

**COURT OF
PRINCIPAL DISTRICT & SESSIONS JUDGE POONCH**

File No. : 43/Challan
CNR No. : JKPN010000812018
Date of Institution : 25.02.2011/05.11.2018
Date of Decision : 13.08.2026

State through SHO Police Station, Surankote in FIR No. 173/2010 U/S (s) 307, 452, 325, 324, 147, 148, 323 RPC.

Through:- Mr. Pankaj Sethi, P.P

Vs

1. Nazir Hussain S/o Haditullha
2. Mohd Iqbal S/o Hadit Ullaha
3. Mohd Latif S/o HaditUllha
4. Mohd Majeed S/o Hadit Ullha
5. Sabar Hussain S/o Nazir Hussain
6. Qaid Iqbal S/o Mohd Iqbal
7. Shadi Khan S/o Hadit Ullaha

All residents of Fazlabad, Tehsil Surankote District Poonch.

(Accused)

Through:- Mr. Shoket Amin Manhas, Advocate

CORAM:

Susheel Singh
UID-JK00144

JUDGMENT

1. The prosecution case, in brief, is as under:-
 - (i) That on 02-11-2010, the complainant of the case, despite being injured, appeared before the Police Station and submitted a written application stating that complainant is a resident of Faisalabad. The accused namely
 1. Mohd Iqbal 2. Nazir Hussain 3. Mohammed Latif 4. Mohammed Majid, sons of Hidayatullah 5. Javed Iqbal 6. Zarafat Iqbal 7. Chhotu 8. Qaid Iqbal, sons of Mohammed Iqbal 9. Sabir Hussain 10. Naveed Ahmed, son of Nazir Hussain 11. Shameem Akhtar, wife of Nazir Hussain 12. Shagufta

Parveen 13. Sonia, daughters of Nazir Hussain 14 Rakhiya Begum, wife of Mohammed Iqbal 15 Najam-ul-Nasa Begum W/o Mohd Majid 16. Fareed Ahmed 17 Shakur Ahmed, sons of Faizullah and 18 Shaadi Khan, son of Hadatullah, caste Malik, resident of Fazlabaad are paternal cousin brothers of complainant, due to one personal relation and dispute regarding land, they are bearing enmity against him. On 02/11/2010 at about 7:00 AM, the above-mentioned accused persons, with common criminal intention and criminal conspiracy, armed with sticks (lathis) and sharp-edged weapons (rambees), launched an attack and forcibly entered into complainant's house and started beating and assaulting him. Mohd Iqbal was holding a sharp-edged weapon (rambi) and made a fatal/attempt-to-kill attack on the complainant's head, while the other accused persons, using lathis (sticks) started beating and assaulting complainant's family. Complainant's wife ran towards Mohalla Dandi and raised an alarm for rescue. In the meantime, upon hearing the cries, the father of Complainant's wife (the complainant's father-in-law) came to Complainant's house. At that time, the accused Mohd Iqbal, who was chasing Complainant's wife with the intention to assault her, made a direct blow with the rambi with the intention to kill Lal Hussain (the complainant's father-in-law). As a result, he fell on the spot. Whereas, Nazir Hussain and the other accused persons, using lathis (sticks), severely beat and injured the family members of complainant as well as other persons who came to rescue and intervene. That on hearing the hue and cry, the complainant's brothers-in-law namely Taraiz Ahmed and Mohd. Farooq also reached the spot. Accused Mohd. Iqbal made a murderous attack with a rambi upon the complainant's father-in-law and the other accused persons also assaulted the persons from the neighbourhood who came to rescue, by means of lathis (sticks) and fists and kicks, etc.

- (ii) Consequently, on the basis of the report, FIR was registered at Police Station, Surankote for the offences punishable under Sections 307, 452, 147, 148, 323 148 RPC and the investigation of the case was entrusted to Shri Munshi Khan, ASI. During investigation, the ASI, after reaching the

spot, inspected the place of occurrence and prepared the site plan. He also recorded the statements of witnesses under Section 161 Cr.P.C separately after ascertaining the facts of the occurrence. The statements of two witnesses were also got recorded under Section 164-A Cr.P.C and certified copies of the said statements were obtained from the Court of competent jurisdiction. During investigation, the weapon of offence, namely rambi, wooden stick, and guch-type lathis, were recovered and seized, and separate seizure memos were prepared in chronological order. After obtaining the medical opinion, offences under Sections 325 and 324 RPC were also found to be made out, and the injureds were medically examined. From the circumstances of the case, spot inspection, site plan, seizure memos, medical injury reports, ascertaining the facts of the incident, and the statements of witnesses recorded under Sections 164-A Cr.P.C and 161 Cr.P.C, it was found that the complainant and the accused persons are related to each other and are paternal cousins (sons of paternal uncles). There has been a long-standing enmity between both the parties regarding land. Accused Nazir Hussain and other accused persons wanted to forcibly grab the land of the complainant, and due to this enmity, on 02-11-2010 at about 7:00 AM, the accused persons namely: 1. Nazir Hussain 2 Mohd. Iqbal 3 Mohd. Latif 4 Mohd. Majid, sons of Hidayat Ullah 5 Sabar Hussain, son of Nazir Hussain 6 Qaid Iqbal, son of Mohd. Iqbal 7 Shadi Khan, son of Hidayat Ullah, caste Malik, resident of Fazlabaad, with common intention and with criminal motive, being armed with rambi, wooden roll, and lathis (sticks), and with the intention to kill, forcibly entered into the residential house of the complainant and started beating and assaulting. The wife of the complainant came out for intervention and raised hue and cry. Upon this, neighbours and other persons of the locality reached the spot. When they tried to rescue the complainant, the accused persons also caused severe injuries to them. The injured persons include Mateer Ullah, son of Hidayat Ullah, Shahbano wife of Mateer Ullah, Sakina Begum, wife of Mukhtar Ahmed, Gulnaz Akhter, wife of Mohd. Reyaz, Lal Hussain, son of Mohd. Hussain, Farooq Ahmed, Taraiz Ahmed, sons of Lal Hussain, all

caste Malik, residents of Fazalabad, who sustained injuries. During investigation, it was found that injured Shahbano, wife of Mateer Ullah, caste Malik, resident of Fazalabaad, was assaulted by accused Nazir Hussain by means of a wooden roll (guch-type), causing blows on her head and back, resulting in internal injuries. She was referred from Sub District Hospital Surankote to Government Medical College Jammu, where an operation of her head was conducted. Similarly, injured Lal Hussain was assaulted by accused Mohd. Iqbal by means of a rambi, causing injuries on his head and back portion of the body. The other accused persons also assaulted the injured persons with lathis, fists and kicks. Thus, the offences punishable under Sections 307, 452, 325, 324, 147, 148 and 323 RPC are found proved against the accused persons 1. Nazir Hussain 2 Mohd. Iqbal 3 Mohd. Latif 4 Mohd. Majid, sons of Hidayat Ullah 5 Sabar Hussain, son of Nazir Hussain 6 Qaid Iqbal, son of Mohd. Iqbal 7 Shadi Khan, son of Hidayat Ullah, caste Malik, resident of Fazlabad. No other person, as per the initial report, was found involved in the occurrence. As far as the accused persons are concerned, accused Nos. 1, 3 and 7 are present before the Court. Efforts were made to trace accused No. 2, however he could not be apprehended. In the absence of evidence regarding his presence, a request for initiating proceedings under Section 512 Cr.P.C was made.

2. Initially the instant challan was presented before the Court of Ld. Chief Judicial Magistrate, Poonch on 25/02/2011. Since the offence under section 307 RPC was exclusively triable by the Court of Sessions, the challan was committed to this Court on 30/03/2011. Upon consideration of the record, this Court vide order dated 18/05/2012 held that no prima facie case under section 307 RPC was made out against the accused persons. Accordingly, charges for the commission of offences punishable under sections 452, 147, 148, 323, 324 RPC were framed against accused Nos. 1,3, 4, 5, 6, and 7, whereas charges under sections 452, 148, 325 RPC were framed against accused No. 2. Consequently, the challan was transferred to the Court of Ld. JMIC Surankote. Thereafter, the Hon'ble High Court of Jammu & Kashmir vide order dated

07/09/2018, allowed the revision petition and set aside the order of discharge passed by this Court. The matter was remanded to this Court for fresh consideration in accordance with the facts of the case and the law governing passed an order in revision and allowed the same and observed that the order of discharge, as passed by the this Court was set aside and the case was remanded to this Court for accord of fresh consideration to it in accordance with the facts and the law governing the subject. Pursuant thereto, the challan file was received back by this Court on 05/11/2018.

3. This Court vide order dated 08/02/2019 formally charge-sheeted the accused persons for the commission of offences under sections 307, 324, 147, 451, 148, 325, 323 RPC. The charge-sheet was read over and explained to the accused persons. It was asked from the accused persons whether they plead guilty or claim to be tried. The accused persons, however, pleaded not guilty and claimed to be tried. The prosecution, as such, was directed to lead evidence in support of its case.
4. In order to bring home the guilt of the accused persons, the prosecution, out of the list of 19 witnesses cited in the calendar of the challan, examined 11 witnesses.
5. A brief resume of the evidence of the prosecution witnesses are as under:-

STATEMENTS OF PROSECUTION WITNESSES:

(i) PW-2 Shokat Hussain, son of Fateh Mohd., resident of Fazlabaad, Tehsil Surankote, District Poonch: During examination in chief by Ld. P.P, the witness deposed that he knows the accused persons who are present in Court today. He stated that the occurrence took place on 02-11-2010, when the accused persons attacked him near his house due to a dispute regarding a “mannu tree” and entered into his house and started beating and assaulting. The occurrence took place at about 7:00 AM, the accused persons entered inside his house, broke utensils, and also broke the stove. Shahbano and Lal Hussain sustained injuries. Lal Hussain received an injury on his head. The accused persons who were present on the spot included Nazir

Hussain, Mohd. Latif, Mohd. Iqbal, Shadi Khan, Mohd. Majid, Sabar Hussain, Qaid Iqbal, Shakoor Hussain and Fareed Ahmed. The police reached the spot and that he got the report registered. He submitted a written application in the Police Station at about 10:00 AM. The contents of his initial written application have been read over to him and the same are correct. He identified his signatures on the same. It is exhibited as EX.PW-2. The contents of the FIR No. 173/2010, along with its annexures, was read over to him and are correct. He identified his signatures on the same. It is exhibited as EXPW-2/A. The contents of the seizure memo of the rambi, exhibited as EXPW-12, were read over to him and are correct and he identifies his signatures on the same. The police inquired from him and also recorded his statement. He also sustained injuries. He received an injury on the left side of his neck.

During cross examination by Ld. defence counsel, the witness deposed that his statement was recorded on the day following the fight. He stated that the seizure memo was prepared on the day of occurrence by the police, and that it was prepared at the place of occurrence at about 10:00 AM, and that he was present on the spot at that time. He admitted that the occurrence was of 02-11-2010. The document EXPW-12, along with its annexure, is dated 28/01/2011, and therefore the document, along with annexure, is incorrect. Thereafter, the witness voluntarily stated that the document is correct, and that his earlier statement was wrong, he remained admitted in the hospital for 4 days. He admitted that giving a false statement in Court is an offence. Despite that, it was recorded that on the date of occurrence at about 10:00 AM, he was present on the spot, and that the seizure memo was prepared in his presence. He stated that during the quarrel, the police reached the spot and the police seized the articles from the spot. He initially stated that nobody handed over the seized articles, however later he stated that the date written on the seizure memo is correct. His statement was recorded in the Police Station. He was confronted with his statement under Section 161 Cr.P.C, wherein it is written that Mohd. Farooq, son of Lal Hussain, had snatched the rambi from Mohd. Iqbal during the fight and produced it before the police. The said statement is dated 02-11-2010, and as per the witness, it is correct

that his statement was recorded on the spot at about 10:00 AM. Accordingly, the seizure memo and his admission in hospital are incorrect. He was in full senses when he submitted the initial application to the Police Station for registration of FIR, and he had submitted the application against 17 persons. However, today he has given statement only against 4 accused persons who are present in Court in hearing. He was confronted with his statement under Section 161 Cr.P.C and also stated that in the initial application it was written that there was a dispute regarding a mannu tree, due to which enmity existed between him and the accused persons. However, on perusal of the initial application, it is clear that no such mention is present therein. He stated that in Ex. PW-2 it is mentioned that there is a relationship and there is enmity due to land dispute; however, this is written but it is not correct. He got the application written by petition writer, and he had told him about the mannu issue, but the writer did not write it. He admitted that he resides in Ward No. 05, and his father-in-law resides in Ward No. 06. He admitted that there is a distance of about half kilometre between his house and his father-in-law's house. He denied the suggestion that a report against him and other witnesses was filed on the date of occurrence and that the accused persons got it quashed on the basis of compromise, as suggested. He did not see the seized rambi in the Court today. Around his house the houses of Mohd. Aslam, Mateer Ullah, Sakina Bi, Gulnaz Begum, Mohd. Rafiq, Jalani, Mohd. Hussain, Mohd. Sharif and Mohd. Zamaan are situated, and all these persons came on spot on the date of occurrence. Sarpanch Atta Ullah also came to the spot and all of them had seen the occurrence with their own eyes. He admitted that at that time the elections for Sarpanch were going on. However, he denied the suggestion that Atta Ullah got a false incident created and got the challan presented, as suggested. No further cross-examination was asked.

(ii) **PW No. 3 Materr Ullah son of Hidayat Ullah, resident of Fazlabaad, Tehsil Surankote recorded on 17/10/2012:** During examination in chief by the Naib Court, the witness deposed that he has no knowledge regarding the occurrence. His house is situated at a distance from the houses of the accused persons. At this stage, the Naib Court submitted that the witness has turned hostile and requested permission to cross-examine him, as he is

not supporting his statement recorded under Section 161 Cr.P.C. For sufficient reasons, permission to cross-examine is granted.

During cross examination by the Naib Court, the witness stated that the police had neither recorded his statement nor had the police called him. The contents of the statement under Section 161 Cr.P.C are not correct and that he did not put any thumb impression on the said statement. The complainant and the accused persons belong to the same biradri. No further question was asked.

No question was put by Ld. defence counsel, despite opportunity having been granted.

(iii) **PW No. 3 Mateer Ullah, son of Hidayat Ullah, caste Malik, resident of Fazlabaad, Tehsil Surankote recorded on 19/02/2019:** During his examination in chief by Ld. P.P, the witness deposed that he knows the accused persons who are present in the court today, as well as those who have exempted. However, he has no knowledge regarding the occurrence, as he was in his own house, which is situated at some distance from the place of incident. He has no knowledge regarding the occurrence. At this stage, the PP submitted that the witness has turned hostile and requested permission to cross-examine him. Permission is granted.

During cross examination by the PP, the witness stated that the accused persons and he are residents of Fazlabaad and are neighbours, and their houses are situated near each other. He has no knowledge as to whether any enmity/dispute regarding land exists between Shokat Hussain and the accused persons. He has no information in this regard. On 02-11-2010, at about 7:00 AM, when Shokat Hussain and his wife raised hue and cry, the witness, upon hearing the noise, went to the spot, his wife had died about four years earlier, and upon hearing the hue and cry, she did not go to the spot along with the witness, and the witness did not give any statement to the police. The statement attributed to me by the police is not given by him. No article was seized/recovered in the presence of the witness. Today, the witness has not come along with the accused persons; rather, he has come to the Court separately. No further question was asked by the PP.

No question was put by Ld. defence counsel, despite opportunity having been granted.

(iv) **PW 4 Mohd. Rafiq @ Jalani, son of Mohd. Sarwar, resident of Fazlabaad, Tehsil Surankote:-** During examination in chief by Ld. P.P, the witness deposed that he knows the accused persons who are present in the Court today, as well as the other exempted accused persons. He stated that the witness was not present at the time of occurrence; therefore, he has no knowledge about the incident. The witness, on his own, stated that he had appeared earlier also and had given his statement, and that today he has come again to give his statement. At this stage, the PP submitted that the witness has turned hostile and requested permission to cross-examine him. Sufficient grounds exist; therefore, permission to cross-examine is granted.

During cross examination by Ld. PP, the witness stated that he used to work as a Secretary in the co-operative society. He did not receive any salary; however, he used to receive payment on the basis of commission/recovery. He has got his statement recorded in this case in the Court at Surankote, and there also he had stated that he has no knowledge regarding the occurrence. No signatures were obtained from him on his statement recorded in the Court at Surankote. His signature does not appear on the statement under Section 161 Cr.P.C annexed with the file, nor does it bear his signature. The statement attributed to him is incorrect, and that he never gave any such statement to the police. No further question was asked.

No question was put by Ld. defence counsel, despite opportunity having been granted.

(v) **PW- 5 Mohd. Aslam, son of Ghulam Ali Khan resident of Fazlabaad, Tehsil Surankote:-** During examination in chief by Ld. P.P, the witness deposed that he knows the accused persons, about one to one and a half years ago, he had only heard that some quarrel has taken place. He had heard that a fight had occurred between the complainant and the accused persons, later the police came, and they obtained his signatures, however, they did not ask him any statement. No further question.

During cross examination by Ld. defence counsel, the witness stated that no quarrel took place in his presence. No further cross-examination was put despite opportunity having been granted.

(vi) **PW-6 Sakina Bi, wife of Mukhtar Ahmed R/o Fazlabaad, Tehsil Surankote:-** During examination in chief by Ld. P.P, the witness deposed that she knows the accused persons who are present in Court today and also the exempted accused Sabar Hussain. Accused Nazir Hussain is her paternal uncle and the complainant Shaukat Hussain is her real brother. She has no knowledge regarding the occurrence, as she lives at a distance. At this stage, on the request of the learned PP, the witness was declared hostile and permission to cross-examine her was granted.

During cross examination by Ld. PP, the witness stated that she did not go to inquire about the quarrel after hearing about it. She used to visit the complainant after 4-5 months. Accused Nazir is her paternal uncle, and whenever she visits, he takes care of her. After the death of her father, her uncle and brother behave well with her. The police did not record her statement. Today she has not come along with the accused persons; rather, she has come in a separate vehicle. The accused persons have not committed any injustice against her, therefore she does not want to annoy them. No further question was asked.

No question was put by Ld. defence counsel, despite opportunity having been granted.

(vii) **PW No. 7 Gulnaz Akhter, wife of Mohd. Reyaz, resident of Fazlabaad, Tehsil Surankote:-** During her examination in chief by Ld. P.P, the witness deposed that she knows the accused persons who are present in the Court and also the exempted accused Mohd. Majid. She has no knowledge regarding the occurrence, and that her statement was not recorded by the police. At this stage, the PP submitted that the witness has turned hostile and is not supporting the prosecution case. Sufficient reasons exist, therefore, the witness is declared hostile and permission to cross-examine is granted.

During cross examination by Ld. P.P, the witness stated that she knows Shokat Hussain, son of Fateh Mohd., caste Malik, resident of Fazlabad. His house is situated at a distance of about one kilometre from her house. She

stated that she does not know whose houses are in her neighbourhood, although her relatives are residing at Fazlabad. The houses of the accused persons are situated at a distance of about 2 to 3 kilometers from her house. The accused persons are not her relatives; rather, they are relatives of the complainant. It is incorrect that on 02-11-2010, Shokat's wife raised hue and cry that the accused persons were fighting with them, and that she had gone to their house to rescue them, as suggested. She is illiterate and puts her thumb impression and does not sign. The name of her husband's elder brother (Jeth) is Mumtaz Ahmed, who lives adjacent to her house. It is incorrect that when she, along with her Jeth, went to the spot and Nazir Hussain was holding a wooden stick/roll, with which he struck blows on the head and back of Shahbano, and that Mohd. Iqbal was holding a rambi and caused injuries on the head and body of Shokat Hussain and Lal Hussain, and that the other accused persons were holding lathis and caused injuries, as suggested. No fight or quarrel took place in her presence, and no compromise between the parties took place in her presence. However, it may have taken place privately. She has no knowledge, Shahbano was the real sister of the accused persons, who later died after the occurrence. No further question was asked.

No question was put by Ld. defence counsel, despite opportunity having been granted.

(viii) **PW-8 Shah Bano, wife of Mateer Ullah, resident of Fazlabaad, Tehsil Surankote:** During examination in chief by Ld. P.O, the witness deposed that she knows the accused persons. The accused persons are her nephews (Bateeje). A quarrel had taken place. The police arrived at the spot afterwards. The quarrel was regarding a house. She does not remember the date and month of the occurrence. The police had recorded her statement. She was inside her house and the fight took place after entering inside. Both the complainant and the accused persons are her nephews. She is giving her statement voluntarily. No further question was asked.

During cross examination by Ld. defence counsel, the witness stated that she was away from the place of occurrence and she has no knowledge

regarding the occurrence. No quarrel took place in her presence. She did not sustain any injury. No further question was asked.

(ix) PW-9 Lal Hussain S/o Mohd Hussain R/o Fazalabad Tehsil Surankote:

During examination in chief by Ld. PP, the witness stated that he knows the accused persons who are present in the court. Further stated that the incident took place on 2nd November and about 14 years have passed since the quarrel occurred. Shoket Hussain is his son-in-law (Damaad). The quarrel had taken place regarding a land dispute. At about 7:30 in the morning, upon hearing noise, he came to the spot. The accused persons had beaten his daughter. The accused persons also pushed him to the ground and started beating him. He moved a little ahead from there, whereupon the accused Nazir caught him by the neck and Shadi Khan held his arms and Mohd. Iqbal struck him on his head with a rambi. When he fell down, there was a large group of the accused persons present there, which included both men and women. In the meantime, he further stated that his paternal aunt (puphi) also came to the spot, and the accused persons also beat her and about two years after that assault, she died. He was taken from there to the hospital for treatment. The police conducted inquiry from him and recorded his statement. The statement of the witness that was written by the police was correctly recorded. No further question was asked.

During cross examination by Ld. defence counsel, the witness stated that the statement, which he had given to the police, was signed by him. When he was in the hospital, the police recorded his statement there about one month after the occurrence. It is correct that his statement was recorded in the hospital, and it is not correct that his statement was recorded at his house. If it is written that the statement was recorded at the house, then that would be incorrect. He knows Urdu and can read it, however, due to weak eyesight, he is presently unable to read the statement. If it is written that the period was one month and ten days, then it would not be correct; however, it may be one or two days more than one month. The quarrel had taken place at about 7:30 in the morning. It is recorded in the police statement that on 02/11/2010, due to the some enmity, the accused persons (Nos. 1-14) attacked at about 9:00 AM, which is not correct. The names of the 14 accused

persons which are mentioned in the statement of the complainant, were all present at the spot and they had participated in the quarrel. All the daughters, sons, and other family members of the accused persons present in the court had also taken part in the quarrel, whose names he does not remember at this moment. It is correct that he resides in Ward No. 6, Mohalla Takha, whereas Shoket Hussain and the accused persons reside in Mohalla Kantu and Koat, which falls in Ward No. 5, Fazlabad. He cannot state exactly how far the house of his son-in-law is from his own house; however, the distance may be about 1/1.25 jareeb. Apart from the house of the complainant in the case, there are also the houses of Mohd. Aslam, Shahbano, Mateer Ullah, and Gulnaz Akhter, who is the sister-in-law of the complainant. The name of Gulnaz's husband is Ditta, also called Riyaz, who was also alive at that time. Iftar, who is the son of Mohd. Aslam, also has a house there. The house of Sakeena Bi, wife of Kala, and later stated to be the wife of Mukhtar, is also there. All these persons had come to the spot, and besides them many other people had also gathered at the place of occurrence. Mohd. Rafiq Jalani had also come to the spot and he stopped the quarrel. Shahbano is the paternal aunt of Shoket, the complainant in the case. Mohd. Aslam is the paternal uncle of the complainant Shoket. If all these witnesses are produced in the court and examined on oath, then if they deny the occurrence it would mean that no quarrel had taken place; however, if they admit it, then action should be taken accordingly. An FIR dated 02-11-2010 at about 8:00 AM had been registered against us, in which he had been shown as an accused. It is not correct that the said case was withdrawn against us by the accused on the basis of a compromise, as suggested. Rather, the court itself dismissed the case. The complainant's son-in-law is a poor person, and the accused persons have forcibly occupied his land. Due to being poor, he does not have money and therefore cannot file a case against the accused persons. Quarrels and disputes used to occur between the accused and the complainant. The complainant in the case was poor, therefore an FIR could not be lodged against the accused; however, the complainant did not get the above-mentioned statement recorded in his statement under Section 161 Cr.P.C. The complainant is giving such a

statement for the first time. The witness voluntarily stated that the matter regarding the grabbing of land arose after this case. No application regarding demarcation of the land has been submitted by the complainant of the case before the DC Office or the Tehsildar. The witness further voluntarily stated that if any such application has been submitted in this regard, the complainant would know about it. He had received an injury in the middle of the head, as well as injuries on the back and on the leg, and blood had come out from all these injuries. It is stated that blood has been coming out from these injuries for the last 14 years. It is not correct that we had assaulted the accused persons and, in order to save ourselves, we lodged this FIR, as suggested. Shahbano had received severe injuries on her head and all over her body. The complainant cannot state exactly where the other injured persons, mentioned above, had received their injuries. Among those mentioned above—Mohd. Aslam, Mateer Ullah, Sakina Bibi, Gulnaz Begum, Shahbano, Iftar, and Mohd. Aslam—were severely beaten in the presence of the complainant. No further question was asked.

(x) **PW-10 Mehmood Ahmed, son of Nazir Hussain, resident of Fazlabaad, Tehsil Surankote recorded on 26/02/2013:-** During examination in chief by Ld. P.O, the witness deposed that he knows the accused persons. He has no knowledge regarding the occurrence. At this stage, Ld. P.O submitted that the witness has turned hostile and requested permission to cross-examine him. For sufficient reasons, permission to cross-examine is granted.

During cross examination by Ld. P.P, the witness stated that he has heard the contents of the seizure memo, which he admits to be true and correct. He identifies his signatures over it. Note:- Seizure memos and lathis are exhibited as EXPW-10 MA. The lathis were seized in his presence.

During cross examination by the Ld. defence counsel, the witness stated that the police went on the second day of the quarrel. The witness does not know from where the lathis were brought by Shamim Akhter. The lathies were in the custody of police and had been seized. It is wrong to suggest that the seizure memo was prepared after 19 days, rather the police visited the place of occurrence on the very next day and prepared the seizure memo. No further question was asked.

(xi) PW-10 Mehmood Ahmed, son of Nazir Hussain, resident of Fazlabaad, Tehsil Surankote recorded on 15/02/2020:- During examination in chief by Ld. P.P, the witness deposed that he knows the accused persons. Police went on the spot. Police had seized lathis from the spot. He also accompanied the police. Police obtained his signatures. He has heard the contents of seizure memo of lathis and admits the same to be true and correct. He identifies his signatures over the same. Note:- It is exhibited as EXPW-10. The items seized are not the same which were seized.

During cross examination by Ld. P.P, the witness stated that the incident is of the year 2010, he is a Chowkidar and used to accompany the police to distant places. The day, when the police went to the spot, he was telephonically called by police on the spot. Two lathis were lying on the field and the same were seized. The same were not produced by anyone. Police themselves picked up the same. Regarding the seizure memo, the paper which was prepared and which was prepared in the Zimni, the same have not been read over to him. The contents of EXPW-10 have been read over to him. It is incorrect.

(xii) PW-12 Farooq Hussain S/o Lal Hussain R/o Fazalabad, Tehsil Surankote:- During examination in chief by Ld. P.P, the witness deposed that he knows the accused persons present in the court. He stated that on 02/11/2010, Nazir Hussain and Mohd. Iqbal attacked at the house of Shokat Hussain and assaulted him. On hearing hue and cry, they were rushed on spot. The accused persons also beat Shokat Hussain and Lal Hussain. Mohd. Iqbal inflicted a blow with a rambi on the head of Lal Hussain. Shahbano, who was also the paternal aunt of Shaukat Hussain, was also beaten and due to the assault she later died. After that, an FIR was registered and the police went to the spot, and chowkidar was also with them. The police had seized the rambi from the spot and prepared a seizure memo in this regard. The police prepared the necessary documents and obtained the signature of the witness on them. The seizure memo with regard to rambi has been seen and is correct, and the witness identifies his signature on it, which is exhibited as EXPW-12. The accused persons still give threats even today, and in this

regard the Investigating Officer (I/O) had recorded the statement of the witness. No further question was asked.

During cross examination by Ld. defence counsel, the witness stated that the statement of the witness was recorded on the same day on which the FIR was registered. The seizure memo annexed with the file was prepared by the Investigating Officer (I.O.), and the said seizure memo was prepared after the recovery from the accused. The seized article was produced by Mohd. Iqbal. The witness read the seizure memo and then signed it. The witness further stated that perhaps the accused had also produced the seized article, but he does not have definite knowledge as to who actually produced it. The witness does not know on which day the seizure was effected or what the exact date was. The seizure memo was prepared on 28-01-2011. It is correct that the statement given by the witness here relates to EXPW-12; if there is any other content attributed to the witness beyond this, then it would be incorrect, meaning that any such statement attributed to the witness would be wrong. Before the hearing of this case, the matter was pending before the Court at Surankote, where the statement of the witness had also been recorded. Shahbano died in the year 2012. She had been injured in the said quarrel and later passed away as she had sustained an injury on her head, and due to the severe injury she eventually died. It is correct that the witness does not know whether the statement of the deceased was recorded before the Court under Section 164 Cr.P.C or not. According to the witness, the deceased passed away about two years after the quarrel. Shoket Hussain is the brother-in-law (Behnoi) of the witness, and Lal Hussain is the grandfather of the witness. The other witnesses belong to the same community (biradari) as the witness. It is correct that even today the witness has come to the Court to give his statement of his own free will and is not giving the statement under any pressure. No further question was asked.

(xiii) **PW-14 Taraiz Ahmed, son of Lal Hussain, resident of Fazlabaad, Tehsil Surankote:-** During examination in chief by Ld. P.P, the witness deposed that he knows the accused persons and also knows the exempted accused persons. He stated that the occurrence is of the year 2010, in the month of April, and that the houses of the accused persons are situated

adjacent to the house of his brother-in-law Shokat Hussain. The occurrence took place at about 7:00 AM, when all the accused persons were beating Shokat Hussain. On hearing the hue and cry, he, along with his father Lal Hussain and his brother Farooq, and Tariq Ahmed went to the spot. Mohd. Iqbal struck a blow on the head of his father Lal Hussain. Shahbano also came to the spot, and she was also beaten. He stated that Mohd Iqbal and Mohd. Nazir assaulted her with a lathi (stick). He also received an injury on his leg and his father Lal Hussain received six stitches on his head. His father remained admitted in the hospital for about 6–7 days and even today he feels dizziness. Shahbano, who had sustained injuries, was taken to Jammu Hospital, and about six months later, she died. The police recorded his statement.

During cross examination by Ld. defence counsel, the witness stated that the persons, who had fought at the spot, were about 12–13 persons. His house is in front of the place of occurrence and it takes about 5 minutes to reach the spot from his house. He stated that they had reached the spot after hearing the noise. The statement given by him above, that Shahbano died about six months after the occurrence, is correct. Earlier the case was being tried at Poonch, then it was transferred to Surankote, and thereafter, by order of the Hon'ble High Court, it was transferred back here. He further stated that, as per his statement, the occurrence took place in October, 2010. It is correct that the statement of Shahbano was recorded in the Court at Surankote when the trial is going on. Shahbano's statement was recorded in January 2013, and that despite such inquiry, she did not remain alive for long and died six months later. Witness Mohd. Aslam had come to the spot to rescue, however, he did not sustain any injury. His statement has already been recorded. He has also died, however, the witness does not know the exact date of his death. The witness Mateer Ullah has also died, and he had also sustained injuries. He died about 7–8 months prior to today. His statement was also recorded in the Surankote Court. The accused persons were having enmity with the complainant regarding land and they wanted to grab his land and even today they quarrel with them and apart from this case, no other case is pending in any other court. Near the place of

occurrence, besides the houses of Rafiq Ahmed, Mohd. Aslam, and Mateer Ullah, the house of Sarpanch Atta Ullah is also situated, and all these persons had come to the spot. No further question was asked.

6. The evidence of the prosecution was closed on 09/09/2024 and the file was posted for recording the statements of the accused persons under section 342 Cr.P.C which came to be recorded on 30/12/2024. The inimical circumstances appearing against the accused persons in the evidence of the prosecution were put and explained to the accused persons in order to extract explanation from the accused persons regarding the inimical circumstances. The accused persons have stated that the witnesses of the prosecution have deposed falsely against them. After recording the statements of the accused persons under section 342 Cr.P.C, the file was posted for arguments u/s. 273 Cr.P.C. However, the benefit of acquittal under section 273 Cr.P.C was not given to the accused persons and the accused persons were directed that they may enter upon their defence, if desire so.
7. In support of their defence, the accused persons have examined DW-1 Shoaib Ikhlaq as witnesses on their behalf. The evidence of the defence witness is briefly discussed as under:-

DEFENCE EVIDENCE

8. **DW-1 Shoaib Ikhlaq S/o Ikhlaq Hussain, R/o Fazlabaad, Tehsil Surankote:-** During examination in chief by Ld. defence counsel, the witness deposed that he knows the complainant, the accused persons present in the court as well as the exempted accused. The complainant is the maternal cousin of the witness. After the Panchayati elections were announced, a campaign was started in which the community wanted to make the accused, Nazir Hussain, the Sarpanch. The then Sarpanch was the paternal cousin of the complainant's father-in-law. Therefore, a false propaganda was made against the said accused that he would be implicated in some criminal case so that he would not be able to contest the election. During that period, the son of the daughter-in-law of the complainant's father-in-law, namely Mohd. Hamid Malik, was serving as the 2nd SHO at Police Station Surankote. Due to this reason, a false case was registered against the accused persons. The

complainant used to supply milk to Dr. Sushil Tandon, who was posted at the hospital in Surankote and complainant also washed the doctor's clothes. By obtaining a report from Dr. Sushil Tandon, the complainant fabricated a false case. No such occurrence in the present case had taken place; therefore, the case is false. The house of the complainant is about 200 meters away from the place of occurrence. No further question was asked.

During cross examination by the Public Prosecutor (PP), the witness stated that the witness runs a business in Surankote, Fazlabaad, and deals in the wholesale trade of eggs. The witness goes to his shop at about 9:00 in the morning and returns at about 5:00 PM. The witness completed his graduation in the year 2009, and after that he used to stay in the house and did not go anywhere outside. In the year 2010, the complainant used to wake up at about 4:30 AM; rather, it is stated that the complainant would wake up at 4:30 AM. to offer the Tahajjud prayer. In the month of November, the prayer time is around 6:20 or 6:30 AM, and the prayer is completed within 5–10 minutes. In November, the sun rises at about 7:00 AM. After getting up at about 7:00 AM, the complainant would go to his fields and check to ensure that no damage had occurred to the land due to rain. On the day of the occurrence, no rain had taken place. In the month of November, the witness had harvested maize in his field and had stacked it there, and he had gone to check it. The witness did not see anything at the spot because no quarrel had taken place. Neither in the presence nor in the absence of the witness did any quarrel occur, because the witness had not heard anything about any quarrel. On 02-11-2010 at about 7:00 AM, the witness was neither present at the house of the complainant in the case nor with the accused persons. When the police came to the spot, the witness was present there and he told the police that no quarrel had taken place between the parties at the spot. The witness also informed the 2nd SHO, namely Hamid that no quarrel had occurred at the spot. The statement of the witness was not recorded because Abdul Hamid wrote the statement according to his own will. The witness has not submitted any such application before any court because no dispute had actually occurred between the parties, and the accused persons are being falsely implicated. The witness did not receive any summons from the Court

today to appear for giving evidence; rather, the witness has come to the Court to give testimony at the request of the accused persons. The accused persons are neighbours and residents of the same locality as the witness, though they are not relatives. The witness belongs to the Malik caste, and the accused persons are also Maliks; therefore, they belong to the same community. The complainant is the maternal cousin of the witness, and the witness used to supply milk to Dr. Sushil Tandon, though not free of cost. In the present case, all those who obtained medical certificates for their injuries might have inflicted the cuts on themselves and the injured Lal Hussain had inflicted a cut on himself in the presence of the witness. He made the cut on his head himself with a blade, which would be about 1/2 inch. The witness did not inform the police or the doctor that Lal Hussain had inflicted the cut on himself. The witness cannot say how deep the cut was; however, a blade cut is usually normal. In the present case, the medical report was issued by Dr. Sushil Tandon as per the medical condition. The investigation of the case was also conducted by the 2nd SHO, Hamid. No further question was asked.

9. On 05/03/2025 Ld. Counsel for the accused persons stated before the Court that the accused persons do not want to lead any further defence evidence and on the submission of the Ld. Defence Counsel, the defence evidence was closed. Thereafter, the matter was posted for final arguments.
10. Heard Ld. P.P for the U.T and Ld. Counsel for the accused persons at length and have considered their rival contentions. I have also gone through the statements of the witnesses of the prosecution recorded before the Court during the course of trial and have appreciated and analyzed the same in their proper perspective in order to arrive at just decision of the case.
11. During the course of arguments, Learned Public Prosecutor argued that the prosecution has succeeded in establishing its case beyond all reasonable doubt. It is argued that the testimony of PW-2 Shokat Hussain, the complainant, finds substantial corroboration from the evidence of PW-9 Lal Hussain, PW-12 Farooq Hussain and PW-14 Taraiz Ahmed, all of whom have consistently deposed regarding the occurrence and the participation of the accused persons. It has further been argued that the evidence clearly establishes that the accused persons, being armed with deadly weapons

including a rambi and lathis, forcibly entered the residential house of the complainant, assaulted the inmates and also attacked those who came to their rescue. The prosecution submits that Mohd. Iqbal inflicted a rambi blow on the head of Lal Hussain, whereas accused Nazir Hussain and the remaining accused assaulted the other injured persons with lathis. Learned Public Prosecutor further argued that merely because certain prosecution witnesses have turned hostile, the entire prosecution case cannot be discarded. It has also argued that the occurrence admittedly arose out of previous enmity regarding landed property. While it may furnish a motive for false implication, it equally provides a motive for the commission of the offence. Therefore, the testimony of the injured witnesses cannot be discarded merely on the ground of relationship. It is lastly contended that the prosecution has proved the recoveries of the weapons of offence, the seizure memos, the FIR and the medical evidence, which collectively establish the guilt of the accused beyond reasonable doubt. The accused persons, therefore, deserve to be convicted for the offences with which they have been charged.

12. Per contra, Ld. defence counsel vehemently argued that the prosecution has miserably failed to prove the charges against the accused persons. It has been contended that the prosecution case suffers from serious contradictions, embellishments and material improvements. The complainant has made substantial departures from the version contained in the FIR as well as from his statement recorded under Section 161 Cr.P.C. The prosecution witnesses have also contradicted each other regarding the manner of occurrence, the recoveries, the time of occurrence and the role attributed to the respective accused persons. It has been argued that a large number of independent witnesses cited by the prosecution have not supported the prosecution case and have been declared hostile. The defence submits that the prosecution has deliberately withheld the best independent evidence and has relied only upon interested and closely related witnesses. Learned counsel further submits that the alleged recoveries of the weapons are highly doubtful. The seizure witnesses themselves have contradicted the prosecution regarding the date, place and manner of recovery. The prosecution has failed to establish an

unbroken chain connecting the alleged weapons with the occurrence. It has further been argued that the entire prosecution case has been falsely engineered due to previous political rivalry and land dispute. Ld. defence counsel further argued that the prosecution has failed to examine the Investigating Officer, thereby leaving the alleged investigation, recoveries and seizure proceedings unproved and unexplained. It was further contended that the Medical Officer has also not been examined and the medical reports forming part of the challan have not been duly proved. It was further contended that DW-1 Shoaib Ikhlaiq has categorically deposed that no such occurrence ever took place and that the accused persons were falsely implicated because of Panchayat elections and political considerations. According to the learned defence counsel, the prosecution has failed to prove the essential ingredients of Sections 307, 452, 325, 324, 323, 147 and 148 RPC beyond reasonable doubt. It is, therefore, prayed that all the accused persons be acquitted by extending to them the benefit of doubt.

13. Let me appreciate the contentions of the P.P and Defence counsel on the basis of law, fact and material before the Court.
14. As per the story of the prosecution on 02/11/2010 at about 07:00 AM, owing to previous enmity between the parties over a land dispute, the accused persons allegedly entered the house of complainant Shokat Hussain, armed with lathis and a rambi and assaulted him and other persons present there. It is specifically alleged that accused Mohd Iqbal inflicted a rambi blow on the head of Lal Hussain, while accused Nazir Hussain and other accused allegedly caused injuries to the complainant and other persons with lathis. On the basis of the written report, FIR No. 173/2010 came to be registered at Police Station Surankote for offences under sections 307, 452, 147, 148, 323 RPC and Sections 324 and 325 RPC were subsequently added during investigation.
15. In order to bring home the guilt of the accused persons, the prosecution examined 11 witnesses.
16. PW-2 Shokat Hussain is the complainant and one of the injured witnesses. He stated that on 02/11/2010 at about 07:00 AM, the accused persons

entered his house, assaulted him and his family members, broke household articles and caused injuries to Shahbano and Lal Hussain. He proved the written report and identified his signatures on the FIR and the seizure memo. During cross-examination, however, several material inconsistencies emerged. PW-2 admitted that there existed previous enmity between the parties. He made contradictory statements regarding the preparation of the seizure memo. Initially he stated that the seizure memo was prepared on the date of occurrence in his presence, but when confronted with the document bearing a different date, he altered his version and admitted the correctness of the date recorded therein. He was further confronted with his statement under Section 161 Cr.P.C. regarding the recovery of the rambi. He also admitted that though seventeen persons had been named in the initial report, he had deposed only against some of them before the Court. These contradictions materially affect the reliability of his testimony in relation to the recovery proceedings and the precise role attributed to each accused. Nevertheless, the core version of PW-2 that an occurrence did take place on the relevant date and that injuries were sustained by members of his family has remained substantially intact. The law is well settled that minor inconsistencies are bound to occur due to lapse of time, particularly where the incident is old. However, contradictions touching the recovery of weapons and the participation of individual accused require cautious scrutiny.

17. PW-3 Mateer Ullah did not support the prosecution. He categorically stated that he had no knowledge regarding the occurrence and denied having made any statement to the police. Consequently, he was declared hostile. Even during his earlier deposition, he denied the prosecution version and asserted that the police had neither recorded his statement nor obtained his thumb impression. Nothing useful could be elicited by the prosecution in his cross-examination. Consequently, his evidence does not advance the prosecution case.
18. PW-4 Mohd. Rafiq also failed to support the prosecution. He specifically stated that he had not witnessed the occurrence and had no personal knowledge regarding the incident. He denied having made any statement to

the police. He was accordingly declared hostile. Nothing favourable to the prosecution could be elicited from him.

19. PW-5 Mohd. Aslam merely stated that he had heard about a quarrel between the parties. During cross-examination, he categorically admitted that no quarrel had taken place in his presence. Consequently, his testimony is purely hearsay and does not establish any overt act against any of the accused.
20. PW-6 Sakina Bi is the real sister of the complainant Shokat Hussain and the niece of accused Nazir Hussain. She was cited as an injured eye witness by the prosecution. However, in her examination-in-chief, she categorically stated that she had no knowledge regarding the occurrence as she was residing at some distance from the place of occurrence. She further deposed that she had not gone to the spot after hearing about the occurrence. Consequently, she was declared hostile by the prosecution. During her cross-examination by the learned Public Prosecutor, she stated that the accused persons had not committed any injustice against her. She also stated that after the death of her father, accused Nazir Hussain used to take care of her and that she did not want to annoy him. She further denied that the police had recorded her statement. Nothing material could be elicited in support of the prosecution. Consequently, her testimony does not corroborate the prosecution case. At the same time, her hostility by itself cannot be made the sole basis for rejecting the entire prosecution version.
21. PW-7 Gulnaz Akhter also failed to support the prosecution. She deposed that she had no knowledge regarding the occurrence and that her statement had never been recorded by the police. She specifically denied having gone to the place of occurrence. She also denied witnessing any assault upon Shahbano, Shokat Hussain or Lal Hussain. During cross-examination by the prosecution, every material suggestion regarding the participation of the accused persons was denied. She categorically stated that no quarrel had taken place in her presence. Consequently, PW-7 completely resiled from her previous police statement and did not lend any support to the prosecution case.

22. PW-8 Shahbano occupies a peculiar position in the prosecution case. During her examination-in-chief she admitted that a quarrel had taken place regarding a house and that the police had recorded her statement. She further stated that she was inside her house when the occurrence took place. However, she did not attribute any specific overt act to any accused nor did she describe the manner of assault in detail. During cross-examination, PW-8 stated that she was away from the place of occurrence, had no knowledge regarding the incident, that no quarrel took place in her presence and that she herself had not sustained any injury. This part of her testimony materially weakens the prosecution case because according to the prosecution version she was one of the seriously injured persons. Thus, her evidence does not furnish reliable corroboration to the prosecution.
23. PW-9 Lal Hussain is an injured witness and the father-in-law of the complainant. He deposed that after hearing the hue and cry he rushed to the spot where the accused persons were beating his daughter and son-in-law. According to him, accused Nazir Hussain caught hold of him by the neck, Shadi Khan held his arms and Mohd. Iqbal inflicted a rambi blow on his head. He further stated that he was shifted to the hospital where the police recorded his statement. The testimony of PW-9 assumes importance because he is himself an injured witness. Ordinarily, the testimony of an injured witness commands greater evidentiary value as his presence at the place of occurrence cannot ordinarily be doubted. Nevertheless, his evidence must be examined in the light of the entire record. During cross-examination, PW-9 admitted previous enmity regarding land between the parties. He also admitted that numerous persons from the locality had gathered at the place of occurrence, including Mohd. Aslam, Mateer Ullah, Sakina Bi, Gulnaz Akhter and Mohd. Rafiq Jalani. Significantly, almost all these independent witnesses have failed to support the prosecution during trial. This circumstance requires the Court to scrutinize his evidence with greater care. PW-9 also made improvements regarding the alleged land grabbing dispute and admitted that no application for demarcation had been filed before any revenue authority. He further admitted the existence of a cross FIR arising

out of the same occurrence. Though he denied the defence suggestion that they had assaulted the accused first, the admitted existence of cross litigation indicates that the occurrence arose out of previous hostility between closely related parties. Nevertheless, despite lengthy cross-examination, the defence could not elicit anything to show that PW-9 had not sustained injuries or that he was not present at the place of occurrence. His testimony regarding the assault by Mohd. Iqbal has remained substantially consistent, though it lacks independent corroboration from several prosecution witnesses who turned hostile.

24. PW-10 Mehmood Ahmed was examined primarily to prove the seizure of the alleged weapons of offence. In his examination-in-chief, he stated that the police had visited the place of occurrence and seized the lathis in his presence. He identified his signatures on the seizure memo. However, he categorically stated that the articles produced before the Court were not the same articles which had been seized by the police. During cross-examination, PW-10 stated that he was working as a Chowkidar and used to accompany the police. According to him, the police themselves picked up the two lathis lying in the field and seized them. He specifically stated that no person had produced those articles before the police. He further deposed that the contents of the seizure memo had not been read over to him and that the contents of EXPW-10 were incorrect. Earlier, he had also deposed that the police had visited the place of occurrence on the next day of the incident and denied the suggestion that the seizure memo had been prepared after nineteen days. The evidence of PW-10 creates a serious doubt regarding the manner in which the alleged recoveries were effected. His statement that the police themselves picked up the lathis from the field is inconsistent with the prosecution case that the articles were recovered and seized in accordance with law. Moreover, his statement that the articles produced before the Court were not the same articles further weakens the evidentiary value of the alleged recovery. In the absence of the testimony of the Investigating Officer, these contradictions remain unexplained. Consequently, the alleged

recoveries cannot be treated as a strong incriminating circumstance against the accused.

25. PW-12 Farooq Hussain is the son of injured Lal Hussain and the brother-in-law of the complainant. He deposed that upon hearing the hue and cry, he rushed to the place of occurrence where he saw the accused persons assaulting Shokat Hussain and Lal Hussain. Mohd Iqbal inflicted a blow with a rambi on the head of Lal Hussain. He also stated that Shahbano was assaulted during the occurrence and that the police seized the rambi and prepared the seizure memo in his presence. During cross-examination, however, PW-12 admitted that he could not state with certainty who had actually produced the alleged rambi. Initially he stated that it had been produced by accused Mohd. Iqbal, but immediately thereafter stated that perhaps somebody else had produced it and that he had no definite knowledge in that regard. He also admitted that the seizure memo was prepared on 28.01.2011 and that he did not know the exact date on which the seizure had actually taken place. These admissions considerably diminish the evidentiary value of the alleged recovery. Nevertheless, his testimony regarding the assault upon Lal Hussain broadly corroborates the evidence of PW-2 and PW-9. Being a related witness, his testimony requires careful scrutiny, but relationship by itself is not a ground for rejection if the evidence otherwise inspires confidence.

26. PW-14 Taraiz Ahmed deposed that on hearing the hue and cry, he along with his father Lal Hussain and other family members rushed to the place of occurrence and found the accused persons beating Shokat Hussain. According to him, Mohd. Iqbal inflicted a blow on the head of Lal Hussain whereas Shahbano was beaten by Mohd. Iqbal and Nazir Hussain. He further stated that he himself sustained injuries on his leg and that Lal Hussain remained admitted in hospital for about six or seven days. During cross-examination, PW-14 admitted that there were about twelve or thirteen persons involved in the occurrence. He further admitted that several independent persons including Mohd. Aslam, Mateer Ullah, Mohd. Rafiq and Sarpanch Atta Ullah had reached the place of occurrence. Significantly, most

of these independent witnesses have not supported the prosecution before the Court. He also admitted that the parties were litigating over land and that enmity existed between them. These admissions necessitate a cautious appreciation of his testimony.

27. The accused examined DW-1 Shoaib Ikhlaq in defence. He deposed that no such occurrence had taken place and that the accused persons had been falsely implicated owing to Panchayat election rivalry. According to him, the complainant's relatives had political influence and had managed registration of a false case. He further stated that the complainant had fabricated the injuries with the assistance of the doctor. During cross-examination, DW-1 admitted that he was neither present with the complainant nor with the accused at the exact time of the alleged occurrence. He also admitted that he had not made any complaint to any authority alleging false implication. His assertion that Lal Hussain had himself caused a blade injury on his own head remained wholly unsubstantiated. No documentary evidence or independent witness has been produced in support of this allegation. Consequently, this part of his testimony appears to be a mere assertion without any corroborative material.
28. At the same time, the defence has succeeded in eliciting circumstances showing that there existed admitted previous enmity between the parties and that several independent witnesses have not supported the prosecution. These circumstances cannot by themselves establish the innocence of the accused persons, but they are relevant while appreciating whether the prosecution has succeeded in proving the charges beyond reasonable doubt.
29. One of the most significant features of the present case is that neither the Investigating Officer nor the Medical Officer has been examined by the prosecution. Consequently, the investigation conducted in the case, the preparation of the site plan, the recovery proceedings, the seizure memos and the medical certificates have not been proved through their respective authors.
30. The non-examination of the Investigating Officer has caused serious prejudice to the accused persons. During the cross-examination of the prosecution witnesses, several contradictions and omissions were brought on record with

reference to their statements recorded under Section 161 Cr.P.C. However, in the absence of the Investigating Officer, those contradictions could not be duly proved in accordance with law. Likewise, the discrepancies regarding the recovery of the alleged rambi and lathis, the preparation of the seizure memos and the place and date of seizure remain unexplained.

31. Equally important is the failure of the prosecution to examine the Medical Officer. The nature, seat and gravity of injuries are matters requiring medical evidence. In the absence of the doctor, neither the injury reports nor the medical opinion regarding the nature of injuries have been proved. Consequently, the Court is left only with the oral assertions of the witnesses regarding the injuries allegedly sustained.
32. Although conviction can, in an appropriate case, be based solely upon reliable ocular testimony even in the absence of medical evidence, where the prosecution alleges grievous injuries and an attempt to commit murder, medical evidence assumes considerable importance. Its absence, coupled with the failure to examine the Investigating Officer, requires the Court to scrutinize the ocular evidence with greater caution.
33. Although medical documents are available on record, the Medical Officer, who prepared the same, has not been examined and the said documents have not otherwise been proved in accordance with law. Therefore, the contents thereof cannot be relied upon for determining the nature, extent or gravity of the injuries allegedly sustained by the injured persons. The prosecution alleges that accused Mohd. Iqbal inflicted a rambi blow on the head of Lal Hussain with the intention to cause his death. However, although the medical report is available on record, the Medical officer, who prepared the same, has not been examined and the report has not otherwise proved in accordance with law. Thus, there is no proved medical evidence on record to establish the nature, extent or gravity of the alleged injury.
34. The prosecution has consistently asserted that a quarrel took place and that injuries were caused. However, several material witnesses have turned hostile. Independent witnesses cited by the prosecution have not supported the

occurrence. The evidence regarding the recovery of the alleged weapons is also doubtful. In these circumstances, the Court is required to determine whether the remaining testimony of the injured witnesses is sufficient to sustain conviction.

35. PW-2, PW-9, PW-12 and PW-14 have consistently attributed the principal role to accused Mohd. Iqbal. However, they are closely related to each other and admittedly inimical towards the accused due to previous land disputes. Their evidence is not substantially corroborated by independent witnesses, most of whom have either turned hostile or denied knowledge of the occurrence.
36. The prosecution has alleged unlawful assembly and house trespass. However, considerable uncertainty exists regarding the exact participation of each accused. The number of persons allegedly involved varies from witness to witness. Some accused named in the FIR have not been charge-sheeted while others were not consistently implicated during evidence. In the absence of independent corroboration and reliable investigation evidence, the common object of the alleged unlawful assembly has not been established beyond reasonable doubt.
37. The prosecution has failed to examine the two most material witnesses, namely the Investigating Officer and the Medical Officer. Several prosecution witnesses have turned hostile. Serious contradictions exist regarding the recoveries. Independent witnesses have not supported the prosecution. The evidence relating to the nature of injuries has remained unproved.
38. In these circumstances, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the accused persons beyond reasonable doubt. The accused are, therefore, entitled to the benefit of doubt. Consequently the accused persons are acquitted of the charges under Sections 307, 452, 325, 324, 323, 147 and 148 RPC by extending to them the benefit of doubt. The bail bonds and personal bonds of the accused persons shall stand discharged. The seized property shall be dealt with in accordance with law after the expiry of the period of appeal.
39. File be consigned to the record after its due completion.

Specimen Chart for Witnesses Examined

Prosecution Witness No.	Name of Witness	Description
PW-2	Shokat Hussain	Complainant/injured, witness to initial report and seizure memo
PW-3	Mateer Ullah	Eye witness
PW-4	Mohd Rafiq	Eye witness
PW-5	Mohd Aslam	Eye witness
PW-6	Sakina Bi	Eye witness
PW-7	Gulnaz Akhter	Eye witness
PW-8	Shah Bano	Eye witness
PW-9	Lal Hussain	Injured Eye witness
PW-10	Mehmood Ahmed	Witness to seizure of lathis
PW-12	Farooq Hussain	Seizure witness regarding rambi
PW-14	Taraiz Ahmed	Eye witness/injured

Specimen Chart for Exhibited Documents

Exhibit No.	Description of the Exhibit	Proved by/Attested by
EXPW-2	Written application	PW-2
EXPW-2/A	FIR No. 173/2010	PW-2
EXPW-12	Seizure memo relating to rambi	PW-2 & PW-12
EXPW-10	Seizure memo relating to lathis	PW-10

Specimen Chart for Material Objects/Muddamals

Material Object No.	Description of the Exhibit	Proved by/Attested by
MO-1	Rambi (alleged weapon of offence)	PW-12
MO-2	Lathis	PW-10

Announced
13/08/2026

(Susheel Singh)
Principal District & Sessions Judge
Poonch