

CASE NO. :

Appeal (cr1.) 34 of 2001

Special Leave Petition (crl.) 2435 of 2000

PETITIONER:

RAM KUMAR LAHARIA

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH & ANR.

DATE OF JUDGMENT: 08/01/2001

BENCH :

M.B.Shah, S.N.Variava

JUDGMENT :

L I T T T T T T J

J U D G M E N T S. N. VARIAVA, J.

Leave granted. Heard parties. This Appeal is against an Order dated 29th March, 2000 by which an order framing charges under Sections 302 and 304 of I.P.C. has been quashed. By the impugned Order the prosecution is directed to be proceeded only under Section 304-A of I.P.C. and Section 39 of the Indian Electricity Act. Briefly stated the facts are as follows: 2nd Respondent was possessing a field by the side of Shankar river. 2nd Respondent used to take water from the river to his field for irrigation purposes. 2nd Respondent did not have electric connection. It is claimed by the prosecution that he was taking illegal electric connection. On 2nd May, 1999 a boy, named Santosh, who was aged about 11 years, died due to electric shock by coming in contact with the live wire through which 2nd Respondent was illegally taking electric connection. Some persons have given statements that the boy was swimming in the river and the wire accidentally broke and fell in the water resulting in the boy being electrocuted. On this basis, by the impugned Order prosecution is directed to be proceeded with only for offences under Section 304 I.P.C. and Section 39 of the Indian Electricity Act. However, two eye witnesses, by name Haribai aged about 12 and Sandhya bai aged about 7, have given statement to the police that 2nd Respondent had called the deceased Santosh to him and had given electric shock to the deceased on his chest and other parts of the body with the help of other accused. The story given by the two eye witnesses is that thereafter 2nd Respondent and other Accused have thrown the body into the river along with the live wire. It must be mentioned at this stage that 5 burn injuries have been found on the dead body. The Trial Court after considering the facts and material framed charges under Sections 302 and 304 of I.P.C.@@

and Section 39 of the Indian Electricity Act. The High@@
J.J.J

Court, in Criminal Revision, by the impugned Order has proceeded to disbelieve the evidence of the eye witnesses. The High Court has noted that, at this stage, the evidence

was not to be weighed by the Court. But the High Court holds that the Court could still assess the improbability or absurdity of the statement of the eye witnesses. The High Court holds that the statements of the two witnesses Sandhya bai and Hari bai were so absurd and improbable that no prudent person could ever reach a just conclusion that there was sufficient ground for proceeding against the accused for offences under Section 302 or Section 304 of the I.P.C. In our view, the High Court has committed a patent error. As noted by the High Court itself, at this stage, it was not open for the Court to weigh or assess the evidence. It was not possible for the Court, at this stage, to come to a conclusion that this evidence was absurd or inherently improbable. Prima facie at least the 5 burn injuries support the case that the boy was not just electrocuted by a live wire falling in the river in which he was swimming. They prima facie suggest direct contact with the live wire. In this view of the matter, we are of the view that the Order of the High Court cannot be sustained and it is set aside. The Appeal is accordingly allowed. The Trial Court is directed to proceed with the trial on the basis of charges framed by it.