

RAJASTHAN HIGH COURT

Dhoolchand

Vs.

The State (Rajasthan)

Criminal Revn. Petn. No. 373 of 1952. against judgment of Addl. S.J. Tonk

(Bapna, J.)

25.09.1952. 14.03.1956

JUDGMENT

Bapna, J.

1. This is a revision by Dhoolchand and Narain Das who have been convicted under Section 379, Indian Penal Code, by the learned. City Magistrate, Tonk, by judgment dated the 16th August, 1952. and sentenced to one month's simple imprisonment and a fine of Rs. 200/- each. On appeal the sentence of imprisonment was remitted.

2. The case for the prosecution is that the accused committed theft of electricity. Learned counsel for the applicants has raised an objection that under Section 50 of the Indian Electricity Act no prosecution can be launched except at the instance of the Government or an Electric Inspector or of a person aggrieved by the offence. Dishonest abstraction, consumption or use of electrical energy has been made an offence of theft by Section 39 of the Electricity Act. There is no doubt that prosecution for theft of electrical energy cannot be launched except in accordance with Section 50 of the Electricity Act. In the present case what happened was that Ram Bilas, wireman, reported Mr. L.K. Pande, Superintendent, Electrical and Mechanical Department, Tonk, that Dhoolchand was in the act of abstracting electrical energy dishonestly. Mr. Pande did not verify the fact himself but he wrote the following letter to Sub-Inspector, Kotwali :-

"It has been reported to me that electrical energy is being stolen by someone in old Tonk. I am sending the wireman who has given a report. Please check up and do the needful in the case."

It may be stated that the report made by Ram Bilas was only oral. The police on this report went to the spot along with Ram Bilas and found that Dhoolchand and Narain Das were by means of certain appliances dishonestly using electrical energy. Nothing, however, was thereafter done by Mr. Pande in furtherance of the prosecution except that he came in the witness box. He does not come within the meaning of the words "Government" or "Electric Inspector", but it was contended on behalf of the Assistant Government Advocate that he can be the person aggrieved by the offence. In my opinion he was only a paid servant of the Government and should not be said to be aggrieved by the offence. There are cases in which electrical energy is generated and distributed by a Company and such company can be the person aggrieved by the offence but where the generation and distribution is done by the Government the person aggrieved would also be the Government. In the present case the prosecution was not launched at the instance of the Government or the Electric Inspector or the person aggrieved by the offence. On the facts of this special case, as stated earlier, Mr. Pande left it to the police to check up and to do the needful and he did not himself proceed to verify whether the report made by the wireman was correct and whether the accused should be prosecuted.

3. The revision is, therefore, allowed. The conviction and sentence of the accused, Dhoolchand and Narain Das are set aside. The fine, if paid, shall be refunded to them. Revision allowed.