

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.1215 OF 2022
IN
CRIMINAL APPEAL NO.637 OF 2019**

Basaweshvar Mahadev Waghchavare
(Since deceased through his LRs)
Rekha Basaweshvar Waghchavare .. Applicant/Appellant
Versus
State of Maharashtra .. Respondent

**WITH
INTERIM APPLICATION NO.232 OF 2022
IN
CRIMINAL APPEAL NO.637 OF 2019**

Kundalik Shrimant Shingade .. Applicant/Appellant
Versus
Basaweshvar Mahadev Waghchavare
and Anr. .. Respondents

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Mr.Nitesh J. Mohite, Advocate for the Applicant/Appellant in IA 1215 of 2022.

Ms.Meghna Goyalani i/b. Ms.Suvarna S. Yadav, Advocate for the Applicant/Appellant in IA 232 of 2022.

Mr.S.V. Gavand, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : MAY 06, 2022.

P.C. :

The appellant in Criminal Appeal No.637 of 2019, was convicted for the offence punishable under Section 307 of Indian

Penal Code (“IPC”, for short) and sentenced to suffer rigorous imprisonment of 7 years and to pay fine of Rs.1,00,000/- and in default of payment of fine, to suffer rigorous imprisonment for one year. It was further directed that the entire fine amount of Rs.1,00,000/-, if recovered, be paid to complainant Kundalik Shrimant Shingade, by way of compensation under Section 357(3) of Cr.P.C.

2 The Appeal challenging the judgment of conviction is admitted by this Court *vide* order dated 30th April, 2019, and, subsequently, by order dated 23rd June, 2020, the sentence of imprisonment was suspended and the applicant therein was directed to be released on bail.

3 During the pendency of Criminal Application No.367 of 2019, the Appellant Basaweshvar Mahadev Waghchavare had expired on 22nd March, 2021.

4 The compensation party Mr.Kundalik Shrimant Shingade had preferred Interim Application No.232 of 2019, for withdrawal of the amount of Rs.1,00,000/-, deposited towards the compensation amount, in accordance with the directions in impugned judgment and order date 9th April, 2019.

5 Learned counsel appearing for the applicant in Interim Application No.232 of 2017, submitted that since the original accused have expired, the compensation party being the injured is entitled for the compensation of Rs.1,00,000/-, deposited in the trial Court. It is further submitted that no other legal heir had come forward to challenge the judgment of conviction. The wife of the appellant is being prosecuted for the offence punishable under Section 302 of IPC for murder of the appellant Basaweshvar Mahadev Waghchavare

6 The wife of the original appellant Smt.Rekha Basaweshvar Waghchavare had preferred Interim Application No.1215 of 2022 under Section 394 of Cr.P.C., seeking permission to pursue Criminal Appeal No.637 of 2019. It is submitted on behalf of the said applicant that the amount of Rs.1,00,000/-, towards compensation has been deposited by her in the trial Court. The receipt of deposit of Rs.1,00,000/-, has been annexed to this application. The applicant is the legal heir being wife of the appellant and she is entitled to pursue the Appeal in accordance with Section 394 of Cr.P.C. The charge under Section 302 of I.P.C. levelled against her for committing murder of the appellant, is false and it is yet to be proved.

7 Learned APP submitted that the receipt annexed to this

application indicate that the amount towards compensation has been deposited. It also bears the name of the advocate through whom it is deposited. However, this cannot be termed as proof that the applicant in I.A.No.1215 of 2022 has deposited the compensation amount.

8 Basaweshvar Mahadev Waghchavare (Appellant) has expired during the pendency of Appeal. Smt.Rekha Basaweshvar Waghchavare is the wife of Basaweshvar Mahadev Waghchavare. The charge against her is yet to be proved. Legally there is no impediment in allowing the applicant Smt.Rekha Basaweshvar Waghchavare, to pursue the Appeal. Considering the relief sought by the compensation party, the application preferred by the said applicant can be kept pending alongwith the Appeal and hearing of Appeal can be expedited. It is clarified that this Court has not given any finding that receipt of deposit of Rs.1,00,000/-, annexed to the application indicate that the amount has been deposited by Smt.Rekha Basaweshvar Waghchavare, and, the said issue will be dealt with at the stage of final hearing of the Appeal.

:: ORDER ::

- (i) Interim Application No.1215 of 2022, is allowed;

- (ii) The applicant Smt.Rekha Basaweshvar Waghchavare, is permitted to pursue Criminal Appeal No.637 of 2019;
- (iii) Requisite amendment may be carried out in Criminal Appeal No.637 of 2019;
- (iv) Interim Application No.232 of 2022, is kept pending. To be heard alongwith Criminal Appeal No.637 of 2019;
- (v) Interim Application No.1215 of 2022, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)