

BIHARI LAL

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v.

THE STATE OF RAJASTHAN & ORS.

(Criminal Appeal No. 676 of 2019)

APRIL 15, 2019

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**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Penal Code, 1860: ss.307, 323, 325, 336 and 341 r/w s.34 – Accused-respondent no.2-4 were prosecuted for commission of offences punishable under ss.307, 323, 325, 336 and 341 r/w s.34 IPC – Before the trial court, the case of the accused persons was that while framing the charges, no offence under s.307 IPC was made out against them and, therefore, no charge should have been framed against them under s.307 and in support of their case, they referred to and placed reliance on the two medical reports which were filed by prosecution along with the charge sheet – Trial court discharged them from offence under s.307 and proceeded to frame the charges in relation to other offences – Revision petition filed by complainant-appellant before the High Court against the discharge order was dismissed – Appeal by complainant – Held: Both the Courts below wrongly appreciated the two medical reports, found fault and inconsistencies therein and then came to a conclusion that no prima facie case was made out against respondent Nos. 2 to 4 insofar as the offence under s.307 IPC was concerned – The stage to appreciate the evidence with a view to find fault or/and inconsistencies in the two medical reports arise only when the prosecution leads evidence by examining the doctors in support of the medical reports – That stage was yet to come in this case – Mere perusal of the medical reports filed by the prosecution prima facie showed that a case under s.307 was made out against respondent Nos. 2 to 4 and, therefore, the charge under s.307 ought to have been framed against them along with the other charges – Trial court seized of the trial is directed to frame the charge under s.307 IPC against respondent Nos. 2 to 4.

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A **Allowing the appeal, the Court**

HELD: The stage to appreciate the evidence with a view to find fault or/and inconsistencies in the two medical reports would arise only when the prosecution leads evidence by examining the doctors in support of the medical reports.

B **That stage is yet to come in this case. Trial court is directed to frame the charge under s.307 IPC against respondent Nos. 2 to 4. [Paras 14, 15, 16][50-B-E]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 676 of 2019.

C From the Judgment and Order dated 12.09.2018 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Revision No. 708 of 2018.

H. D. Thanvi, Ms. Preeti Thanvi, Rishi Matoliya, Advs. for the Appellant.

D Samar Vijay Singh, Hardeep Singh Sundria, Anish Maheshwari, Yunus Malik, Ms. Saroj Bala, Milind Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.

E 1. Leave granted.

F 2. This appeal is directed against the final judgment and order dated 12.09.2018 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B.Criminal Revision No.708 of 2018 whereby the Single Judge of the High Court dismissed the criminal revision filed by the appellant herein and affirmed the order dated 02.06.2018 passed by the Additional Sessions Judge, Bhadra, District Hanumangarh in Sessions Case No.40 of 2017.

G 3. A few facts need mention hereinbelow for the disposal of this appeal, which involves a short point.

H 4. Respondent Nos. 2, 3 and 4(accused persons) are facing prosecution for commission of the offences punishable under Sections 307, 323, 325, 336, and 341 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) in the Court of Additional Sessions Judge, Bhadra District Hanumangarh.

5. Learned counsel for respondent Nos. 2 to 4 herein (accused persons) argued that while framing the charges, no offence under Section 307 IPC is made out against them, therefore, no charge should be framed against them under Section 307 IPC. Respondent Nos.2-4 argued this point by referring to and placing reliance on the two medical reports, which were filed by the prosecution along with the charge sheet in support to their case.

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6. The Additional Sessions Judge, by order dated 02.06.2018, accepted the argument of respondent Nos. 2 to 4 (accused persons) and accordingly discharged them from the commission of the offence punishable under Section 307 IPC and proceeded to frame the charges in relation to other offences mentioned above. In other words, the Additional Sessions Judge was of the view that there is no *prima facie* case made out against respondent Nos. 2 to 4 (accused persons) so far as the offence under Section 307 IPC is concerned.

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7. The appellant (complainant) felt aggrieved and filed a criminal revision before the High Court. By impugned order, the High Court dismissed the criminal revision which has given rise to filing of this appeal by way of special leave by the appellant (complainant) in this Court.

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8. So, the short question, which arises for consideration in this appeal, is whether both the Courts below were justified in discharging respondent Nos. 2 to 4 (accused persons) insofar as the offence under Section 307 IPC is concerned.

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9. Heard Mr. H.D. Thanvi, learned counsel for the appellant and Mr. Samar Vijay Singh, learned counsel for respondent Nos.2-4 (accused persons) & Mr. Anish Maheshwari, learned counsel for respondent No.1 (State).

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10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow this appeal and set aside the impugned order.

11. In our considered opinion, both the Courts below erred in discharging respondent Nos. 2 to 4 from the charge of Section 307 IPC. In other words, both the Courts below erred in holding that no *prima facie* case is made out against respondent Nos. 2 to 4 under Section 307 IPC and hence no charge can be framed for their prosecution for commission of the offence under Section 307 IPC.

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A 12. Indeed, the manner in which both the Courts below proceeded to discharge respondent Nos. 2 to 4 from facing the charge of Section 307 IPC and holding that no *prima facie* case is made out against them is faulty and hence cannot be sustained.

B 13. In our view, both the Courts below wrongly went on to appreciate the two medical reports, found fault and inconsistencies therein and then came to a conclusion that no *prima facie* case is made out against respondent Nos. 2 to 4 insofar as the offence under Section 307 IPC is concerned.

C 14. The stage to appreciate the evidence with a view to find fault or/and inconsistencies in the two medical reports would arise only when the prosecution leads evidence by examining the doctors in support of the medical reports. That stage is yet to come in this case.

D 15. Mere perusal of the medical reports filed by the prosecution would *prima facie* show that a case under Section 307 IPC is made out against respondent Nos. 2 to 4 and, therefore, the charge under Section 307 IPC should have been framed against respondent Nos. 2 to 4 along with the other charges.

E 16. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The Additional Sessions Judge, who is seized of the trial, is directed to frame the charge under Section 307 IPC against respondent Nos. 2 to 4 herein.

F 17. We, however, make it clear that respondent Nos. 2 to 4 will be entitled to argue after the evidence is adduced that no case is made out against them under Section 307 IPC and the Court will decide the matter on the basis of evidence adduced by the prosecution on its merits strictly in accordance with law without being influenced by any observations made by this Court.