

MHTH100003092010



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Duration : 16 04 04
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**IN THE COURT OF
JUDICIAL MAGISTRATE FIRST CLASS,
(COURT No. III) AT KALYAN**

Presided over by Nilesh Prabhakar Wasade,
2nd Jt. Civil Judge, Jr. Division and Judicial Magistrate First
Class, Kalyan

[Date of Judgment : 27/07/2026]

[Regular Criminal Case No. 162/2010] Exh. No. 41

Details of FIR: I- 31/2010

Police Station: Dombivali P .S.

Complainant/ Prosecution	STATE OF MAHARASHTRA Through P. S.O. Dombivali Police Station, Taluka- Kalyan, Dist- Thane.
Represented by	Shri. A.P. Adaskar Ld. A.P.P, for the State.
Accused	01. Mohammad Salim Ibrahim Shaikh, Age: 46, Occ: Rickshaw Driver, 02. Hajibegam Mohd. Salim Shaikh, Age: 42, Occ: Housewife, All R/at- Shiv Shankar Nagar Slum, Patharli, Dombivali East.
Represented by	Adv. Shri. S. A. Dubey.

Date of Offence	03/02/2010
Date of FIR	03/02/2010
Date of Charge-sheet	23/03/2010
Date of Framing of charges	16/12/2013
Date of commencement of evidence	13/02/2014
Date on which judgment is reserved	27/07/2026
Date of the Judgment	27/07/2026
Date of the sentencing order, if any	As per final order.

ACCUSED DETAILS

Sr. No.	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.
A1	Mohammad Salim Ibrahim Shaikh,	19/02/2010	05/02/2010	U/sec. 324, 323 and 504 r.w. 34 of I.P.C.	Convicted for the offence punishable u/s. 324 of I.P.C. and acquitted u/sec. 323 & 504 of IPC	As per final order.	N.A.
A2	Hajibegam Mohd. Salim Shaikh,	19/02/2010	05/02/2010	U/sec. 324, 323 and 504 r.w. 34 of I.P.C.	Convicted for the offence punishable u/s. 324 of I.P.C. and acquitted u/sec. 323 & 504 of IPC	As per final order.	N.A.

LIST OF PROSECUTION WITNESSES

Rank	Name	Nature of evidence	Exh
P.W.1	Husain Mohammad Shaikh	Informant	16

P.W.2	Gafar Hasan Shaikh	Panch	27
P.W.3	Dr. Santosh Siddharameshwar Kembhavi	Medical Officer	35

LIST OF DEFENCE /COURT WITNESSES- Nil**LIST OF PROSECUTION EXHIBITS-**

Sr. No.	Exhibit Number	Nature of evidence
1.	17/P.W.1	Report
2.	36/P.W.2	Medical Certificate

LIST OF DEFENCE/COURT EXHIBITS- Nil**MATERIAL OBJECT -**

Sr. No.	Exhibit Number	Nature of evidence
1.	Article 'A'/P.W.1	Hammer

J U D G M E N T(Delivered on 27th July, 2026)

Accused are arraigned to face the trial for the offence punishable under Sections 324, 323 and 504 r.w. 34 of Indian Penal Code, 1860 (for sake of brevity of 'I.P.C.').

Brief prosecution story is as follows:-

02. Informant Husain Mohammad Shaikh (hereinafter, referred as 'informant') and accused are neighbourer. On 03/02/2010, at 8-00 a.m. informant went to proceed towards his work from auto rickshaw. When he reached near Vijay Kirana Stores, at that time both accused came in front of his auto. They got angry from previous dispute. Hence, accused started abusing to informant. Thereafter, accused No. 1 caught him and accused No. 2,

who is wife of accused No.1 gave blow of hammer on the head of informant. Hence, informant sustained injury on his head. Thereafter, wife and daughter of informant reached to rescue him. Thereafter, accused beat his wife and daughter by fist and blows. Blood started oozing from the head of informant. Hence, he went to police station Dombivali and lodged report. From the report, Crime No. I-21/2010 registered against accused. Thereafter, informant was treated at Shastrinagar Hospital, Dombivali East. Thereafter, investigation undertaken by P.H./4304 Shri. D. K. More. During investigation, he went to the spot and seized hammer and prepared panchanama. Thereafter, he deposited same at police station and prepared muddemal receipt. Thereafter, he collected medical documents of informant. Thereafter, he recorded statement of witnesses and prepared charge-sheet. Lastly, officer-in-charge of Police Station Dombivali filed charge-sheet against accused *inter-alia* for an offences punishable under Sections 324, 323 and 504 r.w. 34 of I.P.C.

03. Charges are framed against accused *vide* Exh. 07 under Section 324, 323 and 504 r.w. 34 of I.P.C. to which they pleaded not guilty and claimed to be tried.

04. After completion of the prosecution evidence, statements u/s 313 (1) (b) of Code of Criminal Procedure, 1973 are recorded at Exh. 39 & 40 for explaining the incriminating circumstances so appearing in evidence against accused. The defence of accused are of total denial and false implication.

05. Upon rival contention, following points arose for the determination, upon which the findings are recorded along with reasons as follows:

Sr. No.	Points	Decision
(1)	Whether the prosecution proves that on 03/02/2010 at about 8-00 a.m. at Shivshankar Nagar, Slum area, in front of Vijay Kirana Stores, Dombivali East, accused in furtherance of their common intention, voluntarily caused hurt to informant by means of hammer which is an instrument used for cutting, stabbing or which used as weapon of an offence is likely to cause death and thereby accused committed an offence punishable under Section 324 r.w. 34 of I.P.C. ?	Yes.
(2)	Whether the prosecution proves that on above date, time and place, accused in furtherance of their common intention, voluntarily caused hurt to informant by means of fist and blows and thereby committed an offence punishable under Section 323 r.w. 34 of I.P.C.?	No.
(3)	Whether the prosecution proves that on above date, time and place, accused in furtherance of their common intention, insulted informant and witnesses and thereby gave provocation to them intending or knowing it to be likely that such provocation would cause them to break the public peace or to commit any other offence and thereby accused committed an offence punishable under Section 504 r.w. 34 of I.P.C. ?	No.
(4)	What order?	As per final order

:: REASONS ::

06. Heard Ld. APP Shri. A.P. Adaskar, for state and Advocate Shri. S. A. Dubey, for accused.

POINT Nos. 01 & 02 :-

07. To prove an offence punishable under Section 324 of I.P.C., the prosecution has to prove following ingredients:

- i] accused voluntarily caused bodily pain, disease or infirmity to the victim, or
- ii] accused must commit an act with the knowledge that thereby he was likely to cause hurt or grievous hurt to the victim, or
- iii] It was caused:
 - a) by any shooting instrument, or
 - b) by any stabbing instrument, or
 - c) by any cutting instrument, or
 - d) by any instrument, if used as a weapon of an offence, likely to cause death, or
 - e) by means of any poison, or
 - f) by means of any corrosive substance, or
 - g) by means of any explosive substance, or
 - h) by means of any animal.

08. To prove an offence punishable under Section 323 of I.P.C., the prosecution has to prove following ingredients:

- i] Accused voluntarily caused bodily pain, disease or infirmity to the victim,
- ii] Accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.

09. P.W.1 is informant. He deposed that on 03/02/2010, he was going to his work. When he reached in front of Vijay Kirana Stores, there, accused came and started abusing to him because of old dispute. Thereafter, accused No. 1 caught him and accused No. 2 beat him by hammer. Hence, blood started oozing from the head of informant and he felt unconscious. Thereafter, his wife and daughter came to rescue him. Accused beat them also by fist and blows. Thereafter, he went to Dombivali Police Station. Police referred him at Shastrinagar Hospital for treatment. Thereafter, P.W.1 lodged report Exh. 17/P.W.1. He identified hammer Article A/P.W.1.

10. In the cross-examination, P.W.1 admitted that police station is 15 to 20 minutes away from his home. He reached at 9-00 am at police station. He admitted that he reached at Shastrinagar Hospital between 12-00 pm to 12-30 pm. He deposed that he stayed two hours at police station for inquiry. He denied rest of suggestions.

11. P.W.3 is Medical Officer. He deposed that on 03/02/2010, P.W. 1 brought before him for medical examination. After examination he found contused lacerated wound on left parietal region of head measuring 2.5 cm X 1 cm bone deep. It was simple injury. Age of injury was 6 hours and it might be caused by hard and blunt object. Therefore, he treated P.W.1 and advised for x-ray and CT scan of brain. Thereafter, he issued medical certificate Exh. 36/P.W.3. According to him, injury might be caused because of throwing hammer. He denied suggestions given in the cross-examination.

12. PW.2 is panch witness. He did not support to the prosecution case. Hence, Ld. APP has taken cross-examination, but except denial nothing came on record.

13. PW.1 is informant and injured. He deposed the incident as stated in the report Exh. 17/PW.1. He deposed that accused No. 2 in collaboration with accused No.1 beat him by hammer on his head. PW.3 is Medical Officer. He deposed the injury on the head i.e. left parietal region of head of PW.1. Hence, injury stated by PW.1 is also stated by Medical Officer PW.3. Hence, evidence of PW.1 and PW. 3 are corroborated with each other.

14. Prosecution has not examined daughter and wife of PW.1, who are also injured. Even though, it can not be ruled that PW.1 suffered injury. Non examination of daughter and wife of PW.1 does not prove the injury suffered by those witnesses. But injury suffered by PW.1 through hammer Article A/PW.1 is duly proved by the prosecution.

15. PW.1 also identified Article A/PW.1. Though, seizure and spot panchanama is not proved through the evidence of PW.2 and I.O. also not examined, even though, PW. 1, who is victim has identified the hammer Article A/PW.1. Hence, there is no contradictory evidence, which can show that he is lying. Hence, considering the evidence of prosecution, it came on record that prosecution has proved the injury of PW.1 through hammer Article A/PW.1 caused by accused. But prosecution failed to prove injury of other witnesses. Hence, point No. 1 is answered in the

affirmative and point No. 2 is answered in the negative.

POINT No. 03 :-

16. In order to prove an offence under Section 504 of I.P.C., the prosecution has to prove following ingredients:

- i] The accused intentionally insulted someone,
- ii] He thereby intended to give him provocation,
- iii] He knew that it was likely that such provocation would cause that person to commit a breach of the peace or to commit any other offence.

17. According to prosecution version, accused abuses to informant /PW.1 and other witnesses and provoked them to break public peace or commit any other offence. But there is no evidence that due to this fighting P.W.1 and other witnesses got provoked and tried to commit any offence or committed any other offence. Hence, point No. 3 is answered in negative.

POINT No. 04 :-

18. As per above discussion, prosecution duly proves that accused committed an offence punishable under Section 324 of I.P.C. and Hence, I stopped my pen on the point of hearing of sentence.

Place: Kalyan
Date: 27/07/2026

(Nilesh Prabhakar Wasade)
Judicial Magistrate F.C.,
(Court No.III), Kalyan

19. Ld. APP A.P. Adsakar, for State submits that accused committed grave offence. Therefore, he prayed for maximum punishment. *Per contra*, Ld. Advocate Shri. S. A. Dubey, for accused, prayed for leniency and submit that accused are old aged person and committed an offence first time under haste. Hence, prayed to release them on probation.

20. Accused beat to P.W.1 and, therefore, he sustained hurt. Hence, accused are not entitled for benefit of probation under Probation of Offender Act, 1958.

21. P.W.1 suffered hurt, therefore, he is entitled for compensation under Section 357 of the Code of Criminal Procedure, 1973. Hence, following order.

:: O R D E R ::

01. Accused are convicted *vide* Section 248(2) of the Code of Criminal Procedure, 1973 for an offence punishable under Section 324 of I.P.C. and sentenced to suffer simple imprisonment of one year each and pay fine of **Rs. 2,000/- (Rs. Two Thousand Only)** each in default to suffer simple imprisonment of fifteen days each. Out of said fine amount **Rs. 1,000/-** each (Rs. One Thousand only) be given to informant/P.W.1 as a compensation.
02. Accused are acquitted of an offences punishable under sections 323 & 504 of I.P.C. *vide* section 248 (1) of the Code of Criminal Procedure, 1973.
03. Bail bond of accused stand surrendered and their cash surety are forfeited.

04. Accused are not in custody and therefore, they are not entitled for set off as per Section 428 of Cr.P.C.
05. Seized muddemal i.e. hammer Article A/PW.1, being worthless now, be disposed off according to law, after appeal period is over.
06. Copy of judgment be given to accused forthwith, free of cost.

(Dictated and pronounced in open court.)

Place: Kalyan
Date: 27/07/2026

(Nilesh Prabhakar Wasade)
Judicial Magistrate F.C.,
(Court No.III), Kalyan