

IN THE COURT OF DISTRICT JUDGE-1 AND ADDITIONAL
SESSIONS JUDGE, YAVATMAL
(Presided over by V. B. Kulkarni)

State

- V E R S U S -

Kishor Gawarle

ORDER BELOW EXH.18
(Passed on 23rd August 2024)

The applicant/prosecution filed this application under section 216 of Cr.PC. read with section 302 IPC. It is the contention of the applicant that, the charge in the present case have been framed vide Exh.9B dated 21/08/2024 the charge is for the offences u/s 307 of IPC by supplementary charge-sheet dated 04/04/2018 the investigating officer have filed documents in respect of the death of the injured Sau. Rupali-Bhagat. It is further contention of the prosecution that, on 04/04/2018 itself the supplementary charge-sheet filed on record. The charge framed below Eh.9B does not include the charge for the offence u/s 302 of IPC. The medical papers of deceased /injured shows that, the injured Rupali died on 24/05/2017, the cause of death is multi organ failure due to septicemia due to infection cause falling assault injury to Horacio spine the accused had committed murder of deceased and therefore charge 302 of IPC required to be framed in substitution of the charge 307

2. On this application the accused had replied at Exh.20 and stated that earlier the offence of 324 was registered thereafter the

offence of 307 of IPC was registered against the accused and now the prosecution prayed for registering the offences 302 of IPC which is totally wrong the complainant is suffering from HIV and there is a document along-with the charge-sheet that she has having the disease of HIV her resistance power also very weak and due to which several diseases attracts on her therefore, her death not caused by the said alleged assault by the accused, but due to the HIV disease.

3. On this application I heard both the sides at length. The learned APP Shri. Verma argued that, there is ample material on the record to show that, the deceased died due to said assault and injury he has pointed out that in the medical postmortem report it is clearly stated that, the multi organ failure happened due to septicemia he has elaborately argued that how the injuries turned into septicemia and where the injuries was on the body of the deceased, it is further argued by him that the deceased was hospitalized in several hospital but there is no healing process because the injuries of such nature that, it is difficult to cure her by medicine, the deceased not became normal because of multiple injuries on her body including the spinal cord, all the injuries mentioned in postmortem report attached with the charge-sheet the other material along-with charge-sheet shown the deceased died due to merciless beating to her and because of the sever injuries she suffered form the septicemia.

4. The learned counsel appearing for the accused N. R. Khandare argued that, in this case if the charge is altered then it would be injustice to the accused, alternation and addition of charge always taken place when there is strong evidence that the accused had committed such a serious offence here there is no such material

placed by the IO which shows that only because of the septicemia and the injuries sustained to deceased in assaulted she died in hospital and opposed the application for framing of the charge.

5. On this application I heard both the sides at l and gone through the provision 216 of alternation of charge it is seen that, when there is ground of alternation of charge or addition of charge the court may in its discretion to do the said alternation or addition which is necessary, therefore in view of provision 216 of Cr.P.C. I am of the view that there is sufficient material placed on record by IO and pointed out of learned APP that, the charge is required to be altered and the in place of 307 the offence 302 of IPC required to be added.

6. After hearing both the sides at length, I am of the view that, it is fit case from perusing the postmortem report and medical certificate and the opinion given by Dr. Kamlakar Z. Kove medical superintendent Rural Hospital, Babhulgaon that the charge is required to be altered hence I proceed to pass the following order.

ORDER

1. The application for alternation of charge is hereby allowed.
2. The APP to submit the alter charge of 302 of IPC on next date positively.

Date : 23-08-2024.

(V. B. Kulkarni)
Additional Sessions Judge,
Yavatmal.