

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,
MAVELIKKARA**

Present: Anandhu. J.B, Civil Judge (Junior Division).

Wednesday, April 29, 2026

Calendar Case No. 140/2018

Complainant : State of Kerala – represented by the
Sub Inspector of Police, Nooranad in
Cr.No.19/2018.
(By APP, JFCMC-II, Mavelikara)

DESCRIPTION OF THE ACCUSED:

Sl.No.	Name	Father's name	Occupation	Residence	Age
1	Noushad, S/o HaneefaRawther, Palavilapadeetathil veetil Puthuppallykunnam Muri, Nooranad Village. (Split up)				44/18
2.	Swathy, W/o Prathapan, Swathi bhavanam veetil, Edakkunnam muri, Nooranad Village.				29/18
3.	Suresh, S/o Veluthakunju, Kallisserikizhakkathil veetil, Puthuppallikunnam muri, Nooranad Village. (Split up)				26/18
4.	Prathapan, S/o Kochukunju, Swathy bhavanam Puthuppallikunnam muri, Nooranad Village. (Split up)				61/18
5	Vishnu, S/o Raveendran, Pandivilayil veetil Puthuppallikunnam muri, Nooranad Village				31/22

(By Adv. J.Asoka Kumaran Nair)

Offences : U/ss.143, 147, 148, 447 and 427 r/w 149 IPC.
Plea : Not guilty.
Finding : Not guilty.
Sentence or order : Accused are acquitted u/s.255(1) of Cr.P.C.

Dates of:

Occurrence	Complaint	Appearance	Release on bail	Commitment	Commencement of trial	Commencement of evidence
01.01.2018	03.01.18	19.07.2018-A2 15.02.2022-A5	19.07.2018-A2 15.02.2022-A5		10.10.2019	29.07.2024
Close of trial	Sentence or order	Service of copy of judgment or finding on accused		Explanation of delay	Period of detention undergone during investigation, inquiry or trial for the purpose of s.428 CrPC.	
29.04.2026	29.04.2026	-		No delay	-	

This case coming on this day for consideration, the court delivered the following:-

J U D G M E N T

1. This is a case charged by the Sub Inspector of Police, Nooranad, in Crime No.19/18 for the offences punishable u/ss. 143, 147, 148, 447, 427 r/w 149 IPC.

2. The prosecution allegation is that the accused, on 01.01.2018 at 1.30 a.m, due to enmity towards PW1 with respect to a property dispute, in prosecution of their common object, formed themselves into an unlawful assembly with the knowledge that they are the members of that assembly, armed with deadly weapons, criminally trespassed into the property of PW1 at Puthuppallikkunnam muri, Nooranad village and committed riot. The accused committed mischief by cutting down the trees standing in that

property and destroying 120 fencing stones thereby PW1 sustained a loss of Rs. 1,25,000/-. Hence the offences.

3. Accused nos.1, 3 and 4 are reported to be absconding and case against them was split-up. On appearance of accused nos. 2 and 5, they were furnished with copies of relevant prosecution records. They were released on bail. Charge for the offences punishable u/ss. 143, 147, 148, 447, 427 r/w 149 IPC was framed, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

4. PW1 to PW6 were examined from the side of the prosecution. Exts.P1 to Ext.P8 were marked. On closing the prosecution evidence, the accused nos.2 and 5 were examined u/s 313 (1) (b) of Cr.P.C. They denied all the incriminating circumstances brought out against them. No defence evidence was adduced.

5. Heard both sides and perused documents.

6. The points that arise for consideration in this case are:

1. Whether the accused on 01.01.2018 at 1.30 a.m., in prosecution of their common object, formed themselves into an unlawful assembly armed with deadly weapons, with the knowledge that they are the members of that assembly, as alleged?

2. Whether the accused, on the aforesaid place, date and time, in prosecution of their common object, criminally trespassed into the property of PW1, as alleged?

3. Whether the accused, in prosecution of their common object, on the aforesaid place, date and time, committed rioting, as alleged?

4. Whether the accused, in prosecution of their common object, on the aforesaid place, date and time, committed mischief, as alleged?

5. If the accused are found guilty, what is the proper sentence to be imposed?

7. **Point Nos.1 to 4:** For the sake of convenience these points are considered together. The case of the prosecution is that the accused have unlawfully assembled, trespassed into the property of PW1, caused mischief therein. According to the prosecution, the accused are using the pathway through the eastern side of the property of PW1. There exist civil disputes between PW1 and the accused with respect to that pathway. It is further alleged that the accused have done these acts to increase the width of the pathway since PW1 has turned down the demand of the accused to surrender his property to increase its width. It is alleged that accused have trespassed into the property of PW1, demolished the fencing stones, cut down trees and intimidated PW1. To prove the allegation against the accused prosecution mainly relies on the oral evidence adduced by PW1 to PW6.

8. PW1 is the de facto complainant. He deposed that he has witnessed the alleged incident which happened on 01.01.2018 on the early morning. The alleged incident happened near his family property. The worker of PW1 has informed him through phone that 19 persons are trying to create a pathway through his property. He reached there by 12.30 a.m. He saw around 50 persons gathered there to create a pathway through his property. The persons who are known to him were Naushad, Swathi, Suresh, Prathapan and Vishnu. His property was demarcated using wired fencing.

The accused have dismantled 120 boundary stones. They have also cut and removed around 9 coconut trees and other trees.

9. According to PW1, around 250 tapiocas were also destroyed by the accused. It is deposed that the accused were using different types of weapons. He saw the incident at the house of his neighbour, namely Saleem. He saw the incident with the aid of the emergency light of Mr. Saleem. While PW1 has witnessed the incident, Mr. Saleem and his wife were also there. Since he was in fear, he did not went to the place. The police have reached the place. Then the accused have ran away. Apart from destroying the properties of PW1, the accused have also destroyed the boundary stones of the property of Mr. Saleem. PW1 has incurred a financial loss of ₹ 1,25,000/-. The alleged incident would have happened under the guidance of Mr. Naushad.

10. PW1 stated that he has 1.56 acres of property. The accused has dismantled the boundary stones on the western side of the property. He gave statement to the police. It is stated by PW1 that he resides in his wife's house and his father-in-law has under ailments. He was engaged with the ailments of his father-in-law. According to PW1, that is the reason why there exists a delay in lodging the FIS. Exhibit P1 is the FIS given by PW1.

11. PW2 is an eye witness to the incident. He is a daily wage worker who often works for PW1. He said that he has witnessed the alleged incident. He resides nearby. According to PW2, the alleged incident happened on the new year of 2018 at around 04.00 a.m. He woke up by hearing the sound of machine sword used by Prathapan and others to cut and remove trees

including coconut trees. When he reached the place, he saw lot of persons standing there. He stood on the courtyard of the house of Mr. Saleem and Subida. He saw Mr. Pradabhan, Swathi, Vishnu, Sudesh and Naushad standing there and cutting and removing the trees in the property of PW1. He saw the accused persons dismantling the boundary stones and taking away in a vehicle. PW1 reached the spot then and there. When police came to the spot, the accused persons ran away. When the police went from the spot, the accused persons again gathered and removed all the weapons used by them. According to PW2, nine coconut trees and other trees were cut and removed by the accused. Earlier, PW1 has given pathway to the accused. Thereafter, PW1 has constructed boundary on his property. The accused has dismantled the property for increasing the width of pathway. He stated that he has given statement to the police.

12. PW3 was the Village Officer of Nooranad during 2018. He provided the possession certificate to the investigation officer on 22.01.2018 with respect to property having an extent of 72.90 Ares comprised in Re-survey No. 658/3 in Nooranad Village. The certificate so provided by PW3 is Exhibit P2. As per Exhibit P2, the above property is in the possession of one Mr. Korothe Joseph.

13. PW4 was the Agricultural Officer of Nooranad during 2018. He inspected the property belonging to Bindu Joseph of Thamarakulam Village and ascertained the Agricultural losses incurred to the property owner. Exhibit P3 is the report given by PW4 to the Sub Inspector of Police,

Nooranad. As per Exhibit P3, it is reported that a total sum of ₹ 6,300 is the financial loss incurred to the property owner.

14. PW5 was examined being the attester to the scene mahazar. He turned hostile to the prosecution.

15. PW6 was the investigation officer of this case. According to PW6, he took the investigation of this case on 03.01.2018. He recorded Exhibit P1 FIS given by PW1. He registered Exhibit P4 FIR based on Exhibit P1 FIS. He reached the place of occurrence and prepared Exhibit P5 scene mahazar. He deposed the place of occurrence before this court. He obtained Exhibit P3 certificate from PW3 and produced it before the court. He also obtained Exhibit P2 certificate from PW4 and produced it before the court. On investigation, it was found that certain persons stated in the FIS are not involved in the crime. He filed a report deleting those persons and also identifying the name and address of accused nos. 1 to 5. That report is marked as Exhibit P6. He obtained location sketch from CW5 and filed before this court. Exhibit P8 is the location sketch of the property of PW1. PW1. Accused nos. 1 to 5 have surrendered before PW6. They were enlarged on bail by executing Exhibit P7 series of bail bonds. He concluded the investigation and filed final report before this court.

16. The learned Assistant Public Prosecutor would submit that from the prosecution evidence available before this court, the prosecution has succeeded in proving the case against the accused. It is submitted that the oral evidence of PW1 and 2 would establish the case against the accused. She seeks to punish the accused. The learned counsel for the accused, on

the other hand, would contend that this is a fabricated case against the accused persons and the prosecution has failed to prove the case against them. The learned counsel for the accused raises several arguments to establish these contentions.

17. One of the major arguments raised by the learned counsel for the accused is that there exists a material contradiction and omission in the evidence of PW1. PW1 has given Exhibit P1 FIS. It is pointed out that in Exhibit P1 FIS, PW1 has given several names of the alleged persons who has trespassed into his property and committed the alleged acts. One of the names mentioned by PW1 in Exhibit P1 FIS is of Mr. Saanthu. In Exhibit P1 FIS, the names mentioned are Naushad, Saanthu, Swathi, Suresh, Prathapan and Vishnu. PW6 the investigation officer, during the investigation has filed Exhibit P6 report excluding Mr. Saanthu from the array of accused. It is submitted by PW6 before this court that in the investigation it was found that Mr. Saanthu was not involved in the alleged crime. The learned counsel for the accused has put several suggestions with respect to this aspect to PW1 during his cross examination. The first question to PW1 during the cross-examination was whether Mr. Saanthu is present in the court. PW1 has pointed out to one of the accused and stated that Mr. Saanthu is the person who is wearing a spectacle. On the request of the counsel for the accused, the court has asked the name of the person pointed out by PW1. He answered that his name is Swathi. Mr. Swathi is the second accused in this case. Further, PW1 has admitted that she stated the

name of Mr. Saanthu in Exhibit P1 FIS. He further reaffirmed that Mr. Saanthu was also in the group of assailants during the alleged incident.

18. PW6, the investigation officer, has deposed before the court that during the investigation he found that Mr. Saanthu was not part of the group of accused persons. During the cross-examination of PW6, he has categorically stated that during the investigation he understood that Mr. Saanthu was not in the place of occurrence. PW1, the aggrieved person, has stated the name of Mr. Santhu in Exhibit P1 FIS and as well as before this court during his examination. Such a person was not made accused in the final report. It is pertinent to note that PW1 has identified the second accused as Mr. Santhu. Therefore, these aspects creates a serious doubt on the veracity of the evidence adduced by PW1.

19. The same aspect was also suggested to PW2. Pertinently, PW2, who is another eye witness examined before this court, has not mentioned the name of Mr. Santhu in his examination in chief. During the cross-examination of PW2, he stated that he knows Mr. Saanthu. He also reiterated that Mr. Saanthu was present during the alleged incident. Exhibit D1 is the portion of 161 statement of PW2. As per Exhibit D1, PW2 has given a statement to the investigation officer to the effect that Mr. Saanthu was not in the scene. But during his examination before this court, he stated that Mr. Saanthu was present.

20. The learned counsel for the accused, in order to establish that the case is a fabricated one, raises another argument that there exists inordinate delay which is unexplained in lodging Exhibit P1 FIS. The alleged incident

happened at around 01.30 a.m. on 01.01.2018. Exhibit P1 FIS was given by PW1 on 09.25 p.m. on 03.01.2018. Exhibit P4 FIS was registered On 09.15 p.m. on 03.01.2018. As per the oral evidence of PW1 and PW2, police have come to the spot during the alleged time of incident. PW6, the investigation officer, has also confirmed that the bodies have reached the spot during the time of the alleged incident. Admittedly, the alleged offences are cognizable ones. There was no hurdle before the investigation officer to register an FIR on receiving the information of the alleged incident. PW1, during the examination-in-chief, has stated that the delay in lodging the FIR happened since he was taking care of his ailing father-in-law. At the outset, the alleged incident is a serious one, and the police has reached the spot during the course of the alleged incident.

21. During the cross-examination of PW1, the question with respect to the delay in lodging the first information statement was put to him. He stated that there is no specific reason for not lodging the first information statement on the same day or the next day of the alleged incident. Admittedly, there is two days delay in lodging Exhibit P1 FIS and registration of Exhibit P4 FIR. The alleged offences are serious in nature, especially when PW1 has alleged to have incurred a financial loss of ₹ 1,25,000. PW1 was present during the alleged time of incident. There is no valid reason for PW1 for not lodging a first information statement on the same day or at least on the second day of the alleged incident. Therefore, the delay in lodging the FIS and registration of FIR is not explained properly and it casts a doubt upon the veracity of the evidence adduced by PW1.

22. Another argument raised by the learned counsel for the accused is that the investigation officer has failed to recover and produce any weapons allegedly used by the accused persons. From the oral evidence of PW1 and PW2, it is clear that the accused have used various types of weapons for the alleged incident. Admittedly, no such weapons are recovered by the police and produced before this court. There is no proper explanation from the part of PW6 in not recovering the alleged weapons used by the accused persons.

23. PW1 and PW2 are the two occurrence witnesses examined before this court to prove the alleged offences against the accused. At the outset, as stated above, the evidence of PW1 is under a suspicion since he could not identify the second accused before this Court. Rather, she has given a statement to the effect that one Mr. Saanthuu is also involved in the alleged offence. During the examination of PW1 and PW2, both of them have stated that one Mr. Saleem and his wife has also witnessed the incident. It is stated that PW1 and PW2 has witnessed the alleged incident in the house of Mr. Saleem. Admittedly Mr. Saleem and his wife are not made witnesses in this case. There is no proper explanation from the part of the prosecution for not making them witnesses.

24. As discussed above, the oral evidence adduced by PW1 and PW2 are not of sterile quality. The omissions and contradictions in their deposition creates a serious doubt on the veracity of their evidence. It is also to be noted that there exists two days' unexplained delay in lodging Exhibit P1 FIS and registration of Exhibit P4 FIR. This gathers importance when it is admitted that the police have reached the spot according to the oral

evidence of PW1 and PW2. PW1 has no valid explanation for not giving the first information statement on the same day or at least on the second day of the alleged day of incident. It is pertinent to note that PW1 has incurred heavy financial loss according to the prosecution. Therefore, it is quite unreasonable for PW1 to not give statement to the police on the same day itself. Moreover, even though the prosecution would allege that the accused have used weapons for the alleged incidents, no such weapons are recovered. There is no proper explanation on the part of PW6, the Investigation Officer, in not recovering the weapons. All these aspects create a reasonable doubt upon the prosecution case. It is settled in law that, in order to punish a person for a criminal offence, the prosecution shall prove the case beyond reasonable doubt. Any doubt created upon the prosecution case, the benefit shall go to the accused. The accused's here in is ended for the benefit of doubt created. Point nos. 1 to 4 are found against the prosecution. Hence, point no.5 does not arise for consideration.

25. In the result, accused no.2 and 5 are found guilty of offence punishable u/ss 143, 147, 148, 447, 427 r/w 149 IPC and they are acquitted u/s 248(1) CrPC. Their bail bonds are cancelled and they are set at liberty. Case against A1, A3, A4 are split up and refiled as CC 644/2018.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court on this the 29th day of April, 2026.

Judicial First Class Magistrate-II,
Mavelikkara.

A P P E N D I X:**1. List of prosecution/Defence/Court witnesses****A. Prosecution witnesses.**

PW1	Biju joseph	FI statement witness
PW2	Thankappan	Eye Witness
PW3	Sujatha	Eye witness
PW4	Kavitha	Eye Witness
PW5	Ameer Rawther	Mahasar witness
PW6	V.Biju	I.O

B. Defence witness:Nil**C. Court witness: Nil****II. List of prosecution/Defence/ Court Exhibits****A. Prosecution Exhibits:**

1.	Ext.P1/PW1	First Information statement
2.	Ext.P2/PW3	Possession certificate
3.	Ext.P3/PW4	Letter of Agricultural officer dated 18.1.2018
4.	Ext.P4/PW6	First Information report
5.	Ext.P5/PW6	Scene mahasar
6.	Ext.P6/PW6	Report
7.	Ext.P7/PW6	Bail bond (5 numbers)
8.	Ext.P8/PW6	Location sketch

B. Defence Exhibits:Nil**C. Court Exhibits: Nil****D. Material Objects: Nil**

Judicial First Class Magistrate-II.
Mavelikara.