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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. APPLICATION No. 1130 of 2015

IN

CRIMINAL APPEAL No. 805 of 2015

Amit Bansi Chavan and Anr

..Applicants.

Versus

The State of Maharashtra

..Respondent.

Mr Kuldeep S. Patil, Advocate for the Applicant.

Mrs P.P. Bhosale, APP for the State.

CORAM : A.R.JOSHI,J

DATE : 10th September, 2015

P.C. :

1) Heard the learned Counsel for the applicants on this application for bail / suspension of substantive sentence, during pendency of the appeal. The appeal is already admitted. Both the applicants/original accused are convicted of the offence punishable under section 307 read with section 34 of IPC and sentenced to suffer rigorous imprisonment (RI) for five years each and to pay a fine of Rs.1,000/- each. They are also convicted of the offence punishable under section 452 read with section 34 of IPC and sentenced to suffer RI for three years each and to pay fine of Rs.1,000/- each. During the trial, both the applicants were on bail.

2) The case of the prosecution, and apparently established during the trial, is that on the relevant date both the applicants assaulted PW no.2, brother of

the first informant by entering into the house of the complainant. That time the wife of the complainant and PW no.2 / brother of the complainant were present. After initial assault on PW no.2, the applicants were coming out of the house. That time the complainant PW no.1 reached the spot and he noticed big crowd gathered around his house. The applicants after coming out of the house saw the complainant PW no.1 and also assaulted him. All the three witnesses i.e. PW no.1 complainant, PW no.3 / the wife of PW no.1 and PW no.2 brother of the complainant gave consistent evidence as to the role attributed to both the applicants. Respectively the applicants were holding the chopper and iron pipe during the incident. The injuries were on the head, legs and other parts of the body as alleged by the witnesses. Admittedly, the injury certificates are not produced before the Court by the Investigating Agency and only the letter addressed to the Sassoon Hospital, Pune asking for injury certificates is marked at Exh.38. Apparently, the Investigating Officer has not taken much care for filing the injury certificates during the trial. Even apparently the trial Court also did not look into the matter. Still the trial Court came to the conclusion that the offence punishable under section 307 of IPC has been established against both the applicants/accused and convicted them for the said offence and sentenced them to undergo RI for five years each. The substantive evidence of PW nos. 1, 2 and 3 corroborates each other and go to show that there was deadly attack on PW nos. 1 and 2 by means of iron pipe and chopper.

3) During the arguments, it is strenuously argued by the learned counsel for

the applicants that in the absence of injury certificates, it cannot be ascertained that injuries were of such a serious nature so as to attract the offence under section 307 of IPC. Needless to mention that for attracting the offence under section 307 of IPC actual bodily injury capable of causing death, is not necessary. However, still this aspect is required to be dealt in detail when the appeal is finally adjudicated.

4) In the considered view of this Court, this is not a case in which the applicants can be released on bail during the pendency of the appeal. Independently, later on the applicants can apply for expeditious hearing, if within a reasonable time the appeal is not taken up for final hearing. The application is accordingly disposed of.

(A.R.JOSHI, J.)

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.