and therefore the learned Advocate Mr. Saiyed has urged that the learned Special Judge (Electricity), Bharuch has rightly awarded acquittal to the Respondent Accused vide judgment and order dated 25.8.2009, and therefore, there is no requirement to interfere in the judgment and order passed by the learned Special Judge (Electricity), Bharuch and the present Criminal Appeal filed by the Appellant – State of Gujarat is required to be dismissed.

16. In view of the rival submissions made by the learned APP for the Appellant State and learned Advocate Mr. M.M.Saiyed for the Respondent / Original Accused, it is required to be considered whether the impugned judgment and order can be sustained.



17. Having heard the arguments advanced by the learned APP and the learned Advocate for the Respondent / Original Accused, before this Court advert to the merits of the case, it would be worthwhile to refer to the scope of this Appeal.

17.1 Before advert to the facts of the case, it would be worthwhile to refer to the scope of interference in acquittal appeals. It is well settled by catena of decisions that an appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is 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 reaffirmed and strengthened by the trial Court.

17.2 Further, 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. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrive at would not be arrived

at by any reasonable person, and therefore, the decision is to be characterized as perverse.

17.3 Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. That the duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to just decision on the basis of material placed on record to find out whether the accused is connected with the commission of the crime with which he is charged.

18. In ***Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others, (2019) 2 SCC 752***, the Apex Court has observed that:

*“The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but*

*more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court”.*

10.5 Yet in another decision in ***Chaman Lal v. The State of Himachal Pradesh, rendered in Criminal Appeal No. 1229 of 2017 on 03.12.2020, 2020 SCC OnLine SC 988***

the Apex Court has observed as under:

*“9.1 In the case of Babu v. State of Kerala, (2010) 9 SCC 189), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:*

*12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo*

*Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445)*

13. *In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."*

14. *The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)*

15. *In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42)*



*“(1) An appellate court has full power to review, reappraise 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 emphasise 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 is 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.”*

16. *In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court’s acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.*

17. *In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) “20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.”*

18. *In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28) “(i) The*

*High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;*

*(ii) The High Court's conclusions are contrary to evidence and documents on record;*

*(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;*

*(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;*

*(v) This Court must always give proper weight and consideration to the findings of the High Court;*

*(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanapal v. State (2009) 10 SCC 401.*

19. *Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."*

9.2 *When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:*

*“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v. State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P (2009) 10 SCC 636).” (emphasis supplied)*

*9.3 It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.*

*9.4 In the recent decision of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena*

*of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:*

*“31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappraisal of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)*

*“10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappraise the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.”*

*31.1. In Sambasivan v. State of Kerala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappraisal of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the*



*trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court.*

*While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416)*

*“8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC 225 viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to*



*satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."*

31.2. In *K. Ramakrishnan Unnithan v. State of Kerala* (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the

*relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.*

*31.3. In Atley v. State of U.P. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 809-10) "5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.P.C came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.*

*It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which*

*had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.*

*It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.*

*If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.*

*31.4. In K. Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.”*

*(emphasis supplied).”*

19. In the aforesaid backdrop, as per the deposition of PW-1 - Complainant - Namanbhai Vestabhai Chaudhari at Exh.17, who appears to be the Deputy Engineer on 22.2.2004 has tried to depose according to his official duties including tendering of relevant document, especially, the Assessment Sheet at Exh.19 and the Objection at Exh.20 and also Objection by the Advocate concerned at Exh.21 and also the Complaint at Exh.22 and also the document at Exh.21 regarding the representation by Raj Ranjeetsinh. But in the cross-examination it is admitted that the captioned alleged wire is easily available in the market. Further, it is also admitted that the internal thin wires are not visible at both ends of the main wire. It is also admitted that the pre-assessment for theft case is *conditio precedent* before preparing the for theft of electric bill. Further, it is also admitted that Exh.21 did not contain the local location of village for Mr. Ranjitsinh. Upon such premises, it appears that the learned Special Judge has rightly arrived at the conclusion that the benefit of doubt is required to be given to the Respondent / Original Accused for acquitting the Respondent / Accused.

19.1 The prosecution has also testified PW-2 - Babubhai Bhagavanbhai Vasava at Exh.25. He appears to be the Lineman at Bharuch Circle Office at the respective time. He tendered Exh.26 which is true copy of the Checking Sheet and he was duly cross-examined, wherein he has admitted that he has no knowledge about the number of persons who were residing at the place.

Further, he has also admitted that the captioned wire as muddamal did not contain any piece of paper (marking paper as *kapli*). He has also admitted that he has not seen any open wire / PVC wiring at the residential place of the Respondent / Original Accused.

19.2 The Prosecution has also testified PW-3 - Ashabhai Somabhai Vanand at Exh.27. He appears to be the Panch-Witness. He has tendered Panchnama at Exh.28. In cross-examination he has admitted that the captioned muddamal which contains the wires but through that wires the theft was not possible since the internal thin wires were not visible.

19.3 The Prosecution has also testified PW-4 - Arjunsinh Mavsinh Raj at Exh.30. He also appears to the Panch-Witness. He has turned hostile and thus not supported the prosecution case.

19.4 The Prosecution has also testified PW-5 - Indrasinh Pratapsinh Raj at Exh. 32. He also appears to the Panch-Witness. He has turned hostile and thus not supported the prosecution case.

19.5 The Prosecution has also testified PW-6 Prabhakar Damubhai Kalanke at Exh.33. He appears to be In-Charge PSO at South Zone GEB Police Station on 20.1.2005. He admitted in the cross-examination that except registration of offence he has done nothing.



19.6 The Prosecution has also testified PW-7 Chandresh Champaklal Patel at Exh.40. He appears to be the Deputy Engineer in Vigilance Department. In the cross-examination he has admitted that the original Checking Sheet is not produced. Further, he has also admitted that when the police has recorded the statement at that time neither the Checking Sheet nor the muddamal wire was shown to him.

19.7 The Prosecution has also testified PW-8 - Ramchandra Naththubhai Patil at Exh.41. He happens to be the PSI at the respective time. He has identified the Respondent Accused in the Court. In his cross-examination he has admitted that he has not produced any ownership certificate or possession certificate of the place of occurrence from anybody, including from any Revenue Officer nor has taken any statement to that effect. It is also admitted that no local panchnama is carried out.

19.8 The Prosecution has also testified PW-9 - Narendrasinh Ajitsinh Chudasama at Exh.43. He appears to be the Talati-cum-Mantri and in his cross-examination he has admitted that the Police has not called for any certificate nor any documents for the possession or ownership of Balvantsinh Amarsinh for the so-called place of occurrence.

20. On all such grounds, in the opinion of this Court, the learned

Special Judge has rightly acquitted the Respondent and in the opinion of this Court, there is no need to interfere in the judgment and order passed by the learned Special Judge (Electricity), Bharuch. Further, it is observed that the captioned order which is under challenge is neither perverse nor capricious and also not arbitrary and illegal. Therefore, there is no need to interfere in the same and the learned Special Judge (Electricity) Bharuch has rightly acquitted the Respondent for the offence under Section 135 of the Indian Electricity Act.

21. Thus, on re-appreciation and reevaluation of the ocular and the documentary evidence on record, as referred to herein above, it transpires that there are contradictions and omissions in the evidence of the prosecution witnesses. The learned Special Judge has observed that on considering the evidence on record there appears no trustworthy evidence on record to prove the charge against the accused and the prosecution has failed to bring home the charge against the accused inasmuch as the ingredients of the offence alleged are not fulfilled. This Court has gone through in detail the impugned judgment and order and found that the learned Special Judge has meticulously considered the depositions of all the witnesses and came to the conclusion that the prosecution has failed to prove the case against the Respondent - Accused beyond reasonable doubt and in the considered opinion of this Court, the learned Special Judge has rightly come to such a conclusion, which

does not call for any interference at the hands of this Court.

22. In view of the aforesaid discussion and observations, in the considered opinion of this Court, the prosecution has failed to bring home the charge against Respondent - Accused. The findings recorded by the learned trial Judge do not call for any interference. Resultantly, ***in fieri***, the appeal fails and is dismissed accordingly. Impugned judgment and order dated 25.8.2009, passed in Special (Electricity) Case No. 58 of 2007 by the learned 2<sup>nd</sup> Additional Sessions Judge and Special Judge, Bharuch, recording acquittal is confirmed. Bail bond, if any, shall stand cancelled. R&P, if received, be transmitted back forthwith.

(A. C. JOSHI,J)

64 / J.N.W

