INDU JAIN

v.

STATE OF MADHYA PRADESH & ORS.

(Criminal Appeal No. 1683 of 2008 and Ors)

OCTOBER 23, 2008

[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

Code of Criminal Procedure, 1973 – s.240 – Framing of charges – Custodial death of accused in office of Lokayukta – Charges framed against officers of Lokayukta u/s 304 Part II but dropped u/s. 330 IPC – Set aside by High Court – Directions issued to frame charges u/s. 323/34 IPC – On appeal, held: It was established that deceased was asthmatic – Despite that he was detained in wholly unhygienic conditions which triggered his asthmatic attack leading to his death on account of asphyxia – Injuries found on the body of deceased might have been caused during attempts at resuscitation when he was brought to Hospital in comatose condition – Therefore, prima facie case made out for framing of charges against accused persons u/s. 304 Part II and 330 and not u/s. 302 IPC – Order of Sessions Judge framing charge u/s.304 Part II IPC restored – Also direction issued to frame charges u/s. 330 IPC – Penal Code, 1860 – ss. 304 Part II and 330.

The officers of the Special Police Establishment (Lokayukta) arrested the Deputy Commissioner, Commercial Tax for taking a bribe and was detained in the office of Lokayukta. The next day prior to 9 a.m., DC was found unconscious in the bathroom of the Office of Lokayukta and was taken to the hospital for treatment. When he was brought to the hospital for treatment, his body neither had any pulse nor respiration and recordable blood pressure and heart sound were also absent. Resuscitation measures were undertaken and there was little response. At 1.30 p.m., DC was declared dead. FIR was lodged. Inves-

A tigation was carried out. Post Mortem examination was conducted at 4.00 p.m. which revealed certain injuries on the body including broken ribs and cause of death was shown to be asphyxia within six hours of the post mortem examination. Investigating agency filed charge sheet. The B Sessions Judge framed charges against the five accused persons u/s 304 Part II IPC but dropped charge u/s. 330 IPC. Accused person filed criminal revision. The complainant-widow of deceased filed criminal revision challenging the dropping of charges u/s. 330 IPC. High Court set C aside the charges framed by Sessions Judge and directed framing of charges u/s. 323/34 IPC. Hence the present appeal by the complainant, the State and the accused persons.

Partly allowing the appeal filed by the complainant D and the State and dismissing the appeal filed by the accused, the Court

HELD: 1.1 It has been sufficiently established that the deceased was a patient of asthma which could cause asphyxia which was ultimately said to be the cause of his E death. It is also clear that notwithstanding his serious respiratory problem, the deceased was kept in a windowless room which was full of dust and cobwebs which are known allergens for triggering an asthma attack, which can be fatal, as in the instant case. The injuries found on F the body of the deceased may have been caused during attempts at resuscitation, but all the said circumstances can only be considered during a proper trial and not on the basis of surmises at the time of framing charge where on the strength of the charge sheet only a prima facie G satisfaction about the commission of an offence has to be arrived at by the trial court. Therefore, while rejecting the submissions that there were no materials on record to frame charge against the accused persons even under Section 323/34 IPC, it can be observed that on a prima H facie view of the matter, there is ground to proceed against

the accused persons even under Section 304 Part II IPC. It is agreed that the High Court had erred in quashing the charge framed against the accused persons under Section 304 Part II and observing that in view of the materials on record only a charge under Section 323 could be brought against the accused persons. [Para 31] (1152-D to H)

1.2 The submission that charge under Section 302 IPC should also have been framed against the accused persons cannot be accepted as at this stage there is little to establish an intention on the part of the accused to willfully cause the death of DC. [Para 32] (1153-A)

1.3 Since the cause of death has been shown to be asphyxia on account of detention of the deceased in unhygienic conditions despite his respiratory problems and the injuries to the ribs and mouth of the deceased could possibly have been caused by the attempts made by the doctor at the Hospital to resuscitate the deceased, who had been brought to the Hospital in a comatose condition, with the body showing no signs of pulse, respiration or blood pressure, prima facie a case is made out for framing of charge under Section 330 IPC. The sheet showing the progress and treatment of the accused on arrival at the Hospital, also corroborates the same and it also mentions the fact that cardiac pulmonary resuscitation was immediately started and the patient was also put on mechanical ventilator as part of the attempts at resuscitation. Apart from indicating that the patient had died of asphyxia, the medical opinion does not give any reason for such asphyxia and even in reply to the queries made on behalf of the investigating authorities the reply received from the doctor as to the cause of death, was that it had occurred due to asphyxia, but as to how it had occurred was under investigation. [Para 34] (1153-D to H; 1154-A)

1.4 The materials submitted by the Investigating Authority in its Final Report under Section 173 Cr.P.C. does

A **establish the fact that the deceased had been kept in a room which was highly unsuitable for a person suffering from respiratory problems. The Senior Scientist of the Mobile Unit of the District Police Force indicated that the condition of the room where the deceased had been de-**
B **tained was completely unsuitable for a patient of asthma as it was filled with dust and cobwebs which was sufficient to trigger an asthmatic attack which could have caused asphyxia which ultimately led to DC's death. [Para 35] (1154-B, C, D)**

C **1.5 The order of the High Court impugned in these appeals is set aside. The order of the Sessions Judge framing charge against the accused persons under section 304 Part II IPC is restored and it is directed that charges also be framed against the accused persons**
D **under section 330 IPC. [Para 36] (1154-E)**

Om Wati (Smt.) and Anr. vs. State **2001 (4) SCC 333;** *State of Maharashtra vs. Salman Salim Khan* **2004 (1) SCC 525;** *State of Orissa vs. Debendra Nath Padhi* **2005 (1) SCC 568;** *Satish Mehra vs. Delhi Administration* **1996 (9) SCC**
E **766;** *Keshub Mahendra v. State of M.P.* **1996 (6) SCC 129;** *Kewal Kishan v. Suray Bhan and Anr.* **AIR 1980 SC 1780;** *Bharat Parikh vs. Union of India* **2008 (1) Scale 86 – referred to.**

F **CASE LAW REFERENCE**

2001 (4) SCC 333	**Referred to.**	**Para 19**
2004 (1) SCC 525	**Referred to.**	**Para 19**
2005 (1) SCC 568	**Referred to.**	**Para 19**
G **1996 (9) SCC 766**	**Referred to.**	**Para 19**
1996 (6) SCC 129	**Referred to.**	**Para 25**
AIR 1980 SC 1780	**Referred to.**	**Para 28**
2008 (1) Scale 86	**Referred to.**	**Para 33**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1683 of 2008 A

From the final Judgment and Order dated 11.9.2006 of the High Court of Madhya Pradesh at Jabalpur in Crl. Revision No. 1114 of 2005

B

WITH

Criminal Appeal Nos. 1684, 1685, 1686 and 1687 of 2008

P.S. Patwalia, T.S. Doabia, Jagjit Singh Chhabra, M.S. Doabia and Vibha Datta Makhija for the Appellant. C

K.T.S. Tulsi, S.K. Gambir, H.K. Puri, U.M. Chauhan, Priya Puri and Praveen Chaturvedi for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. This Special Leave Petition and four other Special Leave Petitions have been filed against the judgment and order of the Madhya Pradesh High Court dated 11th September, 2006, whereby the order of the Sessions Judge, Bhopal, framing charges against the accused under Section 304 Part II I.P.C. in Sessions Trial No. 212 of 2005 was set aside and directions were given to frame charge only under Section 323/34 I.P.C. As all the Special Leave Petitions arise out of the common judgment of the High Court, the same are being heard together. Leave is accordingly granted in all the five Special Leave Petitions (Crl.) Nos. 6010 and 5473 of 2006, filed by Mrs. Indu Jain, No. 2132 of 2007 filed by the State of Madhya Pradesh, No. 2584 and 2588 of 2007 filed by the accused. D E F

2. In order to appreciate the different stands taken by the different appellants in the matter, some relevant facts are reproduced hereinbelow which will have a bearing on the final decision in these appeals. G

3. On 14th July, 2004, officers of the Special Police Establishment (Lokayukta), Bhopal, headed by Shri B.P. Singh and H

A Shri Mokham Singh Nain, who are the appellants in the appeals arising out of S.L.P. (Crl) No. 2584 and 2588 of 2007 and accused in the complaint filed by Ms. Indu Jain, the appellant in the appeals arising out of S.L.P. (Crl.) Nos. 6010 of 5473 of 2006, set a trap for one Shri R.K. Jain, Deputy Commissioner,
B Commercial Tax, Bhopal, and arrested him for taking a bribe of Rs.2,000/- from one of Mr. Chhajed, Tax Consultant, at 5.30 p.m. On 15th July, 2004, prior to 9 a.m. Shri Jain was found unconscious in the bathroom of the office of the Lokayukta, Bhopal, and was taken to Hamidiya Hospital, Bhopal, for treatment. The
C records of the hospital show that when Shri Jain was brought to the hospital at 9 a.m. on 15th July, 2004, his body had neither any pulse nor respiration and recordable blood pressure and even heart sounds were absent. Though resuscitation measures were undertaken, including cardiac pulmonary resuscitation
D (C.P.R.), there was little response and Shri Jain was declared dead at 1.30 p.m. on the same day.

4. The Post Mortem examination of the deceased, which was conducted on 15th July, 2004, itself, at about 4 p.m. revealed certain injuries on the body, which included broken ribs,
E but the cause of death was shown to be on account of asphyxia within six hours of the post mortem examination.

5. On completion of investigation, the investigating agency filed a charge-sheet before the trial court on 12th May, 2004, and on 15th July, 2005, the learned Sessions Judge framed
F charges against the five accused persons, namely, B.P. Singh, Mokham Singh Nain, Badri Nihale, Ramashish and Silvanus Tirki under Section 304 Part-II I.P.C., but dropped the charge under Section 330 I.P.C.

G 6. Aggrieved by the framing of charge under Section 304 Part II I.P.C., accused Mokham Singh Nain filed Criminal Revision No. 1203 of 2005, while the other four accused filed Criminal Revision No. 1204 of 2005, before the Madhya Pradesh High Court at Jabalpur. On the other hand, on account of the dropping of charges under Section 330 I.P.C. Mrs. Indu Jain,
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widow of the deceased, filed Criminal Revision No. 1114 of 2005. All the revisional applications were heard together by the High Court which by its order dated 11th September, 2006, set aside the charge framed by the learned Sessions Judge and directed that charge could only be framed under Section 323/34 I.P.C.

7. As mentioned hereinbefore, these five appeals have been filed against the said judgment and order of the High Court.

8. Appearing in these appeals on behalf of Mrs. Indu Jain, the widow of the deceased, Mr. P.S. Patwalia, learned Senior counsel submitted that the order of the Madhya Pradesh High Court impugned in these appeals, was quite clearly against the Police Report submitted under Section 173(2) of the Code of Criminal Procedure. It was submitted that from the arrest memo of the deceased in connection with Crime No. 97 of 2004 it would be very clear that accused B.P. Singh while arresting the deceased recovered two inhalers from his person, but allowed the deceased to retain them as he was suffering from Asthma. However, during his overnight custody in the office of the Lokayukta, Bhopal, he was kept in a room, which was wholly unsuitable to a person suffering from asthma.

9. Over the condition of the deceased while in the custody of the Special Police Establishment (Lokayukta) who had arrested and detained him in the office of the Lokayukta on 14th July, 2004, and his discovery in an unconscious condition in the morning of 15th July, 2004, a report was lodged by the Station House Officer of Kohefiza Police Station on the basis whereof a First Information Report under Section 330 I.P.C. was registered. In addition to the above, a written report was also made by Shri Akhilesh Jain, brother of the deceased to Kohefiza Police Station in which it was alleged that the accused persons had arrested the deceased and had taken him to an unknown destination from where he was brought to Hamidiya Hospital in a serious condition, and, ultimately, succumbed to his injuries. It was alleged that the accused persons had tortured the deceased on account of which he had died.

A 10. Mr. Patwalia submitted that once R.K. Jain was declared to be dead, as part of the investigation into the offence complained of, Shri O.P. Dixit, the Senior Scientist of the mobile unit of the District Police Force, made a physical inspection of the room in the office of the Lokayukta where the accused had kept the deceased in custody before his death and submitted a report of his inspection. In his report Shri Dixit categorically mentioned the fact that the condition of the room was not at all suitable for detaining a person suffering from a respiratory disease such as asthma, in custody. He plainly indicated that the room in question was completely unsuitable for such a patient as it was filled with dust and cobwebs and the deceased was treated unhumanly and against the principles of ethical human conduct. Shri Dixit also observed from the report of the Forensic Science Laboratory, that it is evident that the conduct of the accused was one of gross negligence and misdemeanor. It was further observed that for a person who was suffering from asthma, the deceased ought not to have been left alone inside the unhygienic room and at least someone, such as a family member or a friend, should have been allowed to remain present with him. Shri Dixit recommended appropriate action to be taken against the accused for dereliction of duty, which was duly supported by the report of the Forensic Science Laboratory.

11 Mr. Patwalia submitted that having regard to the fact that the accused persons were police officers belonging to the Special Establishment of the Lokayukta and also having regard to the nature of the offence, the investigation of the case was handed over from the local police to the Criminal Investigation Department (CID) and upon completion of the investigation a charge-sheet was submitted before the trial court on 12th May, 2005, and, as mentioned hereinbefore, on perusal of the material on record, the learned Sessions Judge on 15h July, 2005, framed charges against all the five accused under Section 304 Part II IPC but dropped the charge under Section 330 IPC.

H 12. Mr. Patwalia submitted that when the materials on

record clearly indicated that R.K. Jain had died because of deliberate ill-treatment and negligence at the hands of the appellants, while in their custody, the High Court had erred in coming to the conclusion that the said materials did not disclose an offence under Section 330 IPC. Mr. Patwalia submitted that apart from the evidence of physical torture of the deceased, which would be supported by the post-mortem report, the opinion of Dr. Satpathi, who conducted the post-mortem examination is that R.K. Jain's death was on account of asphyxia, namely, oxygen hunger on account of choking. According to Mr. Patwalia the cause of death fitted in with the report submitted by Mr. Dixit on the basis of which the First Information Report came to be recorded.

13. Mr. Patwalia urged that in spite of the evidence available at the stage of framing charge, the High Court turned a blind eye to the physical condition of the deceased and the indifferent manner in which he was treated and kept in custody in the office of the Lokayukta in conditions which triggered the asthmatic attack which ultimately led to the death of R.K. Jain in custody. Mr. Patwalia urged that although sufficient material was available before the High Court for framing charge under Section 304 Part II IPC, along with the charge under Section 330 IPC, the High Court quite erroneously dropped the charge under Section 304 Part II and also Section 330 IPC and observed that only a charge under Section 323/34 IPC had been established under the aforesaid report. Mr. Patwalia submitted that the order of the High court impugned in the appeal was liable to be set aside with a direction to the trial court to consider afresh the framing of charges under Sections 304 Part II and 330 IPC, along with the charge under Section 323/34 IPC.

14. As far as the other appeal filed by Ms. Indu Jain is concerned, the arguments made in this appeal will also cover the points raised in the said appeal.

15. In the appeal filed by the State of Madhya Pradesh, Ms. Vibha Dutta Makhija, learned counsel, contended that this

A was not only a case for framing of charge under Sections 323 with Section 34 thereof, but this is fit a case where charges ought to have been framed against the accused under Sections 302 and 330 IPC as well. Repeating the manner in which the deceased R.K. Jain had been arrested and thereafter kept
B in custody of the Special Police Establishment attached to the Lokayukta office, Ms. Makhija reiterated the findings of Mr. Dixit which pointed to the direct involvement of all the accused persons in the commission of the offence.

16. According to Ms. Makhija the bare facts of the inci-
C dent which occurred with the arrest of R.K. Jain on 14th July, 2004, establish the fact that Shri Jain died while in the custody of the Special Police Establishment and it was yet to be proved on evidence as to how R.K. Jain died on account of asphyxia when he was detained in the office of the Lokayukta. Ms.
D Makhija also pointed out that when the deceased had been brought to the Hamidiya Hospital in Bhopal at 9 a.m. on 15th July, 2004, his body did not record any pulse or respiration or blood pressure and there was no heart sound either. Ms. Makhija submitted that although he remained in such condition till he
E was declared to be dead at 1.30 p.m., there was almost no response from R.K. Jain even after being administered cardiac pulmonary resuscitation. He continued to remain in such condition till he was formally declared to be dead. Ms. Makhija submitted that by keeping the deceased, who suffered from
F respiratory problems, in a closed room without windows which was clearly uninhabited for a long time on account of the dust and cobwebs collected therein which triggered an asthmatic attack which led to R.K. Jain's death, a clear case of an offence under Sections 302 and 330 IPC had been made out against
G the appellants. Counsel's submissions were fully supported by the report, which showed six injuries on the person of the deceased. Injury No.1 was a contusion on the scalp. Injury Nos. 2 and 3 were lacerations on the lip and mouth. Injury Nos. 4 and 5 were broken ribs, while injury No.6 was a laceration on the neck of the deceased.

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17. Ms. Makhija contended that this being a clear case of custodial death on account of the treatment meted out to the deceased by detaining him in wholly unhygienic conditions completely unfit for a patient of asthma, both the trial court as well as the High Court erred in not framing charge against the appellant and the other accused persons under Section 330 IPC. The matter was further confounded by the order of the High Court quashing the charge against the accused persons under Section 304 Part II IPC.

18. On legal submissions, Ms. Makhija submitted that the opinion of the doctor at the time of framing charges cannot be conclusive and the same would have to be considered at its face value during the trial itself. Ms. Makhija submitted that at the stage of framing charge, the Court is not required to go into a detailed examination of the material filed by the Investigating agency under Section 173 Cr.P.C. At the said stage, the Court, on perusal of the materials before it, is only required to find out whether a prima-facie case is made out to proceed against the accused. Ms. Makhija submitted that it is settled law that the High Court should not ordinarily interfere with the framing of charges by the trial court, unless some glaring injustice is noticed.

19. Ms. Makhija referred to the decision of this Court in Om Wati (Smt.) and Anr. Vs. State, [2001 (4) SCC 333] in support of her aforesaid submissions. She also referred to the decision of this Court in State of Maharashtra vs. Salman Salim Khan, [2004 (1) SCC 525] wherein this Court cautioned the trial court as well as the High Court regarding arriving at a decision as to the sufficiency or otherwise of the material to frame charge, as the prosecution case gets pre-empted to that extent since during the course of trial, even if the Magistrate comes to a different conclusion, it may not be possible for him to pass orders accordingly. The learned Judges observed that there was limitation to the inherent power of the High Court under Section 482 Cr.P.C. and though it is open to the High Court to quash charges framed by the trial Court the same could not be done

A by weighing the correctness or sufficiency of the evidence. It was further observed by this Court that it is only at the stage of trial that the truthfulness, sufficiency and acceptability of the evidence, can be adjudged.

20. Ms. Makhija lastly referred to the three-Judge Bench B decision of this Court in State of Orissa vs. Debendra Nath Padhi, [2005 (1) SCC 568] in which the question decided differently in the case of Satish Mehra vs. Delhi Administration, [1996 (9) SCC 766] was referred to. In Satish Mehra's case, a two Judge Bench of this Court had decided that at the stage of C framing of charge, the trial Judge was competent to look into the material produced on behalf of defence at the time of framing of charge in order to come to a decision as to whether it was at all necessary to frame charges on the material produced on behalf of the prosecution as well as the defence. Answering D the reference in the negative, the three-Judge Bench overruled the view expressed in Satish Mehra's case and held that at the said stage of framing charge, the Court was only required to look into the material produced on behalf of the prosecution in deciding whether a particular case was fit to go to trial.

E 21. Ms. Makhija, while questioning the decision of the learned Sessions Judge to drop charges against the accused persons under Section 330 IPC, submitted that neither the Sessions Court nor the High Court even thought of framing charge under Section 302 IPC against the accused persons.

F 22. Appearing for the accused in the appeal filed by Indu Jain, who are also the appellants in the appeals arising out of SLP(C) No. 2584 and 2588 of 2007, Mr. K.T.S. Tulsi, learned senior counsel, submitted that the order of the High Court did G not call for any interference since the charge-sheet does not disclose the ingredients of the charge framed against the accused persons under Section 323/34 IPC. Mr. Tulsi submitted that there is no direct evidence that the accused persons had ever assaulted the deceased and the First Information Report shows that R.K. Jain died due to asphyxia. Referring to the state-

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ment of Dr. Satpathi who had examined the deceased, and was also one of the doctors who conducted the Post Mortem examination Mr. Tulsi submitted that the broken ribs and the laceration marks on both sides of the lower lips were the result of attempts made in the Hospital to resuscitate the deceased. It was submitted that the opinion of the Medical Experts and the Post-Mortem Report established that R.K. Jain died on account of asphyxia and that he had obstructive lung disease which block the airways and his death was, therefore, natural and not on account of any violence while in custody.

23. Mr. Tulsi submitted that apart from the above, Dr. V.K. Sharma, Professor and Head of the Department of Medicine, Gandhi Medical College, Bhopal, whose opinion was sought for by the CID, Police Head Quarters, Bhopal had indicated that the fracture of the ribs could have been caused while external cardiac massage or CPR was being administered to R.K. Jain in an attempt to revive him. Dr. Sharma also stated that the fracture of ribs can also be caused while external cardiac massage, with artificial respiration and chest compression, was being undertaken. He also opined in his Report that a severe attack of asthma could result in the condition in which R.K.Jain was found and such attack could have been triggered by heavy mental tension, dust, cobwebs cold weather or the presence of allergens in the atmosphere and pollution.

24. Mr. Tulsi submitted that in view of the circumstances in which R.K. Jain was arrested and thereafter kept detained in the office of the Lokayukta, the constable who formed part of the raiding party had been suspended for dereliction of duty but was ultimately reinstated, as in the preliminary inquiry the charge of negligence and dereliction of duty was held not to have been proved. Mr. Tulsi referred to the Judgment and order passed by the learned Sessions Judge on 28h July, 2005, while deciding the question as to whether there was sufficient ground for framing charge against them under Section 330, 323/34 and 304(2) Indian Penal Code. Referring to paragraph 14 of the order, Mr. Tulsi pointed out that the learned Sessions Judge had himself

held that it could not be definitely said that no cause of death had been indicated in the Post-mortem Report. In fact, on behalf of the Investigating Authorities, a letter was written on 16th July, 2004 to the Director, Gandhi Medical College, Bhopal, asking for information as to whether nature of the injuries on deceased R.K.Jain were simple or grievous in nature or whether in ordinary circumstances, the death of the deceased could have been on account of injuries found on the deceased. The most pertinent question that was asked was as to what was the cause of death. In the reply sent by Dr. Satpathi, Director of the Medical Legal Unit of the Hospital, it was mentioned that the injuries found on the body of the deceased were simple in nature which were not sufficient to cause death. It was stated that death was due to asphyxia. In fact, in the said letter, Dr. Satpathi by way of a footnote indicated that injury Nos. 2,3,4 and 5 on the lips and ribs on both sides of the body had been caused in the Hospital during treatment and it had no relation with the death of R.K. Jain.

25. In support of his aforesaid submission, Mr. Tulsi referred to the well-known Bhopal Gas Tragedy case, namely, Keshub Mahindra vs. State of M.P., [1996 (6) SCC 129], in which while considering the provisions of Section 299 and 304 Part II IPC, it was observed that the accused must have done an act which caused the death of a person with the knowledge that by such act he would likely to cause death. While considering the width of the powers that could be exercised by the High Court under Section 482 Cr.P.C. in relation to Sections 227 and 228 thereof, it was held that at the stage of framing of charge the Court had no jurisdiction to go into the merits of the allegations, which could be gone into at the time of the trial, but at the same time before any charge could be framed under Section 304 Part II, the materials on record must at least prima-facie show that the accused is guilty of culpable homicide and that the act which had caused the death of the victim had been caused at least with the knowledge that such act was likely to cause death.

26. Mr. Tulsi submitted that though there was no definite

conclusion as to the manner in which R.K. Jain had died, at least it was established that he died due to asphyxia which is the consequence of respiratory breathing problems which the deceased suffered from and had nothing to do with an offence under Section 323 IPC under which provision charge had been framed against the accused persons.

27. Mr. S.K. Gambhir, learned senior advocate appearing for the respondent Nos. 5 and 6, while adopting the submissions made by Mr. Tulsi, added that from the sheet of Progress and Treatment given by the Hospital it will be revealed that R.K. Jain was brought to the Hospital at 9 a.m. in a comatose condition and that cardio respiratory resuscitation was started immediately and cardiac activity was regained after 15 or 20 minutes. It was pointed out that the Progress and Treatment Given sheet also indicated that as part of the resuscitation attempts an endotracheal intubation was done, after which the deceased was placed on a mechanical ventilator at about 10.15 a.m. However, inspite of the attempts made to revive R.K.Jain, he ultimately died because of choking of breath caused by respiratory breathing failure. Mr. Gambhir submitted that there was no material on record to indicate that R.K. Jain died a homicidal death so as to attract the provisions of Section 304 IPC. In short, Mr. Gambhir submitted that there was no material before the learned Trial Judge for framing charge under Section 323/34 IPC against the respondent nos. 4, 5 and 6.

28. Relying on the decision of this Court in the case of Kewal Krishan vs. Suraj Bhan & Anr., [AIR 1980 SC 1780] Mr. Gambhir claimed that Section 227 of the Code was meant to prevent prolonged harassment to an accused and if the Judge was not convinced that there was sufficient ground to proceed against the accused, he was required to discharge the accused and to record his reasons for doing so. In the said decision it was observed that at the stage of framing of charge, the Magistrate was not required to weigh the evidence as if he was the trial court. He was only required to see whether the complaint made out a prima facie case triable by the Court of Session,

which would be sufficient for issuing process to the accused and committing them for trial to the Court of Session.

29. Mr. Gambhir concluded his submissions by urging that in the absence of any reliable material regarding the involvement of the respondent Nos. 4, 5 and 6 in respect of the charge under Section 323/34 IPC, the charge framed against the respondents was liable to be quashed.

30. We have carefully considered the submissions made on behalf of the respective parties, having particular regard to the fact that R.K.Jain had died while in the custody of the Officers of the Special Police Establishment (Lokayakuta), Bhopal, in the office of the Lokayukta, Bhopal.

31. It has been sufficiently established that the deceased was a patient of asthma which could cause asphyxia which was ultimately said to be the cause of R.K. Jain's death. It is also clear that notwithstanding his serious respiratory problem, the deceased was kept in a windowless room which was full of dust and cobwebs which are known allergens for triggering an asthma attack, which can be fatal, as in this case. The injuries found on the body of the deceased may have been caused during attempts at resuscitation, but all the said circumstances can only be considered during a proper trial and not on the basis of surmises at the time of framing charge where on the strength of the charge sheet only a prima facie satisfaction about the commission of an offence has to be arrived at by the trial court. Therefore, while rejecting the submissions made by Mr. Tulsi and Mr. Gambhir that there were no materials on record to frame charge against the accused persons even under Section 323/34 IPC, we cannot but observe that on a prima facie view of the matter, there is ground to proceed against the accused persons even under Section 304 Part II IPC. On that score, we are inclined to agree both with Mr. Patwalia and Ms. Makhija that the High Court had erred in quashing the charge framed against the accused persons under Section 304 Part II and observing that in view of the materials on record only a charge under Section 323 could be brought against the accused persons.

32. Although, Ms. Makhija has strenuously urged that charge under Section 302 IPC should also have been framed against the accused persons, we are not inclined to accept the same as at this stage there is little to establish an intention on the part of the accused to willfully cause the death of R.K. Jain.

33. As has been observed in Kewal Krishan's case (supra), at the stage of framing of charge, the Court is not required to go into the details of the investigation but to only arrive at a prima facie finding on the materials made available as to whether a charge could be sustained as recommended in the charge sheet. The same view has been subsequently reiterated in Devendra Padhi's case (Supra) and in the case of Bharat Parikh vs. Union of India, [2008 (1) Scale page 86] wherein the holding of a mini trial at the time of framing of charge has been deprecated.

34. This brings us to the next question as to whether the Trial court as well as the High court was justified in dropping the charge under Section 330 IPC since R.K. Jain's death took place while he was in custody. The important question is whether a prima facie case can be said to have been made out for a charge to be framed under Section 330 IPC. Since the cause of death has been shown to be asphyxia on account of detention of the deceased in unhygienic conditions despite his respiratory problems and the injuries to the ribs and mouth of the deceased could possibly have been caused by the attempts made by the doctor at the Hospital to resuscitate the deceased, who had been brought to the Hospital in a comatose condition, with the body showing no signs of pulse, respiration or blood pressure, prima facie a case is made out for framing of charge under Section 330 IPC. The sheet showing the progress and treatment of the accused on arrival at the Hospital, also corroborates the same and it also mentions the fact that cardiac pulmonary resuscitation was immediately started and the patient was also put on mechanical ventilator as part of the attempts at resuscitation. Apart from indicating that the patient

had died of asphyxia, the medical opinion does not give any reason for such asphyxia and even in reply to the queries made on behalf of the investigating authorities the reply received from Dr. Satpathi, as to the cause of death, was that it had occurred due to asphyxia, but as to how it had occurred was under investigation.

35. In this regard, the materials submitted by the Investigating Authority in its Final Report under Section 173 Cr.P.C. does establish the fact that the deceased had been kept in a room which was highly unsuitable for a person suffering from respiratory problems. In fact, as was indicated by Shri O.P. Dixit, the Senior Scientist of the Mobile Unit of the District Police Force the condition of the room where the deceased had been detained was completely unsuitable for a patient of asthma as it was filled with dust and cobwebs which was sufficient to trigger an asthmatic attack which could have caused asphyxia which ultimately led to R.K. Jain's death.

36. We are, therefore, convinced that the appeals filed by Indu Jain and that filed by the State of Madhya Pradesh must be allowed in part. We, accordingly, allow the same and set aside the order of the High Court impugned in these appeals. While restoring the order of the learned Sessions Judge framing charge against the accused persons under Section 304 Part II IPC, we also direct that charges also be framed against the accused persons under Section 330 Indian Penal Code.

37. The three appeals filed by Ms. Indu Jain and the State of Madhya Pradesh are allowed to the aforesaid extent.

38. As far as the appeals arising out of SLP (Crl.) Nos. 2584 and 2588 of 2007 filed by the accused are concerned, the same are dismissed.

N.J. Appeals disposed of