KESHUB MAHINDRA

*v.*

STATE OF M.P.

SEPTEMBER 13, 1996

[A.M. AHMADI, CJ. AND S.B. MAJMUDAR, J.]

*Criminal Law :*

*Criminal Procedure Code, 1973 : Sections 227, 228, 397 and 482.*

*Criminal Proceedings—Quashing of—Bhopal Gas Tragedy—Leakage of highly toxic MIC gas from storage tank of plant resulting in huge loss of human lives—Permanent/temporary injuries or total/partial disablement and loss of cattle lives—Charges framed against personnel who handle plant substantively under Sec. 304 Part II, 326, 324 and 429 IPC r/w. S. 35 IPC—According to Expert Committee Report escape of gas on account of defective plant and lack and supervision by accused led to accident—Held : material available on record prima facie did not connect accused with offences with which they were charged—Hence, these charges quashed and set aside—However, prima facie charge under S. 304-A IPC made out—Since originally case registered under S. 304-A, charges could be framed thereunder—Trial Court, could also consider on material led by prosecution whether charges could be framed under Ss. 336, 337 and 338 IPC.*

*Penal Code, 1860 :*

*Sections 299 and 304 Part II—Ingredients of—Accused must have done an act which caused death of a person with knowledge that by such act he was likely to cause death.*

*Sections 324 and 326—Ingredients and applicability of—Accused must commit act with knowledge that by such act he was likely to cause hurt or grievous hurt to victim.*

*Sections 425 and 429—Ingredients and applicability of S. 429—If commission of 'mischief' as defined in S. 425 by accused was not made out S. 429 could not be invoked.*

*Constitution of India, 1950 : Article 142.*

A *Criminal Proceedings—Quashing of—Charges framed against accused quashed by Supreme Court as offences alleged not prima facie made out—However, Supreme Court in exercise of power under Article 142 could direct framing of charge for another offence under which case was initially registered and as regards to which counsel for parties addressed the Court with* B *view to avoiding multiplicity of proceedings.*

*A grim tragedy of unprecedented nature occurred on the fateful night when a highly dangerous and toxic gas called MIC escaped from a tank from the factory belonging to accused No. 12—Union Carbide India Limited resulting in huge loss of human lives, permanent/temporary injuries or* C *total/partial disablement and loss of cattle lives.*

*This ghastly tragedy had come to be known as 'Bhopal Gas Tragedy'. According to the Expert Committee Report the lethal gas MIC escaped both on account of defective plant which was operated under the control of the* D *appellants—Accused and their lack of supervision which led to the accident. Charges were framed against the appellants—Accused who were actually handling the Plant (accused Nos. 2 to 9), substantively under Section 304 Part II, 324, 326 and 429 read with Section 35 of the Indian Penal Code, 1860. Aggrieved by the aforesaid charges the appellant-accused moved Criminal Revision Applications before the High Court under Sections 397 and 382 of* E *the Criminal Procedure Code, 1973, which was dismissed. Hence this appeal.*

**On behalf of the appellants-accused it was contended that as per the chargesheet and supporting material there was no *prima facie* case that the accused were guilty of the offence under Sections 304-A, 324, 326 and** F **429 read with Section 35 of the IPC; that there was no proximate act of the negligence on the part of the accused which had resulted in the accidental tragedy; that none of the accused could be held criminally liable for the accident; and that the charges framed against the accused were required to be quashed.**

G **On behalf of the respondent-State it was contended that there was ample material produced by the prosecution in support of the chargesheet; that the Expert Committee Report had clearly indicated the causes of the accident and the defects found in the running of the plant at the relevant time; and that there was sufficient material to *prima facie* indicate that** H **the accused were liable to be prosecuted.**

Allowing the appeal in part, this Court A

HELD : 1. It is clear from Sections 227 and 228 of the Criminal Procedure Code, 1973 that while exercising jurisdiction under Section 482 Cr.P.C. when the High Court is called upon to quash the charge pursuant to which proceedings at the stage of trial are pending, and even when the B High Court is called upon to quash proceedings pursuant to complaint, only a *prima facie* appraisal of the allegations made in the complaint and the material in support thereof has to be done and the Court has no jurisdiction to go into the merits of the allegations as that stage would come when the trial proceeds. It is, therefore, necessary to keep in view the limited jurisdiction available to the Court regarding the *permissible* C scrutiny of the prosecution case as revealed from the chargesheet and material supporting the same framing charges against the present accused. [302-A; B; C; G]

*Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijja & Ors.,* D AIR (1990) SC 1962 and *State of U.P.* v. *O.P. Sharma,* (1996) 2 SCALE 356, relied on.

2. Before any charge under Section 304 Part II of the India Penal Code, 1860 can be framed, the material on record must at least *prima facie* show that the accused is guilty of culpable homicide and the act allegedly E committed by him must amount to culpable homicide. In view of Section 229 of the IPC the material relied upon by the prosecution for framing a charge under Section 304 Part II must at least *prima facie* indicate that the accused had done an act which had caused death with at least such a knowledge that he was by such act likely to cause death. The entire material F which the prosecution relied upon before the Trial Court for framing the charge cannot support such a charge unless it indicates *prima facie* that on that fateful night the plant was run by the concerned accused with the knowledge that such running of the plant was likely to cause deaths of human beings. Mere act of running a plant as per the permission granted G by the authorities would not be a criminal act. Even assuming that it was a defective plant and it was dealing with a very toxic and hazardous substance like MIC the mere act of storing such a material by the accused in tank could not even *prima facie* suggest that the concerned accused thereby had knowledge that they were likely to cause death of human beings. In fairness to prosecution it was not suggested and could not be H

A suggested that the accused had an intention to kill any human being while operating the plant. Taking the entire material on its face value and assuming it to represent correct factual position in connection with the operation of the plant on that fateful night it could not be said that the said material even *prima facie* called for framing of a charge against the
B concerned accused under Section 304 Part II, IPC on the spacious plea that the said act of the accused amounted to culpable homicide because the operation of the plant on that night ultimately resulted in deaths of number of human beings and cattle. When on the material produced by the prosecution no charge could be framed against any of the accused under Section 304 Part II there would remain no occasion to press in
C service the applicability of Section 35, IPC in support of such a charge for those accused who were not actually concerned with the running of the plant, namely accused Nos. 2, 3, 4, and 12. [323-E]

*Adam Ali Taluqdar & Ors.* v. *King-Emperor,* AIR (1927) Cal. 324, held
D inapplicable.

3.1. For applicability of Sections 324 and 326 of the IPC the material relied upon by the prosecution in support of such charges must show that the concerned accused had committed the act complained of at least with the knowledge that by such act he was likely to cause hurt or grievous hurt
E to the victim. The material pressed in service by the prosecution for framing such charges against the accused falls short of indicating that the act of running the plant on that fateful night which in its turn involved storing and utilising highly dangerous and volatile substance like MIC in this storage tank could not even *prima facie* be said to have been done with the knowledge that by such act itself simple hurt or grievous hurt was likely to
F be caused to any one. Consequently on such material even charge under Sections 324 and 326, IPC could not have been framed against the concerned accused. Once this conclusion is reached there would also remain no occasion to press in service against the accused Nos. 2, 3, 4 as well as 12, the charge under Section 35 IPC which the prosecution sought to press
G in service along with substantive Sections 324 and 326 IPC. In fact on the material as placed by the prosecution in support of these charges if a charge under Section 304 Part II cannot be framed then on the parity of reasoning no charge under Sections 324 and 326 could also be framed.

[324-A-E]

H 3.2. Before Section 429 IPC is pressed in service the material relied

upon by the prosecution must indicate even *prima facie* that the concerned accused by running the plant on that fateful night had knowledge that by running such plant they were likely to cause wrongful loss or damage to the public or to any person. The material produced by the prosecution does not even *prima facie* indicate how by running such a plant wherein highly dangerous and volatile substance like MIC was stored in tank the accused had the knowledge that by that act alone they were likely to destroy anybody's property or cause wrongful loss or damage to any person. Once the applicability of Section 425, IPC dealing with 'mischief' is ruled out on such material there would remain no occasion to invoke Section 429 which for its applicability requires the prosecution to show in the first instance any material against the concerned accused indicating the commission of mischief by the accused. Therefore, on the material pressed in service by the prosecution for framing charges against the accused no charge could have been framed against the concerned accused either under Section 304 Part II or under Section 324, 326 or 429, IPC with or without the aid of Section 35, IPC. On these findings all the charges will have to be quashed. [325-A-C]

3.3. On the finding that the material pressed in service by the prosecution does not indicate even *prima facie* that the accused were guilty of an offence of culpable homicide and, therefore, Section 304 Part II was out of picture, Section 304-A on this very finding can straightaway get attracted at least *prima facie*. Because of the operation of the defective plant on that fateful night a highly dangerous and volatile substance like MIC got converted into poisonous gas which snuffed off the lives of thousands of human beings and maimed other thousands and killed number of animals and that all happened, as seen at least *prima facie* the material led by the prosecution on record, because of rash and negligent act on the part of the accused who were in-charge of the plant. The material led by the prosecution shows that there were not only structural defects but even operational defects in the working of the plant on that fateful night which resulted into this grim tragedy. Even though, therefore, these accused cannot be charged for offences under Section 304 Part II, the material led against them by the prosecution at least *prima facie* showed that the accused were guilty of rash or negligent acts not amounting to culpable homicide and by that act caused death of large number of persons.

3.4. It is true that though originally the criminal case was registered

A for an offence under Section 304-A of the IPC the Central Bureau of Investigation which took up the investigation thought it proper to press in service Section 304 Part II and Sections 324, 326 and 429 of the IPC. Charges under these Sections have been found to be unsustainable on the material produced by the prosecution on record in support of these charges. However that does not mean that on the material as it stands on record B the accused cannot even *prima facie* be alleged to have committed any criminal offence for which they can be called upon to face the trial and that they should get a clean chit and clear walk-over. On the question whether on this material Section 304-A could be invoked or not, counsel for the appellants as well as Addl. Solicitor General for the respondent-State did C address this Court, therefore, the Court can and should, with a view to avoid multiplicity of proceedings, exercise its powers under Article 142 of the Constitution and decide whether the material led by the prosecution can *prima facie* support charges under Section 304-A against the concerned accused. Question of proof of rashness and negligence will arise at the stage of trial after full evidence is led by the prosecution and even by the accused D side if at all they choose to do so and in the light of that evidence the question would arise whether the charge as framed is made out by the prosecution against the concerned accused. The aforesaid conclusion, therefore, would make out a *prima facie* case against accused Nos. 5, 6, 7, 8 and 9 who were in actual charge of running of the plant and would require E them to face the trial for charge under Section 304-A of the IPC. [329-E]

*State of Gujarat* v. *Haidarali Kalubai,* [1976] 1 SCC 889; *Ambalal D. Bhatt* v. *State of Gujarat,* [1972] 3 SCC 525; *Suleman Rehiman Mulani & Anr.* v. *State of Maharashtra,* [1968] 2 SCR 515 and *Kurban Hussain Mohammedali Rangwalla* v. *State of Maharashtra,* [1965] 2 SCR 622, held F inapplicable.

4.1. So far as the remaining accused Nos. 2, 3, 4 and 12 are concerned the material produced on record clearly indicates at least *prima facie* that they being at the helm of affairs have to face this charge for the alleged G negligence and rashness of their subordinates who actually operated the plant on that fateful night and for that purpose Section 35 of the IPC would also *prima facie* get attracted against them. A mere look at that Section shows that if the act alleged against these accused becomes criminal on account of their sharing common knowledge about the defective running of plant by the remaining accused who represented them on spot and who had H to carry out their directions from them and who were otherwise required to

supervise their activity. Section 35 of the IPC could at least *prima facie* be invoked against accused 2, 3, 4, and 12 to be read with Section 304-A, IPC. Consequently on the material led by the prosecution against the accused at this stage a *prima facie* case was made out by the prosecution for framing charges against accused Nos. 2, 3, 4 and 12 under Section 304-A read with Section 35 IPC while substantive charges under Section 304-A could be framed against accused Nos. 5, 6, 7, 8 and 9. [329-F; G]

*Esso Standard Inc.* v. *Udharam Bhagwandas Japanwalla,* (1973) 45 Comp. Cas. 16, held inapplicable.

4.2. However, from the material which is produced on record there is a possibility of considering a further question whether charges under Sections 336, 337 and 338 of the IPC with or without the aid of Section 35 can be framed against the concerned accused. As none of the parties have addressed this Court on these aspects this question is left open for consideration of the Trial Judge who may after hearing the parties decide whether on the material as led by prosecution on record at this stage, charges, if any, can also be framed under Sections 336, 337 and 338of the IPC with or without the aid of Section 35 of the IPC. [331-C; 332-A]

4.3. On the material led by the prosecution appropriate charges which are required to be framed against the concerned accused are under Section 304-A, IPC so far as the accused Nos. 5, 6, 7, 8 and 9 are concerned while so far as accused Nos. 2, 3, 4 and 12 are concerned charges under Section 304-A read with Section 35 IPC will have to be framed. As these offences are triable by the court of Judicial Magistrate 1st Class, the Sessions Case shall be transferred to the Court of the Chief Judicial Magistrate, 1st Class who will proceed with the trial in accordance with law and frame appropriate charges under Section 304-A with or without the aid of Section 35, as the case may be, against the concerned accused. [332-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1672 of 1996 Etc. Etc.

From the Judgment and Order dated 1.8.95 of the Madhya Pradesh High Court in Crl. R. No. 237 of 1993.

Asok H. Desai and K.K. Desai, A.K. Desai, K.J. John and Palkar for the Appellant in Crl.A. No.1672/96.

A Prasad Dakephalkar, P.H. Parekh and Ms. Bina Madhavan for the Appellant in Crl.A. Nos. 1673, 1675 and 1674/96.

Altaf Ahmad, Additional Solicitor General, P. Parmeswaran and S.A. Matto for the Respondent.

B The Judgment of the Court was delivered by

**S.B. MAJMUDAR, J.** Leave granted in all these Special Leave Petitions. In these appeals the concerned appellant-accused have brought in challenge the order dated 8th April 1993 passed by the Court of 9th C Additional Sessions Judge, Bhopal in Sessions Trial No. 257 of 1992 whereby the learned Sessions Judge framed charges against the appellants in appeals arising out of S.L.P. (Crl.) Nos. 3900 of 1995, 3901 of 1995 and 3953 of 1995 under Sections 304 Part II, 326, 324 and 429 read with Section 35 of the Indian Penal Code (for short 'IPC') and framed charges under D Sections 304 Part II, 326, 324 and 309 against the appellants in appeal arising out of S.L.P. (Crl.) No. 3932 of 1995. They had also challenged the orders of the High Court of Madhya Pradesh at Jabalpur in Criminal Revision Application Nos. 237/93, 238/93, 312/93 and 311/93 whereby these charges were sustained. Appeal arising out of S.L.P. (Crl.) No. 3900 of 1995 is moved by Shri Keshub Mahindra who is accused No. 2 before the E Sessions Court. Appeal arising out of S.L.P. (Crl.) No. 3901 of 1995 is moved by Shri V.P. Gokhale who is accused No. 3 in the same case. Appeal arising out of S.L.P. (Crl.) No. 3953 of 1995 is moved by Kishore Kamdar who is accused No. 4 in the said case while the last appeal arising out of S.L.P. (Crl.) No. 3932 of 1995 is moved by six accused being Shri J. Mukund F accused No. 5, Dr. R.B. Roy Choudhary accused No. 6, Shri S.P. Chaudhary accused No. 7, Shri K.V. Setty accused No. 8, Shri S.I. Qureshi accused No. 9 and Union Carbide India Limited ('UCTL' for short) accused No. 12 in the same case pending before the Sessions Court at Bhopal. The concerned appellants had moved the High Court of Madhya Pradesh at Jabalpur under Sections 397 and 482 of the Code of Criminal G Procedure (Cr.P.C.) for quashing the aforesaid charges.

With a view to highlighting the grievances of the appellants a few relevant facts deserve to be noted at the outset.

H *Introductory Facts*

A grim tragedy of unprecedented nature occurred at Bhopal on the night intervening 2nd December 1984 and 3rd December 1984 wherein between 0030 hours and 0045 hours a highly dangerous and toxic gas called MIC escaped from tank No. E610 from the Bhopal factory belonging to accused No. 12 UCIL. As a result of this leakage 3828 human beings lost their lives while permanent injuries were caused to 18922 human beings, temporary disablement was suffered by 7172 human beings, temporary disablement caused by permanent injury was suffered by 1313 persons while permanent partial disablement was suffered by 2680 persons, While 40 human beings suffered from permanent total disablement and the death toll of animals amounted to 2544. This ghastly tragedy has come to be known as 'Bhopal Gas Tragedy'. After the gas leakage Criminal Case No. 1104 of 1984 was registered at the Police Station Hanumanganj, Bhopal on 3rd December 1984 by the Station House Officer *sou motu*. This case was registered under Section 304-A, IPC. In the said case 12 accused were indicted. Accused No. 1 was Shri Warren Anderson who was the Chairman of Union Carbide Corporation. The said concern was also indicted as accused No. 10. Accused No. 2 Keshub Mahindra was the Chairman of UCIL which in its turn was shown as accused No. 12. Accused No. 3 V.P. Gokhale was shown as an accused in his capacity as Managing Director of UCIL. Kishore Kamdar who was the Vice President and Incharge of A.P. Division of UCIL was shown as accused No. 4. Shri J. Mukund the Works Manager of the Bhopal Plant was joined as accused No. 5. Dr. R.B. Roy Choudhary who was Assistant Works Manager, A.P. Division, UCIL at Bhopal was joined as accused No. 6. Accused No. 7. was Shri S.P. Choudhary, Production Manager of the Bhopal Plant. Shri K.V. Shetty, Plant Superintendent of the said Bhopal plant was accused No. 8. Shri S.I. Qureshi was shown as accused No. 9. He was Production Assistant at the said Bhopal plant. Out of the above accused persons accused Nos. 5, 6, 7, 8 and 9 were stationed at Bhopal and were incharge of the Bhopal Plant itself.

On the registration of the aforesaid Crime Case the Station House Officer, Bhopal, arrested five employees of the factory, namely, accused Nos. 5 to 9 and they were kept in police custody. Accused Nos. 1, 2 and 3 were arrested on 7th December 1984. Out of them accused No. 1 Shri Warren Anderson was released on bail the same day. On 6th of December

A 1984 the case was handed over to the CBI. On completion of investigation the chargesheet was presented by the CBI in the Court of CJM, Bhopal on 1st December 1987.

In the present proceedings we are not concerned with the question
B of compensation payable to the gas-disaster victims at Bhopal and the various steps taken by the Government of India in this connection. We, therefore, do not dilate on these aspects. Suffice it is to state that by earlier orders of this Court dated 14th February 1989 and 15th February 1989 all criminal proceedings relating to and arising out of the Bhopal Gas Disaster were quashed by this Court. As a result the proceedings in the present case
C which were then pending in the Committal Court stood terminated. However the said order was reviewed by this Court on 3rd October 1991 and the above criminal proceedings were restored. After their restoration the case was committed to the Court of Sessions. Commitment was made by order dated 30th April 1992. On the case being committed to the Court of
D Sessions it was registered as Sessions Trial Case No. 237 of 1992 as aforesaid. It appears that trial of the criminal case against accused No. 1 Warren Anderson, accused no. 10 UCC and accused No. 11 Union Carbide (Eastern) Inc., Hongkong had to be segregated and split up as the concerned accused were absconding. The trial proceeded against remaining accused Nos. 2 to 9 and 12. In the light of the supporting material
E produced by the prosecution before the Sessions Court along with the chargesheet and its contents the Sessions Court was requested by the prosecution to frame appropriate charges against the concerned accused against whom the trial had to proceed. After hearing the prosecution as well as the learned counsel for the concerned accused the learned 9th
F Additional Sessions Judge, Bhopal passed order dated 8th April 1993 framing charges against the concerned accused. As these charges have been seriously brought into challenge it would be apposite to reproduce the charges as framed by the learned Trial Judge against the concerned accused. So far as accused No. 2 Keshub Mahindra is concerned four charges were framed against him as under :

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> "*Firstly* : That on or about the night intervening 2nd and 3rd December, 1984 at Bhopal, the Capital of M.P. co-accused persons S/Shri Kishore Kamdar/J. Mukund/R.B. Roy Choudhary/S.B. Choudhary/K.V. Setty and S.I. Qureshi committed culpable
H homicide not amounting to murder by causing death of 3828 or

more human beings by allowing the highly toxic gas known by the name of MIC to escape from tank No. 610 of A.P. Division plant of UCIL knowing that it was likely to cause deaths and you sharing this common knowlege with them did not do anything to avoid the said escape of gas thus you thereby committed on each courts an offence punishable under Sec. 304 (II) R/W Sec. 35 of the IPC and within the cognizance of the Court of Session.

*Secondly* : That on the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas, knowing that it was likely to cause grevious hurts, thus voluntarily (as defined U/S 39 IPC) caused grevious hurts to 21694 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas thus you thereby committed on each count an offence punishable under section 326 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.

*Thirdly* : That on the above date and at the above place, co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas knowing that it was likely to cause hurts, thus voluntarily (as defined Under Sec. 39 IPC) caused hurts to 8485 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S 324 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.

*Fourthly* : That on the above date and at the above place the above accused persons by allowing MIC gas to escape from the above tank knowing that it was likely to cause death of animals, committed mischief by killing thereby 2544 or more animals of various descriptions each valuing more than Rs. 50 and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S 429 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions."

Charges framed against accused No. 3 V.P. Gokhale were identical with the charges framed against accused No. 2.

A Charges framed against accused No. 4 Kishore Kamdar ran as under:

"*Firstly* : That on or about the night intervening 2nd and 3rd December, 1984 at Bhopal, the Capital of M.P. co-accused persons S/Shri Kishore Kamdar/J. Mukund/R.B. Roy Choudhary/S.P. Choudhary/K.V. Shetty and S.I. Qureshi committed culpable
B homicide not amounting to murder by causing death of 3828 or more human beings by allowing the highly toxic gas known by the name of MIC to escape from tank No. 610 of A.P. Division Plant of UCIL knowing that this common knowledge with them did not do any thing to avoid escape of gas thus you thereby committed
C on each count an offence punishable U/S 304(II) R/W Sec. 35 of the I.P.C. and within the cognizance of the court of Sessions.

*Secondly* : That on the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas, knowing that
D it was likely to cause grevious hurts, thus voluntarily (as defined U/S 39 IPC) caused grevious hurts to 21694 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S 326 R/W Sec. 35
E IPC and within the cognizance of the Court of Sessions.

*Thirdly* : That on the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas, knowing that it was likely to cause hurts, thus voluntarily (as defined U/S. 39
F IPC) caused hurts to 8485 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S. 324 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.

G *Fourthly* : That on the above date and at the above place, the above co-accused persons by allowing MIC gas to escape from the above tank knowing that it was likely to cause death of animals, committed mischief by killing thereby 2544 or more animals of various descriptions each valuing more than Rs. 50 and you sharing this
H common knowledge with them did not do any thing to avoid the

said escape of gas, thus you thereby committed on each count an offence punishable U/S. 429 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions." A

Charges framed against accused No 5 J. Mukund were as under :

"*Firstly* : That you on or about the night intervening 2nd and 3rd December, 1984 at Bhopal, the capital of M.P. committed culpable homicide not amounting to murder by causing death of 3828 or more human beings by allowing the highly toxic gas known by the name of MIC to escape from tank No. 610 of A.P. Division Plant of UCIL, knowing that it was likely to cause deaths and you thereby committed on each count an offence punishable U/S 304(II) I.P.C. and within the cognizance of the court of Sessions. B C

*Secondly :* That you on the above date and at the above place by allowing to escape from tank No. 610 of the A.P. Division Plant of UCIL, a corrosive substance known by the name of MIC gas, knowing that it was likely to cause grevious hurts, thus voluntarily (as defined U/S. 39 IPC) caused grevious hurts to 21694 or more human beings and, thereby committed on each count an offence punishable U/S. 326 IPC and within the cognizance of the Court of Sessions. D E

*Thirdly* : That on the above date and at the above place by allowing to escape from tank No. 610 of A.P. Division Plant of UCIL, a corrosive substance known by the name of MIC gas, knowing that it was likely to cause hurts, thus voluntarily (as defined U/S. 39 IPC) caused hurts to 8485 or more human beings and thereby committed on each count an offence punishable U/S. 324 I.P.C. and within the cognizance of the Court of Sessions. F

*Fourthly* : That on the above date and at the place by allowing to escape from tank No. 610 of the A.P. Division Plant of UCIL, knowing that it was likely to cause death of animals, committed mischief by killing thereby 2544 or more animals of various descriptions each valuing more than Rs. 50 and thereby committed on each count an offence punishable U/S. 429 IPC and within the cognizance of the Court of Sessions." G H

A Identical charges were framed against accused No. 6 R.B. Roy Choudhary, accused No. 7 S.P. Choudhary, accused No. 8 K.V. Shetty and accused No. 9 S.I. Qureshi while UCIL, Calcutta accused No. 12 had to face the following charges :

B "*Firstly* : That on or about the night intervening 2nd and 3rd December, 1984 at Bhopal, the Capital of M.P. co-accused persons S/Shri Kishore Kamdar/J. Mukund/R.B. Roy Choudhary/S.P. Choudhary/K.V. Shetty and S.I. Qureshi committed culpable homicide not amounting to murder by causing death of 3828 or more human beings by allowing the highly toxic gas known by the C name of MIC to escape from tank No. 610 of A.P. Division Plant of UCIL knowing that it was likely to cause deaths and you sharing this common knowledge with them did not do any thing to avoid the said escape of gas thus you thereby committed on each count an offence punishable U/S 304(II) R/W Sec. 35 of the I.P.C. and within the cognizance of the court of Sessions.

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*Secondly* : That on the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name or MIC gas, knowing that it was likely to cause grevious hurts, thus voluntarily (as defined E U/S 39 IPC) caused grevious hurts to 21694 or more human beings and you sharing this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S. 326 R/W Sec. 35 IPC and within the cognizance of Court of Sessions.

F *Thirdly* : That on the above date and at the above place, above co-accused persons by allowing to escape from the above tank the corrosive substance known by the name of MIC gas, knowing that it was likely to cause hurts, thus voluntarily (as defined U/S. 39 IPC) caused hurts to 8485 or more human beings and you sharing G this common knowledge with them did not do anything to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S. 324 R/W Sec. 35 IPC and within the cognizance of the Court of Sessions.

*Fourthly* : That on the above date and at the above place, the above H co-accused persons by allowing MIC gas to escape from the above

tank knowing that it was likely to cause death of animals, committed mischief by killing thereby 2544 or more animals of various descriptions each valuing more than Rs. 50 and you sharing this common knowledge with them did not do any thing to avoid the said escape of gas, thus you thereby committed on each count an offence punishable U/S. 429 R/W. Sec. 35 IPC and within the cognizance of the Court of Sessions."

All these accused being aggrieved by the aforesaid charges framed by the learned Sessions Judge approached the High Court of Madhya Pradesh at Jabalpur in Criminal Revision Applications moved under Sections 397 and 482 of the Cr.P.C. as noted earlier. The High Court of Madhya Pradesh by common judgment in three Criminal Revising Applications Nos. 237/93, 238/93 and 312/93 moved by accused Nos. 2, 3 and 4 respectively, was pleased to dismiss the same by upholding the charges framed against these accused. Similarly Criminal Revision Application No. 311/93 moved by accused No. 5 J. Mukund, accused No. 6 R.B. Roy Choudhary, accused No. 7 S.P. Choudhary, accused No. 8 K.V. Shetty, accused No. 9 S.I. Qureshi and accused No. 12 UCIL was also dismissed by a separate order of even date. It is under these circumstances that the concerned accused are in appeal before us on special leave.

Learned senior counsel Shri Ashok Desai appearing for accused No. 2 Keshub Mahindra, learned senior counsel Shri Nariman, appearing for accused No. 3 V.P. Gokhale and learned senior counsel Shri Rajendra Singh, appearing for the remaining accused vehemently contended that taking the case of the prosecution at the highest as reflected by the contents of the chargesheet and the supporting material it could not be even *prima facie* said that the concerned accused were guilty of offence of culpable homicide not amounting to murder as envisaged by Section 304 Part II, IPC with which they are charged. That there was no question of the concerned accused having done any act on that fateful night at Bhopal which was done with the knowledge that they were likely by such act to cause death and consequently they could not have been charged on the material produced by the prosecution before the Trial Court at this stage of the trial for the offence of culpable homicide not amounting to murder. It was also submitted that on the same reasoning they could not have been charged for offence under Section 326 IPC for voluntarily causing grievous hurt or for that matter for the offence under Section 324 for voluntarily

A causing hurt by dangerous means. It was also contended that on the same parity of reasoning no case is made out against the concerned accused under Section 429 IPC for having committed mischief by killing, poisoning or maiming any animals. It was also submitted that so far as accused Nos. 2, 3 and 4 were concerned they were stationed at Bombay and they were not concerned with the day to day working of the Plant at Bhopal. Consequently there was no question of framing any charge against them for the aforesaid offences read with Section 35 of IPC as there was no evidence whatsoever for even alleging against these accused that they had any criminal knowledge in connection with the misshap that occurred on that fateful night at Bhopal. It was also contended by the aforesaid learned C senior counsel that even lesser charge under Section 304-A, IPC also could not have been framed on this material as nothing was alleged by the prosecution at this stage about any proximate act of the negligence on the part of the concerned accused which had resulted into this accidental tragedy. That if at all it was an unfortunate accident which had taken heavy D toll of human lives and cattle wealth, however, none of the accused could be held criminally liable for the said accident. It was, therefore, contended that the charges as framed against the concerned accused are required to be quashed and the High Court had erred in not exercising its jurisdiction in that behalf.

E On the other hand learned Additional Solicitor General Shri Altaf Ahmed submitted that there was ample material produced by the prosecution in support of the chargesheet which clearly indicated that all the concerned accused shared common criminal knowledge about the potential danger of escape of the lethal gas MIC both on account of defective plant F which was operated under their control and supervision at Bhopal and also on account of the operational shortcomings detected by the Expert Committee which had gone into the causes of this unfortunate accident, namely, Vardarajan Committee which was constituted by the Government of India for that purpose. That the report of the Scientific and Industrial Research team had clearly indicated the causes of this tragedy and the defects found G in the running of the Plant at the relevant time. That this material indicated that all the accused were properly charged for the offences alleged against them and that the court at this stage was not concerned with the truth or falsity of the allegations with which the prosecution has charged them. That at this stage only enquiry into the *prima facie* nature of the allegations H supporting these charges has to be made and if there is any material to

*prima facie* indicate that the concerned accused were liable to be prosecuted for the charges with which they are indicated the trial is required to be permitted to proceed further and should not be nipped in the bud as the appellants would like to have it. In support of the respective contentions learned senior counsel for the appellants as well as learned Additional Solicitor General relied upon various decisions of this Court to which we will make a reference at appropriate stage in latter part of this judgment.

Before we deal with the nature of the material produced by the prosecution before the Trial Court for framing the charges against the concerned accused it will be necessary to keep in view the limited nature of the jurisdiction available to the court for deciding whether the charges framed are legally sustainable on the basis of the material available at this stage. Section 227 of the Cr.P.C. lays down that, 'if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing'. On the other hand as enjoined by Section 228, if after such consideration and hearing as aforesaid the Judge is of opinion that there is ground for presuming that the accused has committed an offence, then subject to the procedure laid down by sub-sections (a) and (b) of the said Section the charge shall be framed in writing against the accused. In the case of *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijja & Ors.*, AIR (1990) SC 1962, one of us A.M. Ahmadi, J. (as His Lordship then was) speaking for the Division Bench of this Court in this connection observed as under :

> "It seems well settled that at the Ss. 227-228 stage i.e., stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

A It is also well settled that while exercising jurisdiction under Section 482 Cr.P.C. when the High Court is called upon to quash the charge pursuant to which proceedings at the stage of trial are pending, and even when the High Court is called upon to quash proceedings pursuant to complaint, only a *prima facie* appraisal of the allegations made in the complaint and the material in support thereof has to be done and the Court has jurisdiction to go into the merits of the allegations as that stage would come when the trial proceeds. In this connection we may usefully refer to a judgment rendered by a Bench of three learned Judges of this Court in the case of *State of U.P.* v. *O.P. Sharma,* (1996) 2 SCALE 356. Relying on earlier decisions of this Court the Bench in the aforesaid case made the following C pertinent observations in paragraphs 11 and 12 of the Report :

> "The question then is : whether the High Court is right in its exercise of inherent power under Section 482 Cr.P.C.? This Court in *State of Himachal Pradesh* v. *Pirthi Chand & Anr.,* (Crl. A. 1752 of 1995) decided on November 30, 1995 held as under :
>
> 'It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognisable offence. After the investigation is conducted and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to *prima facie* consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a

conclusion that no cognisable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases. i.e. in rarest of rare cases of *mala fide* initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognisable offence - the court may embark upon the consideration thereof and exercise the power.

.... .... .... ....

In *State of Bihar* v. *Rajendra Agrawalla,* (Crl.A. No. 66 of 1996) decided on January 18, 1996, this Court observed as under :

'It has been held by this Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no *prima facie* case is made out.'"

Keeping in view the aforesaid well settled limited jurisdiction regarding the permissible scrutiny of the prosecution case as revealed from the chargesheet and the material supporting the same for framing charges against the present accused we will now proceed to examine the available material on record of the case which has resulted into the framing of the impugned charges against the appellant-accused.

*Material in Support of the prosecution case*

In the first place we may glance through the relevant recitals in the chargesheet presented by the agency before the court which has resulted

into the framing of the impugned charges. The said chargesheet is found at page 1 of the compilation in appeal arising out of S.L.P. (Crl.) No. 3900/95. As noted earlier the chargesheet indicts 12 accused out of which the present 9 appellants in these four appeals are accused Nos. 2 to 9 and 12 respectively. In column 5 of the chargesheet are found listed main findings of the investigating agency in connection with this unfortunate tragedy. The relevant recitals therein read as under :

"Union Carbide India Ltd., the majority share holding in which is held by U.C.C., USA, was running a factory at Bhopal for the manufacture of pesticides. The main chemical from which the pesticide Sevin was manufactured was Methyl Isocynate (CII3N = C-O) which was also being manufactured in the same factory and was being stored in underground tanks. The factory is presently not functioning.

2. On the night of 2nd/3rd December, 1984 from about 0034 to 0045 hrs. (on 3rd December, 1984) onwards, MIC started to escape from tank No. 610 in the factory in large quantities causing the death of thousands of human beings and animals .... and injuring also the health of many thousands of human beings and animals.

3. Crime No. 1104/84 was registered at Police Station, Hanumanganj, Bhopal, on 3rd December, 1984, by the S.H.O., Shri Surinder Singh Thakur. Inspector who observed people dying around the factory of Union Carbide India Ltd. Bhopal (UCIL) due to escape of some gas from the factory. He registered the case *suo moto* under Section 304A IPC. There was no information available at that stage from anyone in the factory. Based on enquiries made by him during the course of the day, five employees of the factory (A5 to A9) were arrested and kept in police custody. Accused No. 1 Shri Warren Anderson was arrested alongwith accused No. 2 & 3 on 7th December, 1984. Shri Warren Anderson was released on bail the same day by the I.O. After completing the required legal formalities, C.B.I. (D.P.S.E.) registered a case on 6th December, 1984 as RC-3/84-CIU(I) U/S 304A IPC and received the records of the case from the local police on 9th December, 1984 alongwith A2, A3 and A5 to A9 in police custody from the Madhya Pradesh Police.

4. Investigation has revealed that the Union Carbide Corporation is a company with headquarters in U.S.A. having affiliate and subsidiary companies throughout the world. There subsidiaries were supervised by four regional offices which were controlled by UCC, USA. UCIL is a subsidiary of UCC, USA. Union Carbide Eastern Inc. with its office in Hongkong is the regional office of UCC, USA which controlled UCIL, India besides others. UCC, USA get incorporated in India on 20th June, 1934, a Company known as the Eveready Company (India) Ltd. under the Indian Companies Act (Act VII) of 1913 with the Registrar of Joint Stock Companies, Bengal. The Name of the Company was further changed w.e.f. 24th December. 1959 into Union Carbide India Ltd. under the Indian Companies, 1956. The UCC was a majority shareholder (50.9%) in UCIL. UCC was nominating its own Directors to the Board of Directors of the UCIL and was exercising strict financial, administrative and technical control on the Union Carbide India Limited. Thus, all major decisions were taken under the orders of the Union Carbide Corporation to America. The evidence collected during the investigation proves that UCC was in total control of all the activities of UCIL.

5. The investigation of this case was dependent on highly scientific and technical evaluation of the events which led to the escape of MIC gas from the UCIL plant at Bhopal. The Government of India therefore constituted, immediately after the incident, a team headed by Dr. S. Varadarjan, then D.G./C.S.I.R. to study all the scientific and technical aspects and submit their report. Dr. M. Sriram, Chief Research and Development Manager, Hindustan Organic Chemicals, Rasayani, District Ralgad (Maharashtra), was member as well as the co-ordinator of the Scientific Team. Dr. Varadarajan submitted the report in December, 1985. A further back up report was submitted by the C.S.I.R. in May, 1987. These reports furnish, *inter alia,* the causes that led to the incident.

6. Investigation has revealed that UCIL started importing Sevin from the UCC, USA in December, 1960. They were marketing this Sevin after adding dilutants etc. Subsequently, they decided to manufacture Sevin in their plant at Bhopal itself and accordingly created necessary facilities for production of Sevin MIC as the

basic raw material. To start with, they were importing MIC in 200 litres capacity stainless steel drums from the UCC Plant in West Virginia, USA. Subsequently UCC and UCIL decided to manufacture MIC in their factory at Bhopal itself.

7. At that stage on 13th November, 1973, UCC and UCIL entered into an agreement entitled Foreign Collaboration Agreement according to which the best manufacturing information then available from or to Union Carbide had to be provided for the factory in India. This necessitated UCC supplying the design, knowhow and safety measures for the production, storage and use of MIC which ought to have been an improvement on the factory of UCC at West Virginia based on the experience gained there. Investigation has however disclosed that the factory at Bhopal was deficient in many safety aspects. The design, know-how and safety measures were provided by the Union Carbide Corporation, USA and the erection and commissioning of the plant was done under the strict control of the experts of UCC. The Indians in this plant were only working under their directions.

8. After an initial period of profits, the UCIL factory was running in loss. The loss for the first 10 months of 1984 amounted to Rs. 5,03,39,000. Due to this, U.C.E. Hongkong directed UCIL vide their letter dated 26 October, 1984 that the factory at Bhopal should be closed down and sold to any available buyer. As no buyer became available in India, UCE, Hongkong directed UCIL to prepare an estimate for dismantling the factory and shipping it to Indonesia or Brazil where they probably had some buyers. These estimates were completed towards the end of November, 1984.

9. The investigation conducted by the C.B.I., the report of the scientific team established by Government of India and in particular the literature and manuals etc. regarding MIC of Union Carbide Corporation itself prove that MIC is reactive, toxic, volatile and flammable. It is a highly hazardous and lethal material by all means of contact and is a poison. Skin contact with MIC can cause severe burns. MIC can also seriously injure the eyes even in its concentrations. Exposure to MIC is extremely irritating and would cause chest pain, coughing, choking and even pulmonary

edema. On thermal composition, MIC would produce hydrogen cyanide, nitrogen oxide, carbon monoxide and/or carbon dioxide. A

10. MIC has to be stored and handled in stainless steel of types 304 or 316, namely, good quality stainless steel. Using any other material could be dangerous. In particular, iron or steel, aluminium, zinc or galvanized iron, copper or tin or their alloys could not be used for purposes of storage, transfer/transmission of MIC. This would mean that even the pipes and valves carrying MIC had also got to be of the prescribed stainless steel. In other words, at no stage should MIC be allowed to come into contact with any of the metals mentioned above. B C

11. The tanks storing MIC, have to be, for reasons of safety, twice the volume of the MIC to be stored. It was also advised by UCC itself that an empty tank should also be kept available at all times for transferring MIC from its storage tank to the stand by tank on occasions of emergency. MIC has to be stored in the tanks under pressure by using nitrogen which does not react with MIC. The temperature of the tank with MIC has to be maintained below 15 degree celsius and preferably at about 0 degree celsius. The storage system and the transfer lines have to be free of any contaminants as even trace quantities of contaminants are sufficient to initiate reaction which could become runaway reaction. On reaction setting in, there could be dangerous and rapid trimerization. The induction period could vary from several hours to several days. The heat generated could cause reaction of explosive violence. In particular, water reacts exothermically to produce heat and carbon dioxide. Consequently, the pressure in the tank will rise rapidly if MIC is contaminated with water. The reaction may begin slowly, especially if there is no agitation, but it will become violent. UCC itself states that with bulk systems contamination is more likely than with tightly sealed drums. All these properties of MIC show that despite all the safety precautions that could be taken, storage of large quantities of MIC in big tanks was fraught with considerable risk. D E F G

12. Investigation has disclosed that at the time when the incident took place there were thee partially buried tanks in the factory at H

Bhopal. These were numbered E 610. E 611 and E 619. MIC was being stored generally in the tanks E 610 and E 611. E 619 was supposed to be the stand by tank. In the normal running of the factory, MIC from E 610 and E 611 was being transferred to the Sevin plant through stainless steel pipe lines. MIC is kept under pressure by nitrogen which is supplied by a carbon steel header common to all the storage tanks. There is a strainer in the nitrogen line. Subsequent to the strainer the pipe is of carbon steel and leads to make up control valve (DMV) which also has a body of carbon steel. These carbon steel parts could get exposed to MIC vapours and get corroded, providing a source of contaminant which could enter the MIC storage tank and cause dangerous reactions in the MIC. During the normal working of the factory, MIC fumes and other gases that escape pass first through a pipe line called Process Vent Header (PVH) of 2" diameter. The escaping gases were carried by the PVH line to a Vent Gas Scrubber (VGS) containing alkali solution which would neutralize the escaping gases and release them into the atmosphere. Another escape line of such gases that was provided from the tanks was the Relief Valve Vent Header (RVVH) of 4"diameter. Normal pressure of the MIC tank is shown by a pressure indicator. When the pressure in the tank exceeded 40 psig, a rupture disc (RD) leading to a safety relief valve (SRV) had to break and the said SRV in the RVVH line open automatically to allow the escaping gas to travel through the RVVH line to the VGS for neutralization.

13. Investigation has shown that the PVH and RVVH pipe lines as well as the valves therein were of carbon steel. Besides, on account of design defect these lines also allowed back flow of the alkali solution from the VGS to travel upto the MIC tanks.

14. A very essential requirement was that the MIC tanks in the factory had to be kept under pressure of the order of 1 Kg./cm2g by using nitrogen, a gas that does not react with MIC. However, MIC in tank No. 610 was stored under nearly atmospheric pressure from 22nd October, 1984 and attempts to pressurize it on 30th November and 1st December, 1984 failed. The design of the plant ought not have allowed such a contingency to happen at all. The tank being under nearly atmospheric pressure, free passage was

available for the entry of back flow of the solution from the VGS into the tank. According to the report of Dr. Varadarajan Committee, about 500 Kgs. water with contaminants could enter tank 610 through RVVH/PVH lines. The water that entered RVVH at the time of water flushing along with backed up alkali solution from the VGS already present could find its way into the tank 610 through the RVVH/PVH lines via the blow down DMV or through the SRV and RD.

15. The first indication of any reaction in the tanks comes through the pressure and temperature indicators. The thermowell and temperature transmitting lines were out of order throughout and no temperature was being recorded for quite sometime. Pressure was also being recorded at the end of each shift of 8 hours duration instead every 2 hours as was being done earlier.

16. ... ... ... ...

17. On 2nd December, 1984 before 10.45 PM no deviation was noticed in the pressure of tank No. 610. Soon thereafter, in the night shift, some operators noticed leakage of water and gases and gases from the MIC structure and they informed the Control Room. The Control Room operator saw that the pressure had suddenlly gone up in tank No. 610. Some staff in the IIIrd shift including S/Shri R.K. Kamparia, C.N. Sen and Saumen Dey checked the pressure indicator on the tank E 610 and found that the pressure had gone out of range. The factory staff tried to control the situation but they failed. Even tank E 619 which had to be kept empty for emergency transfers was found to contain MIC and therefore when the reaction started, transfer thereto from tank 610 was not possible. The staff on duty immediately informed senior officials of UCIL at Bhopal about the escape of MIC. During all these developments and even thereafter the Union Carbide officials at Bhopal did not give any information to the residents or any local authority about the serious dangers to which the people were exposed and regarding which the said officials had full knowledge. On the other hand, what was initially mentioned was ammonia gas had escaped."

Thereafter are listed the findings of the Scientific Team made by Dr.

A Vardarajan indicating the causes that had resulted in the toxic gas leakage causing its heavy toll. In para 20 of the chargesheet the following findings of the investigation conducted by the C.B.I. have been noted :

"20. The investigation conducted by the C.B.I. has proved the following aspects :

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(i) MIC is a highly dangerous and toxic poison.

(ii) Storing huge quantity of MIC in large tanks was undesirable and dangerous as the capacity and actual production in the Sevin
C plant did not require such a huge quantity to be stored. Only adequate quantity of MIC should have been stored, that too in small separate stainless steel drums.

(iii) The VGS that had been provided in the design was capable of neutralising only 13 tonnes of MIC per hour and proved to be
D totally inadequate to neutralise the large quantities of MIC that escaped from tank No. E 610. When the two tanks (610 and 611) themselves had been designed for storing a total of about 90 tonnes of MIC, proportionately large capacity VGS should have been furnished in the design and erected rather than VGS that was
E actually provided.

(iv) Due to the design defect, there was back flow of alkali solution from the VGS to the tanks which had been drained in the past by the staff of UCIL. Infact, even after the incident, such draining was done from the PVH and RVVH lines.

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(v) Whereas the MIC tanks had to be constantly kept under pressure using nitrogen, the design permitted the MIC tanks not being under pressure in certain contingencies.

G (vi) The refrigeration system that had been provided was inadequate and inefficient. No alternate stand by system was provided.

(vii) Neither the UCC nor the UCIL took any steps to apprise the local administration authorities or the local public about the consequences of exposure of MIC or the gases produced by its
H reaction and the medical steps to be taken immediately.

21. Apart from these design defects, the further lapses that were committed were :

(a) Invariable storing MIC in the tanks which was much more than the 50% capacity of the tanks which had been prescribed.

(b) Not taking any adequate remedial action to prevent back flow of solution from VGS into the RVVH and PVH lines. This alkali solution/water, therefore, used to be drained.

(c) Not maintaining the temperature of the MIC tanks at the preferred temperature of 0 degree celsius but at ambient temperatures which were much higher.

(d) Putting a slip blind in the PVH line and connecting the PVH line with a jumper line to the RVVH line.

(e) Not taking any immediate remedial action when tank No. E 610 did not maintain pressure from 22nd October, 1984 onwards.

(f) When the gas escaped in such large quantities, not setting out an immediate alarm to warn the public and publicise the medical treatment that had to be given immediately."

It was also recited that if these lapses had not occurred, still the incident would have taken place due to the basic defects in the design supplied by the UCC whose experts supervised the erection and commissioning of the plant itself. The lapses only helped to aggravate the consequences of the incident. Thereafter referring to the indications obtainable from the evidence collected during the investigation regarding the knowledge of the accused about the defective functioning of the plant the following pertinent recitals are found in paragraph 23 and 24 of the chargesheet :

"23. The evidence collected during the investigation proves that the accused persons had the knowledge that by the various acts of commission and omission in the design and running of the MIC based plant, death and injury of various degrees could be caused to a large number of human beings and animals. All the accused persons joined in such acts of omission and commission with such common knowledge. This resulted in the incident on the night of 2nd/3rd December, 1984 which caused the death immediately and

till date of about 2850 human beings and about 3000 animals. The number of affected persons is more than 5,00,000. The ailments damaged respirator tract function, gastro intestinal functions, mascular weakness, forgetfulness etc.

24. The investigation has established that S/Shri Warren Anderson, then Chairman, Union Carbide Corporation, USA: Keshub Mahindra, then Chairman, UCIL Bombay; Vijay Gokhle, then Managing Director and presently Chairman-cum-Managing Director, UCIL, Bombay; Kishore Kamdar, then Vice President Incharge, A.P. Division, UCIL, Bombay; J. Mukund, then Works Manager, A.P. Division, UCIL, Bhopal, Dr. R.B. Roy Choudhary, then Asstt. Works Manager, A.P. Division, UCIL, Bhopal, S.P. Choudhary, then Production Manager, A.P. Division, UCIL, Bhopal; K.V. Setty, Plant Superintendent, A.P. Division, Bhopal; S.I. Qureshi, Production Assistant, A.P. Division, UCIL, Bhopal; the Union Carbide Corporation. U.S.A.; Union Carbide Eastern Inc. Hongkong and Union Carbide India Limited, Calcutta have committed offences punishable Under Sections 304, 326, 324, 429 IPC r/w Section 35 IPC."

Along with this chargesheet a detailed abstract was filed supported by documentary evidence to show how the conclusions reached by the investigating agency were supported by this documentary evidence. In this abstract it was recited that in that plant there were no facilities for collecting MIC produced separately in each shift and the material is directly laid into the storage tanks without batchwise analysis. It was also found that there are no on-line analysers. Similarly, nitrogen from a neighbouring factory is fed directly into the storage tanks, without full intermediate storage and quality determination. Carbon steel sections are used in the connectors to the storage tanks. Copper tubes are used in connectors to the level instruments of the tank. The system of instruments for alarm to indicate sudden increase in temperature are not suited to the conditions of operation. Only a single refrigeration system for cooling of MIC in two tanks was installed and it had not been operated for some considerable time. MIC has the combination of properties of very high reactivity with minimum contaminants, ready volatility to become gas and very high inhalation toxicity. The installed facilities provided for disposal of unstable

liquid MIC in alkali or for the neutralisation of gaseous emissions from violent reaction, on examination are found to be not capable of meeting the objectives of such disposal in a very short time of two hours. The abstract also recited that the ingress of about 500 kg. of water alone, was not the sole cause of the escape of a huge quantity of toxic gas. In this connection the following averments found in the abstract were relied upon by the prosecution. :

> "The ingress of about 500 kg. of water alone, without metallic contaminants, would have led to a reaction with three to four tonnes of MIC and gradual rise in temperature to 70 degree celsius, below the boiling point of MIC at the safety valve pressure. The very rapid explosive rise in temperature and pressure in the tank 610, implies conditions for a run-away trimerisation reaction already existed. Ingress of water and reaction with MIC would generate carbondioxide evolution and cause mixing. The storage tank conditions would then equal those in a well mixed reactor, supplied with heat. Once initiated, the trimerisation reaction had features of auto-catalytic and auto- thermal reactions and temperatures increased rapidly to 250 degree celsius. The relief valve design could not permit free flow of large quantities of gases at the level at which they were generated and therefore further reactions continued.
>
> The presence of sodium at levels of 50 to 90 ppm in the samples from residues of tank 610 indicates ingress of some alkali, possibly derived from the Vent Gas Scrubber Accumulator. It is known that the tank 610 could not be pressured with nitrogen at any time after 22 October, 1984. The contents of tank 610 were virtually at atmospheric pressure from that date providing opportunities for entry of metal contaminants. From a perusal of the reports of the events of the night of 2/3 December, 1984, it appears during the cleaning of choked filters with water in the Relief Valve Vent Header, such water perhaps mixed with alkali from Vent Gas Scrubber Accumulator, could have entered the non pressurised tank and may have carried some metallic contaminants from the carbon steel portions of header pipelines. The rapid rise in temperature necessitates onset of metal catalysed polymerisation and could not result from water alone. The presence of

A choloroform has no influence whatsoever in initiating or accelerating the run-away reactions. The quantum of leakage is related not to the quantum of water but to the amount of MIC stored in a single container. If 42 tonnes of MIC had been stored in 210 stainless steel drums instead of a single tank, leakage by reactions or spillage would be no more than one fifth of tonne."

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Reliance was also placed on the brochure for showing that for manufacture of Sevin, a very volatile and dangerous raw material, MIC had to be stored in large quantities and that raw material was not properly kept under cooling conditions and if coming in contact with water or any other C pollutant had a tendency to create extremely toxic gas which once it escapes would necessarily create disaster to the human beings and even cattle which come in its contact. It has to be stated in fairness to learned senior counsel for the appellants that they also did not challenge the fact that MIC was a very highly volatile and dangerous material which had to be properly kept so that it may not spell disaster once it gets converted D into poisonous gas and if such gas escapes from the factory. However their only contention was whether there was any *prima facie* evidence to show that the appellants or any one of them was in any way responsible for this unfortunate accident, which in their view was an act of God for which no human being was responsible.

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The learned Addl. Solicitor General Shri Altaf Ahmed has also invited our attention to document D-159 a brochure of UCC, USA which stated that if MIC is contaminated with water it may become violent. He also invited our attention to D-195 which is a circular giving company F information about definitions of 'subsidiary and associate companies'. This was relied upon to show that UCIL was a subsidiary company of UCC, USA. Additional D-9 was relied upon which was a copy of the application for grant of industrial licence for manufacture of MIC based pesticides with foreign collaboration of UCC, USA, to show that UCL authorities were well aware regarding the hazardous nature of MIC which they were G handling in collaboration with UCC, USA and the safety measures which were required to be undertaken. Letter D-191 dated 26.10.1984 written by R. Nagarajan of UCEI to Shri K.S. Kamdar was relied upon to show that Shri Kamdar was requested to give feasibility report for dismantling of the MIC Plant, Bhopal and the shipment thereof abroad and the cost estimate H involved in such an undertaking. Reply of Shri Kamdar at D-19 dated

29.11.1984 was also relied upon to show the cost estimate prepared for dismantling and shipping of the Sevin/MIC Unit from Bhopal. These documents were relied upon to indicate that by the closing months of 1984 this plant had become useless and had to be scrapped and shifted and that showed lack of interest of the management and those operating the plant in the safe working of the plant which was no longer profit making and was almost a dead burden to them and this had resulted, according to the prosecution, in illegal omission on their part in taking necessary safety measures for containing the hazardous MIC within the confines of factory premises. D-216 was a statement showing loss to MIC Unit from 1981 to 1984 which showed huge financial loss suffered by the company in running the said plant. Thereafter the learned Additional Solicitor General placed strong reliance on document D-205 which was Operational Safety Survey Report conducted by team of experts of UCC. This document showed that a number of deficiencies in the maintenance of MIC Unit were pointed out by experts as early as in 1982. The said report is styled as Operational Safety Survey Co, MIC and SEVIN Units Union Carbide India Limited, Bhopal Plant. It is dated 28th July 1982. The covering letter addressed to Shri J. Mukund accused No. 5, the then Works Manager of the Bhopal Plant recites that the team was very impressed with the quality of operating and work procedures developed over the past few years. However it sought to bring to the attention of the addressee in connection with the equipment and mechanical deficiencies described in the report and suggested that continued efforts in the area of procedures, training and enforcement were necessary for contributing substantially to the on-going safety efforts at the Bhopal Plant. It was indicated that there were potentials for release of toxic materials in the phosgene/MIC unit and storage areas, either due to equipment failure, operating problems or maintenance problems. There were potentials for contaminations, overpressure, or overfilling of the SEVIN MIC feed tank. At M.2.1. were noted several conditions for operation of the unit that presented serious potential for sizeable releases of toxic materials. They were listed us under :

"(a) Leakage of phosgene and choloroform from the PSS feed and quench feed filter head assemblies.

(b) Breakage of small lines or connections, either because of inadequate line strength, installation of long unsupported nipples, or corrosion. Examples cited included quench pump

drain and vent connections, HCI Scrubber pump drains, and MRS and pyrolyzer tails pump drains and vents. (It should be noted that several of these lines were originally schedule 10 nickel piping, and have been replaced, for the most part.)

(c) Possible failure of the pyrolyzer calandria vapor line due to erosion/corrosion.

(d) Mechanical pump seal failures, caused by improper seal design (on the Glit pumps, for instance) or inadequate control of replacement materials.

(e) Release of material at unexpected places due to improper evacuation jet operation or open evacuation drops."

Regarding the operation of MIC Feed Tank at Sevin which was the basic source of the Bhopal Gas tragedy the Expert Committee Report indicated the dismal situation then existing even in 1982 in paragraph M.4.2. of the Report as under :

"(a) It appears that it would be possible to contaminate the tank with material from the vent gas scrubber. Although the arrangement of lines connecting the tank and vent scrubber appears to be adequate to prevent back flow of liquid, it appears possible to back reactive quantities of water vapors and other gases from the scrubber to the feed tank when it is depressurized.

(b) Location of the tank inside a room and lack of water spray protection facilities create a situation where a toxic and flammable vapor cloud could be formed and confined without provision for knockdown or dispersal. There is mechanical ventilation in the room, but the same circumstances that could result in a leak or overfill (power failure, for instance) could result in the ventilation being inoperative. Also, it appears that a sizeable spill would not be readily dispersed by the system.

(c) There is some question about the adequacy of the tank relief valve to relieve a runaway reaction or fire exposure, particularly since the tank has been enlarged.

(d) Manual control of filling of the tank, with no instrumentation backup, creates a possibility of accidental overfilling." A

Even that apart after the Bhopal Gas tragedy as stated earlier a scientific team of experts headed by Dr. Vardarajan inspected the plant on spot and tried to find out the reasons for this tragedy. At page 81 of the Report after listing various defects in the working of the plant especially with reference to storage tank and the instrumentation and control system the committee in paragraph 4.3 of the Report which is D-164 on the record of the Trial Court observed as under : B

"MIC is kept under a pressure of nitrogen which is supplied by a carbon steel header common to all the storage tanks. There is a strainer in the nitrogen line. Subsequent to the strainer the pipe is of carbon steel and leads to make-up DMV which also has as body of carbon steel. Similarly, the blowdown DMV is also of carbon steel body. These carbon steel parts may be exposed to MIC vapours and get corroded, providing a source of contaminant which can enter the MIC storage tank." C D

At paragraph 4.4 dealing with 'Instrumentation and Control System' it was observed in the Report of the Vardarajan Committee as under :

"4.4. *Instrumentation and Control System* : E

The pressure in the MIC tank increases rapidly if MIC is contaminated with water. There is no high pressure alarm to alert the operator about the build-up of pressure.

There is a graphite rupture disc between the tank and the safety valve. This graphite rupture disc may break because of pressure surges even under normal conditions. There is no provision for an alarm to bring such a breakage of rupture disc to the attention of the operator. F

For the storage of a lethal chemical such as MIC, two instruments in parallel (one for control/indication and another for alarm) are normally provided. No such provision is made. For example, quite often the level readings have not been recorded, reportedly because the level system used to be out of order very often due to choking problems. In fact, after the event, since the only level monitoring system provided for tank 611 was not functioning, it was not possible to ascertain the exact quantity of MIC in that G H

tank. An additional level measuring system would have helped in such a situation.

Ingress of contaminants or water can start a reaction with MIC which begin slowly and produce a rise in temperature of the tank contents. However, the range of the temperature transmitter provided was only -25 degree celsius to +25 degree celsius, with a high alarm setting at +11 degree celsius. The contents of the tank were being stored at ambient temperature, which varies approximately from +15 degree celsius to +40 degree celsius at Bhopal. The temperature of MIC in the storage tanks for most part of the year was higher than the high temperature alaram setting. i.e. +11 degree celsius. Indeed the temperature of material in the tank was higher than the maximum of the range of the temperature transmitter, i.e. +25 decree celsius. In such circumstances the actual temperature was not known and the transmitter was of no value. Further, provision of "rate of rise in temperature" alarm would have invited the operator's attention to the start of such a reaction. No such provision was made."

In connection with refrigeration the Committee observed in paragraph 4.5 of the Report as under :

4.5 *Refrigeration* :

There is only one common compressor and chiller system for all the three MIC storage tanks. For such a hazardous material as MIC, where maintaining it at a low temperature is considered very important, a spare compressor and chiller system would have ensured proper chilling even when the main compressor and chiller system is under repairs or maintenance. This provision of spare compressor and chiller has not been made."

At paragraph 5 of the Report is found an analysis of the events which led to the disaster out of the gas escape on that fateful night and the summary of the conclusion is found in the last sub-paragraph of para 5. It reads as under :

"In retrospect, it appears the factors that led to the toxic gas leakage and its heavy toll existed in the unique properties of very high reactivity, volatility and inhalation toxicity of MIC. The needless storage of large quantities of the material in very large size

containers for inordinately long periods as well as insufficient caution in design, in choice of materials of construction and in provision of measuring and alarm instruments, together with the inadequate controls on systems of storage and on quality of stored materials as well as lack of necessary facilities for quick effective disposal of material exhibiting instability, led to the accident. These factors contributed to guidelines and practices in operations and maintenance. Thus the combination of conditions for the accident were inherent and extant. A small input of integrated scientific analysis of the chemistry, design and controls relevant to the manufacture would have had an enormously beneficial influence in altering this combination of conditions, and in avoiding or lessening considerably the extent of damage of December, 1984 at Bhopal."

In addition to the aforesaid documentary evidence the learned Additional Solicitor General also relied upon D-157 being Memorandum of Association and Articles of Association of M/s Ever Ready Company (India) Private Limited subsequently changed to M/s Union Carbide India Limited showing accused No. 2 Keshub Mahindra as the Chairman. Various annual reports were pressed in service to show how accused No. 2 Keshub Mahindra presided over the meetings and how accused No. 3, V.P. Gokhale worked as whole-time Director. This was relied upon to show that these accused even though stationed at Bombay shared the criminal knowledge of the other personnel of the company who were actually handling the Bhopal plant being accused Nos. 5 to 9. It was submitted relying on aforesaid material and also the statements of Arjun Singh, Mohan Singh and Ram Lal and other statements of persons working in the plant which were recorded during investigation that all the accused had criminal knowledge regarding the defective working of the plant at Bhopal and as the Plant was to be dismantled and shifted out of India the powers that monitored the plant were no longer interested in its safe keeping and by their illegal omissions to take appropriate steps for safe working of the plant and for the safe keeping of such dangerous material like MIC which they were handling at Bhopal, they were rightly charged for the concerned offences by the learned Trial Judge and that the High Court was right in refusing to interfere with the framing of these charges. In this connection it was pointed that as the material showed no transfer of MIC from the strorage tanks to the production line could take place since November 22, 1984 due to the defective system. Still no remedial measures were taken.

A That the report of Vardarajan Committee showed that a relief valve vent header and process valve header were joined together by putting a 'U' type flexible hose jumber line. Therefore, according to him, this resulted in back flow of alkalin solution from the VGS to the storage tanks leading to a chain of reactions.

B It was next submitted that despite the recommendations in the report of the operational Safety Survey conducted at Bhopal Plant by experts from United States during May 1982 and despite various deficiencies of serious and minor nature being pointed out no remedial steps were taken. Even during the Safety Survey leakages from MIC plant area had been C noticed. Deficiency in safety valve and absence of fixed water sprayers in the MIC Plant area had been particularly pointed out. Thus the gas had leaked from the storage tank due to a chain chemical reaction. That the material led before the Trial Court at the stage of framing of charge clearly indicated that there was possibility of ingress of water and other contaminants from the RVVH or during cleaning of the valve due to rupturing D the disc valve which had resulted into this grim tragedy. It was next contended that the material led by the prosecution at this stage at least *prima facie* showed that all the accused were fully responsible for the conduct of the plant and they shared the criminal knowledge about the acts of commission and omission on the part of those of the accused who were actually handling the plant and supervising its working on that fateful night E at Bhopal. That accused R. Choudhary, J. Mukund, S.P. Choudhary, K.V. Shetty and S.I. Qureshi who were actively associated with the working of the plant at Bhopal were directly concerned with the incident as they were in full knowledge of the deficiencies in the plant. Similarly accused Keshub, Mahindra, V.P. Gokhale and Kishore Kamdar too had full knowledge of F the defects in the plant at Bhopal and therefore, they also shared the criminal liability based on criminal knowledge about the acts of commission and omission in connection with the operation of the said plant at Bhopal. That all the accused had full knowledge of the hazardous nature of the MIC manufactured as an intermediate product in Bhopal plant, defects in the design of the plant lack of safety measures, but still they had taken to G precautionary steps to avoid this unfortunate accident.

Learned senior counsel for the appellant-accused on the other hand submitted that even if taking the material available on record at this stage on its face value the short question is whether any charge could have been H framed against the accused under Section 304 Part II, IPC with or without

the aid of Section 35, IPC and even for that matter any charges could have been framed under Sections 326, 324 or 429 with or without the aid of Section 35 of IPC. We may at once state that both the learned Sessions Judge as well as the High Court have taken the view on the aforesaid material that a *prima facie* case has been made out by the prosecution requiring accused to face the aforesaid charges and the trial of the accused on these charges cannot be cut short or nipped in the bud in the light of the aforesaid material which has to be accepted as *prima facie* true and reliable at this preliminary stage of framing of charges.

It, therefore, become necessary for us now to address ourselves on this moot question. As noted earlier the main charge framed against all these accused is under Section 304 Part II, IPC. So far as accused Nos. 2, 3, 4 and 12 are concerned they are also charged with offences under Sections 326, 324, IPC and 429 IPC read with Section 35 IPC while accused 5 to 9 are charged substantially with these offences also. We shall first deal with the charges framed against the concerned accused under the main provisions of Section 304 Part II, IPC. A look at Section 304 Part II shows that the concerned accused can be charged under that provision for an offence of culpable homicide not amounting to murder and when being so charged if it is alleged that the act to the concerned accused is done with the knowledge that it is likely to cause death but without any intention to cause death or to cause such bodily injury as is likely to cause death the charge offences would fall under Section 304 Part II. However before any charge under Section 304 Part II can be framed, the material on record must at least *prima facie* show that the accused is guilty of culpable homicide and the act allegedly committed by him must amount to culpable homicide. However, if the material relied upon for framing such a charge against the concerned accused falls short of even *prima facie* indicating that the accused appeared to be guilty of an offence of culpable homicide Section 304 Part I or Part II would get out of the picture. In this connection we have to keep in view Section 299 of the Indian Penal Code which defines culpable homicide. It lays down that, 'whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide'. Consequently the material relied upon by the prosecution for framing a charge under Section 304 Part II must at least *prima facie* indicate that the accused had done an act which had caused death with at

A least such a knowledge that he was by such act likely to cause death. The entire material which the prosecution relied upon before the Trial Court for framing the charge and to which we have made a detailed reference earlier, in our view, cannot support such a charge unless it indicates *prima facie* that on that fateful night when the plant was run at Bhopal it was run B by the concerned accused with the knowledge that such running of the plant was likely to cause deaths of human beings. It cannot be disputed that mere act of running a plant as per the permission granted by the authorities would not be a criminal act. Even assuming that it was a defective plant and it was dealing with a very toxic and hazardous substance like MIC the mere act of storing such a material by the accused in tank C No. 610 could not even *prima facie* suggest that the concerned accused thereby had knowledge that they were likely to cause death of human beings. In fairness to prosecution it was not suggested and could not be suggested that the accused had an intention to kill any human being while operating the plant. Similarly on the aforesaid material placed on record D it could not be even *prima facie* suggested by the prosecution that any of the accused had a knowledge that by operating the plant on that fateful night whereat such dangerous and highly volatile substance like MIC was stored they had the knowledge that by this very act itself they were likely to cause death of any human being. Consequently in our view taking the E entire material as aforesaid on its face value and assuming it to represent correct factual position in connection with the operation of the plant at Bhopal on that fateful night it could not be said that the said material even *prima facie* called for framing of a charge against the concerned accused under Section 304 Part II, IPC on the spacious plea the said act of the accused amounted to culpable homicide only because the operation of the F plant on that night ultimately resulted in deaths of number of human beings and cattle. It is also pertinent to note that when the complaint was originally filed *suo motu* by the police authorities at Bhopal and the criminal case was registered at the police station Hanumanganj, Bhopal as case No. 1104/84 it was registered under Section 304-A of the IPC. We will come to G that provision a little later. Suffice it to say at this stage that on the entire material produced by the prosecution in support of the charge it could not be said even *prima facie* that it made the accused liable to face the charge under Section 304 Part II. In this connection we may refer to a decision of the Calcutta High Court to which our attention was drawn by learned H senior counsel Shri Rajendra Singh for the appellants. In the case of *Adam*

*Ali Taluqdar and Ors.* v. *King-Emperor,* AIR (1927) Calcutta 324 a Division Bench of the Calcutta High Court made the following pertinent observations while interpreting Section 304 Part II read with Section 34 IPC :

> "Although to constitute an offence under S. 304, Part 2, there must be no intention of causing death or such injury as the offender knew was likely to cause death, there must still be a common intention to do an act with the knowledge that it is likely to cause death though without the intention of causing death. Each of the assailants may know that the act, they are jointly doing, is one that is likely to cause death but have no intention of causing death, yet they may certainly have the common intention to do that act and therefore S. 34 can apply to a case under S. 304, Part 2."

Once we reach the conclusion that the material produced by the prosecution before the Trial Court at the stage of framing of charges did not even *prima facie* connect the accused with any act done with the knowledge that by that act itself deaths of human beings would be caused the accused could not be even charged for culpable homicide and consequently there would be no question of attracting Section 304 Part II against the concerned accused on such material. When on the material produced by the prosecution no charge could be framed against any of the accused under Section 304 Part II there would remain no occasion to press in service the applicability of Section 35, IPC in support of such a charge for those accused who were not actually concerned with the running of the plant at Bhopal, namely, accused Nos. 2, 3, 4 and 12.

We may now turn to the charges framed against the concerned accused- appellanty under Sections 324 and 326 of the IPC. Section 324 deals with 'voluntarily causing hurt by dangerous weapons or means' while Section 326 deals with 'voluntarily causing grievous hurt by dangerous weapons or means". Both these sections for their application require material against the accused on the basis of which it could be said that the accused had voluntarily caused such hurt or grievous hurt, as the case may be. Section 321 defines 'voluntarily causing hurt' and provides that, 'whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt". Similarly Section 322 deals with 'voluntarily causing grievous hurt' and lays down that, 'whoever voluntarily causes hurt, if the hurt which

A he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt". For applicability of these Sections the material relied upon by the prosecution in support of such charges must show that the concerned accused had committed the act complained of at least with the B knowledge that by such act he was likely to cause hurt or grievous hurt to the victim. We have already indicated hereinabove that the material pressed in service by the prosecution for framing such charges against the accused falls short of indicating that the act of running the plant on that fateful night at Bhopal which in its turn involved storing and utilising highly dangerous and volatile substance like MIC in their storage tank No. 610 C could not even *prima facie* be said to have been done with the knowledge that by such act itself simple hurt or grievous hurt was likely to be caused to any one. Consequently on such material even charge under Sections 324 and 326, IPC could not have been framed against the concerned accused. Once this conclusion is reached there would also remain no occasion to D press in service against the absentee accused Nos. 2, 3, 4 as well as 12 Section 35 IPC which the prosecution sought to press in service along with substantive Sections 324 and 326 IPC. In fact on the material as placed by the prosecution in support of these charges if a charge under Section 304 Part II cannot be framed then on the parity of reasoning no charge under E Sections 324 and 326 could also be framed. That takes us to Section 429, IPC which deals with 'mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees'. For application of this Section the material must indicate that the concerned accused had committed mischief in the first place. The term 'mischief' is defined by Section 425 IPC. It lays down that, 'whoever, with intent to cause, or knowing that F he is likely to cause, wrongful loss or damage to the public or to any person, or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief"'. Before the said Section is pressed in service the material relied upon by the prosecution must indicate even *prima facie* that the concerned accused by running the plant at Bhopal on G that fateful night had knowledge that by running such plant they were likely to cause wrongful loss or damage to the public or to any person. It is difficult to appreciate how said provision can be pressed in service on the basis of the material referred to hereinabove which does not whisper or even *prima facie* indicate how by running such a plant wherein highly dangerous and volatile substance like MIC was stored in tank No. 610 the H

accused had the knowledge that by that act alone they were likely to destroy anybody's property or cause wrongful loss or damage to any person. Once the applicability of Section 425, IPC dealing with 'mischief' is ruled out on such material there would remain no occasion to invoke Section 429 which for its applicability requires the prosecution to show in the first instance any material against the concerned accused indicating the commission of mischief by the accused. In our view, therefore, on the material pressed in service by the prosecution for framing charges against the accused no charge could have been framed against the concerned accused either under Section 304 Part II or under Section 324, 326 or 429, IPC with or without the aid of Section 35, IPC. On these findings of ours the appeals will be required to be allowed and all these charges will have to be quashed.

However this is not the end of the matter. There still remains the question as to whether any other charge can be framed against the concerned accused for any of the offences under the Indian Penal Code on the basis of the very same material relied upon by the prosecution for framing appropriate charges against the accused. It is true that though originally the criminal case was registered for an offence under Section 304-A of the IPC the Central Bureau of Investigation which took up the investigation thought it proper to press in service Section 304 Part II and Sections 324, 326 and 429 of the IPC. Charges under these Sections have been found by us to be unsustainable on the material produced by the prosecution on record in support of these charges. However that does not mean that on the material as it stands on record the accused cannot even *prima facie* be alleged to have committed any criminal offence for which they can be called upon to face the trial and that they should get a clean chit and clear walk-over. In our view the prosecution on the material as aforesaid had made out a *prima facie* case against the accused for being tried under Section 304-A of the IPC which reads as under :

> "304-A. Causing death by negligence. - Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for the term which may extend to two years, or fine, or with both".

On our finding that the material pressed in service by the prosecution does

A not indicate even *prima facie* that the accused were guilty of an offence of culpable homicide and, therefore, Section 304 Part II was out of picture, Section 304-A on this very finding can straightaway get attracted at least *prima facie*. It cannot be disputed that because of the operation of the defective plant at Bhopal on that fateful night a highly dangerous and volatile substance like MIC got converted into poisonous gas which snuffed B off the lives of thousands of human beings and maimed other thousands and killed number of animals and that all happened, as seen at least *prima facie* the material led by the prosecution on record, because of rash and negligent act on the part of the accused who were in-charge of the plant at Bhopal. Even though, therefore, these accused cannot be charged for C offences under Section 304 Part II the material led against them by the prosecution at least *prima facie* showed that the accused were guilty of rash or negligent acts not amounting to culpable homicide and by that act caused death of large number of persons. We may mention that on the question whether on this material Section 304-A could be invoked or not, D learned senior counsel for the appellants as well as learned Addl. Solicitor General for the respondent-State did address us and, therefore, we can and should, with a view to avoid multiplicity of proceedings, exercise our powers under Article 142 of the Constitution and decide whether the material led by the prosecution can *prima facie support charges under Section 304-A against concerned accused. In the case of State of Gujarat* v. E *Haidarali Kalubhai,* [1976] 1 SCC 889 it was laid down by this Court as under :

> "Section 304-A by its own definition totally excludes the ingredients of Section 299 or Section 300 I.P.C. Doing an act with the intent F to kill a person or knowledge that doing of an act was likely to cause a person's death are ingredients of the offence of culpable homicide. When intent or knowledge as described above is the direct motivating force of the act complained of, Section 304-A has to make room for the graver and more serious charge of culpable homicide."

G

On the facts found in that case it was held that the prosecution evidence did not make out a case of any wilful or deliberate act on the part of the accused in order to cause the death of the deceased by driving the truck in the way he did. Whether the prosecution brings home the charge under H Section 304- A or not will, of course, have to be decided in the light of the

evidence that may be led in the trial against the accused who is required to face the charge under Section 304-A. But for framing such a charge the material on record must at this stage be assumed to be representing a true version of the event. For repelling the applicability of Section 304-A, learned senior counsel for the appellants pressed in service decision in the case of *Ambalal D. Bhatt* v. *The State of Gujarat,* [1972] 3 SCC 525. The following observations in the aforesaid judgment were pressed in service :

> "(i) In a prosecution for an offence under Section 304- A of I.P.C., the court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act and that act was the proximate and efficient cause of the death without intervention of other's negligence. The mere fact that an accused contravenes certain rules or regulations in doing of an act does not establish an offence under Section 304-A, I.P.C.
>
> The act causing deaths must be the causa causans; it is not enough that it may have been the causa sine qua. non. The court has to determine whether the act of the accused is the causa causans or has there been a cause intervening which has broken the chain of causation so as to make the act of the accused, though a negligent one, not the immediate cause or whether it amounts to an act or gross negligence or recklessly negligent conduct. The fact that twelve lives have been lost, however shocking and regrettable it may be, ought not to allow the mind boggle while appreciating the evidence."

It was submitted that the material must *prima facie* show that the alleged act of the accused was the direct result of rash and negligent act. In this connection we must observe that the material led by the prosecution to which we have made a detailed reference earlier *prima facie* shows that there were not only structural defects but even operational defects in the working of the plant on that fateful night which resulted into this grim tragedy. Consequently a prima facie case is made out for framing charges under Section 304-A against the concerned accused. If ultimately on the evidence led by the prosecution and even by the defence if at all they choose to led evidence in rebuttal, it is found that that act complained of was not the proximate and efficient cause of death and intervention of other's negligence had taken place the accused may get acquittal after

A facing the full fledged trial. But that stage has yet not come. It would, therefore, be premature at this stage to say as to what would be the ultimate result of the trial once the accused are made to face such a trial. But it cannot be said that on the material led by the prosecution at this stage even the case of culpable negligence of rashness is also not made out at least
B *prima facie* against the concerned accused and the trial should be nipped in the bud even for such a charge. Our attention was also invited by learned senior counsel for the appellants in support of their contention that the material on record does not *prima facie* make out a case for framing a charge under Section 304-A, IPC. The following observations of Hegde, J. speaking for a Bench of three learned Judges in the case of *Suleman*
C *Rehiman Mulani & Ors.* v. *State of Maharashtra,* [1968] 2 SCR 515, were pressed in service:

> "The requirements of s. 304-A I.P.C. are that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words, there must be proof that the rash
D or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of a person and the rash or negligent act of the accused. There is no presumption in law that a person who possesses only a learner's licence or possesses no licence at all does not know driving. For various
E reasons, not excluding sheer indifference, he might not have taken a regular licence. The prosecution evidence that first appellant had driven the jeep to various places on the day previous to the occurrence was a proof of the fact that he knew driving."

Even that decision cannot be of any avail to the appellants for the simple
F reason that question of proof of rashness and negligence will arise at the stage of trial after full evidence is led by the prosecution and even by the accused side if at all they choose to do so and in the light of that evidence the question would arise whether the charge as framed is made out by the prosecution against the concerned accused. At present we are concerned
G with the short question as to whether on the material led by the prosecution at this stage a case is made out for framing under Section 304-A, IPC or not? It cannot be gainsaid that the voluminous evidence led by the prosecution in this connection at least *prima facie* shows that the concerned accused who operated the plant on that fateful night at Bhopal could be alleged to be at least guilty of rash and negligent act in the way this highly
H volatile substance MIC was handled by them and which ultimately escaped

in vapourous form and extinguished the lives of thousands of human beings and animals apart from causing serious bodily injuries to thousands of others. Our attention in this connection was also invited by learned senior counsel for the appellants to the case of *Kurban Hussein Mohammedali Rangwalla* v. *State of Maharashtra,* [1965] 2 SCR 622. It was submitted relying on the said decision that for punishing an accused under Sections 304-A and 285 of the IPC it was required to be shown that because of the alleged rash and negligent act death must result and death must be the direct and proximate result. It that case on evidence led at the full fledged trial the question arose whether the charge was made out. All these judgments on which learned senior counsel for the appellants placed reliance, therefore, could have applicability for judging the culpability of the concerned accused after they face the trial and entire evidence is led in the case against them. However for framing charge under Section 304-A on the aforesaid material it cannot be said that the said material even *prima facie* did not point out the culpability of the concerned accused in running a defective plant having number of operational defects and in being *prima facie* guilty of illegal omissions to take safety measures in running such a limping plant on that fateful night which resulted into this colossal tragedy. The aforesaid conclusion of ours, therefore, would make out a *prima facie* case against accused nos. 5, 6, 7, 8 and 9 who were in actual charge of running of the Bhopal plant and would require them to face the trial for charge under Section 304-A of the IPC.

So far as the remaining accused nos. 2, 3, 4 and 12 are concerned the material produced on record clearly indicates at least *prima facie* that they being at the helm of affairs have to face this charge for the alleged negligence and rashness of their subordinates who actually operated the plant on that fateful night at Bhopal and for that purpose Section 35 of the IPC would also *prima facie* get attracted against them. A mere look at that Section shows that if the act alleged against these accused becomes criminal on account of their sharing common knowledge about the defective running of plant at Bhopal by the remaining accused who represented them on spot and who had to carry out their directions from them and who were otherwise required to supervise their activity, Section 35 of the IPC could at least *prima facie* be invoked against accused 2, 3, 4 and 12 to be read with Section 304-A, IPC. Consequently we find that on the material led by the prosecution against the accused at this stage a *prima facie* case was made out by the prosecution for framing charges against accused Nos.

A 2, 3, 4 and 12 under Section 304-A read with Section 35 IPC while substantive charges under Section 304-A could be framed against accused Nos. 5, 6, 7, 8 and 9. In this connection Shri Desai, learned senior counsel for the appellants vehemently submitted that the High Court was in error in invoking Section 35 against the concerned accused. Placing reliance on
B *Esso Standard Inc.* v. *Udharam Bhagwandas Japanwalla,* [1975] 45 Comp. Cas. 16 he submitted that, that was a case in which for the individual acts of the directors of the company the company was sought to be made liable by invoking the principle of corporate liability based on the doctrine of directing mind and will. Shri Desai submitted that this was a converse case where for the act of the company which is a corporate body being accused
C No. 12 the individual directors are sought to be roped in. The aforesaid contention of Shri Desai cannot be of any avail at this stage for the simple reason that whether on facts such converse case is made out or not in the light of aforesaid decision will depend upon the evidence that may be led at the stage of trial. But this would not rule out framing of appropriate
D charge against the appellants if there is *prima facie* material against them which in our view has been made available by the prosecution before the Trial Court for framing such a charge against the concerned accused.

Shri Ashok Desai, learned senior counsel then submitted that the material led by the prosecution does not even remotely indicate that
E accused no. 2 who was at Bombay could have shared any knowledge with persons at Bhopal who were actually operating the plant. When from the documentary evidence produced by the prosecution it is *prima facie* indicated that the accused at the helm of affairs was in the apex position enabling him to know the shortcomings of the working of the plant at
F Bhopal. Whether he actually shared knowledge or not will be a question of evidence and proof to be resolved at the stage of trial. However from the material available on record it cannot be said that the prosecution had not *prima facie* made out a case for attracting Section 35, IPC so far as the present accused are concerned. However we must add a caution. We must note that whatever we have observed at this stage in connection with the
G material produced by the prosecution for framing charges against the accused is strictly confined to this limited question. Whether the accused are found actually guilty of the charges framed against them or not will strictly depend upon the evidence that may be led at the stage of trial and the court will have to decide the culpability of the concerned accused, if
H any, strictly confined to the evidence that may be led at the stage of trial.

Our present observations, therefore, should not be treated to have even remotely suggested that in fact the accused are guilty of the offences with which they are liable to be charged pursuant to our present order. Consequently on the material as produced by the prosecution on record charges under Section 304-A read with Section 35 IPC can be framed against accused nos. 2, 3, 4 and 12. We direct the appropriate Trial Court to frame charges as aforesaid against the concerned accused.

However in our view from the material which is produced on record there is a possibility of considering a further question whether charges under Sections 336, 337 and 338 of the IPC with or without the aid of Section 35 can be framed against the concerned accused. They read as under :

> "336. Act endangering life or personal safety of others. - Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.
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> 337. Causing hurt by act endangering life or personal safety of others. - Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.
>
> 338. Causing grievous hurt by act endangering life or personal safety of others. - Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."

As none of the parties have addressed us on these aspects we leave this question for consideration of the learned Trial Judge who may after hearing the parties decide whether on the material as led by the prosecution on record at this stage charges, if any, can also be framed under

A Sections 336, 337 and 338 of the IPC with or without the aid of Section 35 of the IPC. We express no opinion on this aspect and leave it open to the Trial Court to address itself on this question.

As a result of the aforesaid discussion it is held that on the material led by the prosecution appropriate charges which are required to be
B framed against the concerned accused are under Section 304-A, IPC so far as the accused Nos. 5, 6, 7, 8 and 9 concerned while so far as accused nos. 2, 3, 4 and 12 are concerned charges under Section 304-A read with Section 35 IPC will have to be framed. As these offences are triable by the court of Judicial Magistrate 1st Class, Bhopal the Sessions Case shall be trans-
C ferred to the Court of the Chief Judicial Magistrate, 1st Class, Bhopal who will proceed with the trial in accordance with law and frame appropriate charges under Section 304-A with or without the aid of Section 35, as the case may be, against the concerned accused as indicated hereinabove.

In the result the appeals filed by the concerned accused partially
D succeed to the aforesaid extent. Charges framed against them under Sections 304 Part II, 324, 326 and 429, IPC with or without the aid of Section 35, as the case may be, are quashed and set aside. Instead it is directed that the appropriate Trial Court shall frame charges against these accused as indicated in the judgment. The appropriate Trial Court to which the
E case will stand transferred is also directed to consider the further question whether charges should be framed under Sections 336, 337 and 338 of the IPC with or without taking the aid of Section 35, IPC after hearing the concerned parties. On that aspect we express no opinion. Orders accordingly.

V.S.S. Appeal allowed.