

**(2014) 03 AHC CK 0097**

**Allahabad High Court**

**Case No:** Criminal Revision Nos. 1611 and 1750 of 2009

S.K. Verman

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** March 28, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 319
- Penal Code, 1860 (IPC) - Section 304

**Citation:** (2014) 5 ADJ 95

**Hon'ble Judges:** Vijay Lakshmi, J

**Bench:** Single Bench

**Advocate:** H.N. Tripathi, Advocate for the Appellant; Vijay Singh Senger and R.K.R. Sharma, Advocate for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Vijay Lakshmi, J.

As both these revisions have been preferred against the same order dated 31.1.2009, they have been heard together and are being disposed of by this common order.

Both the revisionists S.K. Verman alias Ajay Kumar Verman and Narendra Kumar Mishra are the Engineers in the Electricity Department at Sub Station Orai, district Jalaun who have preferred the above-said two criminal revisions against the order dated 31.1.2009 passed by Additional Sessions Judge/Fast Track Court-I, Jalaun at Orai in S.T. No. 41 of 2007 (State v. Lalai) u/s 304 I.P.C. whereby both the revisionists, with the aid of Section 319 Cr.P.C., have been summoned to face trial alongwith the accused Lalai Ram.

Some background facts in brief are that an application u/s 156(3) Cr.P.C. was moved by the widow of one Akhilesh Kumar mentioning therein that her husband Akhilesh Kumar was working as an electrician in 33/11 KVA Electricity Department, Orai since 13, 14 years. On 20.6.2005 under the orders of Engineer S.K. Verman, Lalai Ram came to her house and took her husband with him to do some repairing work of electric line. When her husband was doing the repairing work riding on the electric pole, suddenly the main power supply was switched on resulting in instantaneous death of her husband by electric shock. It was alleged in that application that Lalai and both the revisionist in a planned manner had switched on the power line causing the fatal electrocution of her husband. She tried to lodge the F.I.R. several times but the police refused to register the case. When no action was taken by the police an application u/s 156(3) was moved by her. On that application an order to register and investigate the case was passed by the Court concerned. The case was investigated and after investigation the police submitted charge-sheet only against accused Lalai. Both the engineers were found not responsible for the incident. The trial proceeded against Lalai Ram. During the trial widow of the deceased moved an application u/s 319 Cr.P.C. with prayer to summon both the engineers to be tried as accused alongwith accused Lalai. That application was allowed by the learned trial judge by the impugned order dated 31.1.2009. Aggrieved by the aforesaid order, the revisionists have preferred these revisions.

I have heard Dr. H.N. Tripathi, learned counsel for the revisionists, Sri Vijay Singh Sengar, learned counsel for opposite party No. 2 as well as the learned A.G.A. and have carefully perused the records.

It has been argued by learned counsel for the revisionists that the revisionist have no role in the incident. The duties are assigned to different status of employees vide B.O. No. 15958-H, G/SEV-75(iv) 356-HG/1975 dated December 9, 1975. As per the aforesaid guidelines of the department it is the line man who is responsible to open and shut down the power supply and the Sub Station Operator is authorised to give shut down/line clear of equipments to the authorised persons by observing the prescribed safety rules. In the present case Lalai Ram was performing the function of line man and he took the instructions from Sub Station Operator (Hari Nath Singh Yadav) to open the line. Thereafter he switched on the main power supply, resulting in the death of Akhilesh who was working at the electricity pole at that time. The husband of opposite party No. 2 was engaged by Lalai Ram without any departmental authority to correct the fault of line. The other officers namely the junior engineers, executive engineers and Sub Divisional Officer etc. are not authorised to shut down or open the line when Sub Station Operator is present on the sub station. In the present case Hari Nath Singh Yadav was working on duty as Sub Station Operator from whom Lalai Ram took the instructions and opened the main power supply. The statement of P.W. 1 Bhanumati, wife of the deceased Akhilesh Kumar and the statement of Kamta Prasad, P.W. 2, were recorded in the Court and despite the fact that no case was made out against the revisionists u/s

304 I.P.C., the learned trial judge illegally exercised its jurisdiction u/s 319 Cr.P.C. and summoned the revisionists without applying his mind. During the enquiry made by the Joint Director (Electricity Safety), Government of U.P., Lucknow the revisionists were not found responsible for the aforesaid incident. Hence it has been prayed that the revisions be allowed and the impugned order be set aside.

2. The opposite party No. 2 has filed counter-affidavit and has contested the case on the ground that the revisionists and Lalai Ram in a pre-planned manner have opened the electric line causing death of her husband. According to the statement of P.W. 2 the revisionists were fully liable for the death of her husband Akhilesh Kumar. In the inquiry conducted by the Joint Director (Electricity Safety), Government of U.P., Lucknow, the electricity department was found liable for the death of her husband Akhilesh Kumar. It has been argued by learned counsel for opposite party No. 2 that the names of both the revisionists have found place in the statements of P.W. 1 and P.W. 2 showing their implication in this case. So they have been rightly summoned by exercising power u/s 319 Cr.P.C. by the lower Court and there is no need to interfere in the impugned order.

3. The law relating to Section 319 Cr.P.C. has been well established by the Apex Court in a catena of judgments and the Apex Court has repeatedly held that the power u/s 319 Cr.P.C. must not be exercised in a mechanical manner only because some evidence has been brought on record, the same by itself may not be a ground to issue process u/s 319 against the persons who have not been charge-sheeted.

4. In the landmark cases of [Michael Machado and Another Vs. Central Bureau of Investigation and Another](#), and [Sarabjit Singh and Another Vs. State of Punjab and Another](#), the Supreme Court has observed that

the power u/s 319 Cr.P.C. vested in the Court should be used sparingly only in the circumstances when the evidence on which the same was to be invoked should indicate a reasonable prospect of conviction of the person sought to be summoned.

5. In [Krishnappa Vs. State of Karnataka](#), the Apex Court was of the view that

invocation of the power u/s 319 Cr.P.C. should not have been resorted to, since the chances of conviction on the basis of the evidence on record was remote. The power to summon an accused u/s 319 Cr.P.C. is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

6. In [Brindaban Das and Others Vs. State of West Bengal](#), the Apex Court has reiterated the same principle and has held that

"while exercising the power u/s 319 Cr.P.C., the Court is not merely required to take note of the fact that the name of a person has surfaced during the trial but the Court is also required to consider whether such evidence would be sufficient to convict the person being summoned." The Apex Court further observed that the

"fulcrum on which the invocation of Section 319 Cr.P.C. rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons summoned."

7. This Court in the case of [Rajol and Others Vs. State of U.P. and Another](#) has observed that

the standard of evidence required for summoning an additional accused should be higher than the evidence required for framing charges because the jurisdiction u/s 319 Cr.P.C. is to be exercised sparingly in an extraordinary situation. Whether or not any evidence is of such a quality as to record conviction if it remains uncontroverted is a variable question depending upon the facts and circumstances of each case and no hard and fast rule can be laid down in this regard. A non observance of this legal requirement would render the summoning order illegal.

Testing the facts of the instant case on the touch stone of the abovementioned legal position, it appears that the learned lower Court, while passing the impugned order has nowhere recorded any specific finding as to whether or not the evidence adduced u/s 319 Cr.P.C. would be sufficient to record a conviction against the revisionists. In absence of such finding the impugned order cannot be sustained.

For the reasons discussed above, the revisions are allowed. The impugned order dated 31.1.2009 is set aside. The matter is remanded back to the learned Additional Sessions Judge/Fast Track Court-I, Jalaun at Orai to reconsider the application u/s 319 Cr.P.C. in the light of the aforesaid observations and pass an appropriate order afresh in accordance with law.