

ISHWARCHAND AMICHAND GOVADIA AND ORS.

v

STATE OF MAHARASHTRA AND ANR.

OCTOBER 13, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

*Code of Criminal Procedure, 1973—Alteration of charges—Application seeking production of death certificate indicating a different cause of death from the one produced earlier by the same doctor, rejected—Thereafter application for alteration of charge, filed—Trial court allowed the same—Propriety of—Held, not proper—Trial Court ought to have deferred the question of alteration of charge till examination of the doctor and relevance of subsequent certificate and its acceptability.*

The accused were charged under Sections 306, 498A r/w Section 34 IPC. The complainant is the father of deceased. Pending the trial, the complainant filed an application for producing death certificate dated 10.4.2004 indicating the cause of death as certified by Dr. 'D'. The accused persons opposed the acceptance of document as evidence on the ground that alongwith police papers a death certificate dated 18.5.2000 by the same Doctor was filed which stated the probable cause of death to be cardio respiratory failure. In the subsequent certificate a different cause of death was indicated. The Trial Court kept the application relating to the production of certificate in abeyance to be decided after examination of Dr. 'D'. On the same date, another application was filed for altering charge under Section 304 B IPC. Trial Court altered the charge which was affirmed by High Court. Hence the present appeal.

Allowing the appeal, the Court

**HELD:** The charge can be altered at any stage. But the question is whether in view of the order passed on the same date the order relating to alteration of charge has been passed by the Trial Court. The Trial Court itself noted that as per the first certificate the cause of death was cardio respiratory failure. It, however, noted that some chemicals were present in the viscera. The effect of the presence of those chemicals has necessarily to be considered in the background of both the subsequent certificates, in case the latter certificate is taken on record. That being so, it would be proper for the Trial

**A Court to defer the question of framing charge under Section 304B after examination of the Doctor and relevance of the subsequent certificate and its acceptability. [231-D-F]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1051 of 2006.

**B**

From the Final Judgment and Order dated 13.12.2005 of the High Court of Judicature at Bombay in Criminal Writ Petition No. 1770 of 2004.

R.K. Gupta and Dharam Bir Raj Vohra for the Appellants.

**C**

Shivaji M. Jadhav, Aparajita Singh, S.S. Shinde and V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** Leave granted.

**D**

Appellants call in question legality of the judgment rendered by a learned Single Judge of the Bombay High Court dismissing the Criminal Writ Petition no. 1770/2004 filed under Article 227 of the Constitution of India, 1950 (in short the 'Constitution').

**E**

Background facts in a nutshell are as follows:

Appellants are facing trial for alleged commission of offences punishable under Sections 306, 498A read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The case of the prosecution is that Sharmila, daughter of the complainant was married to appellant no.3 and appellant nos. 1, 2 and 4 are her father-in-law, brother-in-law and mother-in-law respectively. The Sessions Case No. 3791 of 2003 is pending trial in the Court of IV Additional Sessions Judge, Thane. An application was filed before the Trial Court by the complainant through the prosecuting counsel for producing the death certificate dated 10.4.2004 indicating cause of death as certified by Dr. R.M.

**F**

Dhotre. The accused persons opposed acceptance of the document as evidence on the ground that along with police papers a certificate of death, dated 18.5.2000 by Dr. R.M. Dhotre, was filed which stated the probable cause of death to be cardio respiratory failure due to acute respiratory failure. In the subsequent certificate a different cause of death was indicated. That being so, it was submitted that the subsequent certificate should not be taken on

**G**

**H**

record.

The Trial Court held that the production of the certificate dated 10.4.2004 cannot be decided at that stage as prosecution has not explained as to how the certificate was sought to be brought on record after 4 years. Therefore, the matter relating to production of the certificate was kept in abeyance to be decided after examination of Dr. R.M. Dhotre. On the same date another application was filed for adding charge under Section 304B IPC. The trial Court accepted this prayer which was affirmed by the High Court. Same is the subject matter of challenge in this appeal.

It was submitted that the trial Court having already decided in the connected application that the question of accepting the subsequent document would be taken up after the examination of doctor, should not have altered the charge primarily based on the same document.

In response, learned counsel for the respondent-State submitted that the charge can be altered at any time and there is nothing wrong in the order passed by the Trial Court. It is submitted that since charge can be altered at any stage, no prejudice has been caused to the accused.

There is no quarrel with the proposition that the charge can be altered at any stage. But the question is whether in view of the order passed on the same date the order relating to alteration of charge has been passed by the Trial Court. It is to be noted that the Trial Court itself noted that as per the first certificate the cause of death was cardio respiratory failure due to acute respiratory failure. It, however, noted that some chemicals were noted in the viscera. The effect of the presence of those chemicals has necessarily to be considered in the background of both the subsequent certificates, in case the latter certificate is taken on record. That being so, it would be proper for the Trial Court to defer the question of framing charge under Section 304B after examination of Dr. R.M. Dhotre and relevance of the subsequent certificate and its acceptability.

The High Court has failed to consider the relevant aspects and, should not have dismissed the application. The impugned order is set aside.

The appeal is allowed.

D.G.

Appeal allowed.