

Order below Exh.83 in Sessions Case No.16/2024
(CNR No. MHRT010004272024)

(1). By this application, learned APP prayed for re-examination of PW10 Medical Officer. It is submitted that on 25/09/2025, the examination-in-chief of this witness has been completed. On 03/10/2025, cross-examination by accused has been completed. This witness made in-consistent statement as regards to time of death of the deceased. To remove in-consistency of her testimony, her re-examination is necessary.

(2). Accused no.1 strongly objected to the application by filing say and submitted that the prosecution cannot be permitted to fill-up lacuna in evidence. The witness appeared before the Court with original papers and documents. Medical Officer is the expert witness. She has given her evidence after all of his questions raised by defence counsel. Finally, it is prayed to reject the application.

(3). Accused no.2 raised strong objection and it is submitted that this application has been moved by prosecution to repair the material admission during cross-examination of PW10. Such recall does not fall within the expression “essential for the just decision of the case” contemplated under section 311 of the CrPC. In the letter at Exh.81, the said Medical Officer opined that death might have occurred between 9:15 pm and 10:00 pm on 25/01/2024. The learned advocate Shri. Dingankar for accused no.2 relied upon various judgments which he quoted in his say and

submitted that the witness cannot be recalled merely to explain damaging admissions and Court must not permit the prosecution to re-do its case after cross-examination has exposed inconsistencies. The witness cannot be permitted to retract a valid admission under oath and this will cause serious prejudice to accused. Finally, it is prayed to reject the application.

(4). Heard learned APP at length. Heard learned both Advocates Shri. Waikool and Dingankar for accused extensively. It is material to note that the opinion issued by Medical Officer at Exh.81 is concerned, what is mentioned in that letter is that she came to know that Suresh Dhondur Padwal died on 25/01/2024 at about 9:15 pm to 10:00 pm. The words mentioned in Marathi are that “त्यानुसार मयत सुरेश धोंडू पडवळ, वय ६४ वर्षे, रा. नांदिवडे, भंडारवाडा, ता. जि. रत्नागिरी यांचा मृत्यू दिनांक २५/०१/२०२४ रोजी अंदाजे रात्री ९:१५ ते १०:०० वा. सुमारास या दरम्यान झाल्याचे समजते.”

(5). The prosecution itself relied upon the said opinion by confronting the said document to witness and marking exhibit to said document. The wording in the said letter can never be said to be an opinion of expert based upon certain examination and certain parameters. What is material is the forming of opinion by expert on the basis of certain scientific parameters as an expert. Once the witness has been examined completely and when such witness is an expert, then such expert witness is not expected to be recalled to remove inconsistencies. Admittedly, the accused will have an opportunity to cross examine the witness. However, the testimony of this witness and her opinion as regards to rigor mortis

and condition of body etc. her opinion is given during cross-examination as well as Chief-examination. In such circumstances, I am of opinion that prosecution cannot be permitted to bring something new from the mouth of this witness and that may cause serious prejudice to the accused. There is no ambiguity in the testimony of this witness and therefore it is not permissible to recall this witness. Hence, I proceed to pass following order.

ORDER

- 1) Application Exh. 83 is rejected.
- 2) Parties to take note.

Date :- 29/12/2025. (A. M. Ambalkar)
Additional Sessions Judge, Ratnagiri.

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Case Number		Sessions Case No.16/2024 Exh.83
Name of Stenographer	:-	Shri. Rajesh G. Rahate
Name of Court	:-	Addl. Sessions Judge, Ratnagiri
Date of Dictation	:-	29.12.2025
Order signed by the P.O. on	:-	29.12.2025
Order uploaded on	:-	30.12.2025