

MHAU010063972017



Presented on : 18-09-2017

Registered on : 19-09-2017

Decided on : 16-05-2026

Duration : 8 Y, 7 M, 28 D

IN THE COURT OF SESSIONS JUDGE AT AURANGABAD.

(Presided over by G. R. Agrawal)

[Date of the Judgment: 16.5.2026]

Sessions Case No.257/2017

Exh. No.211

PART-A

FIR/Crime No.	349/2015
Police Station:	Mukundwadi, Aurangabad.

<u>PROSECUTION</u>		The State of Maharashtra, Through Police Inspector, Mukundwadi Police Station, Aurangabad.
REPRESENTED BY		Shri. A. J. Dale - APP for the State.
<u>ACCUSED</u>	1.	Shaikh Hussain Shaikh Jafar, Age : 44, Occ.: Labour, R/o.: Deolai, Aurangabad.
	2.	Shaikh Yasin Shaikh Shanoor, Age : 60 Years, Occ.: Labour, R/o.: Bharatnagar, Aurangabad.
	3.	Shaikh Bilal Shaikh Yasin, Age : 31 Years, Occ.: Labour, R/o.: As above.

	4	Shaikh Jalal Shaikh Yasin, Age : 29 Years, Occ.: Labour, R/o.: Bharat Nagar, Aurangabad.
	5	Shaikh Ansar Shaikh Shanoor, Age : 55 Years, Occ.: Labour, R/o.: Mendhi Bhalgaon, Tq. Gangapur, Dist. Aurangabad.
	6	Aashabee Shaikh Yasin, Age : 58 Years, Occ.: Labour, R/o.: Bharatnagar, Aurangabad.
	7	Shaikh Tabbu Shaikh Hussain, Age : 40 Years, Occ.: Labour, R/o.: Deolai, Aurangabad.
REPRESENTED BY		Shri Adv. S. G. Ladda for accused

PART - B

Date of offence	:-	28.05.2015
Date of F.I.R.	:-	28.05.2015
Date of Charge-sheet	:-	23.04.2016
Date of committal	:-	16.08.2017
Date of framing of Charges	:-	01.06.2018
Date of commencement of evidence	:-	26.07.2019
Date on which the matter is adjourned for delivery of Judgment.	:-	11.05.2026
Date of the Judgment	:-	16.05.2026
Date of Sentencing Order, if any,	:-	16.05.2026

ACCUSED DETAILS:

Rank of the accused	Name of Accused	Date of arrest	Date of release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence imposed	Period of Detention Undergone during trial for purpose of Section 428 Cr.P.C.
1	Shaikh Hussain Shaikh Jafar	28.5.2015	4.7.2015	307, 201 r/w.149, 143, 147, 148 of IPC	Convicted	2 years imprisonment and Rs. 1 Lakh fine	3.6.2015 to 4.7.2015
2	Shaikh Yasin Shaikh Shanoor	28.5.2015	4.7.2015		Convicted	Rs.10,000 fine	3.6.2015 to 4.7.2015
3	Shaikh Bilal Shaikh Yasin	28.5.2015	4.7.2015		Convicted	1 year imprisonment and Rs. 25,000/- fine	3.6.2015 to 20.6.2015
4	Shaikh Jalal Shaikh Yasin	29.5.2015	20.6.2015		Convicted	Rs.10,000 fine	3.6.2015 to 20.6.2015
5	Shaikh Ansar Shaikh Shanoor	29.5.2015	20.6.2015		Acquitted		
6	Aashabee Shaikh Yasin	Anticipatory bail.	1.8.2017		Acquitted		
7	Shaikh Tabbu Shaikh Hussain	Anticipatory bail.	1.8.2017		Acquitted		

PART – C**(Appended to the Judgment)****JUDGMENT****[Delivered on 16th May, 2026]**

The accused are prosecuted for the offences punishable

under Sections 143, 147, 148, 307 and 201 r/w.149 of the Indian Penal Code ('IPC' in short).

Case of Prosecution

2. The accused persons and the victims are related to each other. Shaikh Salamat (PW-7) is resident of Deolai and his real brother Shaikh Hussain (accused no.1) is resident of Bharat Nagar, Mukundwadi area. There are always at loggerheads and get involved in altercations frequently. In order to resolve their differences, informant Shaikh Salim, his brother Shaikh Mustafa @ Mushtaq and his third brother Shaikh Wasim along with his brother-in-law Sk. Salamat went to the house of Sk. Hussain (accused no.1) on 28.5.2015 at about 10.00 a.m. When they were trying to persuade him not to quarrel, Sk. Hussain got annoyed and he asked his wife (accused no.7) to bring sword from the house. Sk. Hussain mounted physical assault on three brothers and their brother-in-law by forming unlawful assembly with other accused persons. At that time, Sk. Yasin (accused no.2) was carrying axe. Brother of Yasin, was carrying sword and two sons of Yasin namely Bilal and Jalal were holding wooden sticks, wife of Yasin namely Ashbee (accused no.6) was providing wooden sticks.

3. It is thus alleged that all 7 accused, in furtherance of their common object, by means of deadly weapons like axe and sticks, attempted to commit murder of victims. Mushtaq Shaikh sustained serious injury on his head. Wasim sustained injury on temporal parietal region of head and CLW on left ring finger. Salim sustained

one grievous injury over right parietal region. Sk. Salamat suffered injury over upper lip.

4. Shaikh Salim lodged report with police station Mukundwadi. Crime No.349/2015 was registered against accused persons for the offences punishable u/s.143, 147, 148, 307 and 201 r/w.149 of IPC. Statements of witnesses were recorded. Weapons were seized from the accused persons. After completing the investigation, on 23.4.2016, the investigating officer ('I.O.' in short) filed charge-sheet against all the accused for aforesaid offences.

5. Since the offence u/s. 307 of IPC is exclusively triable by the Sessions Court, the Ld. Magistrate committed the matter to Sessions Court for trial on 16.8.2017.

6. My Ld. predecessor framed Charge against the accused persons vide Exh.29 for the offences punishable under Sections 143, 147, 148, 307 and 201 r/w. 149 of IPC. The accused were explained the contents of the charge in vernacular. They pleaded not guilty and claimed to be tried. Their defence is of total denial and false implication. The pleas of accused were recorded at Exhs.22 to 28.

7. In order to establish the aforesaid offences against the accused, prosecution has examined 12 witnesses. The statements of the accused persons u/s.313 of the Cr.P.C. were recorded on

4.7.2022 at Exhs.134 to 140. Accused did not enter the witness box nor examined any defence witness.

8. I have heard Ld. APP Shri. Dale for the prosecution and Ld. Adv. Shri Ladda for the accused persons. Perused the record. The points for determination along with my findings thereon are as under :

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether prosecution proves that the accused persons were members of an unlawful assembly, having common object to commit murder of victims ?	.. No
2.	Whether prosecution proves that in furtherance of their common object, the accused persons committed rioting ?	.. No
3.	Whether prosecution proves that accused persons, in furtherance of their common object, committed rioting armed with deadly weapons ?	.. No
4.	Whether prosecution proves that the accused persons, in furtherance of their common object, attempted to commit murder of victims?	.. No
5.	Whether prosecution proves that accused, knowing that offence punishable u/s.307 of IPC has been committed, destroyed evidence with intention to screen themselves from legal punishment ?	.. No

6.	What offence under IPC, if any, is committed by accused persons ?	.. A-1 and 3 u/s.326 and A-2 & 4 u/s.324 of IPC.
7.	What order ?	.. A-1 to 4 convicted, A-5 to 7 acquitted.

REASONS

Submissions

9. Ld. APP Shri Dale has urged that there are injured eye witnesses to the incident. Medical evidence supports the case of prosecution. Weapons such as iron strip/bar, wooden handle of axe and wooden sticks were recovered at the instances of accused persons u/s.27 of Evidence Act. The motive for the attack was the N. C. (Exh.43) dated 27.5.2015 lodged at the instance of accused persons. In that N. C. PW-1, 2, 5 and 7 were shown as the accused. There is no dispute that residence of accused no.1 is the spot of incident. The presence of the accused persons at the spot is admitted. The altercation between victims and accused are also admitted. The injuries caused to the victims are not disputed. There is no suggestion to any injured witness that no such incident occurred. The defence of accused persons that they have been implicated in false case due to their N.C. report, favours prosecution also. The eye witnesses have denied suggestion in the cross-examination that the injuries were caused due to tin shed.

10. APP Shri Dale has further urged that MLC reports show that victims were examined by Doctor at MGM Hospital around 11.00 a.m. on the date of incident. Therefore, there was no chance to the victims to create false story after the incident. Exh.105 is the letter issued to Doctor of MGM Hospital which shows the remark in the margin that two injured victims could give valid statement, but victim Mushtaq Sk. was in drowsy condition and he cannot give statement. FIR lodged by the victim is prompt. The defence of “fall injury” is not probable. Four persons cannot fall at the same time. PW-6 is independent witness who went with victims to settle the dispute. His testimony supported the prosecution. Shri Dale prayed to convict all the accused.

11. Ld. Adv. Shri Ladda for the accused persons has urged several grounds on behalf of defence. It is admitted by several prosecution witnesses that there was no axe or sword with any of the accused persons. Regarding charge of unlawful assembly, out of 7 accused persons, 4 are residing in the same house with accused no.1. Therefore, charge of unlawful assembly cannot be sustained in the present case. The victims voluntarily went to the house of accused persons on the date of incident. Accused persons had lodged N. C. report one day prior to the incident. It is not the case of the prosecution that accused persons were informed in advance about visit of victims at their house. There was no question of meeting of mind and even S.34 of IPC cannot

be applied. If the incident continued for 20 to 25 minutes as per the version of the prosecution witnesses, it is not possible that there is not a single injury to the accused persons.

12. After MGM hospital, the victims were taken to max Hospital at about 4.00 p.m., but there is no explanation about location of victims from 10.00 a.m. to 4.00 p.m. Story of assault is not proved from the medical evidence. Life threatening injury is not mentioned in the evidence of Doctor. There is no premeditation, therefore, there was no common object of the accused persons. Presence of accused in their house cannot be called as unlawful assembly. The accused can act in private defence when victim came to their house. There are several material omissions in the testimony of prosecution witnesses. I.O. PW-12 had no knowledge regarding old complaints made by the accused persons at Exhs.42 to 44. Admittedly, I.O. did not conduct any investigation about the reason of quarrel and why victims went at the house of accused. The omissions are proved through the I.O. The prosecution has failed to prove intention to cause death. Shri Ladda relied upon some rulings and prayed to acquit all accused.

Points No. 1 to 3

13. The first charge against accused persons is that they were members of unlawful assembly and its common object was to commit murder of victims by using deadly weapons like sword and

wooden handle of axe and sticks.

14. In order to attract the offence punishable u/s.143 of IPC, it is necessary to prove the ingredients of S.142 i.e. “being member of unlawful assembly”. The concerned person must be aware about facts which render any assembly an unlawful assembly, and he must intentionally join that assembly.

15. It has come in the evidence of injured eye witnesses that they went at the house of accused persons to settle the dispute. PW-1 Sk. Salim deposed that accused no.1 asked his wife to bring sword and accordingly she brought sword and gave it to accused no.1. However, he later changed the weapon from ‘sword’ to ‘iron strip’ looking like sword. PW-3 Mushtaq has also corroborated the testimony of PW-1 by saying that they had gone to the house of accused no.1 Hussain as there was dispute between Sk. Salamat and Hussain. Hence, to settle their dispute they had been there, but quarrel took place between Salamat and Hussain in the house of Hussain. He has also deposed about iron strip looking like sword.

16. PW-5 Sk. Wasim has deposed that they had gone to the house of accused no.1-Hussain at 10.00 a.m. to persuade him to settle the dispute. However, accused no.1 got annoyed and he asked his wife to bring sword. PW-7 Sk. Salamat has corroborated the testimony of other injured witnesses regarding visit at the house of Hussain and that quarrel took place at his house. He does not depose about any direction by accused no.1 to his wife (accused no.7) to bring

sword. As regards the overt acts committed by the accused persons, the four injured witnesses have deposed specifically about the acts of accused no.1 Sk. Hussain, accused no.2-Sk. Yasin, accused no.3-Sk. Bilal and accused no.4-Sk. Jalal.

17. In the cross-examination, PW-1 has admitted that accused had not called the victims to visit his house for settlement of dispute. In paragraph no.16 of the cross-examination, PW-1 has admitted that accused no.1 and 2 are residing in the same house. He admitted that no accused had called them to the house of accused no.1. He accepted that accused no.1 had lodged report against victims at Chikalthana police station on 28.5.2015 and N.C. was registered. Said N.C. reports are at Exhs.42 to 44. Ld. APP had raised objection to exhibit these documents and objection was kept open to be decided at the time of final hearing. However, Ld. APP has not addressed this Court on the said documents. I do not find any merit in said objection raised by Ld. APP as there is no dispute about said documents. Hence said objection is hereby rejected.

18. In further cross-examination, in paragraph no. 21, PW-1 admitted that there was *no hot exchange of words* between them and accused persons. He admitted that during the course of incident he and PW-3 had fallen on the ground and incident was going on for 20 to 25 minutes. In paragraph no.25, he admitted that they had not called any of the accused persons on phone *before going to their house* on the date of incident. PW-3 has also

admitted in paragraph no.9 of the cross-examination that accused had not called them at their house and Sk. Salamat had taken to him at their house. Regarding altercations, he stated that quarrel took place in front of house of accused no.1 on a plot. He also admitted that none of the accused was in possession of axe or sword. He admitted that he, Salim and Wasim tried to settle the quarrel. In paragraph no.16, he admitted that he had no inimical relations with accused no.1.

19. PW-5 has also admitted in the cross-examination that they had directly gone at the house of accused no.1. He admitted that accused no.1 was asking not to interfere and he also asked why they visited his house. He further admitted that when he reached at the house of accused no.1, it was peaceful and brothers were talking to each other. There was no quarrel.

20. PW-7 Sk. Salamat also deposed on similar lines. He stated that in view of the report lodged by accused no.1 at Chikalthana police station, he and his brothers went to the house of accused at Bharat Nagar and there was no other reason for the said visit. He denied the suggestion that they tried to persuade accused no.1. He admitted that quarrel and altercation started and both parties were blaming each other. Since four months prior to the incident, they had inimical terms and they had not visited each other's house and they were not on talking terms. They were four persons who visited house of accused. *He admitted that accused no.1 had not called them and they had voluntarily gone at his house.*

21. The prosecution has examined another eye witness though he was not injured i.e. PW-6 Sk. Kasam. He also deposed about incident. He stated that they had gone to the house of accused no.1 to resolve the dispute. He has also related to PW-7 Sk. Salamat. In the cross-examination, he admitted that one of his eye is weak, but he can see by other eye. He admitted that he had gone to the spot of incident alone and when he reached there, Mushtaq was already injured. He admitted that PW-1, 3 and 5 had directly gone to the house of accused no.1 and asked him to reach there. In paragraph no.12, he admitted that he did not enter into the house of accused no.1 and quarrel occurred inside the house. He further admitted that he did not intervene in the quarrel.

22. Considering the aforesaid oral evidence of eye witnesses, I find that formation of unlawful assembly and intention to join such assembly by any of the accused persons is not proved by the prosecution. It is an admitted position that none of the accused had called victims to visit the house of accused no.1. They voluntarily went his house with the object of settling their dispute with him. It is apparent that during the course of such “settlement talks” both parties lost their temper and scuffle started. There is no material to show that there was common object of all accused who were present at the house of accused no.1 to commit murder of injured witnesses who had visited their house. On the contrary, accused were not even aware that informant and other victims are going to visit them.

23. In the facts and circumstances, the act committed by each accused has to be considered as individual acts and not an act of unlawful assembly. They all acted in the heat of moment during the scuffle/altercation.

24. Shri Ladda has rightly pointed out that the accused persons were present in their own house and they had not called the victims to visit them. Since the reason for visit was allegedly settlement of dispute, it was for the prosecution to show that the accused persons intentionally started quarrel with a common object to commit murder of the injured witnesses. It is pertinent to note here that in order to prove offence punishable u/s.307 of IPC, it is necessary for the prosecution to show that an unlawful assembly was formed to cause death of the victims.

25. In the present case, the evidence on record falls short of proving that there was formation of unlawful assembly and it had a common object to commit murder of victims. The intention of each accused to join such assembly with knowledge that object is to commit murder has not been proved by the prosecution. As a result, since the formation of unlawful assembly is not proved beyond reasonable doubt, offences punishable u/ss. 143, 147 and 148 of IPC are not attracted in the present case. Hence, points no.1 to 3 are not proved.

Points no.4 and 5

Attempt to commit murder : Test to determine

26. In order to prove the offence u/s. 307 of IPC, the

prosecution has to prove the following essential ingredients :

- (i) that the death of a human being was attempted;
- (ii) that such death was attempted to be caused by, or in consequence of, the act of the accused; and
- (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as :
 - (a) the accused knew to be likely to cause death ; or
 - (b) was sufficient in the ordinary course of nature to cause death.

27. The ingredients of S.307 require the Court to apply some tests to come to the conclusion whether there was an attempt to commit murder. Court has to judge murderous assault from the act of the accused, the manner in which it was executed, the surrounding circumstances as also the result achieved, together with intention of the accused. Court cannot judge matter one-sided, i.e. from the point of result-orientation. It is duty of the Court to examine such a case intent-oriented. As far as medical evidence is concerned, it is just an opinion in the form of evidence, but the ultimate judgment is of the Judge in the case. What Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned u/s.307 of IPC. The burden is always on the prosecution to prove 'Actus reus' and 'Mens rea'.

28. It is well settled that to establish the offence u/s.307 of IPC,

it should be proved that the intention or knowledge of the accused was such as is necessary to constitute “murder”. Without essential ingredients being established, there is no offence of “attempt to murder”. The intention is to be gathered from all circumstances; and not merely from the consequences that ensue. In the case of **Harikishan Vs. Sukhbir Singh, AIR 1988 SC 2127**, the Hon’ble Apex Court has held that the nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

29. It is well-settled that to convict the accused under this section, it is not necessary to show that bodily injury capable of death was inflicted. What the Court has to see is whether the act, *irrespective of its result*, was done with the intention or knowledge and under circumstances mentioned in the section. This was laid down in the case of **State Vs. Balram Patil, (1983) 2 SCC 28**.

30. Applying the above well-settled principles to the facts of the present case, it is necessary to scrutinize the medical evidence on record. There is no dispute that PW-1, 3, 5 and 7 were injured during the incident. Attempt of defence to show that no such incident occurred and all injuries were caused due to fall on the ground or due to the tin shed in the house of accused, have failed miserably. The injured eye witnesses have deposed consistently about incident. Admittedly, no sword or axe was used at the time of incident. However, it is proved by the

prosecution that iron bar/strip, wooden handle of axe and wooden sticks were used by accused no.1 to 4 during incident.

31. Dr. Amol PW-8 had collected only blood sample of the injured after the incident on 14.12.2015. It appears that blood samples were not collected immediately after the incident and therefore they were done at a later stage in December 2015. Dr. Ansari PW-9 was attached to Max Super Speciality Hospital as consultant Neuro-surgeon. He had examined two victims PW-1 and 3 on the date of incident. He has proved MLC reports at Exhs.81 and 82. He found one simple and two grievous injuries on the body of PW-3. He found one simple and one grievous injury on the body of PW-1. Injury certificates are at Exhs.83 (PW-3) and 85 (PW-1).

32. The injury certificate Exh.83 in respect of PW-2 Mushtaq shows following three injuries. (i) CLW frontal scalp area size 10 x 3 c.m. (ii) Fracture of scalp bone in right Fronto-Parietal region with elevated and depressed fracture. There were multiple fragments and (iii) fracture of the right clavicle bone. Injury no.2 is described as *“grievous and life threatening and C. T. brain is recommended”*. As regards injury certificate at Exh.85 in respect of Sk. Salim, the following injuries are noted : (i) CLW parietal scalp and (ii) extra-dural hemorrhage with right temporal bone fracture. It is proved from the evidence of Doctors that grievous injuries were caused to PW-1 Salim and PW-3 Mushtaq. Nothing is elicited in the cross-examination to disbelieve the said

testimonies.

33. Dr. Ashok PW-10 was attached to MGM Hospital on the date of incident. He deposed that at 11.00 a.m. i.e. just after incident, PW-7 Sk. Salamat had come along with PW-1, 3 and 5 to MGM hospital and all of them were injured. As far as Sk. Salamat is concerned, he has stated about single injury i.e. CLW on upper his lip. In the cross-examination, he admitted that there were no clean cut margins to any of the injuries found on the person of the patient. He did not mention cause of injuries in Exh.95 to 98. He stated that patients were not admitted in the hospital.

34. It is pertinent to note from this evidence that he was the first doctor who examined the injured victims immediately after the incident. It is proved from the evidence of this doctor that PW-3 had sustained grievous injury on head scalp region and his bone was exposed. It is pertinent to note here that Dr. Ashok was the first doctor to examine injured victims, but he did not describe the injury of PW-5 as “life threatening” as was done by Dr. Ansari PW-9.

35. The certificate issued by Max Super Speciality Hospital at Exhs.81 and 82 show that PW-1 and 3 were admitted at the said hospital at 4.00 p.m. There is no explanation from the prosecution as to what treatment was taken by the injured between 11.00 a.m. to 4.00 p.m. Hence, it is difficult to rely on

the opinion of Dr. Ansari that the injury caused to PW-3 was life threatening injury. However, that itself does not create any doubt about the occurrence of incident or the grievous injuries caused to the victims.

36. As per the well settled principles regarding offence u/s.307 discussed above, *intention of the accused is more important than the result of the action*. In the present case, there is no evidence on record to show that there was any intention to commit murder of injured victims by the accused persons. Mere use of dangerous weapons does not prove that there was intention to commit murder. It is only one of the relevant factors.

37. In the FIR statement at Exh.31, informant has specifically stated about use of axe and sword. Oral evidence has proved that it was a false statement and those two weapons were never used. There is huge difference between using axe and sword on one hand and use of iron strip and axe handle on the other hand. Surrounding circumstances also do not support the case of prosecution that there was intention to commit murder. As already discussed in the Judgment, the victims had gone to the house of accused for settlement talks and resolve dispute and differences. During talks, tempers flared and altercation/scuffle started between parties. However, there was no premeditated plan by the accused persons to injure the victims as they were not aware that victims are going to visit their house. None of the injured witnesses has alleged in the evidence that there was any

attempt to commit murder by the accused persons.

38. The I.O. PW-12 has admitted in the cross-examination that house of accused is situated in densely populated area. But he did not record the statement of any neighbour. He did not inquire the reason for the informant and other victims to visit the house of accused. He admitted that during investigation he found that the relations between accused and informant were not cordial. He admitted that they were relatives of each other.

39. Coming to the seizure of weapons, prosecution has examined PW-4 Haribhau who was the panch to the seizure panchnamas. Admissible portion of memorandum of accused Sk. Hussain is at Exh.49 and panchnama of recovered article one iron strip is at Exh.49-A. Memorandum of accused Yasin is at Exh.50 and panchnama of recovered article, one wooden log is at Exh.50-A. Memorandum of accused Sk. Bilal is at Exh.51 and panchnama of recovered article one wooden log is at Exh.51-A. Thus, no axe or sword was recovered at the instance of accused persons. However, there is no reason to doubt the recovery of weapons at the instance of accused persons.

40. Though the head injuries caused to PW-1 and PW-3 were grievous in nature, there is no reliable evidence to show that they were caused with the intent to cause their death. As already discussed, the intention is more important than the result of the action. In view of the surrounding circumstances, the head

injuries do not indicate the intention to commit murder.

41. Considering the entire evidence on record, I find that essential ingredients to attract S.307 of IPC are clearly missing in the present case. Offence u/s.201 r/w.149 of IPC is also not proved by the prosecution. Hence, the accused will have to be acquitted of the said offences. Accordingly, points no.4 and 5 are answered in the negative.

Point No.6

42. Evidence on record proves that it is only accused no.1 to 4 who actively participated and committed overt acts causing injuries to the victims. The allegations against accused no.5 to 7 are not proved beyond reasonable doubt. The evidence against said three accused is not reliable to conclude that they also caused hurt to the victims. Though it is deposed by injured witnesses that accused no.5 beat them by hand, in the FIR Exh.39, his name is not mentioned, but he is described as relative of the accused persons who was present holding a “sword”. Thus, there is clear contradiction in the FIR and evidence as regards role of accused no.5 and therefore, it is not safe to hold him guilty for any offence. Similarly, evidence against accused no.6 and 7 is not sufficient to hold them guilty for any of the offences.

43. Now it is necessary to analyze and ascertain what offence

has been committed by accused no.1 to 4. The weapons used during incident i.e. iron strip, wooden handle of axe and wooden sticks come within the definition of dangerous weapons. Some of the injuries caused to PW-3 Mushtaq and PW-1 Sk. Salim are grievous injuries. The injuries caused to Wasim and Sk. Salamat are simple injuries. As per oral evidence of PW-1 Salim and PW-3 Mushtaq, accused no.1 was responsible for causing head injury to PW-3 with iron strip looking like sword. As already discussed above, said injury was on the scalp region and bone was exposed. There was depressed fracture on the said part of the body. As per the testimony of PW-10 Dr. Ashok there were two injuries on the head scalp region and both were depressed fractures. PW-5, 6 and 7 have corroborated the testimony of other injured witnesses regarding said injury caused by accused no.1. It was grievous injury caused by dangerous weapon and therefore, it is covered by ingredients of S.326 of IPC.

44. As regards injuries caused to PW-1 Sk. Salim, there was one simple and one grievous injury. As per his testimony, accused no.3 Sk. Bilal inflicted blows of handle of axe on his head due to which he sustained bleeding grievous injury. His testimony is corroborated by PW-3 Mushtaq, PW-5 Wasim and PW-7 Sk. Salamat. Thus, it has been proved beyond reasonable doubt that accused no.3 Bilal also caused grievous injury with deadly weapon and S.326 would be attracted against him also.

45. As far as role of accused no.2 Yasin is concerned, PW-1 has stated that he inflicted injury on Wasim by axe handle. It is corroborated by PW-3 Mushtaq and injured witness himself i.e. PW-5 Wasim. There is no material to show that it was a grievous injury. He was not medically examined by Dr. Ansari. He was examined by Dr. Ashok PW-10, but he has not deposed whether he had grievous or simple injuries. As per paragraph no.3 of his examination-in-chief, he stated that Wasim had complained of trauma over head and left hand. Hence, it can be concluded that they were simple injuries caused by dangerous weapon i.e. axe handle. Hence, ingredients of S.326 of IPC are not attracted against accused no.2. In his case, the ingredients of S.324 of IPC would be attracted as he voluntarily caused hurt by a dangerous weapon.

46. As far as accused no.4 Sk. Jalal is concerned, PW-1 has deposed that he caused injury by wooden log. Same is corroborated by PW-3 Mushtaq. Though it is not specified as to which victim was injured by the attack of accused no.4, evidence on record is sufficient to show that he also participated in the assault by using wooden log of axe and caused hurt. However, no grievous injury is attributed to him. Hence, it has to be held that he has also voluntarily caused hurt by using a dangerous weapon and S.324 of IPC is attracted against him.

47. Since the injuries caused by the accused no.1 to 4 are

sufficient to attract the offences punishable u/s.326 and S. 324 of IPC, even if charges u/s.326 and 324 of IPC have not been framed, accused no.1 to 4 can be convicted for the said offences. Sec.324 and 326 are minor offences as compared to offence u/s.307 of IPC and therefore, no prejudice would be caused to the accused no.1 to 4 due to conviction u/s. 326 and 324 of IPC.

48. The theory of private defence presented on behalf of the accused persons does not appeal to this Court. It is not even the defence of accused persons that the victims came to their house with intention to cause harm to them. It is proved that victims visited the house of accused no.1 only for the purpose of settling the disputes. None of the accused persons was injured. Hence, there is no question of the accused persons acting in private defence. The rulings cited by Adv. Ladda on behalf of accused persons on the point of private defence are not applicable to the present case.

49. The omissions/contradictions proved through the testimony of I.O. PW-12 are not fatal to the case of prosecution. They are minor discrepancies which do not go to the root of the prosecution case. In view of corroboration from several witnesses, omissions by one or two witnesses does not affect the case of prosecution.

50. Thus, considering the entire evidence and all the

surrounding circumstances, I find that the prosecution has proved beyond reasonable doubt that accused no.1 and 3 have committed the offence punishable u/s.326 of IPC and accused no.2 and 4 have committed the offence punishable u/s.324 of IPC. Hence, point no. 6 is answered accordingly.

Point No. 7 :

51. In view of findings on points no.1 to 6 above, all the accused will have to be acquitted of the offences punishable u/s.143, 147, 148, 307 and 201 r/w.149 of IPC. Accused no.1 and 3 will have to be convicted for the offence punishable u/s.326 of IPC and accused no.2 and 4 will have to be convicted for the offences punishable u/s.324 of IPC.

52. In the facts and circumstances of the present case, I am not inclined to release accused no.2 and 4 on probation. As regards, accused no.1 and 3, since the offence u/s.326 of IPC is punishable with life imprisonment also, the provisions of S.4 of Probation Offenders Act are not applicable in their case.

53. At this stage, I have heard the accused no.1 to 4 and their Ld. Adv. as well as Ld. APP on the point of sentence. Accused no.1 Sk. Hussain submitted that he is aged about 38 years and he is having 7 children. He is a driver and there is no other earning member in the family. Accused no.3 Sk. Bilal submitted that he is aged about 33 years and he is having 3 children. He is doing

labour work and there is no other earning member in the family. Accused No.2 Sk. Yasin submitted that he is aged about 56 years and he is doing agriculture work. He is having 4 children. Accused no.4 Sk. Jalal submitted that he is 31 years and he is having 3 children. He is doing labour work.

54. Ld. Adv. Shri S. A. Patel and G. K. Gangwal for the accused submit that the accused and victims are relatives. They have small children. There are no criminal antecedents. Ld. APP Shri Dale submits that maximum punishment be imposed. He points out the relevant documents to show that PW-3 Mushtaq was hospitalized for a long time and huge expenditure was incurred in his treatment.

55. I have considered the submissions of the accused no.1 to 4 and their Ld. Advocates. As far as accused no.2 and 4 are concerned, I find that for the offence punishable u/s.324, this court has discretion to award punishment which may extent to 3 years or with fine or both. In the facts and circumstances, I find that no purpose would be served by imposing sentence of imprisonment against accused no.2 and 4. Interest of justice would be met if they both are sentenced to pay fine of Rs.10,000/- each, in default to suffer simple imprisonment of 3 months.

56. Coming to accused no.1 and 3, they caused grievous

injuries to PW-3 Mushtaq and PW-1 Sk. Salim respectively. Ld. APP has rightly pointed out Exh.84 relating to the medical treatment of PW-3 Mushtaq. It shows that he was under medical treatment from 28.5.2015 to 8.6.2015. The total expenditure incurred was approximately Rs.1.50 Lakhs for the treatment. Such information is not available as regards PW-1 Sk. Salim. However, he has deposed in paragraph no.6 of his evidence that he was hospitalized for 4 days in Max Hospital.

57. Considering the above factors, though both Accused no.1 and 3 are convicted for the offence punishable u/s.326, they have to be awarded different punishment. Interest of justice would be met if the accused no.1 is sentenced to 2 years of rigorous imprisonment for the offence punishable u/s.326 of IPC and to pay fine of Rs.1,00,000/-, in default to suffer simple imprisonment of 3 months and accused no.3 is sentenced to 1 year of rigorous imprisonment for the offence punishable u/s.326 of IPC and to pay fine of Rs.25,000/-, in default to suffer simple imprisonment of 2 months.

58. Seized muddemal in this case i.e. two wooden logs, one iron strip, two shirts and two pants, being worthless, will have to be directed to be destroyed after the period of one year.

59. Accused no.1 to 4 are entitled to get set off u/s.428 of Cr. P. C. to accused no.1 and 2 for the period 3.6.2015 to 4.7.2015 and

accused no.3 and 4 for the period 3.6.2015 to 20.6.2015.

60. The accused no.5 to 7 are required to be directed to furnish bail bonds to comply with section 437-A of the Cr. P. C. In the result, in answer to point no.7, I pass the following order :

ORDER

1. Accused no.1 to 7 are hereby acquitted of the offences punishable under sections 143, 147, 148, 307 and 201 r/w. 149 of I.P.C. vide section 235 (1) of the Code of Criminal Procedure.
2. Accused no.1 Shaikh Hussain Shaikh Jafar is hereby convicted for the offence punishable under Section 326 of the Indian Penal Code vide Section 235 (2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for 2 (two) years and to pay fine of Rs.1,00,000/-, in default to suffer simple imprisonment for 3 months.
3. Accused no.3 Shaikh Bilal Shaikh Yasin is hereby convicted for the offence punishable under Section 326 of the Indian Penal Code vide Section 235 (2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for 1 (one) year and to pay fine of Rs.25,000/-, in default to suffer simple imprisonment for 3 months.
4. Accused no.2 Shaikh Yasin Shaikh Shanoor and no.4 Shaikh Jalal Shaikh Yasin are hereby convicted for the offence punishable under Section

324 of the Indian Penal Code vide Section 235 (2) of the Code of Criminal Procedure and sentenced to pay fine of Rs.10,000/- each, in default to suffer simple imprisonment for 2 months.

5. Set off under Sec.428 of Cr. P. C. be given to the accused no.1 and 2 for the period 3.6.2015 to 4.7.2015 and accused no.3 and 4 for the period 3.6.2015 to 20.6.2015.
6. Accused no.1 to 4 to surrender their bail bonds.
7. The bail bonds of accused no.5 to 7 are cancelled and they are set at liberty.
8. Seized muddemal property i.e. two wooden logs, one iron strip, two shirts and two pants be destroyed after one year.
9. Accused no.5 to 7 are hereby directed to furnish personal bond and surety bond of Rs.15,000/- each as per section 437-A of the Code of Criminal Procedure.
10. The fine amount, if recovered from accused no.1, be paid to the informant/victim Sk. Mushtaq Sk. Shahnoor.
11. The fine amount, if recovered from accused no.3, be paid to the victim Sk. Salim Sk. Shahnoor.
12. The fine amount, if recovered from accused no.2 and 4, be paid to the victims Sk. Wasim and Sk. Salamat equally.

13. Copy of the Judgment be given to accused no.1 to 4 free of cost.

Date: 16.5.2026

(G. R. Agrawal)
Sessions Judge,
Aurangabad.

PART - C**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES :-****A. Prosecution :**

RANK	NAME	NATURE OF EVIDENCE
PW1/ Exh.38	Shaikh Salim Shaikh Shahnoor	Complainant/ Informant.
PW2/ Exh.45	Raju Babulal Shaikh	Panch witness.
PW3/ Exh.47	Shaikh Mustafa @ Mushtaq Shaikh Shahnoor	Injured/Brother of informant.
PW4/ Exh.48	Haribhau Runjaji Hiwale	Panch witness.
PW5/ Exh.64	Shaikh Wasim Shaikh Shahnoor	Injured witness/Eye witness.
PW6/ Exh.66	Shaikh Kasam Shaikh Razzak	Eye witness.
PW7/ Exh.68	Shaikh Salamat Shaikh Jafar	Eye witness.
PW8/ Exh.70	Dr. Amol Madhukar Poghe	Doctor who had taken blood samples of injured.
PW9/ Exh.80	Dr. Ishtyaque Ansari Abdul Aziz	Doctor who had given treatment to injured.
PW10/ Exh.94	Dr. Ashok Baburao Hawelikar	Doctor from MGM Hospital who had given preliminary treatment to injured.
PW11/ Exh.102	Shaikh Baba Shaikh Ismail	Seizure panch.
PW12/ Exh.104	Shaikh Harun Khan	Investigating Officer.

	Mohammad	
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B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
Nil	Nil.	Nil.

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE
Nil	Nil.	Nil.

LIST OF PROSECUTION / DEFENCE/ COURT EXHIBITS**A. Prosecution:**

Sr.No.	Exhibit Number	Description
1	39/PW1	Complaint.
2	42 & 43 /PW1	First Information Report in respect of non-cognizable offence (u/s.155 Cr.PC.)
3	44/PW1	Letter to S.P Office (Rural), Aurangabad.
4	46/PW2	Spot panchnama.
5	49/PW4	Memorandum statement of accused Sk. Hussain.
6	49-A/PW4	Seizure panchnama of iron strip.
7	50/PW4	Memorandum statement of accused Yasin Shahnoor.
8	50-A/PW4	Seizure panchnama of wooden log.
9	51/PW4	Memorandum statement of accused Sk. Bilal.
10	51-A/PW4	Seizure panchnama of wooden log.

11	71/PW8	Letter to Ghati Hospital for collecting blood samples of informant Sk. Salim Sk. Shahnoor & injured Sk. Mushtaq.
12	72/PW8	Proforma 'B' of Sk. Salim.
13	73/PW8	Proforma 'B' of Sk. Mustaq.
14	81/PW9	MLC of Sk. Salim Sk. Shahnoor issued by Max Super Speciality Hospital.
15	82/PW9	MLC of Sk. Mushthak Sk. Shahnoor issued by Max Super Speciality Hospital.
16	83/PW9	MLC injury certificate of Musthak Sk. issued by Max Super Speciality Hospital.
17	84/PW9	IPD Bill of Mr. Musthak issued by Max Super Speciality Hospital.
18	85/PW9	MLC injury certificate of Salim Sk. Issued by Max Super Speciality Hospital.
19	95/PW10	MLC of Wasim Sk. issued by MGM Hospital.
20	96/PW10	MLC of Salim Sk. issued by MGM Hospital.
21	97/PW10	MLC of Mustaque Sk. issued by MGM Hospital.
22	98/PW10	MLC of Salamat Sk. issued by MGM Hospital.
23	105/PW12	Letter to Ghati Hospital.
24	106 to 108 /PW12	Arrest panchnama's of accused no.1 to 3.
25	109/PW12	Muddemal receipt.
26	110/PW12	Seizure panchnama of clothes Salim and Mushtaq.
27	111/PW12	Muddemal receipt.
28	112/PW12	Letter sent to Forensic Lab for blood samples of injured complainant and injured witnesses.
29	114 to 116	C. A. reports.

	/PW12	
30	117 to 120 /PW12	Arrest panchanama's of accused nos.4 to 7.

B. Defence :

Sr.No.	Exhibit Number	Description
1	123A to 123D /PW12	Portion mark 'A' to D in supplementary statement of Sk. Salim Sk. Shahnoor.
2	124/PW12	Portion mark 'A' in statement of PW7 Sk. Salamat Sk. Jafar.

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
		NIL

D. Material Objects :

Sr.No.	Material Object Number	Description
1	Article-1/PW1	Pant
2	Article-2/PW1	Shirt
3	Articles-3 & 4 PW1, PW3 & PW7	Two wooden logs
4	Article-5/PW1 PW3/PW5, PW6 /PW7	Iron strip
5	Article-6 & 7/PW3	Jean pant and shirt
6	Article 3 & 4/PW6	Wooden log & weapon like a axe

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment/ order is same and as per the original judgment / order.

Name of the Stenographer : Santosh B. Satpute

Court : Principal District Judge and
Sessions Judge,
Aurangabad.

Date of Judgment / Order : 16.5.2026

Judgment/Order Dictated on : 15.5.2026

Judgment/Order Typed on : 15 & 16.5.2026

Judgment/Order Corrected on : 16.5.2026

Judgment/Order signed by the : 16.5.2026
P.O.

Judgment/Order uploaded on : 16.5.2026