

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,
KARUNAGAPPALLY**

Present: Sri. **MIDHUN. A. SATHEESH.**, Civil Judge (Junior Division)

Tuesday, the 26th day of May, 2026

(5th day of Jyaishta, 1948)

CALENDAR CASE NO :447/2019

Complainant	:	The Kerala State represented by the Sub Inspector of Police, Karunagappally police station in Crime No.582/2019 [By Sri. <i>Mohammed Rafeeqe M.H,</i> Asst. Public Prosecutor, Karunagappally]
Accused	1	Muhammed Kunju, aged 79, S/o. Aboobekker, ' <i>Kottathazhe House</i> ' Kozhicode mekku Muri, Ayanivelikulangara Village, Karunagappally Taluk [By Adv. Muhammed Noufal]
Charge	:	Under sections 341, 323 of the Indian Penal Code 1860
Plea	:	Not guilty
Finding	:	Not guilty
Sentence or order	:	The accused is found not guilty for offenses punishable u/s.341, 323 of the Indian Penal Code,1860 and he is acquitted u/s.255(1) Cr.P.C for the said offenses. He is set at liberty forthwith, terminating the bail bonds executed by him.

Name and Description of the accused

Sl. No	Name	Father's name	Occupation	Residence	Age
1	Muhammed Kunju	Aboobekker	Nil	'Kottathazhe House' Kozhicode mekku Muri, Ayanivelikulangara Village, Karunagappally Taluk	79

[By Adv. Muhammed Noufal]

DATE OF

Offence	Report of complaint	Apprehension of accused	Released on bail	Commencement of trial	Commencement of evidence	Close of trial	Sentence or order	Expln. for delay and remarks
-	11.04.2019	30.11.2021	30.11.2021	30.11.2021	23.09.2025	26.05.2026	26.05.2026	Nil

This case having been finally heard on 26.05.2026 and the Court on the this day delivered the following:-

J U D G M E N T

1. The accused is indicted by the complainant in Crime No. No.582/2019 alleging the offences punishable under Sections 341, 323 of the Indian Penal Code 1860 of the Indian Penal Code 1860.
2. The prosecution case, in brief, is that the accused, who is the brother of the informant, owing to previous enmity arising out

of property disputes, on 11.04.2019 at about 1:00 p.m., wrongfully restrained and assaulted the informant with the intention of causing hurt. It is alleged that, while the informant was returning after offering prayers at the mosque and had reached near Morangattuvila School, the accused caught hold of the collar of his shirt, wrongfully restrained him, pushed him to the ground, slapped him on his cheek, and kicked him, thereby causing pain and committing the aforesaid offences.

3. The investigation officer laid a final report upon which cognizance was taken against the accused. Upon the issuance of summons, the accused appeared and sought bail, and was enlarged on bail and was served with copies of the prosecution records as mandated u/s 207 of the Code of Criminal Procedure, 1973.
4. Particulars of offenses punishable u/s 341, 323 of the Indian Penal Code, 1860 was read over and explained to the accused in *malayalam* to which he pleaded not guilty and claimed to be tried and hence the case was posted for the evidence of the prosecution.

5. In the final report, the prosecution cited 7 witnesses to substantiate the charges against the accused. Of them, 5 witnesses were examined before the Court as PW1 to PW5, and documents marked as Exhibits P1 to P4, P4(a) and P5 were marked on the side of the prosecution. CW1 could not be examined as he was reported to be laid up and is not in a condition to give evidence. CW4 is given up by the prosecution. No material objects were produced or marked in this case.
6. On conclusion of the prosecution evidence, the accused was questioned under section 313(1)(b) of the Code of Criminal Procedure 1973, so as to enable him to answer the incriminating circumstances that appeared in the depositions of PWs 1-5. He answered negatively and claimed innocence.
7. The accused were then called upon to enter upon his defence. On the part of the defence, neither ocular nor documentary evidence were adduced.
8. Heard both sides and perused the records.
9. The following points came up for consideration.

1. *Whether the accused voluntarily caused hurt to PW1 and thereby committed an offence punishable under Section 323 of the Indian Penal Code?*
 2. *Whether the accused wrongfully restrained PW1 and committed an offence punishable u/s 341 IPC as alleged?*
 3. *Whether the accused is guilty of the offences with which he stands charged?*
 4. *In the event of conviction, what would be the appropriate sentence to be imposed upon the accused?*
10. For the sake of convenience and to ensure brevity, Points 1 and 2 shall be considered collectively.

The informant in the present case, Mr. Abdul Hakim, could not be examined before the Court as he was reported to be laid up due to illness. Several steps were taken to secure his presence; however, it was reported that he was not in a condition to depose before the Court. Consequently, his evidence was dispensed with.

11. CW2 and CW3, who were examined as PW1 and PW2 respectively, were cited by the prosecution as occurrence witnesses to prove the incident. However, both of them turned hostile to the prosecution case. In view of the same, the learned Assistant Public Prosecutor sought and obtained permission under Section 154 of the Indian Evidence Act to put questions that are permissible to be put in cross-examination. Despite such efforts, no incriminating material could be elicited from either of the witnesses.
12. Dr. Athira K.L., who was then serving as the Casualty Medical Officer at Taluk Hospital, Karunagappally, was examined as PW3. She deposed that she had examined and treated the informant in the present case and that the informant had stated before her that the incident occurred at about 1:15 p.m. She further spoke regarding the injuries sustained by the informant and identified her signature in Ext.P3 wound certificate. During cross-examination, she denied the suggestive questions put to her by the defence.
13. Mr. Sanju Joseph, who was then working as the Sub Inspector attached to Karunagappally Police Station, was examined as PW4. He deposed that he had recorded the First

Information Statement under Section 154 of the Code of Criminal Procedure, 1973, and identified his signature therein, which was marked as Ext.P4. He also identified the body note prepared by him describing the injuries sustained by the informant, which was marked as Ext.P4(a). Based on Ext.P4 First Information Statement, he registered the crime and identified the FIR prepared by him, which was marked as Ext.P5. In cross-examination, he denied the suggestions put forth by the defence.

14. The Investigating Officer, Mr. Omanakutten B., was examined as PW5. He narrated the course of investigation conducted by him and identified the scene mahazar prepared during the investigation, which was marked as Ext.P6. He also described the scene of occurrence in detail. PW5 further stated that the accused had appeared before the police station along with sureties, whereupon he was arrested and later released on bail on execution of bond. The bail bond executed by the accused and his sureties was identified by him and marked as Ext.P7.
15. PW5 further stated that he had submitted a report before the Court regarding the correct name and address of the accused,

which was identified and marked as Ext.P8. During cross-examination, he denied all the suggestive questions put by the defence counsel.

16. The learned counsel for the defence contended that the informant, who is the injured witness in the case, could not be examined before the Court as he was laid up due to illness, thereby depriving the prosecution of its most material piece of evidence. It was further argued that the occurrence witnesses, namely CW2 and CW3 examined as PW1 and PW2, had turned completely hostile to the prosecution case and that, despite permission being granted under Section 154 of the Indian Evidence Act, no incriminating evidence could be brought out from their testimony. According to the defence, the case is false and fabricated, instituted owing to previous animosity, and since the prosecution failed to establish the ingredients of the offences alleged, the accused is entitled to an acquittal.
17. On the other hand, the learned Assistant Public Prosecutor fairly submitted that the informant could not be examined owing to his illness and that the prosecution had thereby lost a substantial piece of evidence. It was also conceded that the

occurrence witnesses had turned hostile to the prosecution case. In view of the paucity of evidence available on record, the learned Assistant Public Prosecutor rested the case.

18. Having considered the oral and documentary evidence adduced in this case and the rival submissions advanced by both sides, the crucial question that arises for consideration is whether the prosecution has succeeded in proving the ingredients of the offences alleged against the accused so as to warrant a conviction.
19. This Court has carefully evaluated the entire evidence on record. The most material witness in the present case is the informant himself, who is also the injured witness. The best evidence available to the prosecution would therefore have been his testimony. Unfortunately, owing to his illness and bedridden condition, his evidence could not be secured despite several attempts taken by the Court.
20. Further, the occurrence witnesses cited by the prosecution, namely CW2 and CW3 examined as PW1 and PW2, turned hostile to the prosecution case. Even after granting permission to the learned Assistant Public Prosecutor to put questions that are permissible in cross-examination by the

adverse party under Section 154 of the Indian Evidence Act, no incriminating evidence could be elicited from their testimony.

21. The next available evidence is that of PW3, the doctor who treated the informant. Though her evidence establishes that the informant had sustained injuries, the same by itself is insufficient to connect the accused with the commission of the offences alleged, particularly in the absence of substantive evidence regarding the occurrence. The evidence of the Investigating Officer only speaks about the course of investigation conducted by him and does not independently implicate the accused in the alleged offences.
22. On an overall appreciation of the entire evidence on record, this Court is of the considered opinion that the prosecution has failed to establish the ingredients of the offences alleged against the accused beyond reasonable doubt. Accordingly, the accused is entitled to the benefit of doubt and is liable to be acquitted of all the charges levelled against him under Sections 341 and 323 of the Indian Penal Code, 1860.

23. Point No: 3 and 4:- Since Points No. 1 and 2 are found negative, there is no use in answering these points.

In the result, the accused is found not guilty for the offenses punishable u/ss 341, 323 of the Indian Penal Code 1860 and he is acquitted for the said offenses u/s 255(1) Cr.P.C. He is set at liberty forthwith, terminating the bail bonds executed by him.

Dictated to Adalath.ai , corrected by me and pronounced in open court on the 26th day of May, 2026.

**Judicial First Class Magistrate,
Karunagappally**

APPENDIX

List of Prosecution/Defence/Court Witnesses

A. Prosecution Witnesses

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
PW1	Abdul Rasheed	Eye Witness
PW2	Thaha Kunju	Eye Witness
PW3	Dr. Athira	Medical Witness

PW4	Sanju Joseph	Police Witness
PW5	Omanakuttan	Police Witness

B. Defence Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
	Nil	

C. Court Witnesses

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
	NIL	

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits

Sl. No	Ext. No	Description
1	P1	161 Statement marked through PW1 on 23.09.2025
2	P2	161 Statement marked through PW2 on 23.09.2025
3	P3	Wound certificate marked through PW3 on 30.10.2025
4	P4	First Information Statement marked through PW4 on 28.11.2025
5	P4(a)	Body note marked through PW4 on 28.11.2025
6	P5	First Information Report marked through PW4 on 28.11.2025

B. Defence Exhibits

Sl.No.	Exhibit Number	Description
	NIL	

C. Court Exhibits

Sl.No.	Exhibit Number	Description
	NIL	

D. Material Objects

Sl.No.	Exhibit Number	Description
	Nil	

**Judicial First Class Magistrate,
Karunagappally**