



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.20 OF 2025

PETITIONER : **Arun Tulshiram Gawande,**
Age – 67 years, Occ. Nil, R/o. Babhulgaon
Jahangir, Tq. Dist. Akola.

..VERSUS..

RESPONDENTS : 1 **State of Maharashtra,**
Through its Police Station Officer, Police
Station, Civil Line, Akola.

2 **Sanjay Dnyandev Dhepe,**
Age – Adult, Occ. Business, R/o. Keshav Nagar,
Akola, Tq. Dist. Akola.

3 **Ajay Vitthalrao Dhepe,**
Age – Adult, Occ. Business,
R/o. Babhulgaon Jahangir, Akola, Tq. Dist.
Akola.

Mr S. K. Bhattacharya, Advocate for Petitioner.
Mr M. J. Khan, APP for Respondent/State.
Mr S. U. Dable, Advocate for Respondent Nos.2 and 3.

CORAM : **M. W. CHANDWANI, J.**

DATED : **28th MARCH, 2025.**

ORAL JUDGMENT

1. The order dated 09.11.2023 passed below Exhibit – 83 by the learned Chief Judicial Magistrate, Akola, in Regular Criminal Case No.422 of 2006, thereby rejecting the application of the petitioner for altering the charges and adding Section 307 of Indian Penal Code, 1860 is challenged by way of this petition.

2. The contention is that accused No.2/respondent No.3 threatened the petitioner by telling him "I will kill you here". Thereafter, accused No.1/respondent No.2 firmly caught hold of the petitioner's hands and accused No.2 hit him on the head with a wooden stick. It is also contended that while deciding the application, the learned Trial Court made observations on the merits of the case which will prejudice the petitioner.

3. The evidence of the material witnesses has already been recorded. Rather, the petitioner has deposed that accused No.2 assaulted him by means of a wooden stick on his head. He has even deposed that accused No.2 told him that he will kill him there. After considering the depositions of the material witnesses, the learned Trial Court came to the conclusion that the petitioner's statement that accused No.2/respondent No.3 told him that he would kill him there only is nothing but an omission. Additionally, considering the material evidence of PW-2 as well as the medical expert PW-7, the Trial Court opined that Section 307 will not be attracted. There is no dispute to the proposition of law that it is not the nature of the injury but the intention to kill which is one of the main ingredients of the offence of attempt to commit murder. The intention is to be gathered from surrounding circumstances and the nature of injuries is one of the aspect to be considered while determining the intention.

4. Though the injured has deposed that while assaulting, accused No.2 told him that he would kill him there but it is an omission. The injuries also do not appear to be serious. It also appears from the facts and circumstances of the case that accused No.2/respondent No.3 made only one assault on the petitioner and then left him there. This is one of the surrounding circumstances. Since, the severity of the injury has been duly considered by the learned Trial Court as well as the learned Revisional Court, therefore, no interference is required in the findings of the Courts below. So far as the apprehension of the learned counsel for the petitioner is concerned that the learned Trial Court has opined on merits, I do not see anything wrong, particularly since the application for addition of charges was filed after the material witnesses had been examined. Therefore, the petition lacks merit and is hereby **dismissed**.

5. Needless to mention that the Trial Court shall not get influenced by the observations made by this Court regarding evidence of assault and other circumstances and decide the case on its own merit.

(M. W. CHANDWANI, J.)