

SC No. 171/2019
State Vs. Thakur etc.
FIR No. 301 /2018
PS Gokul Puri

18.04.2022

Present: Sh. Ajit Kr. Srivastava, Ld. Addl. PP for State.
All the accused are on bail.
Sh.D. P.Singh, Ld. Counsel for accused Durgesh,
Chintu, Devender Gala, Kinha and Lokesh.
Ms. Heena, Ld proxy counsel for accused Devender
Chatni and Thakur.

Vide this order, I shall dispose off this application under section 216 Cr. P.C filed on behalf of the complainant for alteration of charge.

Arguments heard.

Ld. Counsel for complainant has submitted that this court has framed charges against all accused under section 365/304/34 IPC vide order dated 26.11.2019, but this court has ignored some material evidence while framing the charges against the accused and charges under section 365/302/34 IPC ought to be framed against all the accused. It is further argued that the deceased was in the last company of the accused persons and they had full opportunity to commit his murder as all the injuries opined in the postmortem report were ante mortem and were also lacerated bone deep wounds. It is

further submitted that the evidence of the parties is yet to be recorded and no prejudice is going to be caused to the accused, if charges are modified/alterd. It is prayed that charges under section 365/302/34 IPC, in lieu of section 365/304/34 IPC, should be framed against all the accused.

Ld. Counsels for accused have strongly opposed this application on the ground that this court has already framed charges as per the material available on record and any addition or alteration in charges may be done only if some new material comes on record, which is not there. It is further argued that complainant has no *locus standi* to file this application and same is liable be dismissed. In support of their submissions, Ld. Counsels for accused have relied upon judgment tilted *2013(3)MWN(Cr.)521, P. Krithikalakshmi v. Sri Ganesh, Criminal Revision No.713/2015 State Vs. K. P. Sankar & Ors and Criminal Revision No.654/2007, Krishnammal Vs. The Revenue Divisional Officer & others.*

Perusal of the file shows that Ld. Predecessor has framed charges under section 365/304/34 IPC against all the accused vide order dated 26.11.2019. Thereafter, statement of complainant Pramod Kumar has also been partly recorded, but now this application has been filed. Admittedly, charges are to be framed by the court on the basis of material available on record and such charges may be amended/alterd by the court, at any stage and usually when some new material comes on record. However, in this case, neither new material nor circumstances has come on record, but still complainant has filed this application for alteration of charge.

As per the FIR, all the accused allegedly took away the deceased by making him sit in ECO car to have bath in Gang Nahar, Mussoorie, but accused went missing while having bath and later on his dead body was found abandoned. As per the postmortem report, he sustained some lacerated deep bone wounds on skull area, but there is no opinion that such injuries were caused by the accused persons or were sustained while flowing in river. As such, just on the basis of doubt of the complainant, it is not a ground to amend/alter the charges, accordingly, application dismissed.

However, observations of this court are only incidental and for the purpose of disposal of this application and shall not have effect the merit of this case.

Put up for PE on 20.09.2022.

Material witnesses be summoned for next date of hearing.

(Devender Kumar)
ASJ-02(NE), KKD/Delhi
18.04.2022