

MHPU240007942020

**State****Vs.****Akshay Awate & ors.****ORDER BELOW EXH.95**

This is an application filed by prosecution under Section 216 of Code of Criminal Procedure (for short herein after referred as 'Cr.P.C.').

02. It is contention of prosecution that, PW.2 Sunanda has sustained injury of fracture on her finger. Medical certificate shows same. Said injury is grievous and caused in said incident. Hence, he has prayed to frame charge under section 326 of Indian Penal Code.

03. Accused have filed say vide Exh. 97 and opposed to the application. They have contended that, trial is concluded. None of the witnesses of prosecution has stated hurt with weapon. Section 326 of IPC attracts only when there is grievous hurt caused by dangerous weapon. It does not apply in present case. As such, they have prayed to reject the application.

04. Heard Ld. Advocates for accused and Ld. APP. They have argued in line on their contentions. First of all it is important to note that,

for application of section 326 of IPC there must be i) voluntarily caused grievous hurt, ii) it must be with by means of any instrument for shooting, stabbing or cutting or any instrument, which used as weapon of offence, iii) Said hurt with that weapon is likely to cause death. In light of this provision perusal charge-sheet as well as evidence on record it reveals that, though other witness have stated that, accused have caused hurt with sticks, PW. 2 Sunanda who has sustained injury on her finger did not state such hurt with said sticks. PW. 6 Doctor has stated fracture on left forth finger distal phalynx. Therefore, said injury comes within definition of grievous hurt as enumerated under section 320 of IPC.

05. However, said injury is not stated to be caused with weapon like shooting, stabbing or cutting by PW.2 Sunanda. However, a stick may cover under any instrument, which used as weapon of offence as enumerated under section 320 of IPC. But, it may differ from case to case, whether such instrument like stick would become a weapon of offence which is likely to cause death. In cases where stick or wood used in the offence and hurt is caused on head with it, one can say that, there may be likely to cause death because of that hurt. But, when said stick or wood if, used to cause hurt on hand or leg, it may not in every case, is likely to cause death. Further, blow with that weapon is also important. If,

such blow is slight that, it may not cause death. On the contrary if such blow is so in force, it may likely to cause death of person. As such, it may be concluded that, hurt with stick or wood differs from case to case as is likely to cause death or not, as per its use on part of body and force used while causing hurt.

06. In instant case, PW.2 Sunanda has not stated use of stick or wood to fracture of her finger. If, it is assumed that, said fracture is caused with stick or wood as alleged by the prosecution, said fracture is on finger and it is not likely to cause death. Therefore, said hurt though grievous, not pertains within ambit of dangerous weapon. Therefore, section 326 of IPC does not attract and charge under same section need not be framed. Resultantly, application deserves to be rejected. Hence, following order is passed-

An application is rejected.

Date :- 20/02/2026

(Avinash M. Patil)

Judicial Magistrate First Class, Ghodegaon

CERTIFICATE

I affirm that the contents of this PDF file order are same word for word as per original order.

Name of Steno	: Gaurav A. Bobade.
Name of Court	: Shri. Avinash M. Patil. Civil Judge Junior Division, Ghodegaon.
Dictated and typed on	: 20.02.2026.
Corrected on	: 20.02.2026.
Signed on	: 20.02.2026.