



CNR.No.MHSI010001552022

Order below Exh.16 in S.C. No.13/2022

The present application is preferred by prosecution for framing additional charge for the offence punishable under section 449 of Indian Penal Code on the ground that, the assaulter trespassed in the house of deceased and then committed an offence, therefore, charge under section 449 is essential.

2. The accused objected the application on the ground that, the application preferred by the prosecution on own whims without evidence on record which attract section 449 of Indian Penal Code.

3. Heard APP N.P. Konghe for prosecution and advocate S.B. Kolgaonkar for accused at length.

4. On perusal of charge-sheet, charge, present application and say given by accused on Exh.18 and after considering oral submissions of both side advocates the following points arise for my consideration on which court answer thereon with reason as follows:

Sr. No.	<u>Points</u>	<u>Findings.</u>
1)	Whether the prosecution proves case for framing of additional charge of offence punishable u/sec. 449 of I.P.C. against the accused.?	... In the affirmative.
2)	What Order ?	... As per final order.

-:- R E A S O N S -:-

As to point No.1:-

5. The prosecution came with the case the deceased entered on 30/10/2021 between 7.00 p.m. to 31/10/2021 before 8.30 in the house of deceased and committed murder in order to grab the golden ornaments of deceased. It is not the case of accused also that the alleged incident took place in open space, then the assaulter bound to enter in the house of deceased for commission of alleged offence and once the entry of person in the house is unlawful then it constitute offence of trespass. So also, the

evidence yet to be started, then there is no prejudice to the accused in the event of framing of additional charge as opportunity of cross-examination to be availed by accused at proper time.

6. On the other hand, the prosecution will loose opportunity for want of framing of charge for offence punishable u/sec. 449 of I.P.C. if charge is not added in the original charge, so that this court hereby conclude the prosecution proved case for framing of additional charge for the offence punishable under section 449 of I.P.C. and answer point No.1 in the affirmative.

As to Point No.2:-

7. As the court conclude prosecution proved case for framing of additional charge for the offence constitute under section 449 of I.P.C., the application deserves for grant. Hence order.:-

-:-O R D E R:-

- 1) The application of prosecution at Exh.16 is hereby allowed.
- 2) The additional charge for the offence constitute under section 449 of I.P.C. be framed against the accused.
- 3) The prosecution to file draft charge of additional charge on or before 22/07/2022.
- 4) Accordingly, the application is disposed of.

Sd/-xxx

(S.V.Hande)
Sessions Judge,
Sindhudurg-Oros.

Date: 11/07/2022.