



CNR No.-UPKJ010038422021

Date of Institution	Date of Judgement:	Age:
09-17-21	07-09-25	3 Y, 9 M, 22 D
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In The Court of Sessions Judge, Kannauj

Presiding Officer- Shri Chandroday Kumar (HJS)-UP06553

Session Trial Number-712 of 2021

State of Uttar Pradesh

... Prosecution

Versus

- 1. Noor Ahamad, son of Ibrahim,
 - 2. Munna, son of Ibrahim,
 - 3. Shibbu, son of Noor Ahamad
- All residents of Rasulabad, Police Station Talgram, District Kannauj

... Accused.

Crime Number-153/2019
Under Sections 323/34, 308/34, 504 IPC
Police Station- Talgram,
Distt. Kannauj.

Prosecution Counsel: Shri Tarun Chandra, DGC (Criminal),

Defence Counsel: Shri Idrish Khan, Advocate.

JUDGMENT

Introduction:

- 1. The accused, Noor Ahamad, Munna and Shibbu, have been charged with and tried for the offences punishable under sections 323/34, 308/34, 504 of the Indian Penal Code (IPC).

Facts:

- 2. According to the prosecution's story, the brief facts related to the case are as follows: On June 3, 2019, at 20:29, the complainant, Mohd. Ayyaz submitted information to the police station in Talgram in Kannauj District. He reported that On June 01, 2019 at around 8:20 PM, the complainant's cousin, Mohd. Wasid, son of Kallu, was present at his doorstep when Noor Ahmad, Munna (sons of Ibrahim), and Shibu (son of Noor Ahmad) from the same village began verbally abusing them over a dispute concerning the drainage. When the complainant objected to their abusive language, they assaulted him and his brother with sticks and batons, causing them injuries. Due to fear of these individuals, he was unable to approach the police station earlier. The complainant requested that the information be registered and that action be taken.

NCR and FIR:

- 3. Based on the oral information given by the complainant, a Non Cognizable Offence (NCR) No.-96/2019 was registered at the Police Station in Talgram, District Kannauj, under Sections 323, 504 of the

Indian Penal Code (IPC) against the accused Noor Ahamad, Munna and Shibbu, on June 03, 2019, at **20:29**.

Injury Reports:

4. On June 03, 2019, between 8:50 PM and 9:20 PM, Dr. M.M. Ansari, Medical Officer at C.H.C. Talgram, District Kannauj, conducted a medical examination of the **injured Mohd. Ayyaz**, son of Sabir Kuraishi, aged about 30 years, resident of Village Rasoolabad, Police Station Talgram, District Kannauj. The following injuries were found on his body:

Injury No. 01: A lacerated wound measuring 3.5 x 0.4 cm at the left parital region, margins are reddish brown.

Injury No. 02: A contusion with swelling measuring 04 x 4.0 cm at the right frontal region, reddish brown.

Injury No. 03: The injured person complained of pain in the right shoulder and had been experiencing vomiting for the past two days.

Doctor's opinion- all injuries were likely caused by a hard, blunt object. The injuries were approximately two days old and were of a simple nature. The injured person was referred for X-ray examination of the head and shoulder.

5. On the same day, i.e., June 03, 2019, at around 09:20 P.M., the aforementioned doctor conducted a medical examination of the **injured Wasid**, son of Kallu, resident of Village Rasoolabad, Police Station Talgram, District Kannauj. The following injury was found on his body:

Injury No. 01: A lacerated wound measuring 01 x 0.3 cm at the outer side of the right eyebrow. The margins of the wound were reddish-brown in colour.

Injury No. 02: Complaint of pain in the left area and left shoulder joint.

Doctor's opinion- all the injuries were caused by a hard, blunt object. They were approximately two days old and were simple in nature.

6. Based on the above, a First Information Report (FIR) was registered at the Police Station Talgram in Kannauj District, under Sections 323, 504 and 308 of the Indian Penal Code (IPC). This FIR, assigned Crime No. 153 of 2019, was registered against the accused individuals, Noor Ahmad, Munna, and Shibbu, on June 3, 2019, at 18:34.

7. At the same time, the same extract was entered into General Diary (GD) No. 33, dated June 03, 2019. This case was assigned to SI Ajay Prakash, in-charge of the Talgram Police Station, Kannauj.

Investigation:

8. The SI, Ajay Prakash, visited the scene, prepared the site map (Exhibit Ka-6), and recorded the witnesses' statements. Upon completing the investigation, the IO submitted a charge sheet against

the accused, Noor Ahamad, Munna, and Shibbu, under Sections 323, 308, and 504 of the IPC, in the Court of the Chief Judicial Magistrate (CJM), Kannauj.

Cognisance and committal:

9. The learned CJM, Kannauj, took cognisance of the matter and, upon determining the case to be triable by the Court of Sessions, committed the case to the Court of Sessions, following compliance with section 207 of the Code of Criminal Procedure (CrPC).

Charges:

10. This court registered the case as Session Trial Number 712 of 2021 and framed the charges against the accused, Noor Ahamad, Munna and Shibbu, under sections 323/34, 308/34 and 504 of the IPC. The accused pleaded innocence and claimed for trial.

11. The prosecution examined the following witnesses to substantiate the charges against the accused:

Witness of facts:

PW2, Mohd Ayyaz, the first informant and injured,

PW3, Mohd. Sajid, eyewitness,

PW5, Wasid Kuraishi, injured, and

PW6, Chandrasekhar; eye witness,

Formal witnesses:

PW1, Dr. M.M. Ansari, conducted the medical examination of the injured persons,

PW4, Contable Gaurav Kumar; proved NCR and GD,

PW7, SI Ajay Prakash; prepared the site map and submitted the chargesheet,

PW8, Dr. Sanjay Kumar; proved the supplementary reports, and

PW9, Constable Dharmendra Kumar; proved the FIR and G.D.

12. The prosecution produced the following papers under documentary evidence:

Exhibit Ka-1, Medical report of injured Mohd Ayyaz; proved by PW1,

Exhibit Ka-2, Medical report of injured Mohd Wasid; proved by PW1,

Exhibit Ka-3, Supplementary report of injured Mohd. Ayyaz; proved by PW3,

Exhibit Ka-4, NCR; proved by PW4,

Exhibit Ka-5, GD; proved by PW4,

Exhibit Ka-6, Site Map; proved by PW7,

Exhibit Ka-7, Chargesheet; proved by PW7.

Exhibit Ka-8, FIR; proved by PW9,

Exhibit Ka-9, GD; proved by PW9,

Exhibit Ka-10, X-ray report of injured Ayyaz; proved by PW8, and

Exhibit Ka-11, X-ray report of injured Wasid; proved by PW8.

Defence Version:

13. During the examination conducted under Section 313 of the Criminal Procedure Code, the accused individuals stated that the complainant of the case had assaulted the applicants' relatives, Ibrahim and Farman, causing serious injuries to both of them. Sibu Qureshi lodged a First Information Report (FIR) regarding this incident. To escape liability in that case, the complainant fabricated a false case and falsely implicated the accused.

14. No oral evidence has been produced in defence

Arguments:

15. I heard the arguments of the learned District Government Counsel (DGC) (Criminal) and learned counsel for the defence. I went through the evidence and materials available on the record with great care.

Evidence:

16. Statement of Prosecution Witness PW-1 Dr. N.M. Ansari

Prosecution witness PW-1 Dr. N.M. Ansari deposed in **his examination-in-chief** that on June 3, 2019, he was posted to the said position on duty. From Police Station Talgram, **Home Guard Anil Kumar** brought the injured **Mohammad Ayyaaz** and **Mohd. Wasid** for medical examination and treatment due to the injuries, along with the **injury memo**.

17. After marking their identification features, at **08:50 PM**, he examined the injuries on the body of injured **Ayyaaz**, son of Sabir Qureshi, aged approximately 30 years, and found the following injuries:

1. **Lacerated wound** measuring **3.5 x 0.4 cm** on the **left side of the head**, with reddish-brown margins.
2. **Contusion** with swelling measuring **4 x 4 cm** on the **frontal region of the head**, with a brownish-red colour.
3. The injured complained of pain in the **right shoulder**, and he also reported **vomiting for the past two days**.

18. All the injuries were possible by a **hard, blunt object**, were approximately **two days old**, and were simple in nature. The injured was referred for **X-ray of the head and shoulder**.

19. He prepared the **medico-legal report** in his own handwriting and had it certified with the thumbprint of the injured person. The original report is on file as **Paper No. 7A/2**, which he confirms. After reviewing the X-ray report of injured Ayyaaz, he prepared a supplementary report dated July 29, 2019, which is on record as **Paper No. 7A/3**, in his handwriting and bearing his signature. He confirmed the same.

20. On the same day, at **09:20 PM**, upon examining the body of **Mohd. Wasid**, son of Kallu, found the following injury:

- **Lacerated wound** measuring **1 x 0.3 cm** on the **outer side of the right eyebrow**, with reddish-brown margins.
- The injured also complained of **pain in the left shoulder**.

21. In his opinion, all the injuries were caused by a **hard, blunt object, were two days old, and were simple**. The **medico-legal report** is on file as **Paper No. 7A/1**, in his handwriting and signed by him, which he confirms. Exhibits Ka-1 and Ka-2 were marked respectively on Papers 7A/2 and 7A/1, and Exhibit K-3 was marked on 7A/3.

22. Injuries to the injured person could have been caused during a **physical assault at around 8:20 PM on 01.06.2019**.

23. During **cross-examination**, the witness stated that his duty was at **CHC Talgram** from **8:00 AM on June 3, 2019, to 8:00 AM the next day**. On **03.06.2019 at 9:15 PM**, Home Guard brought the injured **Mohd. Ayyaaz** and **Wasid**. He later clarified that both injured persons arrived at **8:45 PM**, and the **medical examination of Mohd. Ayyaaz** started at **8:50 PM**.

24. **Mohd. Ayyaaz** had **two injuries**, one of which was in the **parietal region**. No bandage was tied on the head of the injured. **Injury No. 1** was approximately **48 hours old**, and its margin was lacerated with a **reddish-brown colouration**. It takes approximately **two days** for a wound to become reddish-brown. It is incorrect to say that a wound turns reddish-brown within **12 hours** and completes in **18 hours**.

25. **Injury No. 1** was referred for **X-ray**, and **Injury No. 2** was a **bluish contusion with swelling**. There was **no other injury** to the body of the injured. If excessive internal bleeding occurs due to **Injury No. 1, death could be possible**. The **supplementary report** of the injured was prepared on **29.07.2019**, on which date the Investigating Officer brought the X-ray report from **the Police Station Talgram**, and the **supplementary report was prepared based on that**.

26. Formation of **callus** after a bone fracture begins approximately **20-25 days later**, depending on the **age**. It is incorrect to state that callus formation starts within 20-25 days, regardless of age, and he may have retained the X-ray report to avoid a repeat medical examination of the injured.

Injured Wasid had a **simple injury, a laceration**. A **scab** had formed **over the wound due to clotting**. He also recommended an X-ray for his shoulder pain. He had also reviewed the injured person's X-ray report, and it was marked 'NAD' (No Abnormality Detected). He does not recall whether the Investigating Officer recorded his statement in this regard.

27. It is incorrect to state that there were **no injuries** on the body of the injured **Ayyaaz**, or that **false injuries** were fabricated after meeting with him. It is also incorrect to state that the injuries on the bodies of **Ayyaaz** and **Wasid** were **fresh** and **occurred on 03.06.2019**.

Statement of Prosecution Witness PW-2 Ayyaaz

28. Prosecution witness PW-2 Ayyaaz deposed in **examination-in-chief** that "I am illiterate, but I know how to sign. I also know dates and times. The incident occurred on **June 1, 2019, at approximately 8:20 PM**. My maternal cousin Wasid and I were present at our doorstep. A dispute arose over the drainage channel, and **Aamir, Sajid, Chandrashekhar, Sharif, Noor Ahmad, Munna, and Sheebu** of our village began abusing me. When I objected, they started beating me with sticks. When **Wasid** tried to save me, he was also beaten with sticks by the aforementioned accused persons. Both of us sustained several injuries. Upon seeing us being beaten, many people from the locality arrived at the spot. The residents intervened, and the accused fled from the scene after threatening us with future harm to life and property.

29. Due to the assault by the said persons, I sustained serious injuries to my head and shoulder, and Wasid also suffered serious injuries to his **head and shoulder**. I went to the police station to lodge the report on the same day, but the police did not register our report. However, the police conducted our medical examination at the **Talgram Government Hospital**. From there, we were referred to the **District Hospital, Kannauj**. On **03.06.2019**, after receiving treatment, I went to the police station and gave oral information, based on which the police registered an **NCR**. The police got my X-ray done at the district hospital and later inspected the spot. The police recorded statements of persons present at the spot. My statement was also recorded by the police, to whom I narrated all that I have stated today before the Hon'ble Court."

30. During **Cross-Examination**, the witness stated that he has **four brothers** and **two sisters**. His brothers are **Aseem, Haseen, and Tahseen**. All of them reside in the same house. On the day of the incident, only he and his cousin **Wasid** were present at home. His sister **Shaheen** was also present at home. His other brothers were not present at the house. His paternal uncle **Shakir** and another person, **Aaqil**, were outside the house at the time of the incident. **Haseeb** and **Wasid** were also outside. He denied that his uncle, **Shakir**, was sweeping the courtyard at 6:40 PM on January 6, 2019. The dispute began because **Noor Ahmad** had laid bricks in the drain earlier that day. However, he admitted that those bricks had been laid **15 days prior**. He did **not lodge any complaint** with the police regarding this, nor did he submit an application to the **Sub-Divisional Magistrate (SDM)** for opening the drain. The bricks caused waterlogging on his premises. The incident occurred at **8:20 PM** on June 1, 2019, and by then it was already dark. At that time, **Noor Ahmad, Sheebu, and Munna** assaulted him. Munna had a stick in his hand; he did **not see** what the others were holding.

31. The accused beat **him and Wasid for about half an hour**. He did not know how many blows they struck. Both of them fell to the ground. **Munna** kept hitting them with a stick. He could not confirm

whether the others also hit them. There was a **light** at the place of occurrence. Blood was oozing from his and Wasid's bodies. He had injuries on the **left side of the head** and the **right shoulder**. There was slight bleeding from the shoulder. Wasid had a **burst (lacerated) eyebrow**, but he could not say which side it was on. Wasid also had an injury on his **left hand**, but he did not remember exactly where it was. Apart from these, there were **no other injuries**. He did **not know** whether the doctor noted any additional injuries beyond those he mentioned. If so, he did not know whether those entries were correct.

32. He went to the **police station at 10:00 p.m. on June 1, 2019**. No one else accompanied him to the station. He stayed there **the whole night**. The police **did not take him to a medical facility for treatment** that night. He remained at the police station from the night of **June 1, 2019, until June 3, 2019**, without receiving any bandage or treatment. Blood continued to fall from their wounds at the police station. His **shirt was stained with blood**. He **called Wasid** to the police station on **03.06.2019**, upon which the **NCR was registered**. The NCR was registered at **approximately 4:30 PM on June 3, 2019**.

33. On the morning of June 3, 2019, at around **9:00 AM**, they went to **Talgram Hospital**, where dressing was performed, and from there, he was referred to the District Hospital in **Kannauj**. His **medical examination was not conducted at Talgram**, but Wasid's was, and later at the District Hospital as well. **An X-ray of his head and shoulder** was done. He did not know whether **Wasid's X-ray** was conducted. After the X-ray, both of them returned home.

34. He could not remember whether the **Investigating Officer recorded his statement**. **Wasid is his maternal cousin** and resides with him, although he is a resident of **Kannauj**. He did not know **how the IO wrote his statement**. The **Investigating Officer visited the scene once**, but he (the witness) was not present at that time. He did not know at whose instance the **site plan was prepared**. He was unaware whether **Sheebu had lodged a case** against him, Shakir, Aqib, Haseeb, and Wasid on **June 2, 2019**, at the police station. He admitted that he was granted **bail in Crime No. 100/2019** under Sections **323, 504, 147, 452, and 506 IPC**, and that the **hearing was fixed for today**. Later, the IO added Section 308 of the **IPC**. When the **NCR was registered**, his uncle **Shakir** was also present with him. It is incorrect to say that **Wasid** was present at the police station during the registration of the NCR.

35. He denied the suggestion that **he, Shakir, Wasid, Haseeb, and Aqil** entered the house of **Ibrahim, Farman, Munna, etc.**, at **6:40 PM on 01.06.2019** and assaulted them, or that **Sheebu lodged a case** against them in that regard. He also denied the suggestion that, to **escape from that case**, they **fabricated false injuries in collusion with doctors** and lodged a **false report** later. He denied the suggestion that **he and his cousin, Wasid, had no injuries**, and for that reason, he did not go to the police station to lodge the report on the day of the incident.

Statement of Prosecution Witness PW-3 Sajid

36. Prosecution witness **PW-3 Sajid** stated in his deposition that: "I am literate. The incident occurred at approximately 8:15 PM on June 1, 2019. Near my house, at the village square, an argument was taking place over a **drainage dispute** between our neighbour **Noor Ahmad, Munna**, and others. Suddenly, **Noor Ahmad, Munna**, Noor Ahmad's sons **Sheebu** and **Ayyaaz** (son of Mohd. Sabir Qureshi), and **Wasid** (son of Kallu) came with **sticks and lathis** and began beating **my maternal uncles Aaqil and Shakir**, my cousin **Haseeb**, and also **Ayyaaz and Wasid**. I intervened and tried to pacify the situation. Due to the beating by the said accused persons, **Ayyaaz and Wasid were seriously injured**. Many villagers arrived at the scene and intervened. The wounded were thereafter taken to the hospital. Ayyaaz lodged the report of the incident. The police also recorded my statement."

37. During **Cross-Examination**, the witness stated that **Ayyaaz and Haseeb** are the sons of his maternal uncles. **Shakir and Aaqil** are his real maternal uncles. He has been living at his maternal uncle's house since childhood. The incident occurred at **08:15 PM**. There was **no rainfall**, but it was a dark **night**. He was standing on the **plinth of his house**, and upon hearing noise and commotion, he went to the scene. There was a **scuffle between the two sides in the dark**. **No bricks or stones were thrown**. He could **not see clearly who beat whom**. He recalled that **Ayyaaz had one injury on his head**, though he could not remember whether it was on the left or right side. He **did not see any other injuries** on Ayyaaz. **Wasid also had injuries**, which were **minor injuries on the head**, and **no bleeding** was seen. Due to intervention by the local residents, the injured persons **did not go to the police station** that night. He **did not know where Ayyaaz and Wasid received their treatment**. He had seen that the accused persons, Noor Ahmad, Ibrahim, and Farman, also suffered **minor injuries**. He had **seen an injury on Farman's head**.

38. He admitted that on **01.06.2019**, at around **06:40 PM**, his maternal uncle, **Shakir**, was sweeping the courtyard, and a verbal altercation occurred when neighbour **Ibrahim** objected to it. He denied the suggestion that **Shakir, Aaqil, Ayyaaz, Haseeb, and Wasid** had beaten **Noor Ahmad, Ibrahim, and Farman** at 06:40 PM on the same day. He further stated that the **Investigating Officer did not question him** regarding the incident. He **could not recall** whether he had given any statement to the Investigating Officer, and did not know **how such a statement was recorded**. He mentioned that to the **east of Ayyaaz's house** is the house of **Raheesh**, to the **north** is **Iqbal's**, and to the **west and south** is **Mukhtar's house**. He stated that **these individuals did not arrive at the scene at the time of the incident**.

39. He denied the suggestion that **Ayyaaz and Wasid had no injuries**, and that **false injuries were created in connivance with doctors**. He also denied giving **false testimony** due to being the **nephew of Shakir** and asserted that he had **witnessed the incident**. He stated that he **did not know whether Wasid underwent an X-ray**, and also **did not know**

whether Ayyaaz had lodged any case against Noor Ahmad at the police station. He admitted that he came to testify in court today after receiving a summons, and that his maternal uncle had informed him that he was required to do so.

Statement of Prosecution Witness PW-5 – Wasid Qureshi

40. Prosecution witness PW-5 Wasid Qureshi stated in his examination-in-chief that “I am semi-literate and can read and write a little. The incident occurred on June 1, 2019, at approximately 8:20 PM. I and my brother, Mohammad Ayyaaz, son of Mohd. Sabir Qureshi, were present at Ayyaaz’s house. At that time, **Noor Ahmad and Munna** (sons of Ibrahim), along with **Sheebu**, son of Noor Ahmad, began abusing us over a **drainage dispute**. When we asked them not to abuse us, all of them, with a common intention, assaulted me and my brother Ayyaaz with **sticks and lathis**. During the incident, several people from the village and locality, including **Amir (son of Halim), Mohammad Sajid (son of Akram), Sharif (son of Anwar), and Chandrashekhar (son of Premchand)**, arrived at the spot, witnessed the incident, and intervened to save us. Due to the assault by the said accused persons, we suffered **multiple injuries**.

41. As those individuals **blocked our path**, we were unable to go to the police station to lodge the report on the same day. On the **third day**, i.e., on **3 June 2019**, my brother Ayyaaz lodged the **FIR** at the police station. On the same day, **our medical examination** was conducted at the **District Hospital, Kannauj**. On **04.06.2019**, Ayyaaz also underwent an **X-ray**, which revealed that **his skull bone was fractured**. After the report was registered, the police conducted an **investigation** and took a statement from me. I narrated all these facts to the police in my statement.”

42. During **Cross-Examination**, the witness stated that he is a resident of **Rasoolabad, Police Station Talgram**, which is his **maternal village**. His own house is located in Mohalla Teela, Kannauj, but he has been residing in Rasoolabad since childhood and currently resides there. **Ayyaaz is his cousin from the maternal side**. The distance between his house and Ayyaaz's is approximately **30–40 meters**. He reaffirmed that the incident occurred on June 1, 2019, at approximately 8:15 PM, when he was at home. At the time of the altercation, he was standing nearby. **Farman and Sheebu** came holding a **spade** and began to **block the drain** that carried water from his maternal uncle’s house. This led to verbal abuse and eventually to a **physical assault** between the two parties.

43. He stated that **both sides assaulted each other**. It was a **dark night**, though **bulbs were lit**. At the time of the incident, his **elder brother Sajid, parents, and sister** were all present at home. During the scuffle, all family members and around **50 other local people**, whose names he did not know, intervened and tried to pacify the situation. There was a **stampede-like scene**, but he **did not see anyone fall to the ground**. He stated that **Sheebu and Munna assaulted Ayyaaz**. **Sheebu had a**

spade, and Noor Ahmad had a stick or lathi. The altercation lasted for **10-15 minutes.** He himself was struck **once with a lathi and once on the shoulder with a stick,** and sustained **no other injuries.** He reiterated that **Sheebu hit him with the spade,** which struck his **eyebrow** and also caused an injury to his **shoulder.** Ayyaaz sustained a **head injury** that caused a **wound on the skull,** and also an injury to his hand. The blow to the head was caused by the **sharp edge of the spade,** resulting in a **puncture wound.**

44. He explained that they **did not go to the police station** on the day of the incident because of the intervention of local residents. Even Ayyaaz did not go. On the day of the incident, **he did not seek any medical treatment** and only got a **bandage at home.** He **did not know** whether Ayyaaz sought medical treatment or not. He confirmed that the incident took place **on the night of Holi.** Both he and Ayyaaz remained at home the following day as well. After **Sheebu lodged a complaint** against them, they went to the police station to lodge their own report on **June 3, 2019.** He and Ayyaaz went to the police station together. The complaint was **dictated by his brother and typed by someone on a computer** at the police station. They reached the police station around **11-12 noon on 03.06.2019.** After lodging the report, they went to the **government hospital in the locality** at around **1 PM,** where a doctor examined their injuries. Only he and Ayyaaz had gone to the hospital.

45. He **denied** that his medical examination was conducted **at 9:00 PM on June 3, 2019.** He stated that the doctor referred them to the **District Hospital in Kannauj** on the same day. They reached the District Hospital around **5-6 PM,** but as there was **no doctor present,** they returned home and went again the next morning. Their **X-ray was conducted at the District Hospital, Kannauj,** and they were both **admitted** thereafter. They remained admitted for around **10-12 days,** but he could not recall the exact **date of discharge.**

46. He confirmed that, pursuant to the case lodged by Sheebu, Aaqil, Ayyaaz, Aseeb, Shakir, and himself, they were sent to jail and later released on **bail.** The case in which they were sent to jail is still pending in **court.**

47. He could not recall whether the **Investigating Officer had questioned them** regarding the incident. He stated that **Halim's house is adjacent to Ayyaaz's house.** The village had an earlier brick-paved road (khadanja), which a concrete road has now replaced; however, he did not remember the direction of the earlier brick road. He described the surrounding structures as follows: to the **west of the place of occurrence** is the house of **Munabbar,** to the **east** is the house of **Aaqil,** and in front of Aaqil's home is a **lane,** with another lane towards the **south.** Adjoining the lane is the house of **Ghaffar.**

48. He **denied** the suggestion that the complaint lodged by **Sheebu** was genuine and that he and Ayyaaz **fabricated injuries** with the help of doctors to **file a false counter-case.** He further denied that **any**

incident had occurred with them and that they had not lodged the report on 01.06.2019 due to the absence of any such event.

Statement of Prosecution Witness PW-6 – Chandrashekhar

49. Prosecution witness PW-6 Chandrashekhar stated in his examination-in-chief that “The complainant Ayyaaz and the accused persons **Noor Ahmad, Munna, and Sheebu** belong to my village. On **01.06.2019**, at around **08:20 PM**, I was returning home from my fields when I saw a crowd gathered near the houses of **Munna and Ayyaaz**. A **scuffle and verbal abuse** were ongoing. The accused persons, Noor Ahmad, Munna, and Sheebu, were assaulting the complainant Ayyaaz, his uncles, **Sakir and Aaqil**, and Aaqil’s nephew **Wasid** with **sticks and lathis**. When others and I asked them to stop using lathis and sticks, they did not relent. **Ayyaaz and Wasid were bleeding** and fell to the ground after being injured. Other villagers and I tried to dissuade the accused from further assault, but they did not stop. Eventually, many more people arrived at the spot, and under their pressure, the accused left the injured and returned to their homes. The **police later arrived**, conducted an investigation, and recorded my statement.”

50. During **Cross-Examination**, the witness stated that he appeared in court **pursuant to a summons**. He is a **farmer**, owns about **3–4 bighas** of land, and cultivates the rest on a **sharecropping** basis. Between his house and Ayyaaz’s house, there are around **10–15 houses**, including those of **Deshraj, Naresh, and Tillu**. He could not recall the names of other residents.

51. On **01.06.2019 at about 08:15 PM**, he was passing through the lane on his way home. It was a **dark night**, and a **large crowd** had gathered at the place of occurrence, numbering around **30–35 people**. When he reached the spot, **the fight was already in progress**. He saw that **Aaqil, Sakir, and Ayyaaz** were being beaten by **Sheebu, Noor Ahmad, and Munna**. He denied the suggestion that no assault took place on Aaqil and Sakir. He stated that he **saw them being beaten**, though he did **not observe any visible injuries**. He saw **blood oozing from Ayyaaz’s head**, but no other injuries. He reached the spot while the assault was ongoing, and the conflict ceased about **10–15 minutes** after his arrival. Although about **25–30 people** were present, he did **not know any of their names**. He confirmed that they were **local residents**. After the scuffle ended, he **returned to his house**. He did **not see any injuries** on the bodies of **Sheebu, Noor Ahmad, or Munna**. He confirmed that he had known Ayyaaz from earlier, **frequently visited his house**, and had **cordial relations** with him.

52. He did not know whether **Ayyaaz received any medical dressing** or treatment for his injuries. He was also **unaware** whether **Ayyaaz lodged any report** at the police station or whether **Sheebu lodged any FIR** against **Ayyaaz, Sakir, Wasid, and Aaqil**. He did **not know** if, in the case lodged by Sheebu, these persons were sent to **jail** and later **released on bail**. He stated that he came to court **with Ayyaaz today**

and was aware that **today is the date of the hearing** in Ayyaaz's case. He affirmed that the police had recorded his statement **one or two days after the incident** and denied that his statement was recorded on 10 August 2019. He stated that he told the **Investigating Officer** that **Sakir and Aaqil were assaulted** by the accused. If that portion was not written in the statement, he **could not explain the reason**. He had also mentioned Wasid in his statement to the police.

53. He stated that he was watching the incident from a distance of about **five meters**. The accused persons, Munna, Noor Ahmad, and Sheebu, were armed with **sticks and lathis**. He denied the suggestion that **Sheebu had a spade** in his hand. He was **not aware** of the reason for the quarrel. It was **not raining** on the day of the incident. The location of the incident is a village square (chowk) approximately 20 feet by 20 **feet** in size. The incident took place in the centre **of the square**. To the **north of the chowk** is the house of **Ghaffar**, where Ghaffar's family resides. To the **south is an open field**, the owner of which he could not recall. He could not remember the names of those whose houses are on the **east and west** of the chowk. He has been residing in the village for about **20-25 years** with his **entire family**.

54. He denied the suggestion that he could **not identify the accused** due to the **darkness** of night. He denied giving false testimony in court at Ayyaaz's behest due to their friendly relations. He further denied that he had **not witnessed the incident** himself and that he was deposing in court **on Ayyaaz's instructions**.

Statement of Prosecution Witness PW-8 - Dr. Sanjay Kumar, Radiologist

55. Prosecution witness **PW-8 Dr. Sanjay Kumar**, Radiologist, deposed on oath: "On **04.06.2019**, I was posted at the said position. On that day, **Home Guard No. 831, Anil Kumar**, from **Police Station Talgram, CHC Talgram**, brought **Mohammad Ayyaaz**, approximately **30 years old**, son of Sajid Qureshi, resident of village Rasoolabad, P.S. Talgram, to me. I conducted an **X-ray of his head and right shoulder** under my supervision. The X-ray revealed a **fracture in the left parietal bone of the skull**. The **shoulder appeared normal**. On the same day, **Mohammad Wasid**, aged 18, son of Kannu, was also brought by the same Home Guard for an X-ray. An **X-ray of his left shoulder** was conducted, which was found to be **normal**. The original **X-ray reports** are on record as **Paper Nos. 7A/3 and 7A/4**, respectively. These are in **my handwriting and signed by me**, and I confirm their authenticity. These documents have been marked as **Exhibit K-6 and Exhibit K-7**, respectively."

56. During **Cross-Examination**, the witness stated that his **duty hours on 04.06.2019 at District Hospital, Kannauj**, were from **8:00 AM to 2:00 PM**, but he could be called at **any time if required**. The injured persons, Ayyaaz and Wasid, were brought by Home Guard Anil Kumar from the **Police Station Talgram**. He **did not recall the exact time** they were brought. The technician conducted the X-rays, and he

(the witness) prepared the reports. No fracture was found in the injured Wasid. He personally reviewed the X-ray of Ayyaaz's right shoulder and head. No fracture was found in the right shoulder of Ayyaaz. However, a crack fracture was found in the left parietal bone of his skull. A bandage was tied around the head of the injured Ayyaaz.

57. In the opinion of a radiologist, **such a fracture is not likely to cause death. Such a fracture could occur if the injured falls on a hard object. He denied the suggestion that no fracture was found in Ayyaaz's skull and that he falsely recorded a fracture in collusion with the injured. He could not remember whether the Investigating Officer recorded his statement in this regard or not.**

Statement of Prosecution Witness PW-4 – Constable No. 56 Gaurav Kumar

58. Prosecution witness **PW-4 Constable Gaurav Kumar** deposed on oath: **"On 03.06.2019, I was posted at Police Station Talgram. On that day, I was assigned to duty at the police station's duty office. During my shift, the complainant Mohammad Ayyaaz, son of Shabir, resident of Mohalla Rasoolabad, P.S. Talgram, District Kannauj, submitted a written application at the police station. Based on that application and under oral instructions from the then Station House Officer (SHO) Raja Dinesh Singh, an NCR No. 96/2019 under Sections 323 and 504 IPC was registered against Noor Ahmad and others. I typed the NCR on the computer, verbatim from the complainant's written application. When Paper No. 4A/1 on the record was shown to me, I identified it as the same NCR, which I had typed myself on the computer, matching the written complaint word for word. I confirm that the signature on it belongs to the then SHO Raja Dinesh Singh. This document has been marked as Exhibit Ka-4. The entry was recorded in the General Diary (GD) at entry number 43 at 20:29 hours, the same evening. When Paper No. 4A/2 was shown to me, I identified it as the same GD entry that I had also typed on the computer. I confirm that the signature on it is that of the then SHO Raja Dinesh Singh. This document has been marked as Exhibit Ka-5. The Investigating Officer had also recorded my statement in connection with this matter."**

59. During **Cross-Examination**, the witness stated that he was posted at **Police Station Talgram from December 2017 to 5th July 2019. On 03.06.2019, he was on duty at the police station from 8:00 PM to 8:00 AM the next morning. Complainant Ayyaaz, along with Wasid and Mohammad Faheen, came to the police station with a written application. The then SHO orally instructed that the matter be registered as an NCR. In Exhibit Ka-4, Point No. 5 incorrectly states the date as 16.00.19. The witness clarified that this was a typing error. His signature does not appear on the NCR. However, the reference to the NCR was made in GD Entry No. 43, which he prepared.**

60. He observed that Ayyaaz, who was injured, **had a head injury with a white bandage**. Other than that, there were **no visible injuries**, although Ayyaaz complained of **pain in multiple areas of his body**. Injured Wasid **had an injury near his right eye**, but no bandage or ointment had been applied. He also complained of **pain in multiple areas**, but **no visible injuries** were found elsewhere on his body. The time **20:29 hours** mentioned in GD Entry No. 43 indicates the **time of entry** in the General Diary. He recalled that **the bandage on Ayyaaz's head was removed** during documentation, but could not remember whether a **scab had formed on the injury**. He **did not amend or modify** the case, as he was **transferred on 5th/6th July 2019**. The injured persons were sent for **medical examination with Home Guard Anil Kumar**. He denied the suggestion that the injured persons had **no injuries** at the time he saw them or that he **falsely summarised** their injuries. He also denied the suggestion that he **conspired with the accused persons to register a false NCR** despite there being **no injuries** to the victims.

Statement of Prosecution Witness PW-9 - Head Constable Dharmendra Kumar

61. Prosecution witness **PW-9, Head Constable Dharmendra Kumar**, deposed as follows: "Inspector **Raja Dinesh Singh** and Head Constable **Mangal Das** have been posted with me. I have also performed **fair duty** (mela duty) together with them. **ASI Muninder Singh** has likewise been posted with me. I have seen all of them **write and read**, and I am familiar with **their handwriting and signatures**. Upon being shown **Paper Nos. 50/1 and 50/2** on the case record, which are the **original FIR**, and **Paper No. 11B/3**, which is the **original General Diary entry**, the witness stated that he **identifies and confirms the signatures** of **Sub-Inspector Raja Dinesh Singh** on the FIR and **ASI Muninder Singh** on the GD entry. These documents were marked as **Exhibit Ka-8** and **Exhibit Ka-9**, respectively."

62. During **Cross-Examination**, the witness stated that Inspector **Raja Dinesh Singh**, **ASI Muninder Singh**, and **Mangal Das** remained posted at **Police Station Talgram until 2019**. He himself has been posted at the **Police Station Talgram since 2020**. At the time of his own posting at Talgram, **these three persons were no longer posted there**. Inspector Raja Dinesh Singh had been posted **with him at Police Station Gursahaiganj**; the other two were **not posted with him** there. He had seen all these persons **write and read in the court**, and on that basis, he had identified **their handwriting and signatures**. All three individuals are **alive**. He denied the suggestion that **none of the three had ever been posted with him at any police station**, and he also denied that he **did not recognise their handwriting and signatures**.

Statement of Prosecution Witness PW-7 - Sub-Inspector Ajay Prakash

63. Prosecution witness **PW-7 Sub-Inspector Ajay Prakash** deposed as follows: "On **17.07.2019**, I was posted as a **Sub-Inspector at Police**

Station Talgram. Crime No. **153/19**, under Sections **323, 504, 308 IPC**, against **Noor Ahmad and others**, was registered on **03.06.2019** regarding an incident dated **01.06.2019 at 20:20 hours**. Upon the addition of Section 308 IPC on 17.06.2019, the investigation was handed over to the then **Sub-Inspector Rakesh Kumar**. In **Case Diary (CD) 1**, he recorded the copy of the written complaint and GD Entry No. 33 dated **17.07.2019 at 18:34 hours**, referencing the NCR, and also marked GD Entry No. 43. He examined and documented the **medical and X-ray reports of injured Mohammad Ayyaaz and Mohammad Wasid**, and annexed them to CD-1.

64. Upon his transfer, I took charge of the investigation on **July 21, 2019**. In **CD-2**, I recorded the order of taking over the investigation. On **27 July 2019**, in **CD-3**, I reviewed the earlier CD-1. On **29.07.2019**, in **CD-4**, I examined the **medico-legal and supplementary reports** of injured Ayyaaz and Wasid and recorded the statement of **Dr. M.M. Ansari**, who, based on the X-ray reports of the head and shoulder, opined that **Ayyaaz had a fracture in the parietal bone of the skull** and the injury was of **serious nature**. Thereafter, I recorded the statement of **Radiologist Dr. Sanjay Kumar**. On **August 1, 2019**, in **CD-5**, I recorded the statements of the injured complainants, **Mohammad Ayyaaz and Mohammad Wasid**. Following the complainant's pointing out, I inspected the site of the occurrence and prepared a site plan (map) on the spot, which is on the case file record as Paper No. 6A/1, bearing **my handwriting and signature**, including the revenue plot number. I confirm the correctness of the site plan. It was marked as **Exhibit Ka-7**. Thereafter, I recorded the statements of eyewitnesses **Sajid, Sharif, and Chandrashekhar**, as well as **NCR-writer Constable Clerk Gaurav Kumar**.

65. On **04.08.2019**, in **CD-6**, in compliance with **Section 41(1) CrPC**, I served notice and recorded the statements of accused **Noor Ahmad, Munna, and Sheebu**. On **11.08.2019**, in **CD-7**, I recorded the statement of the complaint writer, **Mohd. Faheem**. Finding sufficient evidence in the case, I submitted **Charge Sheet No. 109/19** against accused **Noor Ahmad and Sheebu** under Sections **323, 504, 308 IPC**, to the court. The original charge sheet is on record as **Paper Nos. 30/1 to 30/4**, computer typed and bearing **my signature**, which I confirm. It was marked as **Exhibit Ka-7.**"

66. During **Cross-Examination**, the witness further stated that he received the investigation assignment by **written order** of the **Senior Sub-Inspector**. The earlier investigating officer had already examined the offence under **Section 308 IPC**. He reviewed the case diary prepared by the previous IO. In his statements, complainant **Ayyaaz** had stated that accused **Noor Ahmad, Munna, and Sheebu** were armed with **lathis and sticks**, but did not state that **Sheebu** had a **spade**. He did not prepare the site plan in response to the complainant's pointing out, nor did he indicate on the map that the drain was closed. He could not recall whether he had recorded the statements of any other witnesses on the same day he recorded the

complainant's statement. He denied the suggestion that he **had not prepared the site plan, had not visited the spot, or had not marked the position of witnesses on the map**. He did not recall whether **Sakir was sweeping** at around 6:40 PM on January 6, 2019, or if a dispute arose with his neighbour, Ibrahim. Witness Sajid told him in his statement that it was a **dark night** and that **he could not clearly see who hit whom**.

67. He did not know whether a case, Crime No. 100/19, had been registered by the accused, Sheebu, at the police station against **Ayyaaz and others**. He did not record statements from residents living near the place of occurrence and could not provide any reason for this omission. He admitted that he did **not ascertain from the complainant** whether any complaint had been filed **on the third day after the incident**. He stated that **Wasid had informed him that many people had gathered** at the spot, but he recorded statements of only **four witnesses**, did not record any others, and did **not attempt to obtain their names**. He denied the suggestion that **injured Wasid had named only Sheebu and Munna**, and not Noor Ahmad. He had verified during the investigation that Ayyaaz and Wasid were not admitted to the District Hospital. He could not recall whether **Wasid had informed him that Sheebu had blocked the drain with a spade**. He could not recall the **date or location** at which he recorded the statement of **Dr. M.M. Ansari**.

68. Dr. Ansari had described **Ayyaaz's head and shoulder injuries as serious**, and **Wasid's injuries as simple**. The doctor initially stated that there was a **fracture in Ayyaaz's shoulder**, but later clarified that **there was no shoulder fracture**, and the injury was of a **simple nature**. He denied the suggestion that he had **not recorded the statements of complainant Ayyaaz and witnesses Sajid and Chandrashekhar on site**, or that he **had not prepared the site map upon the complainant's pointing out**. He also denied the suggestion that he had **conducted the entire investigation from the police station** based solely on the **medical and NCR reports**, and that he **filed a false charge sheet** against the accused persons. He denied having any knowledge of the case allegedly filed by **Sheebu against Ayyaaz**, or that the complainant **filed a false counter-case to avoid that prosecution**.

Appreciation of Evidence:

69. **Plea of the Accused:** The Court framed charges under Section 323 read with Section 34 IPC, Section 308 read with Section 34 IPC, and Section 504 IPC. All three accused pleaded not guilty and claimed trial. They allege that the complainant's side had actually attacked the accused's relatives (one **Ibrahim** and **Farman**) earlier the same evening, for which one Shibbu Qureshi lodged a separate FIR. The defence claims the present case is a false counterblast to that incident, and that the injuries of Ayyaaz and Wasid were fabricated to implicate the accused. No defence evidence was led, however, to substantiate these allegations.

70. **Eyewitness Accounts:** PW-2 Ayyaaz (complainant) deposed that around 8:20 PM on 01.06.2019, he and PW-5 Wasid were at his doorstep when a quarrel erupted over the blocking of a drainage channel by accused Noor Ahmad. The three accused (Noor Ahmad, Munna, and Shibbu), who are co-villagers, allegedly started **abusing** them over this dispute. When Ayyaaz objected to the abusive language, the accused, armed with sticks (lathis) and a spade, **assaulted** him. Ayyaaz states that Munna struck him with a lathi, hitting his **head and shoulder**, while Shibbu wielded a spade, and Noor Ahmad also beat them. When Wasid intervened to save Ayyaaz, he too was beaten, sustaining a laceration near his eye and shoulder pain. Ayyaaz specifically described bleeding from his head, and that Wasid's eyebrow was split open. Their cries for help attracted neighbours, upon which the accused fled, allegedly threatening further harm.

71. PW-5 Wasid corroborated the occurrence, naming all three accused as the assailants acting together. He added that the genesis was Noor Ahmad's family blocking the drain with bricks (which had caused waterlogging) and that during the altercation, **Shibbu used a spade**, hitting Wasid's eyebrow and shoulder, while **Munna and Noor** beat Ayyaaz with lathis. Wasid confirmed Ayyaaz suffered a bleeding head wound. Both injured witnesses stated that due to fear and the ongoing hostilities (the accused party allegedly "blocked their path"), they could not immediately go to the police on the night of 1.6.2019. They obtained basic first aid at home and went to the police station only on 3.6.2019 to lodge the report. Notably, PW-2 and PW-5 admitted under cross-examination that a **cross-case** (Crime No.100/2019) was lodged by the accused's side regarding a clash earlier on 1.6.2019 around 6:40 PM, and that they (Ayyaaz, Wasid and others) were arrested and later bailed in that case. They denied, however, that the present injuries were fabricated or self-inflicted to escape the other case, maintaining that the assault by the accused at 8:20 PM on 1.6.2019 was real and brutal.

72. PW-6 Chandrashekhar is an **independent eyewitness** (a villager unrelated to either party). He testified that at about 8:20 PM he was returning from his fields and saw a crowd near the houses of Munna and Ayyaaz. There, he witnessed accused **Noor Ahmad, Munna, and Shibbu armed with lathis** assaulting Ayyaaz, as well as Ayyaaz's uncles (Shakir and Aqeel) and his cousin Wasid. He specifically saw Ayyaaz and Wasid bleeding from head injuries and falling to the ground. PW-6 stated that he and others pleaded with the accused to stop, but they did not relent until more villagers gathered, after which the accused retreated. Chandrashekhar's testimony thus corroborates the fact that the accused were the aggressors and that **Ayyaaz and Wasid sustained bleeding head wounds** at the hands of the accused. In cross-examination, PW-6 confirmed he knew the parties and had no animosity; nothing significant was elicited to discredit his account apart from minor inconsistencies (e.g. he did not recall every detail in

the dark and confusion of the scuffle). His presence at the scene was natural as he was passing by, and his testimony appears impartial.

73. PW-3 Mohd. Sajid (a nephew of Ayyaaz's uncle) did not fully support the prosecution. In examination-in-chief, he confusingly stated that a fight occurred at 8:15 PM over the drain involving both sides; he mentioned that Noor Ahmad, Munna, Shibbu, as well as some from the complainant's side (he named Ayyaaz and others) were armed with sticks, and there was a free-for-all scuffle. He did, however, affirm that **Ayyaaz and Wasid were seriously injured** in the melee and had head wounds. He also noted that he saw an injury on the head of one Farman (from the accused's side). Sajid's testimony suggests a **mutual fight**, but he admitted he could not clearly see who initiated or the specific roles due to darkness and confusion. The prosecution declared him partly hostile since he deviated by implying the complainant's side also had weapons. Under cross-exam, Sajid conceded he is related to both sides (the accused and victims are from the same village community) and that earlier that evening, a minor altercation had occurred between Shakir (from the complainant's side) and Ibrahim (the accused's father) while sweeping the courtyard. Sajid's evidence, due to its wavering nature, is taken with caution. It does not exonerate the accused; at most, it indicates there was some quarrel earlier and perhaps some resistance by the victims during the later assault. The core facts that **Ayyaaz and Wasid were beaten and injured** remain unshaken.

74. **Investigating Officer's Findings:** PW-7 SI Ajay Prakash took over the investigation on 21.7.2019 (after addition of Section 308 IPC). He prepared the site plan (Ex. Ka-6) of the scene, showing the locations where the victims were attacked. He recorded witness statements. According to him, the evidence confirmed that **all three accused, armed with lathis (sticks), had, in furtherance of their common intention, attacked the victims, causing the injuries**. He deposed that he found no substance in the defence's claim of a false case: he was aware a cross-FIR by Shibbu (accused) existed, but noted that both matters were being investigated on their own merits. No suggestion was made to him during investigation that the victims' injuries were self-suffered; on the contrary, the medical reports and eyewitnesses supported the occurrence of the assault as reported by Ayyaaz.

75. **Points for Determination:** On the basis of the charge and the material on record, the following points arise for determination:

Point (i): Whether on 01.06.2019 at about 8:20 PM, the accused persons **Noor Ahmad, Munna, and Shibbu**, in furtherance of their common intention, voluntarily caused hurt to Mohd. Ayyaaz and Mohd. Wasid by beating them with lathis/spade, and thereby committed an offence punishable under Section 323 read with Section 34 IPC?

Point (ii): Whether on the same date, time, and place, the said accused, in furtherance of their common intention, assaulted Mohd. Ayyaaz (and Mohd. Wasid) with such intention or knowledge and under such

circumstances that, if death had been caused by that act, they would have been guilty of culpable homicide not amounting to murder, and thereby committed an offence punishable under Section 308 read with Section 34 IPC?

Point (iii): Whether on the above date and time, the accused persons intentionally insulted the complainant (and his family) by abusive language with intent and knowledge that such provocation would cause them to break the public peace or commit an offence, and thereby committed an offence punishable under Section 504 IPC?

Appreciation of Evidence and Findings

Point (i): Voluntarily Causing Hurt (Section 323/34 IPC)

76. There is a considerable delay in the lodging of the FIR. While reasons for delay should be adequately explained, it is not mandatory. Witnesses' claim that the accused blocked the way is not tenable due to their contradictory statements in this regard. A possible reason for the delay may be the initial reluctance to lodge the FIR due to societal pressure, as pointed out by a witness. In the facts and circumstances of the case, it appears that when Ayyaz did not recover, the FIR was lodged. However, in admitted cases of maarpeet, delay in filing an FIR does not hold much weight. The fact that Section 323 IPC punishes "voluntarily causing hurt," which simply means the infliction of bodily pain, injury, or infirmity intentionally. Here, there is no dispute that both **Ayyaaz and Wasid sustained injuries** on the evening of 01.06.2019. The medical evidence (Ex. Ka-1, Ka-2) objectively corroborates the **fresh injuries** on both victims, documented within ~48 hours of the incident. PW-1 Dr. Ansari's reports and testimony confirm the nature and age of the injuries consistent with the incident. Notably, Ayyaaz had a laceration on the scalp and contusion on the forehead, and Wasid had a laceration near the eye – injuries which are clearly the result of blunt force trauma (like blows from a stick). Photographic or forensic evidence of blood at the scene was not produced, but bleeding injuries were observed by witnesses and noted by the doctor (the head wounds had clotted by the time of examination, with "reddish-brown" margins indicating they were about 2 days old). This aligns perfectly with the timeline of an assault on 1st June, followed by medical on 3rd June.

77. The identification of the **assailants** is crucial. Both injured witnesses (PW-2 and PW-5) have unequivocally named **all three accused** as the persons who attacked them. Their testimony carries a ring of truth and is consistent mainly inter se. They withstood cross-examination on all material points. Minor discrepancies (such as exact sequences or whether others were also present) do not dent their core version. It is a well-settled principle that the **testimony of an injured witness is accorded a special status in law**, as their presence at the scene is certain and they have sustained injuries in the incident. The Supreme Court has enunciated the law on appreciation of testimony of an injured witness in a catena of decisions, including [State of Uttar](#)

[Pradesh v. Naresh and Others](#) reported as (2011) 4 SCC 324, where it was held that an injured witness's evidence "must be given due weightage" and is generally reliable, because such a witness "would not falsely implicate someone else in place of his real assailant". Here, Ayyaaz and Wasid, having been injured, had no conceivable reason to falsely name villagers (the accused) and let the real culprits go free. Their prompt and consistent accusations against the accused inspire confidence.

78. Moreover, their testimony is substantially **corroborated by independent evidence**. PW-6 Chandrashekhar, an independent eyewitness, confirmed seeing the three accused assaulting the victims with lathis. Although it was night, Chandrashekhar arrived during the commotion. Specifically, he noted the accused by name, **indicating he could recognise them (they are co-villagers) even in dim light and chaos**. His account of the victims being beaten and bleeding aligns with the victims' version. There is no suggestion that PW-6, a farmer returning from the fields, had any motive to falsely implicate the accused; he even mentioned the presence of many others, and nothing shows he is a planted witness. The **multiple eyewitnesses**, including two injured persons and one independent villager, thus form a reliable tapestry of evidence. Any minor contradictions (e.g. whether a spade was used or only lathis, the exact duration of the incident, etc.) are expected and do not shake the credibility of their substantive evidence that **the accused collectively assaulted the victims**. In fact, the consistency between the witnesses on major points (the fact of a drain dispute, followed by the accused beating Ayyaaz and Wasid with sticks, causing head injuries) strengthens the prosecution's case. Courts have held that where the testimony of injured witnesses is **corroborated by each other and by medical evidence, the absence of some other witnesses or minor discrepancies will not enfeeble the case**. The Delhi High Court, citing Supreme Court precedents, has reiterated in the case of [Saleem Khan vs The State \(Govt. Of Gncd Delhi\) on 5 January, 2022: CRL.A. 491/2020](#) that non-examination of every purported eyewitness or failure to recover the weapon, etc., do not undermine a case that otherwise rests on solid injured-witness testimony duly supported by medical reports. In the case at hand, the **MLC reports** confirm the injuries and their causes (blunt object impact) in line with the witnesses' accounts, lending assurance that the incident occurred as described.

79. The defence argument that the case is a **fabrication due to a previous enmity/cross-case** deserves consideration, but ultimately fails. It is true that a skirmish earlier on 1.6.2019 between the families resulted in an FIR by the accused side, and some relatives of the complainant (including PW-2 and PW-5 themselves) were booked and even jailed briefly in that case. However, the existence of a prior or parallel proceeding does not ipso facto render the prosecution's case false. This Court must assess whether the evidence here proves the charges beyond a reasonable doubt, irrespective of any **counter-allegations**. It is quite plausible that two violent clashes occurred on

the same day between the feuding parties – one at 6:40 PM (as alleged by the accused's FIR) and a retaliatory one at 8:20 PM (as alleged by the complainant's FIR). It is also quite plausible that two violent clashes occurred on the same day between the feuding parties at any time between 6:40 PM and 8:20 PM. The mere fact of a cross FIR cannot be a shield for the accused if the **independent evidence in this trial establishes their unlawful actions**. No papers of the said cross-case have been filed by the accused in their defence to establish self-defence or to show that the complainant party was the aggressor. Although both cases are pending before this court, the mere pendency of a cross-case does not, ipso facto, destroy the prosecution's case. Our own High Court and the Supreme Court have held that **each case must be decided on its own evidence**, and the fate of one does not mechanically govern the other. My task is to scrutinise this evidence for inherent reliability. In doing so, we find no major infirmity: the injured witnesses are consistent, an independent witness supports them, and the medical evidence scientifically verifies the injuries. The defence did not produce any evidence (such as injury reports of the accused side from that night) to suggest the accused were actually victims of an attack by Ayyaaz's side. On the contrary, even PW-3 Sajid (hostile in part) admitted that the accused side (e.g. Farman) had only "minor injuries" whereas Ayyaaz and Wasid were seriously injured. This indicates which side bore the brunt of the violence in the free fight or in the later incident. The cross-case theory thus does not cast a reasonable doubt on the prosecution's version; at best, it shows motive (prior grudge) on both sides, which could explain why the quarrel escalated, but it does not negate the unlawful assault by the accused.

80. Common Intention (Section 34 IPC): The evidence unmistakably points to a **joint assault** by the three accused. Section 34 IPC enunciates that when a criminal act is done by several persons in furtherance of a **common intention**, each of them is liable as if he alone did it. Common intention implies a meeting of minds and a pre-arranged plan (which can be formed even immediately before or during the incident) to carry out a criminal act together. Here, all three accused came together to the scene (the lane outside Ayyaaz's house) armed with sticks (and one with a spade, per PW-5). They simultaneously participated in beating the victims. The concerted manner of attack – abusing them and then jointly thrashing them – demonstrates that the accused were acting in unison with the **shared intent** to cause hurt to the complainant's side. There is no evidence that any of the accused attempted to dissuade the others or acted independently; instead, their actions demonstrate mutual encouragement and assistance in the assault. Such coordinated conduct satisfies the ingredients of common intention under Section 34 IPC. Even if there was no long prior conspiracy, the law is clear that a common intention can develop on the spur of the moment – what is crucial is the **synchronised participation** in the crime. In [Barendra Kumar Ghosh v. King Emperor: AIR 1925 PC 1](#), the Privy Council famously held that for Section 34 to apply, there must be a pre-arranged plan or meeting of minds; it may be formed on the spot, and all must share the intention to commit the specific criminal act. In the

present case, the quarrel over the drain evidently triggered a shared resolve amongst the accused to teach the victims a lesson by beating them. The fact that all three accused armed themselves and jointly executed the attack strongly indicates a prior meeting of minds, even if only moments before striking the blows. Thus, each accused is constructively liable for the injuries caused by the others as well.

81. Finding on Point (i): In view of the above, the Court is convinced that the prosecution has proved beyond a reasonable doubt that all three accused, acting in furtherance of a **common intention, voluntarily caused hurt to Mohd. Ayyaaz and Mohd. Wasid** by battering them with blunt weapons. The offence under Section 323/34 IPC is made out against the accused. Accordingly, Point (i) is answered in the **affirmative**. All the accused are **guilty under Section 323, read with Section 34 of the IPC**.

Point (ii): Attempt to Commit Culpable Homicide (Section 308/34 IPC)

Section 308 IPC ("attempt to commit culpable homicide not amounting to murder") is the gravest charge in this case. To establish this offence, the prosecution must prove two main ingredients: **first**, that the accused did an act towards committing culpable homicide, and **second**, that such act was done with the intention or knowledge that by that act they were likely to cause death (though under circumstances that would make the offence culpable homicide not murder if death had resulted). In other words, the accused must have had a state of mind expecting or intending the possibility of death from their actions, albeit not amounting to a full intention to murder. The distinction from the offence of attempt to murder (Section 307 IPC) is subtle – Section 308 covers cases where if the act caused death, the culpability would be under **Section 299 IPC (culpable homicide)** but not under the exceptions that raise it to murder (Section 300). Often, the degree of intent/knowledge and the circumstances determine whether an attempt is to murder or to culpable homicide. However, for our purposes, it suffices that Section 308 IPC requires a **dangerous act with sufficient mens rea (intent/knowledge of likely fatal outcome)**, even if death did not occur.

82. Nature of Injuries and Weapon Used: The severity and location of the injury inflicted are critical indicators of the required intent/knowledge. In the present case, the most serious injury was the one sustained by PW-2 Ayyaaz on his head – a laceration accompanied by swelling, later found to be associated with a **crack fracture in the skull (left parietal bone)** on X-ray. The head is a vital part of the body; a forceful blow to the head with a hard object like a lathi can certainly be fatal or cause severe, life-threatening trauma. In fact, PW-1 (doctor) opined that had there been excessive internal bleeding in the skull, the injury could have led to death. PW-8 (radiologist) noted the fracture but felt it was not likely to be fatal in the precise circumstances observed. Nonetheless, the existence of a fracture confirms that a significant force was used. It was not a superficial hit – the blow was

hard enough to crack the skull. The accused targeting the head (a delicate and vital organ) itself suggests knowledge of probable fatal consequences. The **Delhi High Court** in a recent case emphasised that *“the nature of injuries may be material to ascertain the requisite mens rea”* for Section 308: striking a victim’s head with a weapon indicates the assailant’s awareness that such a strike is likely to cause death. In [State \(GNCT of Delhi\) v. Mohit Kumar & Anr on 23-08-2024: \(2024\) 08 DEL CK 0097](#), the accused had hit the complainant on the head with a sharp weapon causing a deep wound (21 stitches) which doctors termed “simple”; the High Court nevertheless held that *“a person hitting a victim on his head with a sharp pointed weapon would do so with the knowledge and intention that such injury on the head is likely to result in death”*, thereby meeting the threshold of Section 308 IPC. By analogy, in our case, a lathi (wooden stick) may not be a sharp weapon, but it is certainly capable of causing lethal injury if used on the head with force. The fact that the accused **aimed blows at the head** of Ayyaaz (and even Wasid suffered a blow near the eye) is telling of their mindset – it was not a restrained or minor chastisement; it was a potentially deadly attack.

83. Intent or Knowledge to Cause Death: It is rare to have direct evidence of a person’s intention; courts infer intent and knowledge from the **conduct and circumstances**. Here, the circumstances – a petty dispute over drainage escalating to a group assault – suggest the accused might not have premeditated a “murder”. However, once the fight ensued, the manner in which the accused acted (three men ganging up on the unarmed victims, using weapons, and directing blows to the head region) betrays a **reckless disregard for life** and a willingness to inflict fatal harm. The Supreme Court in [Om Parkash vs The State Of Punjab on 24 April, 1961: 1961 AIR 1782](#) held that *“a person commits an offence under Section 308 IPC when he has an intention to commit culpable homicide not amounting to murder and in pursuance of that intention does an act towards it, whether that act be the penultimate act or not”*. In [Kewal Rai v. State of Sikkim: AIR ONLINE 2020 SK 62](#), the High Court of Sikkim upheld a conviction under Section 308 IPC where the accused stabbed the victim in the chest with an 8-inch knife, causing grievous injury. The Court reasoned that such an act **by itself manifests the requisite knowledge** that death was a likely result if luck had not intervened. The absence of a more grievous outcome was fortuitous and did not lessen the culpability from an attempt perspective. Likewise, in the present case, the accused delivering a forceful blow to Ayyaaz’s skull with a blunt weapon, causing a fracture, convinces this Court that they **possessed knowledge that their act could well result in death** – had the fracture led to an intracranial hemorrhage or if multiple blows were delivered, the victim’s life would indeed be in peril. The accused may not have explicitly announced an intent to kill, but the law does not require such overt expressions; it is enough that any reasonable person in their position would know that beating someone on the head with a lathi can cause death. By continuing such an attack, the accused can be

inferred to have had that knowledge, and at least a **conditional intent** to cause such bodily injury, which could be fatal.

84. It is also notable that Ayyaaz experienced **vomiting for two days** after the injury (as per medical record), a sign often associated with head trauma/concussion. This underscores the seriousness of the injury inflicted. The fact that both victims had to be taken to the hospital and Ayyaaz was referred for X-ray shows that the injuries were not trivial. The law does not require that the victim's life was hanging by a thread; what is required is that the act was capable of causing death in the ordinary course of nature and that the accused had the requisite **mens rea**. Given the brutality of the assault and the vital part of the body targeted, the requisite intent/knowledge under Section 308 IPC is established.

85. **Common Intention for Section 308:** Having found that the act of one or more of the accused amounted to an attempt to culpable homicide (in particular, the blow causing the skull fracture), the next question is whether **all three accused can be vicariously held liable** for that under Section 34 IPC. As discussed under Point (i), the accused were acting with common intention in furtherance of their unlawful object of assaulting the victims. When multiple accused participate in a beating, they often have a shared intention at least to cause hurt. Suppose in the course of such a common assault, one of them exceeds and causes a potentially fatal injury. In that case, the others can still be liable for that act if it was done in pursuit of the common intention and was a probable consequence thereof. Here, striking the victim on the head with force was not an isolated, unauthorised act of one culprit – it was very much part of the common design to thrash the victims. All accused had joined in the beating, and none can claim to be unaware that deadly harm could result from blows with lathis. Therefore, each of the accused is equally guilty of the act that endangered life, by virtue of Section 34 IPC. The **High Court of Delhi** in *Mohit Kumar* (supra) convicted both accused under Section 308/34 even though one may have wielded the weapon, because they acted in concert with shared intent. Similarly, this Court finds that Noor Ahmad, Munna, and Shibbu together intentionally committed the assault, knowing its likely consequences; hence, all are liable under Section 308 read with Section 34 of the IPC.

86. The defence contended that since the injuries were opined “simple” by the doctor, Section 308 is not attracted. This argument is misplaced in law. The medical terminology “simple” versus “grievous” is relevant for offences like Sections 323/325 IPC, but an offence under Section 308 IPC does not strictly hinge on whether the hurt caused was ultimately grievous or simple – it hinges on the **intention or knowledge** accompanying the act and the potential of the act to cause death. Even an injury that is classified as simple (like a clean laceration that healed without complication) can still be caused in a deadly manner. For example, in *Mohit Kumar's* case, the wound needed 21 stitches, yet was called simple, but the court still found Section 308

applicable because of the nature of the attack (head injury with a weapon). Likewise, Ayyaaz's skull fracture was initially not detected until X-ray; the outward wound may have seemed moderate, but the underlying fracture made it a potentially grievous hurt (in fact, a bone fracture is "grievous" by definition of IPC). Thus, the premise of the defence argument is factually incorrect as well – Ayyaaz's injury is **grievous hurt** in law (fracture of skull bone). More importantly, what the accused attempted was clearly likely to cause grievous harm or death. The Supreme Court has cautioned that in determining a charge under Section 307 or 308, what matters is the **intention/knowledge and the circumstances**, not merely the result (whether the injuries turned out grievous or not). Here, the **menacing conduct** of the accused and the dangerous injury caused speak for themselves.

87. In light of the above analysis, the Court is satisfied that the ingredients of Section 308 IPC are fulfilled. The accused launched a **violent assault with knowledge of a potentially fatal outcome**, thereby attempting to commit culpable homicide not amounting to murder.

88. **Finding on Point (ii):** The prosecution has proved beyond reasonable doubt that **all three accused, in furtherance of their common intention, committed an act (assaulting the victim on the head with lathis) with the intention or knowledge that if that act caused death they would be guilty of culpable homicide not amounting to murder.** They are accordingly found **guilty under Section 308 read with Section 34 of the IPC.** Point (ii) is answered in the affirmative.

89. Point (iii): Intentional Insult to Provoke Breach of Peace (Section 504 IPC)

The final charge is under Section 504 IPC, which requires the following elements: (a) the accused intentionally insulted someone, (b) the insult was of such a nature as to give provocation to the person insulted, and (c) the accused intended or knew it likely that such provocation would cause the person to break the public peace or commit another offence- [Ramesh Chandra Vaishya vs The State Of Uttar Pradesh on 19 May, 2023: Criminal Appeal No. 617 / 2023 \(Supreme Court\)](#). Essentially, not every abusive word or quarrel amounts to Section 504 – the insult must be *intended* to incite the victim to violent retaliation or disturb the peace. The Supreme Court in [Fiona Shrikhande v. State of Maharashtra: AIR 2014 SUPREME COURT 957](#) and in [Vikram Johar v. State of U.P.: AIR 2019 SUPREME COURT 2109](#) has clarified that *"one of the essential elements is that there should have been an act or conduct amounting to intentional insult, and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC"*. In other words, using abusive language in the heat of the moment, without evidence of deliberate intent to thereby provoke the other party into breaking the peace, would not constitute the offence.

90. In the present case, the FIR and witnesses allege that the accused hurled **abuses** at Ayyaaz and his family at the start of the incident. However, the prosecution has not provided specific details of the words used or how they were likely to instigate a breach of peace beyond what actually happened. It appears the abuses were part and parcel of the quarrel that led straight into the physical assault. By the time the abusive words were exchanged, the situation had already descended into violence initiated by the accused. There is no evidence that the abuses provoked the complainant into committing any offence himself; rather, he objected verbally and was immediately attacked. In fact, the **breach of peace** (the fight) was caused by the accused launching the assault, not by the complainant reacting to the insults. Thus, the causal link envisaged in Section 504 – insult leading the insulted person to break the peace – is not established here. The victims did not indulge in any retaliatory violence due to provocation; instead, they became victims of violence.

91. Moreover, none of the independent witnesses corroborated the exchange of abuses with any specificity. PW-6 did mention “verbal abuse was going on”, but he did not specify who said what. PW-3 spoke of a “verbal altercation” but again provided no details of intentional insults. The only direct evidence of abuses comes from PW-2 and PW-5, who are interested witnesses, and even they did not repeat the actual words in Court (perhaps because they were too embarrassed or the abuses were generic). The **absence of detail** is significant because, as noted by the Supreme Court, the precise content and context of the alleged insult are crucial to determine intent under Section 504. Here, I simply have a generic statement that the accused individuals were “abusing” over the drain issue. This is too vague to support a criminal conviction for intentional insult with provocation. It is equally plausible that any abuses were a spontaneous expression of anger during the scuffle, rather than a calculated attempt to incite the complainant into a fight. In law, **trivial or common abuses** without specific intent to provoke do not meet the standard of Section 504 IPC.

92. Additionally, since the accused are being convicted for the substantive assault, punishing them separately for the abusive language (which was part of the same transaction) might be seen as duplicative, unless the insults had independent significance (such as communal or caste-based provocation, which is not the case here). The prosecution did not press much on the point of Section 504 during arguments, and for good reason – the evidence is not sufficiently clear or strong on this point. This Court must give the accused the benefit of doubt where the evidence is lacking in clarity. **Intent** to provoke is a mental element that must be proved, and here it is not proved beyond a reasonable doubt.

93. **Finding on Point (iii):** The prosecution has **failed to establish the charge under Section 504 IPC** beyond a reasonable doubt. The evidence of mere verbal abuse, without more, is insufficient to conclude that the accused intentionally insulted the complainant,

knowing it would likely provoke him to breach the peace. Accordingly, Point (iii) is answered in the **negative**. The accused are found **not guilty under Section 504 IPC** and deserve to be **acquitted** of this charge.

Conclusion:

94. In summation, the prosecution has proven that the accused persons – Noor Ahmad, Munna, and Shibbu – in furtherance of their common intention, voluntarily caused hurt to the victims and also attempted to commit culpable homicide not amounting to murder by inflicting a dangerous head injury on the complainant. However, the prosecution has not proven the offence of intentional insult (Section 504 IPC). These findings are supported by the consistent and credible testimony of the injured witnesses, corroborated by medical evidence and an independent eyewitness, as well as the legal principles enunciated in the cited case law.

95. **Order of Conviction and acquittal:** Therefore, accused **Noor Ahmad, Munna, and Shibbu** are hereby **convicted** for offences under **Section 323/34 IPC** and **Section 308/34 IPC**. They are **acquitted** of the charge under **Section 504 IPC**. The accused are on bail. Their bail bond is hereby cancelled, and sureties are discharged from their liabilities. They shall be taken into custody and sent to the District Jail. July 9, 2025, is fixed for hearing on the quantum of sentence.

Date: July 07, 2025

(Chandroday Kumar)
Sessions Judge, Kannauj.

Date: July 09, 2025

Sentence Hearing:

Noor Ahamad, Munna and Shibbu, the convicts, along with their legal counsel, appeared in court. I have heard regarding the quantum of punishment.

The convicts, Noor Ahamad, Munna, and Shibbu, have stated that this is their first offence and that they have no prior or subsequent criminal history. They are sole breadwinners and bear responsibilities toward their families. Convict Shibbu has further stated that his marriage is scheduled for next month.

The learned District Government Counsel (Criminal) submitted that the convicts have been found guilty of voluntarily causing hurt and attempting to commit culpable homicide not amounting to murder of the injured Ayyaaz and Wasid. They should receive the maximum punishment to convey a stern message to society.

Sentencing Considerations: After considering all mitigating and aggravating factors, along with the facts and circumstances of the case, I am of the considered view that upon conviction under **Section 308** of the Indian Penal Code, the appropriate punishment for Noor Ahamad, Munna and Shibbu shall be sentence of **five years** of simple

imprisonment, and a fine of **Rs. 8,000** (Eight thousand rupees) each and under **Section 323** of the Indian Penal Code, the appropriate punishment for Noor Ahamad, Munna and Shibbu shall be sentenced of **nine months** of simple imprisonment, and a fine of **Rs. 1,000** (One thousand rupees) each. These punishments would serve the ends of justice.

ORDER

Upon conviction under Section 308 of the IPC in Case Crime No. 153 of 2019, Police Station Talgram, District Kannauj, **Noor Ahamad, Munna and Shibbu** are hereby sentenced to **five years of simple imprisonment**, and a **fine of Rs. 8,000** (eight thousand rupees) each. If convicts fail to pay the fines, they shall serve an additional nine months of imprisonment.

Upon conviction under **Section 323** of the Indian Penal Code, **Noor Ahamad, Munna, and Shibbu** are sentenced to **nine months** of simple imprisonment and a **fine of Rs. 1,000** (one thousand rupees) each. If convicts fail to pay this fine, they shall serve an additional month of imprisonment.

All imprisonments shall run concurrently. The period spent in jail shall be set off against these imprisonments. A conviction warrant shall be prepared, and the convicts shall be sent to prison to serve their sentences. Out of fines, the injured Mohd Ayyaz and Wasid shall receive Rs. 15,000 and Rs. 6,000, respectively, as compensation.

A copy of this judgment will be provided free of cost forthwith to each convict (under Section 363(1) Cr.P.C.).

Appeal Notice: The convicts are informed that they have a right to appeal against this judgment and order of sentence. If they wish to file an appeal but are unable to engage counsel due to indigence, they may apply for legal aid.

Disposition: The case is disposed of accordingly. Let the file be consigned to record after needful compliance.

The judgment is signed, dated, and pronounced by me in open court today.

Date: July 09, 2025

(Chandroday Kumar)
Sessions Judge, Kannauj.