

IN THE COURT OF THE
SECOND ADDL. ASST. SESSIONS JUDGE,
THIRUVANANTHAPURAM

Present : Smt. Asha Devi. V.S., Second Addl. Asst. Sessions Judge

Friday, 31st October, 2025 / 09th Karthika, 1947

SC No. 1326/2014

(CP No. 173/2013 of Judicial First Class Magistrate Court - II,
Thiruvananthapuram)

(Crime No. 1217/2013 of Valiyathura Police Station)

Complainant : State of Kerala represented by the
Sub Inspector of Police,
Valiyathura Police Station.

***By Addl. Public Prosecutor,
Sri. P.S. Sreejith.***

Accused : A1 : Herman @ Vipin, S/o. Helton,
TC No. 78/1518, Vineetha Bhavan,
Kochuthoppu, Valiyathura Ward,
Pettah Village, Thiruvananthapuram.
(Split up)

A2 : Helton, S/o. Sebastian,
TC No. 78/1518, Vineetha Bhavan,
Kochuthoppu, Valiyathura Ward,
Pettah Village, Thiruvananthapuram.

A3 : Krishnankutty, S/o. Babu,
TC No. 78/1540, Fisherman Colony,
Kochuthoppu, Valiyathura Ward,
Pettah Village, Thiruvananthapuram.

By Adv. Sri. T.N. Sunilkumar.

Offence : U/s. 341, 323, 324, 308, 427 r/w. 34 IPC

Plea : Not guilty

Finding : Not guilty (A2 & A3)

Sentence / Order : A2 & A3 are acquitted u/s.235(1) Cr.P.C.
Case against A1 split up and refiled.

Trial started on : 08-07-2022

Trial closed on : 29-10-2022

Date of Trial : 11-02-2025

No. of days the case stood for trial : 11 days
11-02-2025, 18-02-2025, 19-02-2025,
04-07-2025, 29-07-2025, 27-08-2025,
15-09-2025, 17-09-2025, 29-09-2025,
23-10-2025, 29-10-2025

This sessions case having been finally heard on 29-10-2025 and the court on 31-10-2025 delivered the following.

J U D G M E N T

1) Charge sheet was filed against the accused u/s 341, 323, 324, 308 and 427 r/w 34 IPC. The case is based on the Final Report filed by Valiyathura Police Station in Crime No: 1217/2013.

2) **The prosecution in brief is as follows:-** On 28.09.2013 at about 18.30 pm at Kochuthoppu, on the byroad starting from beach

road Valiyathura at a distance of 500 metre from the said road, while PW1 was walking through the said road, the accused in furtherance of their common intention illegally restrained him by caught hold of him and caused hurt to him by A1 with a chopper by causing cut injury on the back of his head on the right side behind the right ear and also on his wrist while he ward off the attack. Thereafter all the accused stamped and beat him all over the body and misappropriated his gold chain having weight of 7.5 sovereign. Accused thereby alleged to have committed the offence under sections 341, 323, 324, 308, 427 r/w 34 IPC. The FIR was registered by PW6. First part of the investigation was done by PW5. PW6 completed the investigation and filed Final Report before the Judicial First Class Magistrate Court II, Thiruvananthapuram. The case was taken on file as C.P 1217/2013. Accused Nos 1 to 3 appeared and were released on bail. After complying with the formalities the case was committed u/s Sec.207 Cr.P.C to the Hon'ble Court of Sessions, Thiruvananthapuram. It is made over to this Court for trial as SC No.1326/2014. A4 died before the filing of Final Report.

3) On appearance of the accused, the prosecution case was opened by the Learned Public Prosecutor. Records were perused.

Since the Court was convinced that there are prima facie materials to presume that the accused had committed the alleged offence. Charge was framed under sections 341, 323, 324, 308, 427 r/w 34 IPC. It was read over and explained to A1 to A3. They pleaded not guilty to the charge. The prosecution examined PW1 to PW6 and Ext's P1 to P10 and MO1 were marked. After the closing of the prosecution evidence, A1 to 3 were questioned under section 313(1)(b) Cr.P.C. They denied the incriminating circumstances levelled against them and stated that they are innocent.

4) The prosecution and the accused were heard. Since the accused were not entitled to an acquittal u/s 232 Cr.P.C, accused were called upon to enter on their defence and to adduce evidence. Though sufficient opportunity given, no oral or documentary evidence adduced from the side of the accused.

5) Heard both sides.

6) The points that arose for consideration are :

- 1) Did the accused at 6.30 p.m on 28.09.2013 at Kochuthoppu, caused hurt to PW1 by hitting and stamping all over his body and thereby committed offence punishable under section 323 IPC?

- 2) Did the accused at the same time, place and occurrence A1 cause hurt to PW1 with a chopper on the wrist and palm of PW1 while he tried to ward off his attack towards his head and thereby committed offence under section 324 IPC?
 - 3) Did the accused at the same time, place and occurrence attempted to commit culpable homicide of PW1 by A1 causing a cut injury with a chopper which is likely to cause death on the head of PW1 and thereby committed offence under section 308 IPC?
 - 4) Did the accused at the same time, place and occurrence, on the byroad starting from Beach Road Valiyathura illegally restrained PW1 and thereby committed offence punishable under section 341 IPC?
 - 5) Did the accused at the same time, place and occurrence caused loss the gold chain having weight of 7 ½ sovereign and worn by PW1 and thereby committed the offence under section 427 IPC?
 - 6) Did the accused at the same time, place and occurrence have done all such acts in furtherance of their common intention liable for such acts u/s 34 IPC?
 - 7) If found guilty, what is the Order as to sentence and imprisonment?
- 7) **Points 1 to 3** : The prosecution case is based on the allegation that PW1, while walking through the beach road of Valiyathura, he

was illegally restrained by A1 to A4 and A1 with the chopper in his hand, caused hurt to PW1 by making a cut injury on the back side of his head. He was attacked again with the chopper and it was ward off by him which resulted in injury on the wrist. PW1 was also subjected to hurt by A1 to A4 by stamping and hitting all over his body. The prosecution examined PW1 and PW2 as material witnesses. PW1 injured himself and PW2 is the occurrence witness. The motive behind the alleged incident was stated as that, A1 has on a previous occasion caused hurt to PW1 by stabbing him with a knife and the case in respect of that has been on trial before the Judicial First Class Magistrate Court, Thiruvananthapuram. On the alleged day, there was a heat exchange of words between PW1 and accused in respect of the earlier incident in which A1 attacked PW1. Thereafter PW1 returned to his home and again came to the playground which is near the alleged place of incident. At that time, he was attacked by these accused.

8) The challenge upon the evidence adduced by prosecution was that PW1 is a healthy person having height of 6 feet and above and is more than 100 kilogram. Whereas these accused persons are very short persons and are of feeble health. It is unbelievable that the

accused persons were able to overwhelm PW1 and to cause a cut injury on the head of PW1. The same defence was suggested to PW1 in cross-examination. PW1 gave the answer that the alleged incident took place in 2013 when he was at a very young age and accused are 4 persons and they are very easily overwhelmed him and caused hurt to him.

9) Another contention raised by the accused was that, PW1 was taken to hospital after the alleged incident. He was examined by PW3, the doctor of Medical College, Thiruvananthapuram, who issued Exhibit P3 medical certificate. In the medical certificate, it is recorded that കണ്ടാൽ അറിയാവുന്ന നാലുപേർ ചേർന്ന് വെട്ടിയതിൽ വെച്ച് ". The accused and PW1 are well known to each other. They are neighbours and there is also a previous incident in which accused caused hurt to PW1. Hence it has also come out in evidence that PW1 was completely conscious and oriented at the time of medical examination. Hence there is no impediment for him to speak of the name of the accused at the time when he was examined by the doctor. In spite of that, he stated that 4 identifiable persons. It shows that the inclusion of accused in the case was done by PW1 as an afterthought. He has no

idea regarding the assailants immediately after the incident and its probalises the contention of the accused that he was attacked by a group of people when he turned to be a nuisance in the locality and his previous animosity towards A1 made him included the name of accused in the alleged incident as assailants.

10) The learned counsel for the accused also argued that PW2, the occurrence witness examined by the prosecution is an unreliable witness. According to him, he watched all the incidents. He deposed that he was at the place when there was a quarrel between PW1 and A1 at 06.30p.m. Thereafter he stood there till the next incident occurred in which hurt was caused to PW1. At the same time he deposed that he has no connection with accused and is not a friend of PW1. Then his presence at the place of occurrence remains unexplainable. Moreover, he was unable to depose regarding the injuries caused on the body of PW1. At the same time he has clearly described the acts alleged against the accused and was also able to describe MO1, the alleged weapon, in the incident. It shows that he had not seen the incident in which hurt was caused to PW1 and his statement is false.

11) It is also contented that the alleged injuries on PW1 was stated as an incised wound on the back of the head and an incised wound on the lower back. Whereas the evidence of PW1 is that he was attacked with chopper on his head and when he ward off such attack his wrist was also got injured. It is also his case that accused had stamped and hit while he was laying down. In spite of that, not even a single injury was noted on his body either by the police officer who recorded the body mahazar or by the doctor who examined him. He never had a case that he has any injury on his back. The nature of the injury and the portion of the body in which the injuries happened would clearly show that it can very well be caused by fall on a ground. The learned counsel also argued that the weapon was not recovered as provided under Section 27 of the Indian Evidence Act. There was no confession statement of the accused recorded. It was recovered by PW6 by preparing a mahazar alone. The recovery was said to have done from the house of A1 and A2. The said piece of evidence is not admissible in evidence, as it is not done in accordance with the provisions of law. MO1 weapon is a chopper and when it was used with force on a human body, the injury happened will be more deep and serious. The injuries on PW1 did not represent an injury that is likely to be caused

by MO1. The learned counsel has argued that prosecution failed in proving the alleged offence against the accused and the accused are entitled to acquittal.

12) The learned Public Prosecutor argued that PW1 and PW2 have given consistent evidence regarding the alleged incident and the injury happened to PW1. The name of the assailants with their identification was also deposed by PW1 and PW2. Their initial statements given to police contained the name of the accused and their evidence adduced in court. There was no material contradiction or omission in the evidence of PW1 and PW2 from the statement given to the police at the time of investigation.

13) The alleged weapon was recovered and the accused were arrested. The injuries found on the body of PW1 was on the back side of the head of PW1 and injuries are likely to be caused by the alleged weapon.

14) The case put up by the Prosecutor is that the accused was that PW1 was attacked by A1 to A3 when he was walking through the road wherein from the play ground at Kochuthoppu, Valiyathura alleged to have made a cut injury on the back of the head of PW1 with the

chopper, his second attack was defended by PW1 and the chopper hit on his hand. The further case of the prosecution is that A1 to A3 kicked and stamped him while he fell down.

15) The material witness to prosecution case is PW1 and 2. PW1 is the defacto complainant and his FIS is marked as Ext.P1. The case of PW1 in FIS is that he was illegally restrained by Vibin, Helton, Krishnankutty, Vinod. Helton came with a chopper and he made a cut wound on his head. Helton is A2. In evidence, he deposed that the cut wound on his head was made with Vibin. Vibin is another name of A1 whose name is recorded as Herman. It is a material contradiction which cuts the root of the case. CW2 also deposed that "ഹെൽട്ടൺ ആൻസണിനെ തലയ്ക്കു വെട്ടി." A1 in this case is now absconding and evidence against A2 and A3 alone need to be discussed in this case. The only person said to have used the weapon among A1 to A4 is A1, i.e, Herman @ Vibin. In the FIS and evidence of CW2 the said person is stated as A2. PW1 did not have such a case and he categorically stated that Vibin is the person who attacked him with the chopper. The material contradiction in the evidence of PW1 with FIS and evidence of PW2 regarding the identity of the person who used the chopper is

fatal to the prosecution case.

16) PW1 was taken to the hospital immediately after the incident. The Medical Officer told that he was attacked by him were identifiable persons. He had made clear in evidence that A1 to A4 are persons well known to him. In spite of that he did not say the name of the assailant to the Medical Officer. It is a material omission and the inclusion of A1 to A4 in the case at a later stage can well be doubt as an after thought of PW1. The accused has laid down a reason for such conduct of PW1 that he has previous animosity towards A1 and A2 and a criminal case is also pending in between them.

17) The other instance pointed out by the Learned Counsel for the accused is that the injuries noted on the body of PW1 are only minor injuries and are not likely to be happened with MO1 chopper. MO1 is a chopper sharp at one edge. The evidence of PW1 was that accused were standing very close to him and he was attacked by A1 in such a position. If the statement is true, then the injury resulted from such attack would be more deeper than that found on the head of PW1. Another important fact is that PW1 did not have a case that he has any injury on his lower back also made a candid denial of the

suggestion made to him. In the cross-examination that he had no injury on his back. At the same time, he had a case that when he tried to ward off the attack of PW1 with the chopper, it hit on his hands and resulted in an injury. However such an injury was not recorded in the Medical Certificate. PW2 the doctor categorically admitted that except the injuries noted in the Medical Certificate, there are no other injuries on the body of PW1. Thus regarding the injuries caused to PW1 also. There are material contradiction and omissions. The defence had suggested and argued the case that the injuries found on the body of PW1 is likely to cause by fall on ground. There is valid room for such a suspicion.

18) Regarding the recover of MO1 chopper also, it is not recovered by complying with the procedure known to law. The Investigation Officer, PW5 deposed that the weapon was recovered on the basis of statement given by the accused. However, no such statement seen recorded. Then the recovery done cannot be considered as one under Sec 27 of the Indian Evidence Act. It also not proved by independent witness. In such a circumstance, the evidence regarding the use of MO1 chopper by the accused.

19) Hence, the alleged charge u/s 324 and 308 IPC based on the wound said to have caused by MO1 chopper was shattered totally and became unsustainable. The injuries noted on the head of PW1 is a minor injury with 1 cm depth only and it cannot be concluded as an injury likely to cause death. Hence the offence u/s 308 IPC will not be attracted.

20) The other allegation against A2 and A3 is that they stamped, stamped and hit PW1 while he was laying down to the attack by A1. There was only a general and vague statement that all the accused kicked and fisted him. The individual act of each of the accused is not stated by PW1. Hence, none of the accused can be found guilty of the alleged charge u/s 323 IPC. Points 2 to 3 thus found against the prosecution.

21) **Point number 4 :**

This is a Case registered by the Sub Inspector of Police, Valiyathura Police Station as Crime No. 173/2013. The allegation of the prosecution was that PW1, while walking through the by-road at Kochuthoppu, at 06.30 p.m on 28.09.2019 was illegally restrained by accused Nos. 1 to 4. All of them caught hold of him and accused no.1 with the chopper in

his hand made a cut injury on the back side of the head of PW1. Again the chopper was used against him, but it was warded off by PW1. Thereafter all the accused surrounded him and hit and stamped him all over the body. The first charge alleged against the accused is under Section 341 IPC.

22) As we all know, the offence under Section 341 IPC came into play when the accused illegally restrained the victim. The term illegal restrain is defined in Section 339 IPC. "Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

23) The ingredients of the said section, as it appears from the definition is that the person was prevented from moving further in a direction which he has the right to proceed with. In this case, the evidence adduced by PW1 shows that while he was walking through the road, A1 to A4 surrounded him and caught hold of him from all sides. At the time of cross-examination of PW1, the learned counsel for accused put a question as to who was the person who stood in front of him and who are the persons who were on the right and left of

PW1. PW1 gave the answer that the accused had surrounded him and he was trying to which person came in front of him at the time when he was caught hold of by the accused. There is material contradictions and omissions in the evidence of PW1 and PW2. In such a circumstance, their evidence cannot be used to couch accused with any criminal liability.

24) **Point No.5** : Another head of charge against the accused is that they committed mischief by misappropriating the gold ornaments of PW1. In the FIR, the prosecution alleged that a chain weighing 7 ½ sovereigns was misappropriated by the accused. When examined in Court, PW1 deposed that his chain with weight of 6 sovereign and bracelet weighing 1 ½ sovereign were misappropriated. The evidence regarding the bracelet is absent in FIS and FIR. Moreover there is no evidence before the Court to find that PW1 owned the said ornaments and possessed it at the time of alleged incident. In such a circumstance, it is unable to find that accused are liable u/s 427 IPC to prove the charge u/ss. 34, 323, 324, 308 and 427 IPC.

25) **Point No.6** : The prosecution failed to prove the charge u/s 341, 323, 324, 308 and 427 IPC. Hence charge u/s 34 IPC also will not lie

against the accused. Point No.6 also found against the prosecution.

In the light of discussion on points 1 to 6, A2 and A3 are not found guilty of the alleged charge u/s 341, 323, 324, 308, 427 & 34 IPC.

In the result,

A2 and A3 are found not guilty of the alleged offence u/s 341, 323, 324, 308, 427 r/w 34 IPC. They are acquitted u/s 235(1) Cr.P.C. Their bail bonds cancelled. Case against A1 split up and refiled.

Dictated to the Confidential Assistant, she typed directly on computer, corrected and pronounced by me in open court on this the 31st day of February, 2025.

Sd/-
Asha Devi. V.S.
Second Addl. Asst. Sessions Judge

APPENDIX

Exhibits for the Prosecution :

- P1 - 28-09-2013 - First Information Statement
- P1(a) - 28-09-2013 - Body Note
- P2 - 29-09-2013 - Scene Mahazar
- P3 - 28-09-2013 - Inventory Mahazar

P4	-	28-09-2013	-	First Information Report
P5	-	28-09-2013	-	Property list
P6	-	29-09-2013	-	Address report
P7	-	28-09-2013	-	Arrest memo of A1
P7(a)	-	28-09-2013	-	Inspection memo
P7(b)	-	29-09-2013	-	Custody memo
P8	-	28-09-2013	-	Arrest memo of A2
P8(a)	-	28-09-2013	-	Inspection memo
P8(b)	-	29-09-2013	-	Custody memo
P9	-	29-09-2013	-	Arrest memo of A3
P9(a)	-	29-09-2013	-	Inspection memo
P9(b)	-	29-09-2013	-	Custody memo
P10	-	28-09-2013	-	Wound Certificate

Exhibits for the Defence : Nil

Witness for the Prosecution :

PW1	-	11-02-2025	-	Robinson
PW2	-	18-02-2025	-	Antony
PW3	-	19-02-2025 & 29-07-2025	-	Dr. Geetha. R.
PW4	-	19-02-2025	-	Justin Felix

PW5 - 19-02-2025 - Winny Rossario

PW6 - 04-07-2025 - Sajin Louis

Witness for the Defence : Nil

Material Objects :

MO1 - Chopper

Id/-

Second Addl. Asst. Sessions Judge

// True copy //

Second Addl. Asst. Sessions Judge

AJ / Compd by FCS :

Copy of Judgment
in SC 1326/2014
Dtd. 31-10-2025

**CALENDAR STATEMENT IN SESSIONS CASE NO. 1326/2014 OF
SECOND ADDL. ASST. SESSIONS COURT, THIRUVANANTHAPURAM**

Sl. No. : SC No. 1326/2014
CP No. 173/2013 of JFMC - II,
Thiruvananthapuram.

Name of Police Station & : Valiyathura Police Station
Crime No. of the offence : Crime No. 1217/2013

DESCRIPTION OF THE ACCUSED

A1

Name : Herman @ Vipin
Father's Name : Helton
Residence : TC No. 78/1518, Vineetha Bhavan,
Kochuthoppu, Valiyathura Ward,
Pettah Village, Thiruvananthapuram.
Age : -

A2

Name : Helton
Father's Name : Sebastian
Residence : TC No. 78/1518, Vineetha Bhavan,
Kochuthoppu, Valiyathura Ward,
Pettah Village, Thiruvananthapuram.
Age : -

A3

Name : Krishnankutty
Father's Name : Babu
Residence : TC No. 78/1540, Fisherman Colony,
Kochuthoppu, Valiyathura Ward,
Pettah Village, Thiruvananthapuram.
Age : -

DATES OF :

Occurrence : 28-09-2013

Complaint : 28-09-2013

Apprehension : 28-09-2013 (A1 & A2); 29-09-2013 (A3)

Release on bail : 11-10-2013

Commitment : 09-06-2014

Appearance : 21-03-2017

Commencement of trial : 08-07-2022

Close of trial : 29-10-2025

Judgment : 31-10-2025

No. of witness : 6

Name of Committing Magistrate : Sri. Vishnu. K.,
Judicial First Class Magistrate – II,
Thiruvananthapuram.

Second Addl. Asst. Sessions Court,
Thiruvananthapuram,
Dated: 05-11-2025

Second Addl. Asst. Sessions Judge