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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.715 OF 2016

Dattatray Khanderao Aarge and ors Petitioners

Versus

The State of Maharashtra and anr Respondents

Mr. Vijay Killedar, for the petitioner.

Mr. H. J. Dedia, APP for the State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 29TH FEBRUARY 2016.

P.C. :

1. This petition is preferred by original accused, challenging the order dated 22nd January, 2016, passed by the Additional Sessions Judge, Jaisingpur, in Session Case No.5 of 2013, thereby rejecting petitioner's application for discharge under Section 307 of the Indian Penal Code and requesting the Court to frame charge under Section 324 IPC, in place of 307 IPC.

2. Admittedly charge is already framed under Section 307 IPC and perusal of the impugned order passed by the trial Court does not disclose any illegality in rejecting petitioner's application. The only ground on which discharge under Section 307 of IPC is sought that the injuries sustained by the injured are simple injuries and he was discharged from

the hospital within six days only. However, in order to constitute offence under Section 307 of IPC, the intention of the assailant is material aspect. In the instant case, the intention can be found from the fact that weapon used for assault was sickle and part of body chosen for assault was head. The perusal of medical certificate indicates that there were as many as five C.L.Ws. Out of which one was over parieto temporal occipital region admeasuring 7x4 mm, the second was C.L.W. over left side of face and third was C.L.W. over left forearm and fourth and fifth were on wrist joint.

3. Considering that the weapon used was sickle and part of body chosen for the assault was head, prima face intention of the petitioner in committing assault is writ large on record. Section 307 of IPC is attracted even in the absence of any injury is sustained. In view thereof no illegality can be found in the impugned order of the trial Court. Writ Petition holds no merit and stands dismissed.

4. At this stage it is made clear that the above observations are made only for deciding this writ petition and trial Court shall not get influenced by these observations.

[DR. SHALINI PHANSALKAR-JOSHI, J.]