

MHPU01-001582-2014	Exhibit No.	:	167		
	Presented on	:	08/01/2014		
	Registered on	:	01/02/2014		
	Decided on	:	04/08/2026		
	Duration	:	Years 12	Months 06	Days 28

IN THE COURT OF SESSIONS AT PUNE
(Presided Over By P. Y. Ladekar, Additional Sessions Judge, Pune)
SESSIONS CASE NO.81 OF 2014

Form No. XXXII
Part 'A'
 (Title Page of Judgment)
 (Para 44(i) of Chapter VI of Criminal Manual)

	(F.I.R. No.398/2013 for the offences punishable under Sections 143, 147, 148, 307 r/w Section 149 in alternatively Section 307 r/w Section 34 of the Indian Penal Code, 1860.			
Complainant	The State of Maharashtra Through Yerwada Police Station			
Represented By	Shri. M. B. Wadekar Ld. A.P. P. for the State.			
Accused	1.	Ibrahim Mohammed Umar Momin Age : Adult, Occu.: Business, R/at : Sadashivnagar Society, Handewadi Road, Hadapsar, Pune.		
	2.	Sarfraj Ibrahim Momin Age : 28 Years, Occu.: Business, R/at : Sadashivnagar Society, Handewadi Road, Hadapsar, Pune.		

	3. Adil Farookh Shaikh Age : 22 Years, Occu.: Business, R/at : 704, Guruwar Peth, Pune.
	4. Anil Virendra Tiwari Age : 22 Years, Occu.: Business, R/at : Navajish Park, Kondhwa, Pune.
	5. Khurshid Afzal Khan Age : 56 Years, Occu.: Labour, R/at : Ekbote Colony, Lohiyanagar, Pune.
	6. Raheja Anwar Shaikh Age : 56 Years, Occu.: Labour, R/at : Lohiyanagar, Near Carom Shop, Pune.
	7. Ashiya Sadik Momin Age : 40 Years, Occu.: Housewife, R/at : Jitekar Building, Sir J. J. Road, Flat No.19, Mumbai (W)
Represented By	Shri. B. H. Sheikh Learned Advocate for the accused.

Part 'B'

(Para 4(ii) of Chapter VI of Criminal Manual)

Date of Offence	:	22/09/2013
Date of FIR	:	22/09/2013
Date of Charge-sheet	:	16/12/2013
Date of Framing of Charge	:	06/12/2014
Date of Commencement of Evidence	:	29/08/2023
Date on which Judgment is Reserved	:	04/08/2026
Date of the Judgment	:	04/08/2026
Date of the Sentencing Order, if any	:	As Per Final Order

ACCUSED DETAILS

Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.C.
Ibrahim Mohammed Umar Momin	22/09/2013	28/10/2013	Sections 143, 147, 148, 307 r/w Sec.149 in alternatively Section 307 r/w Sec.34 I.P.C.	Convicted	From 22/09/2013 to 28/10/2013
Sarfraj Ibrahim Momin	22/09/2013	10/10/2013	Sections 143, 147, 148, 307 r/w Sec.149 in alternatively Section 307 r/w Sec.34 I.P.C.	Acquitted	--
Adil Farookh Shaikh	22/09/2013	10/10/2013	Sections 143, 147, 148, 307 r/w Sec.149 in alternatively Section 307 r/w Sec.34 I.P.C.	Acquitted	--

Anil Virendra Tiwari	22/09/ 2013	10/10/ 2013	Sections 143, 147, 148, 307 r/w Sec.149 in alternativel y Section 307 r/w Sec.34 I.P.C.	Acquitted	--
Khurshid Afzal Khan	22/09/ 2013	10/10/ 2013	Sections 143, 147, 148, 307 r/w Sec.149 in alternativel y Section 307 r/w Sec.34 I.P.C.	Acquitted	--
Raheja Anwar Shaikh	22/09/ 2013	10/10/ 2013	Sections 143, 147, 148, 307 r/w Sec.149 in alternativel y Section 307 r/w Sec.34 I.P.C.	Acquitted	--
Ashiya Sadik Momin	26/11/ 2013	17/12/ 2013	Sections 143, 147, 148, 307 r/w Sec.149 in alternativel y Section 307 r/w Sec.34 I.P.C.	Acquitted	--

Part 'C'

(Para 44(iii) of Chapter VI of Criminal Manual)

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**A. PROSECUTION :**

Rank	Name	Exh. Nos.	Nature of Evidence (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Mohammad Shafi Ramjanbhai Choudhary	98	Complainant
PW2	Iqbal Mohammad Shafi Choudhary	101	Witness
PW3	Shahanur Mohammad Shafi Choudhary	119	Witness
PW4	Raju Malhari Jamadar	124	Eye Witness/Panch
PW5	Dr. Sagar Anant Khadilkar	140	Medical Officer
PW6	Chimaji Hemaji Madhe	146	Investigating Officer

B. DEFENCE WITNESSES, IF ANY :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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C. COURT WITNESSES, IF ANY :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. PROSECUTION EXHIBITS :**

Sr. No.	Exh. Nos.	Proved/ Attested by	Description.
1	99	P.W.1	Complaint
2	125	P.W.4	Spot Panchanama
3	141	P.W.5	Injury Certificate
4	147	P.W.6	Report.
5	148	P.W.6	F.I.R.
6	149	P.W.6	Arrest Report of the accused
7	150	P.W.6	Seizure Panchanama of Clothes of the accused
8	151	P.W.6	Disclosure of the accused No.1
9	151/1	P.W.6	Recovery Memorandum of the hammer (Article A)
10	152	P.W.6	Letter dated 11/10/2013 issued to the Forensic Laboratory
11	153	P.W.6	Letter dated 11/10/2013 issued to Medical Officer

B. DEFENCE EXHIBITS : (Admitted by Defence)

Sr. No.	Exh. Nos.	Proved/ Attested by	Description.
1	131	Admitted by Accused	Seizure of Clothes Panchanama of the complainant.
2	144	P.W.5	IPD paper

C. COURT EXHIBITS :

Sr. No.	Exhibit Number	Description
1	45	Charge

2	46 to 52	Plea
3	156 to 162	Statements under Section 313 of Cr.P.C. of the accused.

D. MATERIAL OBJECTS :

Sr. No.	Material Object Number	Proved/ Attested by	Description
1	A	P.W.1	Hammer
2	B	P.W.2	Clothes
3	M.O.-C	P.W.6	Shirt of the accused No.1
4	M.O.-D	P.W.6	Salwar of the accused No.1

J U D G M E N T**(Delivered on 04th August 2026)**

The accused stand prosecuted for the offences under Sections 143, 147, 148, 307 r/w Section 149 alternatively Section 307 r/w Section 34 of the Indian Penal Code, 1860 (for short I.P.C.).

2. Prosecution case against the accused as per complaint Exh.99 and F.I.R. Exh.148 registered on 22/09/2013 at Yerwada Police Station vide C.R. No.398/2013 is that on 22/09/2013 Mohammad Shafi (P.W.1) who was residing at Pathare Thube Nagar, Survey No.43, Kharadi, Chandannagar, Pune along with the family members in the house on 4000 Sq.Ft. land since year 1990, but since two years the accused No.1 was regularly coming and quarreling with him and his wife by saying that he is the owner of 1000 Sq.Ft. land out of it and they should vacate it, though he has showed the

Sale Deed and 7/12 extract of the land but the accused has threatened him.

3. On 22/09/2013 at around 01:15 p.m. to 01:30 p.m. when he along with his wife and children was in his house, the accused Nos.1 to 4, 7 alongwith two to three unknown ladies trespassed on his residence and stated that they have come to take possession of their one guntha land on that he told them that they cannot by force take possession and he will not handover the possession, therefore, all of them started beating him by hand, kicks. At that time, the accused No.1 by using a hammer hit on his temple which caused injury to him. Again the accused No.1 tried to hit on his head but he avoided that blow which would have killed him. He has also stated that the accused have assaulted his son Iqbal (PW.2). Based on this statement recorded in Rakshak Hospital by the then PSI Chimaji Madhe (PW.6), report Exh.147 was submitted at Yerwada Police Station for registration of the offence and accordingly F.I.R. Exh.148 was registered against the accused. The names of the accused Nos.5 and 6 are also mentioned in the F.I.R.

4. Based on this complaint, investigation was carried out, the accused were arrested and charge-sheet for the offences under above sections was filed in the Court by the Judicial Magistrate First Class, Pune. Ld. Magistrate by following the provisions under Sections 207 and 209 of the Code of Criminal Procedure (Cr.P.C.) committed the case for trial by this Court.

5. In respect of the same incident there was a cross complaint for which on the basis of the order passed by the Ld. Judicial

Magistrate First Class, Pune, F.I.R. was registered and Regular Criminal No.3475/2014 was registered and both these cases are tried simultaneously by this Court.

6. Based on the charge-sheet, my Ld. Predecessor arraigned the accused for the offences under Sections 143, 147, 148, 307 r/w Section 149 alternatively Section 307 r/w Section 34 of the I.P.C. to which the accused have pleaded not guilty.

7. To bring home guilt of the accused, the prosecution has examined Mohammad Shafi (PW.1) who stated that he has filed the complaint Exh.99, identified the hammer (Article A) and his clothes (Article B). Iqbal (PW.2) and Shahanur (PW.3) are the son and wife of Mohammad Shafi (PW.1), Raju Jamadar (PW.4) an eye witness and panch of Spot Panchanama Exh.125. The accused have admitted Seizure of Clothes Panchanama Exh.131 of Mohammad Shafi (PW.1). Dr. Sagar Khadilkar (PW.5) has issued Injury Certificate Exh.141, in his cross-examination IPD paper Exh.144 of the same hospital was brought on record by the accused.

8. Retired PSI Chimaji Madhe (PW.6) has recorded complaint Exh.99, submitted report Exh.147 for registration of F.I.R. Exh.148, prepared Arrest Report Exh.149 of the accused persons (the accused have not disputed their arrest), drew Spot Panchanama Exh.125, prepared Seizure of Clothes Panchanama Exh.131 of the injured, he has also seized the clothes of the accused as per Panchanama Exh.150, he recorded Disclosure made by the accused No.1 Exh.151 and prepared Recovery Memorandum Exh.151/1 of the hammer (Article A). He sent the seized clothes to the forensic laboratory as

per letter Exh.152, collected Injury Certificate Exh.141 and 144 by writing letter Exh.153. He identified shirt and salwar of the accused No.1 which are M.O.-C AND M.O.-D.

9. Thereafter, statements of the accused as per Section 313 of the Cr.PC. have been recorded. The accused have denied the evidence of the prosecution witnesses about the incident against them and it is the defence of the accused that the accused No.1 has purchased one guntha land from mother-in-law of the accused No.7 and they produced registered Sale Deed and when they went to take their land, the complainant have assaulted them but the police have not registered their complaint and arrested them in the false case. They had at that time filed the complaint with the Judicial Magistrate First Class, Pune and crime was registered. They admitted their arrest.

10. Following points came up for determination and findings of this Court thereon are for the reasons stated thereto :

Sr. No.	Points	Findings
1.	Whether the prosecution proved that the accused Nos.1 to 7, on 22/09/2013, at about 13.15 to 13.30 hrs. or thereabout, at S.No.43, Thube Pathare Nagar, Kharadi, Pune, were members of an unlawful assembly the common object of which was to commit murder of Mohammed Shafi Ramjanbhai Choudhary, and voluntarily cause hurt to his wife Shahanur and to commit mischief causing loss to compound wall of house of complainant and thereby committed an offence punishable under Section 143 of the Indian Penal Code, 1860 ?	No.

2.	Whether the prosecution proved that the accused Nos.1 to 7, on the aforesaid day, date, time and place and during the course of the same transaction, were members of an unlawful assembly and in prosecution of the aforesaid common object of such assembly, committed offence of rioting and thereby committed an offence punishable under Section 147 of the Indian Penal Code, 1860 ?	No.
3.	Whether the prosecution proved that the accused Nos.1 to 7, on the aforesaid day, date, time and place and during the course of the same transaction, were members of an unlawful assembly, and in prosecution of the aforesaid common object of such assembly, committed offence of rioting with deadly weapons to wit - hammer and thereby committed an offence punishable under Section 148 of the Indian Penal Code, 1860 ?	No.
4.	Whether the prosecution proved that the accused Nos.1 to 7, on the aforesaid day, date, time and place and during the course of the same transaction, were members of an unlawful assembly and in prosecution of the aforesaid common object of which, assaulted said complainant Mohammed Shafi Ramjanbhai Choudhary, by means of hammer, with such intention or knowledge and under such circumstances, that if by that act they had caused the death of said complainant Shafi Ramjanbhai Choudhary, they would have been guilty of murder, and they caused hurt to the said Shafi Ramjanbhai Choudhary, and thereby under Section 149 of the Indian Penal Code, guilty of committing an offence punishable under Section 307 of the Indian Penal Code, 1860 ?	No.

5.	That you accused Nos.1 to 7, on the aforesaid day, date, time and place and during the course of the same transaction, either individually or in furtherance of your common intention, assaulted said complainant Mohammed Shafi Ramjanbhai Choudhary by means of hammer with such intention or knowledge and under such circumstances that if by that act they had caused the death of said complainant Shafi Ramjanbhai Choudhary, they would have been guilty of murder, and they caused hurt to the said Shafi Ramjanbhai Choudhary and thereby committed an offence punishable either under Section 307 of the Indian Penal Code simpliciter or under Section 307 r/w Section 34 of the Indian Penal Code, 1860 ?	Accused No.1 is Convicted for the offence punishable under Section 323 of I.P.C.
6.	What Order ?	As per Final Order.

ARGUMENTS

11. I have heard at length Ld. A.P.P. Shri. Wadekar and Ld. Advocate Shri. Shaikh for the accused.

12. Ld. A.P.P. would say that the evidence of the prosecution witnesses brings out that the accused were the members of unlawful assembly, they have assaulted the complainant and his family members, they have also demolished the compound wall to illegally take possession of the alleged land. There were earlier complaints against each other by the parties. The hammer used by the accused No.1 was identified by the injured. The disclosure and recovery have been proved by the Investigating Officer. Presence of the accused on the spot is established. There was no delay in the complaint.

Mohammad Shafi (PW.1) was in fact admitted in the hospital and his statement was recorded in the hospital and injury certificate supports his evidence. Therefore, according to Ld. A.P.P. there is sufficient evidence brought on record by the prosecution to prove the offences against the accused.

13. On the other hand, Ld. Advocate for the accused submitted that the complainant and his family members have in fact illegally taken possession of the 1000 Sq.Ft. land of the accused No.1. The parties are relatives, there was dispute going on between them and the complainant is resident of Pune, but the accused was residing in Mumbai and therefore, by taking advantage of political connection, the complainant has got the false F.I.R. registered against the accused persons. The evidence of the complainant and his family members is not supported by independent witness though there were people gathered on the spot as per the prosecution case. The age of the accused No.1 is such that being an old person it was not possible for him to use such a hammer. The Injury Certificate Exhs.141 and 144 indicate names of different persons and these documents got created after some time as they were collected almost after one month of the incident. Injuries are not proved. Presence of all the accused together is also not proved. So as per Ld. Advocate for the accused none of the offences are proved against them.

REASONS

AS TO POINT NOS.1 TO 4 :

14. To prove the offences under Sections 143, 147 and 148 of

I.P.C., burden on the prosecution was to prove that the accused were the members of an unlawful assembly, the object of unlawful assembly was to commit a crime and according to the prosecution, the crime was under Section 307 of the I.P.C. Then for the offence under Section 307 of the I.P.C., the burden on the prosecution was to prove that common object of the unlawful assembly was that they all or any one of them had committed the act of causing injury to Mohammad Shafi (P.W.1) with such intention or knowledge and under the circumstances that by causing such injury if death would have been caused they would have been guilty of murder. Alternatively the prosecution has to prove the accused has common intention r/w Section 34 of the I.P.C. in committing the offence under Section 307 of the I.P.C.

15. Prosecution case is heavily dependent on the evidence of Mohammad Shafi (P.W.1), Iqbal (P.W.2), Shahanur (P.W.3) and Raju Jamadar (P.W.4) who was eye witness as well as spot panch.

16. Perusal of the complaint Exh.99 indicates that the accused No.1 has hit on the head of Mohammad Shafi (P.W.1) and at that time they have also assaulted his son Iqbal (P.W.2). Mohammad Shafi (P.W.1) in his deposition before the Court has stated that in the year 1989, he has purchased 4000 Sq.Ft. land out of which 1000 Sq.Ft. land is in his name and 2000 Sq.Ft. land in the name of his brother but about one year prior to the incident, the accused used to come on the land and ask him to vacate it, saying that they are the owners though he shown them his document but they were threatening him.

17. On 22/09/2013, all the accused came on the spot to take possession of one guntha land. When he told that it is his land, the accused stated that that they will take possession and started beating him by kicks and fist blows. At that time, the accused No.1 Ibrahim hit him on his head and again tried to hit on his head but he avoided, because of it he sustained injury and there were three sutures applied on the injury in the hospital and if he would not have avoided second blow of hammer he would have been killed. He was admitted in Rakshak Hospital by Iqbal (PW.2) i.e. his son. He stated that his statement Exh.99 was recorded in the hospital as narrated by him and he identified the accused as well as hammer (Article A). He also identified his shirt (Article B).

18. Then his son Iqbal (PW.2) in his deposition before the Court has also stated about earlier visits of the accused and in respect of the incident he has stated when he along with his parents and sister was in the house, the accused demolished compound wall and entered in the house. At that time his father told them that the land belongs to him and they should not take possession, so the accused assaulted his father with kicks and fist blows and the accused No.1 hit him on his head by hammer. When he went to save his father along with his mother, the lady accused have assaulted his mother and remaining accused hit him by kicks and fist blows and he also sustained injury on his nose. Then he took his father to Rakshak Hospital, came back with the police and showed the spot and police have also taken the photographs and after two to three months he had handed over those photographs to the police as he had clicked them.

19. Then Shahanur (PW.3) in her deposition before the Court while talking about visits of the accused on earlier occasions in respect of the incident stated that at about 01:15 p.m. when they heard noise of breaking something, they came out of the house. The accused No.1 was holding a hammer and for forcible possession he was breaking the compound wall and other accused were with him and when her husband opposed them, the accused No.1 hit her husband on his temple and when she went to save her husband, the lady accused have beaten her by hand and other male accused assaulted Iqbal (PW.2) causing injury on his nose. Her husband fell unconscious on the spot. He was taken in the hospital. After one and one and half hours, the police reached on the spot. At that time the accused were present on the spot and they were taken by the police.

20. As per Raju Jamadar (PW.4) when he was at the spot, seven to eight persons from Hadapsar came. There was wordy wrangle with Mohammad Shafi (PW.1) and altercation between them resulted in free fighting. At that time the wire fencing and the wall was broken and Mohammad Shafi (PW.1) had sustained injury near his left eye by hammer. He also stated that Spot Panchanama Exh.125 was prepared in his presence.

21. In cross-examination Mohammad Shafi (PW.1) admitted that in March 2012 the accused No.1 had filed complaint against him for which the police had issue notice under Section 149 of Cr.P.C. Then in May 2012 also the accused No.1 filed complaint against him wherein his statement was recorded by the police. But at one place

he stated that he was not knowing the accused No.1 and his family members prior to the incident. He also admitted that Mohammad Shakeel has filed criminal complaint against him and agent Dube wherein he was arrested and his wife, brother and son were also accused in that case.

22. Iqbal (P.W.2) in his cross-examination admitted that prior to the incident there were complaints against his family by the accused and the police has issued notice under Section 149 of Cr.P.C. and the complaints were with the allegation that when they were coming to take possession, his family members were threatening them. He also admitted that on 22/09/2013, the accused No.1 along with labours came to erect compound near his house. He also admitted that about the incident, the accused have made phone call to the police and then police reached on the spot and then also admitted that the accused No.1 along with his labours went to the police chowky along with police. He also admitted that his father fell down because of giddiness. However, Shahanur (P.W.3) in her cross-examination admitted about civil and criminal disputes between them and the complaint to Yerwada Police Station by the accused. She stated in cross-examination that her husband was unconscious on the spot. Raju Jamadar (P.W.4) in cross-examination admitted that he is friend of Iqbal (P.W.2) and knows his family since his childhood. He also admitted that on the date of incident, the accused came along with the labours on the spot.

23. The evidence of Chimaji Madhe (P.W.6) indicates that he had received information of the incident from the control room and

also stated that after recording the statement in the hospital he visited the spot at about 07:00 p.m. He has also stated that when he reached on the spot, all the accused were present on the spot. He also admitted that there were cross complaints prior to the incident made by both the parties. The accused were resident of Hadapsar, Mumbai and Shukrawar Peth, which are outside territorial jurisdiction of his police station. There was dispute between them on account of the land and many complaints were made by the accused that the complainant was not allowing them to take possession of their land. He also admitted that the place where the alleged hammer was confined was open space and there was traffic at that place. He also admitted that he has written letter dated 11/10/2013 to the hospital which was received by the hospital on 22/10/2013 then the Injury Certificate Exh.141 and 144 were given. He also admitted that though he has stated in the spot panchanama that photographs of the spot were taken but those photographs are not filed alongwith the charge-sheet. But then he also admitted that at the time of panchanama he has not clicked the photographs. He also admitted that after 23/09/2013 he has not recorded statement of any of the witness and he has not recorded statement of any independent witness and he has only recorded statement of the complainant, witness, relatives and tenant.

24. Analysis of the above evidence brings out following factors :

In the complaint Exh.99, there is no mention of any assault or beating of wife of Mohammad Shafi (P.W.1) but in the evidence before the Court Iqbal (P.W.2) and Shahanur (P.W.3) have stated that Shahanur (P.W.3) was also assaulted by the female members of the

unlawful assembly.

Similarly, in the complaint Mohammad Shafi (P.W.1) has mentioned that Iqbal (P.W.2) was also assaulted by kicks and fist blows and injured. But in the deposition before the Court Mohammad Shafi (P.W.1) has not at all stated that his son was assaulted, rather he stated that because he got injured, his son took him to Rakshak Hospital where he got admitted for five days. So far as injury to Iqbal (P.W.2) are concerned except oral statement of Iqbal (P.W.2) there is no supporting circumstantial evidence or certificate issued by the doctor.

Then admission of Iqbal (P.W.2) that the accused were present when police reached on the spot and admission of Chimaji Madhe (P.W.6) that when he reached on the spot, the accused were present and he received the information from the control room supports the stand taken by the accused that in fact they were the complainants, they themselves informed the police and then police took them to police station. This brings out conduct on the part of the accused indicative of the fact that they were the victims and to that effect the defence of the accused is probable.

25. Then about the injuries the Injury Certificate Exh.141 indicates that Dr. Sagar Khadilkar (P.W.5) issued it when he examined Mohammad S. Chaudhary (P.W.1) and found following injuries :

- c/o – CLW to (L) eye brows (5 X 1 X 1 cm)
- CLW to below (L) eye 2 X 1 X 1 cm
- Bleeding & Pain
- Giddiness

But he has not mentioned in the injury certificate age of injuries, nature of injuries and whether they were simple or grievous hurt and then another document Exh.144 issued by the same hospital indicate name of a person Chaudhary Ramjanbhai Chaudhary. So there are two different names on the document issued by the same hospital. It also appears that the injured was not referred to the Government hospital. The Investigating Officer has not taken care of ascertaining the injuries through the Government hospital or even referring the hammer allegedly seized at the behest of the accused No.1 to the doctor who has initially examined the injured. Then though there is reference of forwarding the clothes and other samples to the forensic laboratory, but there are no C.A. Reports on record to support or link by way of circumstantial evidence the accused with the incident.

26. The evidence of Chimaji Madhe (P.W.6) indicates that the Investigating Officer has prepared Spot Panchanama Exh.125 between 04:00 p.m. and 07.05 p.m., the crime was registered at about 03:45 p.m., as per the Investigating Officer he has recorded statement of the injured in the hospital when the doctor has given the certificate that the injured was conscious which means the statement of the injured was recorded before 03:45 p.m. on 22/09/2013 but the injured himself has stated in the Court, till the evening of the date of incident he was unconscious in the hospital. Then the oral evidence of the Investigating Officer indicates that he has visited the spot of incident at 07:00 p.m. on the same date and drew spot panchanama. So if he has visited the spot at 07:00 p.m. then it is doubtful how he has prepared the spot panchanama

between 04:00 p.m. and 05:00 p.m. Then in the spot panchanama he has mentioned that he has clicked the photographs of the spot of incident through a private person but in the Court he has stated that he has not clicked the photographs of the spot of incident. Rather the photographs were according to Iqbal (PW.2) handed over to the police after two to three months and they were clicked by himself. There is no explanation as to how these photographs filed alongwith the charge-sheet as the photographs were taken at the time of spot panchanama.

27. Further evidence of all the first three witnesses does not bring out specific role attributable to the accused except the accused No.1 hitting Mohammad Shafi (PW.1) on his head by hammer. The hammer (Article A) produced in the Court. It is a very heavy hammer. But the Injury Certificate Exh.141 or 144 does not explain or indicate how the measurements of the injuries mentioned in the Injury Certificate are possible by such hammer and in any case the hammer was not referred for the opinion of the doctor. To arrive at the conclusion about knowledge and intention on the part of the accused in causing the injury which according to prosecution was with intention to kill Mohammad Shafi (PW.1) then the Injury Certificate which is brought on record which appears to have been obtained after one month of the incident does not inspire confidence in the theory of the prosecution. The role of the accused as mentioned by the witness appears to be a general description and not specific to what act having been committed by which accused. The role of the female accused is not at all mentioned in the complaint which was registered soon after the incident according to Chimaji

Madhe (P.W.6) but Shahanur (P.W.3) stated that she was assaulted. She admitted that her statement that after hearing the noise of breaking she came out of the house is not told to the police at the time of her statement or the accused No.1 was trying to break compound wall though she told the police that her husband was unconscious and both the injured were taken by the neighbours to the hospital but why that was not recorded by the police. So there are lot of improvements made by Shahanur (P.W.3) in her statement before the Court and similar is the case of Iqbal (P.W.2).

28. In the complaint it was mentioned that there were two to three unknown persons along with the accused persons. Apparently the Investigating Officer has not carried out any investigation as regards the unknown persons and even if some of the accused were unknown persons and they have been arrested by the Investigating Officer there ought to have been test identification parade of the accused persons particularly in light of the fact of admission by the Investigating Officer that some of the accused were residents of Mumbai, Shukrawar Peth, Hadapsar which is not within the area of his police station and it is also to be noted that though the complainant has stated that prior to the incident he has not met the accused persons, but the accused and the complainant are the relatives and it is hard to believe that these relatives were not knowing each other.

29. Therefore, the evidence brought on record by the prosecution is not sufficient to prove the unlawful assembly of the accused Nos.1 to 7 and therefore, the offences under Sections 143,

147, 148 and 307 r/w Section 149 of the I.P.C. cannot be stated to have been proved by the prosecution.

30. Similarly as regards the offence under Section 307 r/w Section 34 of the I.P.C. it was necessary on the part of the prosecution to prove injury was caused by using hammer. Of course the Investigating Officer has stated that on the basis of disclosure made by the accused No.1, he has seized the hammer but again the panchas as regards the said panchanama are not examined. Then as per the Investigating Officer it was lying in the open space near the spot of incident and from there the accused has taken it out, but then the evidence on record indicates that there was no open space surrounding the spot of incident as there were constructed house, in the spot panchanama, the Investigating Officer has mentioned that he has checked the spot of incident and he has not found any incriminating article over there, admittedly the accused were present on the spot and in the complaint it was mentioned that the hammer was used by the accused No.1. Then Investigating Officer has not explained as to what stopped him from checking about the hammer at that time itself. So also the Disclosure cum Recovery Memorandum Panchanama Exh.151/1 again does not inspire confidence in the evidence of the Investigating Officer. Some corroboration through the independent witness about the same was necessary.

31. Of course the evidence is doubtful about the intention on the part of the accused to kill Mohammad Shafi (P.W.1). It is also doubtful that whether the accused Nos.2 to 7 have taken any active

participation or not. However, from the evidence of Mohammad Shafi (P.W.1), Iqbal (P.W.2) and Shahanur (P.W.3) a consistent fact which is also supported by circumstantial evidence comes out is that Mohammad Shafi (P.W.1) was indeed injured, he was taken to the hospital and his presence in the hospital was for five days. So his admission in the hospital for five days and the nature of the injuries having not been mentioned by the doctor though not prove that he has suffered a grievous hurt, but the fact that he was taken to the hospital and then his statement that he was injured do show that a simple hurt was caused to him and considering the checkered history of dispute between the parties and admitted presence of the accused No.1 on the spot is sufficient to believe the evidence of Mohammad Shafi (P.W.1) that the injury was caused to him by the accused No.1 and as such though the prosecution has failed to prove the offence under Section 307 of the I.P.C. but the prosecution succeeded in proving the minor offence under Section 323 of the I.P.C. against the accused No.1. Remaining accused are entitled to get benefit of doubt. The evidence also indicates that the accused may be having intention to take possession of their land by force which does not mean that they wanted to kill Mohammad Shafi (P.W.1). Accordingly points are answers in above terms.

AS TO POINT NOS.5 AND 6 :

32. Since the offences under Sections 143, 147, 148 and 307 r/w Section 149 and Section 307 r/w Section 34 of the I.P.C. are not proved the accused are entitled for acquittal however, the minor offence under Section 323 of the I.P.C. is proved against the accused

No.1. The accused No.1 is heard on the point of the sentence. The offence under Section 323 of the I.P.C. prescribe punishment of imprisonment for either description for a term of one year or fine up to Rs.1,000/- or with both.

33. Ld. Advocate for the accused on his behalf submitted that the accused is senior citizen and therefore, a lenient view may be taken by giving him benefit of probation.

34. The facts and circumstances of the case indicate that after purchasing a plot of land he was consistently trying to take its possession and certainly his land was not available for the possession and the disputes were going between him and the complainant. It appears that the accused went along with labours to take possession and then quarrel took place. May be the accused was having legitimate right to have possession of his land but it does not mean that the accused should indulge in the act of violence. Certainly, the accused No.1 is senior citizen and therefore, some leniency can be shown but granting benefit of probation would be too lenient view.

35. During the course of trial, the prosecution has produced hammer (Article A), clothes (Article B), M.O.-C and M.O.-D they can be destroyed after appeal period is over. Accordingly, I pass following order :

ORDER

1. Accused Nos.1 **Mohammad Shafi Mohammed Umar Momin**, No.2 **Sarfraj Mohammad Shafi Momin**, No.3 **Adil Farookh Shaikh**, No.4 **Anil Virendra Tiwari**, No.5 **Khurshid Afzal Khan**, No.6 **Raheja Anwar Shaikh**, No.7 **Ashiya Sadik Momin** are

acquitted of the offences punishable under Sections 143, 147, 148, 307 r/w Section 149, 307 r/w Section 34 of the Indian Penal Code, 1860, vide Section 235(1) of the Code of Criminal Procedure.

2. Bail Bonds of the accused Nos.2 to 7 stand cancelled.
3. The accused Nos.2 to 7 shall furnish personal bond of Rs.15,000/- each as per provisions under Section 437-A of the Code of Criminal Procedure.
4. Accused No.1 **Mohammad Shafi Mohammed Umar Momin** is convicted for the offence punishable under Section 323 of the Indian Penal Code, 1860 instead of Section 307 of the Indian Penal Code, 1860 under the provisions of Section 235(2) of the Criminal Procedure Code and sentenced to suffer Rigorous Imprisonment for Three Months and to pay fine of Rs.1,000/- and in default of fine to suffer Simple Imprisonment for Fifteen Days.
5. Bail Bonds of the accused No.1 stand forfeited.
6. The accused No.1 was in custody from 22/09/2013 to 28/10/2013, he shall get set off for the said period as per Section 428 of the Code of Criminal Procedure.
7. Muddemal Property i.e. Hammer Article A, Clothes Article B, M.O.-C, M.O.-D being worthless be destroyed after appeal period is over.
8. A copy of this Judgment be supplied to the convict free of cost.

(Dictated and pronounced in Open Court).

Pune.

Date : 04/08/2026

(P. Y. Ladekar)

Additional Sessions Judge, Pune.

CERTIFICATE

I affirms that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Court Name	P. Y. Ladekar, : District Judge – 2 and Additional Sessions Judge, Pune.
Name of Steno	: Abhishek Arun Gite (Stenographer Grade - I)
Date of Judgment	: 04/08/2026
Judgment signed by the Presiding Officer	: 10/08/2026
Judgment PDF and Uploaded On	: 10/08/2026