

**ORDER BELOW EXH. 51 IN RCC NO. 194/2018**State of Maharashtra Vs. Manohar and ors.

1. The informant, Sau. Madhuri Gajanan Kharabe, and injured Vitthal Kharabe have filed the present application under Section 216 of the Code of Criminal Procedure, 1973, seeking addition of the charge punishable under Section 307 read with Section 34 of the Indian Penal Code against all the accused.
2. It is contended in the application that accused No.1 Manohar Thakare, in furtherance of the common intention of the other accused, assaulted injured Vitthal Kharabe on vital parts of his body, namely, his head and chin, by means of an axe. It is further contended that the injured had become unconscious after the assault and that all the accused had threatened to kill him. According to the applicants, the nature of the weapon used, the parts of the body targeted and the injuries caused disclose the intention and knowledge required to constitute an offence punishable under Section 307 of the Indian Penal Code.
3. The accused have strongly opposed the application. It is contended that the application has been filed merely to invoke a graver penal provision against them. According to the accused, this Court has already framed an appropriate charge after considering the material placed on record and no case is made out for addition of the charge under Section 307 of the Indian Penal Code. Hence, they prayed for rejection of the application.

4. Heard the learned Assistant Public Prosecutor for the prosecution and learned Advocate Shri M. D. Undal appearing for the accused. Perused the application, the say filed by the accused, the police report, First Information Report, statements of witnesses, medical papers and the charge framed at Exh.39. The following points arise for determination:

| SR. NO. | POINTS                                                                                                                                                           | FINDINGS                |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1       | Whether the material on record discloses sufficient grounds to add a charge under Section 307 read with Section 34 of the Indian Penal Code against the accused? | In the negative.        |
| 2       | Whether the charge framed at Exh.39 requires alteration by adding Sections 324, 326 and 504 read with Section 34 of the Indian Penal Code?                       | In the affirmative.     |
| 3       | What order?                                                                                                                                                      | As per the final order. |

### **REASONS**

5. Section 216 of the Code of Criminal Procedure empowers the Court to alter or add to any charge at any time before the judgment is pronounced. Every such alteration or addition is required to be read over and explained to the accused. The power under Section 216 of the Code is wide; however, it must be exercised judicially on the basis of the material available on record and not merely at the request of either party. The alteration should also not cause prejudice to the accused or the prosecution.

6. At the stage of framing or alteration of charge, the Court is not expected to conduct a meticulous appreciation of the evidence or

determine whether the prosecution will ultimately succeed. The Court has to ascertain whether the police report and the documents submitted therewith disclose a prima facie case for proceeding against the accused for the proposed offence.

7. In the present case, accused Nos.1 to 4 are facing trial. By the charge framed at Exh.39 on 16.12.2024, charges for the offences punishable under Sections 325, 323 and 506 read with Section 34 of the Indian Penal Code were framed against them.

8. The First Information Report lodged by Sau. Madhuri Gajanan Kharabe shows that the incident arose out of a dispute regarding drainage water. It is alleged that accused No.1 Manohar Thakare came in front of the house of the informant and questioned injured Vitthal Kharabe as to why the excreta of a child was washed into the drain. Thereafter, he allegedly abused Vitthal Kharabe and assaulted him on his head and chin by means of an axe, causing bleeding injuries.

9. The First Information Report further alleges that when Vicky Vitthal Kharabe, Gajanan Kharabe and Dnyaneshwar Pable intervened, accused No.2 Rama Manohar Thakare assaulted Vicky and Dnyaneshwar on their heads by means of an iron rod. Accused Nos.3 and 4 allegedly participated in the quarrel, abused the informant's party and threatened to kill them.

10. The police, after completion of the investigation, filed a charge-sheet for the offences punishable under Sections 324, 325, 326, 504 and 506 read with Section 34 of the Indian Penal Code. Thus, the charge-sheet itself contains allegations relating to the use of an axe and

an iron rod, causing injuries to Vitthal Kharabe and the other injured persons, besides allegations of intentional insult and criminal intimidation.

11. For constituting an offence punishable under Section 307 of the Indian Penal Code, the prosecution material must prima facie disclose that the act was done with such intention or knowledge and under such circumstances that, had death been caused, the act would have amounted to murder. Merely because a dangerous weapon was allegedly used or an injury was caused on a part of the body described as vital, Section 307 of the Indian Penal Code does not automatically become applicable. The nature of the assault, circumstances in which it was made, severity and location of the injuries, force used, number of blows, conduct of the accused and surrounding circumstances must be considered together.

12. In the present matter, the incident appears to have arisen suddenly out of a neighbourhood dispute concerning drainage water. The First Information Report alleges an assault by accused No.1 with an axe upon Vitthal Kharabe. However, from the material presently placed before the Court, there is no sufficient indication of repeated blows or of any overt act which, at this stage, unmistakably reflects an intention to cause the death of Vitthal Kharabe.

13. The mere allegation that the injured had become unconscious or that he was referred for further treatment, without corresponding material prima facie establishing an intention or knowledge of the nature required under Section 307 of the Indian Penal

Code, is not sufficient to add the said charge. The medical documents may disclose a grievous injury caused by a dangerous weapon, but the gravity of the injury by itself is not conclusive of the intention to commit murder.

14. Moreover, the general allegation that the accused threatened the injured party with death may constitute the offence of criminal intimidation; however, such threat, by itself, cannot be treated as conclusive proof that the assault was made with the intention to commit murder.

15. Therefore, considering the origin of the occurrence, the manner of the alleged assault, the material in the charge-sheet and the medical documents, this Court is of the view that sufficient grounds are not presently made out for adding a charge under Section 307 read with Section 34 of the Indian Penal Code against the accused. Point No.1 is, therefore, answered in the negative.

16. Nevertheless, while examining the record for deciding the present application, it is noticed that the police filed the charge-sheet for the offences punishable under Sections 324, 325, 326, 504 and 506 read with Section 34 of the Indian Penal Code. The First Information Report specifically contains allegations of assault by means of an axe and an iron rod. An axe and an iron rod, depending upon their manner of use, are capable of being treated as dangerous weapons for the purposes of Sections 324 and 326 of the Indian Penal Code.

17. The medical documents relied upon in the charge-sheet also form part of the record and, according to the prosecution, disclose

grievous injuries sustained by Vitthal Kharabe. The allegations regarding assaults upon Vicky Kharabe and Dnyaneshwar Pable by means of an iron rod are also part of the prosecution case. These allegations prima facie attract the relevant provisions concerning voluntarily causing hurt or grievous hurt by means of a dangerous weapon.

18. There are also specific allegations in the First Information Report that the accused abused and intentionally insulted the informant's party immediately before and during the occurrence. Therefore, the material collected during the investigation prima facie discloses the ingredients of the offence punishable under Section 504 of the Indian Penal Code.

19. However, while framing the charge at Exh.39, charges were framed only under Sections 325, 323 and 506 read with Section 34 of the Indian Penal Code. The offences punishable under Sections 324, 326 and 504 read with Section 34 of the Indian Penal Code, though mentioned in the police report and supported prima facie by the allegations and documents accompanying the charge-sheet, appear to have remained omitted inadvertently.

20. Such an inadvertent omission can be corrected by exercising the power under Section 216 of the Code of Criminal Procedure. Correcting the omission is necessary so that the charge reflects the accusations disclosed by the police report and the accompanying documents and so that the real controversy involved in the prosecution is properly adjudicated.

21. The accused have already been supplied with the charge-sheet and the documents relied upon by the prosecution. The proposed alteration arises from the same incident, the same First Information Report and the same material already supplied to them. Therefore, the alteration does not introduce an altogether new incident or a prosecution case of which the accused had no notice.

22. Any possible prejudice to the accused can be adequately avoided by reading over and explaining the altered charge to them and by granting the parties the opportunity contemplated under Section 217 of the Code of Criminal Procedure to recall or further examine any witness, if such an occasion arises. Accordingly, Point No.2 is answered in the affirmative.

23. In view of the foregoing discussion, the application at Exh.51 deserves to be partly allowed. The prayer for addition of Section 307 read with Section 34 of the Indian Penal Code is liable to be rejected. However, the charge framed at Exh.39 requires alteration by adding the offences punishable under Sections 324, 326 and 504 read with Section 34 of the Indian Penal Code. Hence, I proceed to pass following order.

### **ORDER**

1. The application at Exh.51 is partly allowed.
2. The prayer for addition of the charge punishable under Section 307 read with Section 34 of the Indian Penal Code is hereby rejected.
3. In exercise of the powers under Section 216 of the Code of Criminal Procedure, the charge framed at Exh.39 is hereby altered.

4. In addition to the charges already framed, an appropriate charge for the offences punishable under Sections 324, 326 and 504 read with Section 34 of the Indian Penal Code be framed against the concerned accused in accordance with the allegations contained in the police report and the material accompanying it.
5. The altered/additional charge be separately framed, read over and explained to each accused in the language understood by them, and their pleas be recorded.
6. The prosecution as well as the accused shall be entitled to exercise their rights under Section 217 of the Code of Criminal Procedure, if necessary.
7. The trial shall thereafter proceed in accordance with law.

Pronounced in open Court

Mangrulpir  
Date : 30/07/2026

**(Khwaja C. Kalal)**  
J.M.F.C., Mangrulpir,  
Tal.Mangrulpir, Dist. Washim.

| <b><u>CERTIFICATE</u></b>                                                                                       |    |                                                                  |
|-----------------------------------------------------------------------------------------------------------------|----|------------------------------------------------------------------|
| I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order. |    |                                                                  |
| Name of Court                                                                                                   | :- | Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpir, Dist. Washim. |
| Presiding Officer                                                                                               | :- | Khwaja C. Kalal                                                  |
| Judgment/Order uploaded by                                                                                      | :- | Shri. S. S. Rathod (Jr. Clerk)                                   |
| Date of Judgment/Order                                                                                          | :- | 30/07/2026                                                       |
| Judgment/Order signed by the presiding officer on                                                               | :- | 30/07/2026                                                       |
| Judgment/Order uploaded on                                                                                      | :- | 30/07/2026                                                       |