

**IN THE COURT OF THE JUDICIAL FIRST-CLASS MAGISTRATE,
KADAKKAL.**

Present: Sri. Amal. S. R, Judicial First-Class Magistrate

Thursday the 07th day of May 2026/ 17th Vaisakha, 1948

CALENDAR CASE. No.58/2019

Complainant	:	State represented by the Sub Inspector of Police, Kadakkal Police Station in Crime No.1638/2018 <i>(By APP Gr II, Kadakkal)</i>
Accused	:	Girilal, S/o Sreedharan, aged 58/26, G.D Bhavan, Madathara P.O, Chithara, Kollam. <i>(By Adv. Sri. Ajimon V)</i>
Charge	:	Offence punishable U/ss. 323, 341, 509 and 354 of the Indian Penal Code.
Plea	:	Not guilty
Finding	:	Not guilty
Sentence	:	Accused is found not guilty of the Offence punishable U/ss. 323, 341, 509 and 354 of the Indian Penal Code. He is acquitted u/s 271(1) of BNSS, 2023. His bail bond stands cancelled, and he is set at liberty.

Date of

Occurrence	Complainant	Apprehension	Release on bail	Commencement of trial	Commencement of evidence	Close of trial	Sentence or order	Period of detention undergone during investigation of trial for the purpose of Section 428 Cr.P.C
10.09.18	15.09.18	26.11.18	26.11.18	28.10.24	23.07.25	07.05.26	07.05.26	-

This case having been finally heard on today the court on the same day delivered the following: -

JUDGMENT

This case arose on a final report filed by the S.I of Police, Kadakkal Police Station in Crime No. 1638/2018. The offences alleged against the accused is punishable U/ss. 323, 341, 509 and 354 of the Indian Penal Code.

2. ***The gist of the prosecution case is as follows:*** - Due to previous enmity towards PW1, the accused, with the intention and knowledge of causing physical harm, humiliation, and mental agony to her, on 07.05.2020 at about 7.25 a.m., at the road situated in front of her house, wrongfully abused her in obscene language, pushed her, picked up a stone and struck on her back causing pain, and further pulled and tore her nighty. By such acts, the accused allegedly caused humiliation and mental distress to her and thereby committed offences punishable under Sections 294(b), 323, 324 and 354 of the IPC.

3. Final report was filed before this Court, and the case was taken on file. Cognizance was taken for the offences punishable U/ss. 323, 341, 509 and 354 of the Indian Penal Code. Then the accused was enlarged on bail on his appearance.

4. After hearing on framing of charge, charge was framed, read over and explained to the accused u/s.240(2) of Cr.P.C for the offences punishable U/ss. 323, 341, 509 and 354 of the Indian Penal Code to which the accused persons pleaded not guilty and claimed to be tried.

5. From the side of prosecution, PW1 to PW6 were examined. Exts. P1, P1(a), P2 to P6 were marked. Based on the prosecution evidence, the accused

was examined u/s. 313 (1) (b) of Cr.P.C. From the side of defence, no oral evidence was adduced. Ext D1 was marked.

6. Both sides were heard.

7. Following points came up for consideration in this case are:

- 1) *Whether the prosecution has succeeded in proving that on 10.09.2018 at about 5.00 p.m., the accused wrongfully restrained CW1 on the Panchayat Road and thereby committed the offence punishable under Section 341 IPC?*
- 2) *Whether the prosecution has proved that the accused voluntarily caused hurt to CW1 by catching hold of her neck, beating, pushing her to the ground and kicking her, and thereby committed the offence punishable under Section 323 IPC?*
- 3) *Whether the prosecution has proved that the accused assaulted or used criminal force against CW1 with the intention of outraging her modesty and thereby committed the offence punishable under Section 354 IPC?*
- 4) *Whether the prosecution has proved that the accused, by making obscene gestures and acts towards CW1, intended to insult the modesty of CW1 and thereby committed the offence punishable under Section 509 IPC?*
- 5) *If found guilty, what shall the punishment be if any, to be awarded?*

8. **Point Nos. 1 to 4:** - As the discussion upon these issues encompasses the same, these are considered together. The prosecution case was set into motion based on Ext P1 given by PW1 before PW5. Pursuant to the said statement recorded by PW5, PW6, the then Sub Inspector of Police registered Ext.P3 FIR. Then, PW6 took up investigation, prepared Ext.P4, questioned witnesses and, on completion of investigation, laid the final report before the court.

9. The learned APP argued that the prosecution has succeeded in proving the guilt of the accused through the consistent testimonies of PW1 and PW2. It was contended that the evidence of the injured witness, namely PW1, is trustworthy and is sufficiently corroborated by PW2, who witnessed the occurrence immediately after hearing the commotion. The learned APP further submitted that the previous enmity admitted by the defence itself supplies the motive for the occurrence. It was also argued that the delay in lodging Ext P1 has been satisfactorily explained and that the medical evidence and Ext P1(a) body note supports the allegation of assault. Hence, according to her, the prosecution has established the offences punishable under Sections 341, 323, 354 and 509 IPC beyond reasonable doubt and the accused is liable to be convicted accordingly.

10. *Per Contra*, the learned counsel for the accused vehemently contended that the entire prosecution case is false and has been foisted due to the long-standing boundary disputes admittedly existing between PW1 and the accused. It was argued that there was an inordinate delay of five days in lodging Ext P1

and no satisfactory explanation has been offered for the same, thereby creating serious doubt regarding the genuineness of the prosecution case. The learned counsel further submitted that though independent witnesses were allegedly available, none were examined before the court, and even the person named Salam, who allegedly came to the spot during the incident, was neither questioned nor cited as a witness. The learned counsel further argued that no injuries were noted in Ext P2 or P1(a) and that it only refers to complaints of pain which could be pretended. It was therefore contended that the prosecution failed to establish the offences alleged beyond reasonable doubt and the accused is entitled to the benefit of doubt and acquittal.

11. Now, this Court shall proceed to consider the rival submissions advanced by the learned Assistant Public Prosecutor and the learned counsel for the accused and evaluate the evidence on record to ascertain whether the prosecution has succeeded in establishing the guilt of the accused for the offences alleged beyond reasonable doubt. The accused is alleged to have committed offences punishable under Sections 341, 323, 354 and 509 of the Indian Penal Code.

12. Before appreciating the evidence relating to Sections 354 and 509 IPC, it is necessary to bear in mind the essential ingredients required to constitute the said offences. To attract Section 354 IPC, the prosecution must prove not only the use of assault or criminal force against a woman, but also that such act was done with the intention of outraging her modesty or with the

knowledge that the modesty of the woman was likely to be outraged. The culpable intention or knowledge of the accused is therefore the gravamen of the offence. Likewise, for constituting an offence under Section 509 IPC, there must be a clear and specific act, word, gesture or conduct intended to insult the modesty of a woman. The prosecution is bound to establish the precise nature of the alleged act and the intention to accompany the same. Mere general allegations would not by themselves be sufficient to sustain conviction under the said provisions.

13. In the instant case, the allegations constituting the offences under Sections 354 and 509 IPC mainly arise from the assertions of PW1 that the accused made a “വൃത്തികെട്ട ആംഗ്യം” towards her and pulled away the shawl covering her head. PW2 also attempted to support the prosecution case by stating that he made obscene gestures and “തൂണി മാറ്റി കാണിച്ചു”. But, when it is carefully scrutinized, substantial infirmities and omissions become apparent.

14. At the outset, it is relevant to note that neither PW1 nor PW2 has clearly explained the exact nature of the alleged obscene gesture or act. The evidence remains vague and omnibus in this regard. The prosecution has not elicited any definite picture as to what precisely the accused did to constitute an insult to modesty. Such lack of specificity assumes importance because offences under Sections 354 and 509 IPC carry serious social and penal consequences, and therefore the acts constituting the offences must be clearly established through cogent evidence.

15. The omissions brought out through the evidence of PW5 have become highly significant in this context. PW5, who recorded Ext.P1 admitted during cross-examination that PW1 had not stated before him that the accused had pulled away the shawl worn on her head. PW5 also admitted that PW1 had not described the nature of the alleged gesture made by the accused. Thus, the allegation regarding removal of shawl, which forms a material part of the prosecution case relating to outrage of modesty, is conspicuously absent in the earliest version given to police.

16. Also, PW2 introduced an additional allegation during chief examination by stating that the accused “തുണി മാറ്റി കാണിച്ചു”. However, during cross-examination it was specifically brought out that such a statement was not seen in her 161 statement before police. Thus, material improvements are evident in the testimony of PW2 as well. The evidence of PW2 also shows that she admittedly came to the place after hearing the commotion. Thus, her presence at the exact inception of the occurrence itself becomes doubtful. Though she attempted to state that she saw the incident while approaching the place, the contradictions and omissions in her evidence materially affect its reliability.

17. Another important aspect is the admitted prior enmity between the parties. PW1 admitted that longstanding disputes existed between herself and the accused regarding pathway issues. The defence further succeeded in bringing out that other criminal cases were pending between the parties and that complaints had been lodged before the Women’s Commission as well.

PW6 also admitted during cross-examination that disputes regarding a newly cut pathway existed between them. Thus, the possibility of exaggeration or embellishment in the prosecution version cannot be lightly brushed aside.

18. The conduct of the investigation also assumes relevance while appreciating the prosecution allegations. PW6 admitted that though PW1 stated that one Salam had reached the spot hearing the commotion, he was neither questioned nor cited as a witness. No explanation whatsoever is forthcoming from PW6 regarding his non-examination. Further, CW3, CW4 and CW6 could not be examined even after coercive steps under Section 82 Cr.P.C., and PW3 turned hostile to the prosecution case. Consequently, the allegations relating to outrage and insult of modesty remain unsupported by any independent evidence.

19. The delay in lodging Ext P1 also assumes significance. Admittedly, the incident allegedly occurred on 10.09.2018, whereas the FIR was registered only on 15.09.2018. Though PW1 attempted to explain the delay by stating that she was physically unwell and later consulted a doctor, the prosecution has not produced convincing evidence to substantiate the same. PW6 admitted that he had not verified the alleged treatment taken by PW1 on 14.09.2018, nor had he investigated the alleged X-ray examination spoken to during trial. The unexplained delay assumes greater importance in view of the admitted hostility between the parties.

20. Further, the medical evidence does not lend support to the prosecution case regarding use of criminal force of nature alleged. PW4 only stated that PW1 complained of body pain. No visible external injuries were noted either in Ext.P2 or in Ext.P1(a). PW4 admitted that pain can even be pretended. Thus, Ext P2 does not materially corroborate the prosecution allegations relating to assault with intent to outrage modesty.

21. On evaluation of the evidence, this Court finds that the prosecution evidence relating to Ss. 354 and 509 IPC suffers from material omissions, and lack of corroboration. The allegations constituting insult or outrage of modesty have not been proved with the degree of certainty required in a criminal trial. In such circumstances, the accused is entitled to the benefit of doubt with respect to the aforesaid offences.

22. To bring home an offence punishable under S. 323 IPC, the prosecution must establish that the accused voluntarily caused hurt to the victim. "Hurt" as defined under Section 319 IPC means causing bodily pain, disease or infirmity to any person. Therefore, the prosecution must prove not only the occurrence of physical assault, but also that such assault resulted in bodily pain or injury attributable to the acts of the accused.

23. In the present case, the prosecution allegation is that the accused caught hold of PW1 by the neck, beat her on the cheek and back, pushed her to the ground and kicked her, thereby causing hurt. PW1 deposed in tune with the prosecution case and stated that due to the assault she sustained bodily

discomfort and weakness. PW2 supported the prosecution version by stating that she saw the accused beating PW1 and causing her to fall.

24. A significant aspect which affects the credibility of the prosecution case is the unexplained delay in lodging Ext P1, which was discussed earlier. The medical evidence available on record also does not substantially support the prosecution allegation of assault. PW4 merely stated that PW1 attended the hospital on 12.09.2018 with complaints of body pain. No visible external injuries were noted by the doctor in Ext P2. Ext.P1(a) body note prepared by PW5 also does not disclose any visible injuries on the body of PW1 and only records complaints of pain on her face and back. PW4 also admitted in cross-examination that pain can even be pretended. Thus, Ext P2 does not provide corroboration to the prosecution version regarding physical assault. As stated above, the prosecution case also suffers from lack of corroboration.

25. The admitted prior enmity between them also assumes significance. Material omissions and improvements are also visible in the prosecution evidence. PW1 stated before court that the accused pulled away her shawl and that mud had fallen on her clothes when she fell. However, such allegations do not find place in the earliest version and the allegedly mud-stained clothes were neither seized nor produced before court. The prosecution also failed to establish through definite evidence the exact way the injuries were allegedly sustained. Therefore, the accused is entitled to the benefit of doubt in respect of the offence punishable under Section 323 IPC as well.

26. To establish an offence punishable under S. 341 IPC, the prosecution must prove that the accused voluntarily obstructed the victim and thereby prevented her from proceeding in a direction in which she had a lawful right to proceed. The obstruction must be specific and intentional so as to amount to wrongful restraint within the meaning of Section 339 IPC. In the present case, the prosecution allegation is that the accused wrongfully restrained PW1 on the Panchayat road immediately prior to the alleged incident. PW1 stated that while she was engaged in cutting firewood, the accused questioned her and called her outside. However, except the general allegation that the accused intercepted her, there is no evidence describing the manner in which PW1 was prevented from proceeding in any particular direction. The evidence on record does not disclose any specific act of obstruction constituting wrongful restraint as contemplated under law.

27. The evidence of PW2 also does not materially improve the prosecution case in this regard. PW2 mainly spoke about the alleged assault and did not depose regarding any act of restraint preventing PW1 from moving freely. No independent witness was examined to substantiate the allegation of wrongful restraint, though PW1 stated that one Salam had reached the place hearing the commotion. PW6 admitted that the said witness was neither questioned nor cited during investigation. The delay in registration of the FIR and the absence of corroboration weaken the prosecution case regarding wrongful restraint. Therefore, this Court is of the view that the prosecution has failed to prove the

essential ingredients of the offence punishable under Section 341 IPC beyond reasonable doubt.

28. In the result, on an overall appreciation of the oral and documentary evidence adduced in this case, this Court finds that the prosecution has failed to establish the offences punishable under Sections 341, 323, 354 and 509 IPC against the accused beyond reasonable doubt. Hence, the accused is entitled to the benefit of doubt. Accordingly, all the points for consideration are answered in favour of the accused and against the prosecution.

29. **Point No.5:** - On the basis of finding on Point Nos. 1 to 4, this point does not arise for consideration.

In the result, Accused is found not guilty of the offences punishable under Sections 323, 341, 354 & 509 of IPC. He is acquitted u/s 271(1) of BNSS, 2023. His bail bond stands cancelled, and he is set at liberty.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me, in open court, on this the 7th day of May 2026.

Sd/-

Judicial First-Class Magistrate, Kadakkal.

APPENDIX**List of Prosecution/Defence/Court Witnesses****A. Prosecution Witnesses**

Rank	Name	Whether Eyewitness, Police Witness, Expert witness, Medical Witness, other witness
PW1	Thahira (CW1)	Injured Witness
PW2	Jasmi (CW2)	Occurrence Witness
PW3	Salahudheen (CW5)	Mahazar Witness
PW4	Dr Roshni (CW7)	Medical Witness
PW5	Saleena (CW8)	Police Witness
PW6	Ajukumar (CW9)	Police Witness

B. Defence Witness

	NIL	
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C. Court Witnesses

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

List of Prosecution/Defence/Court Exhibits**A. Prosecution Exhibits**

Sl.No	Exhibit Number	Description
1	P1	FIS proved by PW1 on 23.07.2025
2	P1(a)	Body Note proved by PW5 on 07.01.2026
3	P2	Treatment certificate marked through PW4 on 01.12.2025 S/P
4	P3	FIR proved by PW6 on 04.02.2026
5	P4	Scene Mahazar proved by PW6 on 04.02.2026
6	P5	Name and address report proved by PW6 on 04.02.2026
7	P6	Bail bond proved by PW6 on 04.02.2026

B. Defence Exhibits

Sl.No.	Exhibit Number	Description
1	D1	Certified copy of FIR in Crime No. 98/19 of Kadakkal P.S marked through PW1 on 23.07.25

C. Court Exhibits

Sl.No.	Exhibit Number	Description
	NIL	

D. Material Objects

Sl.No.	Exhibit Number	Description
	NIL	

Sd/-

Judicial First-Class Magistrate, Kadakkal.**//True Copy//****Judicial First-Class Magistrate, Kadakkal.**