

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Criminal Application No.5362 of 2014
In
Criminal Application No.5361 of 2014**

The State of Maharashtra. **.. Applicant.**

Versus

Vilas Babarao Kure
And Another. **.. Respondents.**

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for
applicant.

Shri. U.B. Bilolikar, Advocate, for respondent No.1.

Shri. M.A. Tandale, Advocate, for respondent No.2.

With

Criminal Appeal No.472 of 2014

Bhagyashri w/o Vilas Kure. **.. Applicant.**

Versus

The State of Maharashtra
And Others. **.. Respondents.**

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for
Respondent No.1.

**CORAM: T.V. NALAWADE &
Smt. I.K. JAIN, JJ.**

DATE : 25th MARCH 2015.

ORDER:

1) Criminal Application No.5362 of 2014 is filed for condonation of delay of 29 days caused in filing appeal against the judgment and order of Sessions Case No.9 of 2012 which was pending in the Court of the Additional Sessions Judge, Biloli. The State wants to file appeal against the decision of acquittal.

2) In view of contents of the application and after hearing both the sides, the application is allowed and delay is condoned.

3) Criminal Application No.5361 of 2014 is filed for grant of leave to file appeal against the judgment and order of acquittal given by the Additional Sessions Judge Biloli in Sessions Case No.9/2012.

4) The learned Additional Public Prosecutor is heard and even when notice was not served, learned counsel for both the respondents were present and they

submitted that they would like to make submissions on behalf of these respondents. So they were heard to some extent.

5) The original record was not available but the learned Additional Public Prosecutor was having copies of the depositions and this Court had opportunity to go through copies of the depositions.

6) Respondent No.1, Vilas is the father of the deceased. There is material evidence as against Vilas that he had motive for committing murder of his deceased son Vishal, who was aged about 11 years. Vilas had suspicion about character of his wife and he used to say that Vishal was not born from him and deceased Vishal was disclosing about the ill-treatment given to his mother by Vilas to others.

7) Vilas left for Nanded on 17-11-2011 and he took the deceased with him. There is evidence of at least 3 witnesses that they had seen Vishal boarding a bus

proceeding to Nanded. Vilas took Vishal towards Nanded on 17-11-2011 via Wajegaon and the witnesses had seen Vilas in the company of the deceased in Nanded on 17-11-2011. Vilas stayed in Nanded till 18-11-2011. Vishal was not in the company of Vilas on 18-11-2011. Dead body of Vishal was found in river Godawari of Nanded.

8) As Vilas alone returned to his village and he did not offer any explanation about absence of Vishal so First Information Report was given by the wife and investigation was made. It is not in dispute that Vishal died due to drowning in the river. There is evidence of aforesaid nature against Vilas, respondent No.1. The trial Court has disbelieved the witnesses examined by the prosecution who were mainly on the last seen and also on motive. It is a question of appreciation of evidence. There is good arguable case for the State at least as against Vilas, respondent No.1. So the application to the extent of Vilas is allowed and leave is granted to file appeal against him. However, the application as against Shivaji Babarao Kure is dismissed and leave is refused to the extent of this respondent No.2.

9) The appeal as against Vilas Babarao Kure is admitted. Comply the provision of section 390 of the Code of Criminal Procedure.

10) Nobody is present for the appellant in Criminal Appeal No.472 of 2014. Today this Court has considered the matter filed by the State and leave is granted to file appeal only against Vilas, respondent No.1 from the present proceeding. Leave is refused to file appeal as against Shivaji Babarao Kure. The appeal filed against Vilas is admitted by this Court and so the the appeal filed by Bhagyashri, original complainant cannot be admitted as against respondent No.3 - Shivaji Babarao Kure and to that extent the appeal is dismissed. Only one appeal filed by the State as against Vilas is to be registered. Said appeal is to be tagged with the appeal filed by the original complainant.

Sd/-
(Smt. I.K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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