

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I,
VATAKARA**

**Present:- Smt. Ali Fathima. N. S.
Judicial First Class Magistrate –I, Vatakara**

Dated this the 26th day of May, 2026

C.C No. 298/2018

Complainant	:	1.	State: Represented by Sub Inspector of Police, Edachery Police Station in Crime no. 40/2018. (By Sri. Manojan.N, APP, Sr. Grade, Payyoli, Additional charge of this court)
Accused persons	:	1.	Firos, S/o. Abdurahiman, Aged.26/18, Panoli(h), Kurinhaliyode post, Near Corotton Colony. (Rep. by Adv. Hareesh E Karayil)
		2.	Vipinlal, S/o. Vasu, Aged.28/18, Njattoth Thazhekuni(h), Karthikappally post, Muyipra.
		3.	Sanalkumar, S/o. Kelappan, Aged.35/18, Padikkuthazhekuni(h), Kurinhaliyode post, Muyipra.
		4.	Arunraj, S/o. Rajan, Aged.21/18, Maruthiyatt(h), Karthikappally post. (Rep. by Adv. P. P. Vineeth for A2, A3 & A4)
Offences	:		u/ss. 143, 147, 148, 341, 323, 324 r/w 149 of IPC.
Plea	:		Not Guilty.
Finding	:		Not Guilty.
Sentence/order	:		All accused are acquitted U/s.248(1) of Cr.P.C.

Description of the accused

Sl No.	Name	Father's name	Calling	Residence	Taluk	Age
1.	Firos	Abdurahiman		Pannoli		26/18
2.	Vipinlal	Vasu		NjattothThazhekuni		28/18
3.	Sanalkumar	Kelappan		Padikkuthazhekun	Vatakara	35/18
4.	Arunraj	Rajan		Maruthiyatt		21/18

Dates of

Occurrence	Complaint	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence/ Order	Explanation of delay
02.02.18	28.02.18	11.10.18	11.10.18	21.12.19-A2, A3 6.1.21-A4 23.11.20-A1	23.05.26	26.05.26	nil

This case finally heard on 23.05.26 and stood over for consideration and delivered Judgment on 26.05.26.

J U D G M E N T

The Accused nos.1 to 4 were put on trial alleging commission of offences under Sections 143, 147, 148, 341, 323, 324 r/w 149 of IPC in Crime No.40/2018 of Edachery Police Station.

2. **The prosecution case, in brief, is as follows:** On February 2, 2018, at around 23.30 hours, the Charge witness no.1 and Charge witness no.2 were returning to home situated at Kurikkilad. When they reached at Kurinhaliyode Auto stand, the accused persons herein along with 11 other identifiable persons, in prosecution of their common object to cause hurt to charge witness no.1, formed an unlawful assembly due to political enmity towards him. Armed with deadly weapon, they

wrongfully restrained Charge witness no.1 and caused hurt by means of hands and stone. Thereby, the accused are alleged to have committed offences punishable under Sections 143, 147, 148, 341 323, 324 r/w 149 of IPC.

3. In this case, final report was filed before this Court and cognizance of the above offences were taken by this Court. Thereafter, summons was issued to the accused. All accused appeared before the court and they were enlarged on bail. They were furnished with the copies of all relevant prosecution records and represented by their own counsels. Charges was framed u/ss.143, 147, 148, 341, 323, 324 r/w 149 of IPC read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

4. Prosecution cited CWs 1 to 10 to prove their case and examined PWs 1 to 8. Exhibits P1 to P6 were marked. The examination of CW6 was given up by Learned APP. CW3 failed to appear before the court despite coercive measures being taken against him. After closing of prosecution evidence, all accused were examined u/s.313(i)(b) Cr.pc and they denied all incriminating circumstances against them. No defence evidence was adduced in this case.

5. Heard both sides.

6. **The points that arise for determination in this case are the following:-**

- i. Did the Accused persons formed an unlawful assembly, in furtherance of their common object on February 2, 2018, at around 23.30 hours, at Kurinhaliyode Auto stand and

thereby committed offence punishable u/s.143 r/w 149 of IPC, as alleged?

- ii. Did the accused in prosecution of common object formed unlawful assembly with others and committed rioting and, thereby committed offence punishable u/s.147 r/w 149 of IPC, as alleged?
- iii. Did the accused in prosecution of common object armed with deadly weapons using stone and thereby committed offence punishable u/s.148 r/w 149 of IPC, as alleged?
- iv. Did the accused in furtherance of common object, wrongfully restrained PW1, and thereby committed offence punishable u/s.341 r/w 149 of IPC, as alleged?
- v. Did the accused in prosecution of the common object, voluntarily caused hurt to PW1 and thereby committed offence punishable u/s.323 r/w 149 of IPC as alleged?
- vi. Did the Accused in prosecution of the common object, voluntarily caused hurt to PW1 by means of dangerous weapon like stone and thereby committed offence punishable u/s. 324 of IPC r/w 149 of IPC as alleged?
- vii. If found guilty, what shall be the Finding, Sentence and order thereof?

7. Point Nos.(i) to (vi): In order to avoid repetition, these points are considered together. PW1 is the informant in the case, who deposed before the court that on 02.02.2018 at around 11.30 pm, while he was travelling with his friend in his motorcycle bearing registration number KL 18 S 7850, near Orkkattery Kurinjaliyodu road, accused no. 1 to 4, wrongfully restrained them and hit him using stones, hands and legs. They dragged him into the road and attacked him. When the police party reached the place of incident, the accused persons ran away and he was taken to the police station by the police. Ext P1 is the complaint given to the police. During his cross-examination, he stated that the motor cycle driven by him during the time of incident belonged to his brother and he mistakenly referred to his own vehicle in Ext. P1 FIS. He testified that he was taken to the police station at 11.30 pm and it was after 12.00 am, he went to the hospital. According to him, he sustained several injuries and he had scars on his body from the attack. He also sustained an injury on the right side of his forehead, which did not require stitches. He stated that he does not know whether PW2 sustained any injuries and submitted that PW2 went to the hospital with him. He further stated that his friend Rajesh explained the incident to the doctor. He admitted that he did not mention the names of the accused persons in Ext.P1 FIS and did not mention whether they had restrained or assaulted them. It was also not stated which accused hit him. He was not admitted in the hospital and on next day of incident, he went to Vatakara Co-operative hospital for treatment. The incident happened during the market time and PW2 did not prefer any complaint before police. He stated that he does not know why the police failed to record his injuries.

8. PW2 is the occurrence witness who deposed before the court that while he was travelling with PW1 in a motorcycle and when they reached near the starting point of Orkkatteri- Kurinjaliyodu road, some persons wrongfully restrained them and hit PW1. They dragged PW1 into the road and hit him using hands and legs. The police reached the place of incident at that time and the accused persons ran away. During his cross-examination, he stated that he did not sustain any injuries in the incident and at around 11.45 p.m., they reached the police station. According to him, PW1 sustained injuries in his chest and head, and there were no visible injuries. He stated that he went to the hospital along with PW1 and he did not consult a doctor as he did not sustain any injuries in the incident. He admitted in his statement to the police that he had not gone to the hospital. However, he clarified that he meant he had not consulted the doctor, and that he did go to the hospital accompanying PW1. He denied having told the police that he learned PW1 had been taken to the hospital by the police. He testified that he did not mention the overt acts of the accused and that he showed the place of incident to the police.

9. PW3 testified in court that he saw the police inspecting the scene of the incident. He signed as a witness on the Ext. P2 Scene mahazar.

10. PW4 is the occurrence witness who stated that on 02.02.2018 at around 11.30 p.m. in front of his textile shop where he was working as a salesman, he saw PW1 and PW2 going in a vehicle and the accused persons dragged PW1 and PW2 from the vehicle into the road. The accused persons hit PW2 and threw stone at him. They hit PW1 in his face using stone. He mentioned the names of all the four accused

persons before court. He testified that PW1 was taken to hospital in station vehicle and at that time the accused persons ran away. During cross-examination, he deposed that he was working in the textile shop for more than 12 years. The incident was happened in the auto stand in Kurunjaliyodu and the distance between his shop and Kurunjaliyodu was around 3.5 km. He stated that he gave statement before police as to the accused persons dragging both PW1 and PW2 into the road. He stated that Accused No. 1 struck PW1 with a stone, and that he saw blood on PW1's face. He stated that he could not mention as to the injuries sustained by the witnesses.

11. PW5 is the police officer who registered Ext. P3 FIR in this case. Ext. P3(a) is the body note according to which the injuries sustained by PW1 was noted. During cross-examination, he stated that PW1 came to the police station between 11:30 p.m. and 1:56 a.m. on 02/02/2018–03/02/2018, and that PW1 did not sustain any visible injuries.

12. PW6 is the Doctor who examined PW1 and issued Ext.P4 Wound certificate. He testified that PW1 came with alleged history of assault by group of 15 persons at Orkattery Kurunjaliyodu on 02.02.2018 at 11.30 p.m. On examination, he found swelling at the left jaw of the witness and also an abrasion was present at the back of his neck. PW6 testified that according to PW1, he had been assaulted with a wooden stick.

13. PW7 was the Investigating officer in the case who visited the crime scene and prepared Ext P2 Scene mahazar. He recorded statements of witnesses 1 to 7. He

arrested the accused no. 1 to 4 in this case and Ext.P5 series are the arrest memos. Ext.P6 is a report with names and addresses of the accused persons. No weapons were seized in the case. During cross-examination, he stated that he does not know the distance between Kurinjilayode and Orkkatteri town. According to him the incident occurred nearby Kurinjaliyode auto stand. As per Ext.P2 scene mahazar, the place of incident was shown as auto stand, Orkkatteri. He testified that he was shown the place of incident by PW2. He testified that the witnesses gave statement as to hitting them using stones by the accused persons. He testified that the witness mentioned getting pain due to the incident. No witness mentioned which accused wrongfully restrained them. He stated that he does not know whether any police took PW1 to the hospital. He stated that the vehicle driven by PW1 was not seen and that PW3 gave statements as to the incident that happened in Kurinjaliyodu auto stand. PW8 is the Investigating officer who filed final report in the case.

14. The Learned counsel for the accused no.1 contended that the place of incident itself is disputed in this case as the witnesses gave different accounts to the same. There was delay in registering FIR in this case which was not seen sufficiently explained by the prosecution. There were no injuries noted in the body note of PW1 and his version is not believable. The Learned counsel for other accused persons argued that the name of accused persons was not mentioned by PW1 in the FIS and the presence of 15 accused persons in the place of incident was not mentioned in his examination in chief. No accounts were made as to the overt acts of the accused

persons and the weapon involved in the case itself is seem doubtful. He submitted that the medical evidence did not tally with the oral evidence of the witnesses and contended that the place of incident is different according to the testimonies of the witnesses and the case of prosecution. In contrast, the Learned APP argued in line with the prosecution's case.

15. It is seen that the incident occurred between parties who were affiliated to different political factions and the motive behind the incident seems unclear from the evidence adduced before court. In order to prove the case of prosecution, PW1 to PW8 were examined and Exts. P1 to P6 were marked. The prosecution heavily relies upon the evidence of the material witnesses such as PW1, PW2 and PW4. Hence, it is necessary to ascertain the fact whether their testimonies can be wholly reliable or not. From the evidence of PW1, it can be seen that the incident happened in the public place. However, a significant omission was noted in PW1's testimony. He failed to mention the presence of other accused persons other than Accused Nos. 1 to 4, during the alleged incident. Being an injured/occurrence witness, the omission as to mentioning the presence of other accused persons, other than the accused nos. 1 to 4, is considered material affecting the case of prosecution itself. Furthermore, the overt acts of the accused persons were also not stated by him either before court or in his Ext. P1 FIS. He failed to point out who hit him with wooden stick and who hit him by hands. His testimony lacks detail as to whether PW2 sustained any injuries in the incident or not. Though he testified that PW1 sustained injuries in the incident, no such injuries were seen noted by the police. Thus, the evidence of PW1 lacks crucial

facts that supports the case of prosecution, which therefore requires corroboration from the other evidences.

16. Apparently, PW2 testified before court that he went to police station and to the hospital along with PW1. However, the said details were conspicuously absent in his 161 statement before police. Though no contradictions were marked in the case, such omissions can nevertheless be considered material, particularly since the defence case itself revolves around disputing the presence of PW2 during the incident. Notably, PW2 did not specify the overt acts allegedly committed by the accused persons, nor did he state whether PW1 was assaulted using a wooden stick or stones. Furthermore, PW2 failed to mention the name of one Rajesh who allegedly went to doctor accompanying PW1 and the said omissions are crucial considering the aftermath of the incident.

17. It is pertinent to note that there is no contention raised with respect of the identification of the accused persons in the case. Both PW1 and PW2 identified the Accused No.1 before court and the identity of other accused persons were not disputed in the case. PW4 deposed the names of the accused persons and no accused had a contention that they were not the persons mentioned by the witness. However, in order to attribute guilt to the accused persons, it must first be proved that they committed the offences alleged in connection with the incident.

18. In the instant case, the occurrence was at 11.30 p.m. on 2.2.2018 on the Orkkattery-Kurinjalayodu road nearby auto stand, as per Ext.P3 FIR which is seen

corroborated by Ext.P1 FIS. As per Ext.P2 Scene mahazar, the place of incident is a road and surrounding area near Kurinjaliyode autostand. PW1 would say the incident occurred when they reached near Orkkatteri-Kurinjaliyodu road after attending temple festival at Kakkannoor. PW2 would say that the incident occurred near starting point of Orkkatteri- Kurinjaliyodu road. Both the witnesses failed to mention the existence of auto stand at the place of incident. However, PW4 stated that the place of incident was near an auto stand. The learned counsel for the accused persons vehemently contended that the evidence regarding the place of occurrence is contradictory and cannot coexist. It must be seen that both PW1 and PW2 specifically mentioned that they were returning from a temple festival at Kurikkiladu and Ext.P2 would show the presence of one M.M. Bakery and Prasanna Textiles near the place of incident. PW1 testified that the incident happened in front of one Prasanna textiles and PW4, a staff who was working in the textile shop was examined in this case as eye witness. All these evidences are consistent with one another and only deviation that was noted with respect the occurrence was in the evidence of PW2's statement with respect to the starting point of road. However, the said testimony does not affect the case of prosecution with respect to the place as all other evidences are consistent with each other. In order to show that light was available in the place of occurrence so as to identify the assailants, the prosecution relied on Ext.P2 scene mahazar, which would show the availability of lights near the place of occurrence capable of identifying the assailants.

19. Delay in lodging the FIR has been raised as a ground to disbelieve the prosecution case. On perusal of the evidence given by PW1, the same would show that in relation to the occurrence at 11.30 p.m. on 2.2.2018, FIS given by PW1 was recorded at 1.56 Am on the next day and soon thereafter FIR was registered and the evidence would show that the statement of PW1 was recorded when he reached the police station at 1.56 Am. However, according the testimony of witnesses, both PW1 and PW2 reached the police station immediately after the incident and the police recorded the statement at once. Hence, a delay of more than one hour seen noted and the said delay was not properly explained by the prosecution. Furthermore, PW7 Investigating officer would depose that he was not aware of the whereabouts of PW1 between 11.30 p.m. and 1.56 a.m and Ext.P3 FIR report would only show the information received at 1.56 am on 3.2.2018. PW7 was also unaware of whether the witnesses had been taken to the police station. On closer scrutiny of PW7, it becomes evident that he failed to answer several crucial questions put forth by the defence side and remained silent.

20. PW4, an independent witness who was an employee in a nearby textiles shop. According to him, he saw the accused persons were attacking both PW1 and PW2 and they ran away when the police reached the spot. It must be seen that he testified that the accused persons pulled PW2 down and attacked him. However, PW2 had no such case and he specifically stated that the accused persons attacked PW1 alone after pulling him down. Thus, it is apparent that his testimony before court is

not free from doubts and require corroboration from independent witnesses. Moreover, no weapons were produced to corroborate the testimonies of material witnesses in this case.

21. To establish the offences under Sections 143, 147, 148, and 149 of the IPC, it is crucial to demonstrate the existence of an unlawful assembly and the accused persons' continued participation despite being instructed to disperse. However, in this case, there is a lack of material evidence to show whether unlawful assembly formed, the nature of the unlawful assembly, its characteristics, or the behavior of its members. Despite the prosecution's claims, no material objects were seized. The material witnesses omitted to testify before court the presence of more than five accused persons during the time of incident and thus the essential ingredients of formation of unlawful assembly itself not proved in the case.

22. It would be evident from Ext. P1(a) body note that PW1 did not sustain any visible injuries. PW5, the police officer who recorded Ext. P3 FIR deposed before the court that there were no external injuries on the body of PW1. PW6, the doctor who issued Ext P4 wound certificate stated that on the relevant date the victim came into the hospital with history of assault by wooden stick and the certificate reflects that the injury sustained by the victim is simple injury. Reading S.324 of IPC as well as under S.118(1) of the BNS, it is clear that, voluntarily causing hurt by means of any instrument which used as a weapon of offence is likely to cause death, would attract offence under S.324 of IPC. In the decision of Hon'ble Apex court in **Nanda**

Gopalan v. State of Kerala (2015 (11) SCC 137), it was held that, the facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in a case, offences under S.323, S.324, S.325 or 326 would apply. Thus, it has to be held that a stone would also come within the purview of a weapon of the offence likely to cause death, depending upon the nature of the stone, the size and sharpness of the said stone and the manner in which the stone was used in the process of assault for inflicting injury. However, no evidence was adduced with respect to the nature of the weapon and PW6, doctor deposed that the allegation was with respect to usage of one wooden stick rather than the stone as alleged by the prosecution.

23. It is pertinent to note that Ext. P4 wound certificate would show that PW1 had pain at lower jaw and swelling was noted. An abrasion was also present at back of neck. It is also significant to note that the wound certificate makes reference to the use of a key as the weapon allegedly employed to cause the injuries. However, none of the witnesses gave testimony with respect to the said fact. Ext.P1(a) Body note shows that PW1 had complains of pain on various part of body. At this juncture, it is necessary to look into Ext.P1 FIS. As per the said document, PW1 stated as follows: “എന്റെ വണ്ടി തടഞ്ഞു നിർത്തി എന്നെയും സുഹൃത്ത് മിഥുൻ ചന്ദ്രനെയും വണ്ടിയിൽ നിന്നും വലിച്ച് താഴെ ഇറക്കി കൈ കൊണ്ട് അടിക്കുകയും കല്ല് കൊണ്ട് കുത്തുകയും ചെയ്തു.” His testimony before court would show as follows: “ഒരു കാരണവും കൂടാതെ, ഫിറോസ്, അരുൺരാജ്, സനൽകുമാർ, വിപിൻലാൽ എന്നിവർ ചേർന്ന് തടഞ്ഞുവെച്ച് കല്ല് കൊണ്ടും

കൈ കൊണ്ടും കാലുകൊണ്ടും മർദ്ദിച്ചു.” PW2 would say as follows: “അവർ PW1 നെ വണ്ടിയിൽ നിന്നും വലിച്ച് താഴെ ഇറക്കി കൈകൊണ്ടും കാൽ കൊണ്ടും മർദ്ദിച്ചു.” PW3 would say as follows: “പ്രതികൾ ബാബുവിനെയും മിഥുനെയും വണ്ടിയിൽ നിന്ന് വലിച്ചിറക്കി. മിഥുൻ രാജിനെ പ്രതികൾ 4 ചേർന്ന് അടിച്ചു. ബാബുവിനെ കല്ലുകൊണ്ട് മുഖത്ത് കത്തി. ഫിറോസ്, വിപിൻലാൽ, അരുൺ, സനൽ എന്നിവരായിരുന്നു പ്രതികൾ.”

24. Thus, it is apparent that there was no allegation as to using either wooden stick or key as weapons at the time of alleged incident. The embellishments and inconsistencies in the testimonies are apparent on a careful evaluation of the evidence. PW1 did not state anything regarding any assault by kicking, whereas PW2 omitted any allegation relating to the use of stones in the assault. Moreover, while PW4 deposed that both PW1 and PW2 were attacked by the accused persons, he restricted the allegation of stone assault solely to PW1. These material inconsistencies and improvements in the prosecution version cast doubt on the reliability of the ocular evidence. Furthermore, the witnesses failed to provide direct accounts as to the specific acts of the accused persons. The medical evidence does not support the oral testimonies before court and hence in lieu of the said reasons, the offence under sections 323, 324 of IPC are not established in the case.

25. To constitute an offence under Section 341 of the IPC, the prosecution needs to establish that the accused persons wrongfully restrained PW1 and the restraint was such that it obstructed PW1 from proceeding in a direction he had right to proceed. PW7, investigating officer testified that none of the witnesses have given

any statement regarding any act of wrongful restraint by the accused persons. Apparently, the material witnesses failed to depose as to how PW1 and PW2 were restrained by the accused and how their movement was restricted. Thus, the prosecution also failed to prove offence punishable under section 341 of IPC.

26. It is fundamental that convictions cannot be based solely on allegations; compelling evidence is required to substantiate the charges. Despite the prosecution's efforts to gather evidence, the presented material lacks direct proof linking the accused persons to the alleged offences. Given the absence of conclusive evidence, I find that the prosecution has failed to prove its case beyond reasonable doubt against the Accused persons. Based on the evidence adduced, Point Nos. (i) to (vi) are decided against the prosecution.

27. **Point No. (vii):** In the light of the findings on Point Nos. (i) to (vi), all accused are found not guilty of the offences punishable under sections 143, 147, 148, 341, 323, 324, r/w 149 of IPC. They are acquitted of the charge under Section 248(1) Cr.P.C. Their bail bonds stand cancelled and they are set at liberty.

(No property produced in this case)

(Dictated to Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court this the 26th day of May, 2026)

sd/-

Judicial First Class Magistrate – I,
Vatakara

APPENDIX**Witnesses examined for the prosecution**

Prosecution Witness No.	Names of Witness	Description
1(CW1)	Sibin Babu, S/o. Babu	Defacto complainant
2(CW2)	Mithunchandra, S/o. Chandran	Eye witness
3(CW5)	Baskaran, S/o. Kannan	Witness to scene mahazar
4(CW4)	Damu, S/o. Chappan	Eye witness
5(CW8)	Sreekumar, GASI, Edachery PS.	Registered FIR.
6(CW7)	Rasoonraj, Asst. Surgeon, Govt. District Hospital, Vatakara.	Medical Jurist
7(CW9)	Jayan, GASI, Edachery PS	Investigating Officer
8 (CW10)	Pradeep Kumar, SI, Edachery PS	Investigating Officer

Exhibits for prosecution

Exhibit No.	Description of the Exhibit	Proved by/Attested by
P1	FIS dated 03.02.18	PW1
P1(a)	Body note	PW1
P2	Scene mahazar dated 03.02.18	PW3
P3	FIR in Crime no. 40/18 of Edachery PS	PW5
P4	Wound certificate dated 03.02.18 issued from Govt. District Hospital, Vatakara.	
P5	Arrest memo of Accused no.4, Arun Raj	PW7
P5(a)	Arrest memo of Accused no.1, Firos	PW7

P5(b)	Arrest memo of Accused no.3, Sanal Kumar	PW7
P5(c)	Arrest memo of Accused no.2, Vipinlal	PW7
P6	Report to add name and address of accused dated 09.02.18	PW7

Witnesses examined and exhibits marked by the defence -

Nil

MOs marked -

Nil

sd/-

Judicial First Class Magistrate – I,
Vatakara

//True copy//

Judicial First Class Magistrate – I,
Vatakara