

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

**CRIMINAL APPLICATION NO. 931 OF 2019
IN
CRIMINAL APPEAL NO. 833 OF 2019**

Kalpesh Tukaram Jadhav & Ors.	...Appellants
Vs.	
The State of Maharashtra	...Respondent

- Mr. Vishal G. Salvi, Advocate for Appellants.
- Ms. Pallavi Dabholkar, APP for the State/Respondent.

**CORAM : P.N.DESHMUKH, J.
DATE : 4th OCTOBER, 2019**

P.C. :

1. Issue notice.
2. APP waive service for respondent no.1/State.
3. This application is for suspension of sentence and for bail by original accused no. 1 and 2, who came to be convicted by the learned sessions judge, Dist. Raigad by its judgment dated 20th April 2019. Accused no. 1 is convicted for offences punishable under Section 354-A(1)(i) and is sentence to suffer RI for three years and further convicted for the offence under Sections 307 read with section 34 of the IPC and is sentenced to suffer RI for seven years and to pay fine of Rs. 25,000/-. In default of payment of fine to suffer RI for one year. While

appellant no.2 is convicted only for the offence punishable under Section 307 read with section 34 of the IPC to suffer RI as aforesaid.

4. Learned counsel for the appellants submitted that though according to the case of the prosecution appellant no. 1 is alleged to have assaulted the victim by Axe on his head, when appellant no. 2 was stated to have held the victim, no such case is said to be established by prosecution as according to the victim, he sustained injury due to fall. By referring to the victim's evidence alongwith the evidence of his wife, the complainant, it is further submitted that even their evidence is contrary on the issue of spot of incident. It is therefore, prayed that application be allowed.

5. Learned APP opposed the application contending that there is direct evidence of assault on victim by both the appellants, which is corroborated by medical evidence and therefore, submitted that application be dismissed.

6. In the background of submissions advanced as aforesaid, it is to be noted that from the evidence of PW-2, the victim, he has admitted that he sustained injury due to fall on the stone and that his statement is recorded by police, when he

was in unconscious state of mind and therefore is unable to state what police has recorded in his statement. Admittedly, there is no further re-examination of the victim.

7. In view of the above admissions, his evidence of assault by appellant no. 1 on his head by axe and role attributed to the appellant no. 2 of his holding the victim, does not appear to be convencing.

8. Similarly, it is material to note that as per the injured, the alleged incident took place when he was proceeding to the house of appellant no. 2 while according to the evidence of complainant, who is wife of injured, the assault was committed in her house. In view of such contrary evidence and as there is no other independent witness examined, inspite of evidence of injured that the incident took place in the presence of his wife as well as others, application is liable to be allowed by imposing conditions as follows:-

ORDER

1. Applicants shall be released on bail on their executing PR bond of RS. 25,000/- (Rs. Twenty Five Thousands Only) each with one surety each in the like amount, subject to payment of fine of Rs. 25,000/- each with the trial court.

2. Applicants shall mark their presence with Roha Police Station quarterly on the 1st day of each such month, pending appeal.
3. Criminal Application is disposed of.

(P.N.DESHMUKH, J.)