

<b>IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -I KANNUR</b>	
Present:- Sri Mohammed Ali Shahshad, Judicial First Class Magistrate-I, Kannur	
Dated this the Tuesday, the 24 <sup>th</sup> day of March, 2026 (03 <sup>rd</sup> day of Chaithra, 1948 S.E )	
<b><u>C.C. 929/19</u></b>	
Complainant	: State rep. by Sub Inspector of Police, Kannur Town Police Station (Cr. No. 675/19 of Kannur Town P S) (By Sri. Satheesan P, APP Gr-II, Kannur)
Accused	: <ol style="list-style-type: none"> <li>1. Shyam Sundar.P, age 36/19 S/o. Velayudhan, Ajmeer Quarters, Arayakkandippara, Azheekode, Kannur (Now residing at Jinsha Manzil, Near Panchayath Well, Valiyannur, Varam (P.O) <b>(Split Up)</b></li> <li>2. Shyju.P, age 40/19 S/o. Nomi.P, Ponnian House Moonnampeedika, Kannur.</li> <li>3. Anirudh.P @ Kunhappu(<b>No More</b>) S/o. Sukumaran, Surabhi Nivas, Poothappara, Azheekode South, Azheekode (P.O).</li> <li>4. Shyju.K @ Channan Shyju, aged 42/19 S/o. Balan.K, Koolothumkandi House C.K.Puram, Chalad, Pallikkunnu, Kannur.</li> <li>5. Nidhin.T @ Kuttan, age 35/19 S/o. Surendran.V.T, Thayamballi House C.K.Puram, Chalad, Pallikkunnu, Kannur. (A1 by Adv. Sri. Vinod Kumar.P &amp; A2, 4 and A5 by Adv. Smt. Aparna Ramachandran)</li> </ol>
Offence	: u/ss. 143, 147, 451, 324, 506(i) and 427 r/w 149 of IPC.

Pleading	:	Not Guilty.
Finding	:	Not Guilty.
Sentence or Order	:	The accused Nos. 2, 4 and 5 are found not guilty of the offences punishable u/ss. 143, 147, 451, 324, 506(i) and 427 r/w 149 of IPC and they are acquitted u/s 248 (1) of Cr. P.C. They are set at liberty and their bail bonds stand cancelled. Case against A1 is split up and refiled as CC. 1407/2019. Charge against A3 is abated.

Description of Accused

Sl. No	Name	Father's Name	Occupation	Residence	Age
1.	Shyam Sundar.P (Split Up)	Velayudhan	Carpenter	Valiyannur, Varam (P.O)	36/19
2.	Shyju.P	Nomi.P	Painting	Ponnian House Moonnampeedika	40/19
3	Anirudh.P @ Kunhappu (No More)	Sukumaran	--	Azheekode	
4	Shyju.K @ Channan Shyju	Balan	--	C.K.Puram, Chalad	42/19
5	Nidhin.T @ Kuttan	Surendran.V.T	Welder	C.K.Puram, Chalad	35/19

Date of:-	
Offence	: 18.06.2019
Complaint	: 19.06.2019
Apprehension	: A1& A2: 8.6.2019 A3 to 5: 3.7.2019
Release on bail	: A1: 28.06.2019 A2-5: 27.11.2019
Commencement of trial	: 30.12.2021
Close of trial	: 23.03.2026
Sentence/Order	: 24.03.2026
Service copy of judgment	: .....

## **J U D G M E N T**

The case is charge sheeted by the Sub Inspector of Police, Kannur Town police station in Crime No. 675/2019 for the offences punishable USs. 143, 147, 451, 294 (b), 324, 506(i) and 427 r/w 149 IPC.

2. **The prosecution case, in brief, is as follows:** On 18.06.2019 at 17.30 hours, at the House bearing No. XXVI-865 of Kannur Municipal Corporation, wherein CW1 and her family is residing, due to the enmity towards CW5, the accused persons, in prosecution of their common object, formed themselves into an unlawful assembly and committed rioting. Further, the accused No.1 and 3 trespassed into the house, abused CW1 and her family members in abusive language and intimidated her. Further, the accused No.3 broke the window glass and caused injuries to the face of CW1 and caused a loss to the tune of Rs. 500/-. Therefore, accused persons are alleged to have committed the aforementioned offences.

3. This Court had not taken cognizance of the offence under Section 294 (B) IPC. The accused No.1, 2, 4 and 5 appeared before the Court on receiving summons. They were enlarged on bail. Copies of relevant prosecution records were furnished to them. After hearing both sides and after perusing the materials available before the Court, it is found that there is ground for presuming that the accused had committed the offence. Hence, charge was framed u/ss. 143, 147, 451, 324, 506(i) and 427 r/w 149 IPC against the accused. When charge was read over to the accused in Malayalam, they pleaded not guilty and claimed to be tried. Case was posted for evidence. Further, during the evidence, the accused No.3 was reported no more. The

accused No.1 absconded during the evidence and therefore, the case against him was split up.

4. On the side of the prosecution, PW1 to PW10 were examined and Ext. P1 to P9 and MO1 were marked. The learned APP had given up CW5 and CW7. On closure of prosecution evidence, the accused No. 2, 4 and 5 were questioned under Sec.313(1)(b)Cr.P.C. They denied the incriminating circumstances put to them and maintained innocence.

5. Both sides were heard.

6. Now the points that arise for consideration are:-

1) Whether the accused persons, on 18.06.2019 at about 17.30 hours, at House No. XXVI-865 within the limits of Kannur Municipal Corporation, formed themselves into an unlawful assembly with the common object of committing offences against CW1 and her family members so as to attract an offence U/s. 143 of the IPC as alleged?

2) Whether the accused persons, on the aforesaid date, time and place, being members of the aforesaid unlawful assembly and in prosecution of the common object of such assembly, committed rioting so as to attract an offence U/s. 147 of IPC as alleged?

3) Whether the accused Nos. 1 and 3, on the aforesaid date, time and place, in prosecution of the common object of the unlawful assembly, committed house trespass by entering into the residence of CW1 with intent to commit an offence so as to attract an offence U/s. 451 of the IPC as alleged?

4) Whether the accused No.3, on the aforesaid date, time and place, in prosecution of the common object of the unlawful assembly, committed mischief by breaking the window glass of the house of CW1 and thereby caused loss to the tune of Rs. 500/- so as to attract an offence U/s. 427 of the IPC as alleged?

5) Whether the accused No.3, on the aforesaid date, time and place, in prosecution of the common object of the unlawful assembly, voluntarily caused hurt to CW1 by breaking the window glass and causing injury to her face so as to attract an offence under section 324 of the IPC?

6) Whether the accused the accused persons, on the aforesaid date, time and place, in prosecution of the common object of the unlawful assembly, intimidated CW1 by threatening her so as to attract an offence under section 506 of the IPC?

7) If the offences are proved, what is the order or sentence?

7. **Point No.1 to 4:** PW2 is the informant, who deposed that on 18.06.2019 at about 5.30 p.m., while she was milking a cow, her daughter (PW3) informed her that five persons had arrived on two motorcycles enquiring about her son. Further, they entered the house and threatened saying that they came there to kill her son. When she objected to their entry, they smashed the window glass. She further deposed that the accused No.5 entered the house and the accused No.1 stood on the steps. According to her, the accused No.5 broke the window glass and the accused No.3 (deceased) abused them and the others were also present. She further stated that splinters of glass hit her eye and caused injury, for which she took treatment. She preferred Ext.P1 FI statement. She also deposed that she had pointed out the scene of occurrence and MO1 series broken glass pieces were seized from there.

8. PW3, daughter of PW1, deposed that on 18.06.2019 at about 5.30 p.m., while she was inside the house, five persons came on two motorcycles enquiring about her brother. As he was not present, they abused them in filthy language and demanded to call him as they did not believe her. She also stated that the accused No.5 entered the central hall and the accused No.1 came up to the steps of the house.

She further deposed that they stated that they had come to kill her brother and uttered words to the effect of “cut banana leaves and keep them ready.” According to her, the accused No.5 broke the window glass, as a result of which glass splinters caused injuries to her son as well as to PW2. Further, PW2 availed treatment from the District Hospital.

9. PW4 deposed that she is the neighbour of PW1 and used to purchase milk from the house of PW2. According to her, on 16.08.2019 at about 5.30 p.m., when she went to the house of PW2 to buy milk, five persons arrived on two motorcycles and two among them ran into the house and PW2 was milking a cow at that time. She further deposed that they stated that they would kill the son of PW2, if they got him. Further, when they were informed that he was not present, they came out and smashed the window glass with their hands. According to her, glass splinters struck on the face of PW2 as a result of the attack and PW2 sustained injury.

10. The learned counsel for the accused vehemently argued that the prosecution has miserably failed to prove its case beyond reasonable doubt. It was argued that the evidence of PW2 with respect to the entry of the assailants into the house is contradictory and inconsistent with Ext. P1 FIS. It was further submitted that the evidence of PW7 would show that the injuries sustained are minor in nature and it could have been caused by a scratch from a nail or similar object and therefore, the same would not attract an offence under Section 324 of the IPC. She further argued that the testimony of PW2 reveals that she had no prior acquaintance with the accused and the identification of the accused was made only after they were shown by the police and the same creates doubt as to the identification of the accused.

Further, the testimony of PW4 regarding the date of occurrence is inconsistent with that of PW2 and PW3. According to the defence, the incident occurred on 18.06.2019, whereas MO1 series were seized only on 20.06.2019. It was argued that it is unlikely that MO1 broken glass pieces would remain scattered in the house for such a long period especially when the house was occupied by family members including minor children. She also contended that the non-examination of CW5, a material witness, is fatal to the prosecution.

11. On the other hand, the learned APP submitted that the evidence of PW2 to PW4 consistently narrate the incident and the same is coherent, categoric and corroborative in nature. It was further argued that minor discrepancies in the evidence are natural and do not affect the substratum of the prosecution case. He also contended that the incident occurred inside a residential house and the acts of the accused posed a serious threat to the safety of the inmates including PW2 and PW3. Further, CW5 is not an eye witness and his evidence has no much relevance and therefore, non-examination of CW5 is not fatal to the prosecution.

12. I have carefully analysed the materials on record. In order to prove the occurrence, the prosecution primarily relied on the testimonies of PW2 to PW4. Though the prosecution examined PW1 as an eye witness, she turned hostile to the prosecution and did not support the prosecution. It is the evidence of PW2 that the accused came on two motor cycles and they entered the premises and threatened her that they came to kill her son and smashed the window glass and its splinters resulted injuries to her. Further, the testimony of PW3, who was present inside the house, has corroborated the arrival of the accused, threatening of PW2 and the act of breaking

the window glass. Moreover, PW4 also supported the prosecution version by speaking to the presence of the accused, their threatening acts and the damage caused to the house. A bare analysis of the testimonies of PW2 to PW4 consistently shows that five persons arrived on two motorcycles, enquired about the son of PW2, entered the premises and created a horrific atmosphere on the spot. A cumulative reading of the testimonies of PW2 to PW4 provides a consistent account of the occurrence with respect to the presence of the accused, threatening of PW2 and causing damage to the window glass and resulting damage to the window pane and injury to PW2.

13. It is true that there is a discrepancy in the date of occurrence in the testimony of PW4. Her evidence shows that she mentioned the date of incident as 16.08.2019 instead of 18.06.2019. A careful scrutiny of the testimony of PW4 reveals that her version regarding the manner of occurrence including the number of assailants, number of motorcycles and rushing of two among the assailants towards the house is consistent and corroborative with the testimonies of PW2 and PW3. It is relevant to note that PW4 is an elderly lady aged about 65 years and her evidence was recorded after six years from the date of occurrence. Thus, minor discrepancies with respect to the exact date are quite natural. The defence has not succeeded to elicit anything in the cross-examination to discredit her testimony regarding the occurrence. The evidence of PW4 shows that she went to the house of PW2, who is her neighbour, to purchase milk. It is a common and accepted practice among the village residents to procure milk directly from neighbouring households rather than relying upon processed milk available in shops. Therefore, the presence of PW4 at the place of occurrence cannot be said to be unnatural or improbable. Though it was

vaguely suggested that she is an interested witness, nothing has been brought on record to show that she has any vested interest in the outcome of the case. An interested witness is one who has a direct stake in securing the conviction of the accused. See **Mohd. Rojali Ali Vs. The State of Assam, (2019) 19 SCC 567.** However, no such circumstance is established in this case. Therefore, I am of the view that the discrepancy in the date mentioned by PW4 appears to be a lapse of memory rather than a contradiction affecting the substratum of the prosecution case. Hence, I find that the testimony of PW4 inspires confidence and carries a ring of truth and hence, the said discrepancy is not fatal to the prosecution.

14. Now let me discuss the aspects relating to the medical evidence in this case. An analysis of the oral testimonies of PW2 to PW4 reveals a consistent version that PW2 sustained injuries when splinters of broken window glass (MO1 series) hit her face and eyes during the incident. PW2 has specifically stated that the glass pieces hit her eye and PW3 and PW4 have also corroborated the same by deposing that the glass splinters struck PW2 during the occurrence. Further, their evidence also shows that PW2 had gone to the hospital and availed treatment. The testimony of PW7 reveals that he had examined PW2 on 19.06.2019 at the District Hospital and issued Ext. P3 wound certificate. It is relevant to note that PW7 has noted abrasions measuring about 3 c.m on the left side of the forehead and redness in both eyes. Further, PW7 also opined that the injuries are fresh and simple in nature. Though the defence has suggested that the injuries could have been caused by a scratch by a nail or a thorn, no concrete evidence has been adduced to substantiate such a suggestion. It is true that PW7 has conceded the possibility of such injuries being caused in the

manner suggested by the defence. However, mere possibility cannot outweigh the consistent ocular version of PW2 to PW4. It is also pertinent to note that the evidence of PW7 revealed that there was indication of a foreign particle in the eye of PW2, for which she was referred to an ophthalmologist. It is true that PW2 has no case that she consulted any ophthalmologist nor the defence has asked any question in this regard. From a cumulative appreciation of the ocular evidence of PW2 to 4 along with the medical evidence provided by PW7, I find that PW2 sustained injuries during the incident in the manner alleged by the prosecution. In view of the above of the evidence on record, I find that the prosecution has succeeded in proving the factum of the incident.

15. Section 427 IPC deals with the offence of mischief causing damage to the amount of Rs.50 or more. To attract the said provision, the prosecution must prove "mischief" as contemplated under Section 425 IPC. A perusal of the consistent evidence of PW2 and PW3 shows that the window glass of the house was broken during the incident. PW4 has also spoken about the breaking of the window glass and the same corroborates with testimonies of PW2 and PW3. The prosecution alleged that the damage caused amounts to Rs.500/-. Though the defence has challenged the seizure of MO1 series on the ground of delay, the oral evidence regarding the breaking of the glass is consistent and convincing. Further, production of MO1 series glass pieces also vindicates the oral evidence. It is true that the prosecution has not produced any valuation certificate issued by a competent authority to assess the exact quantum of loss caused due to the damage to the window pane. However, it is pertinent to note that the defence has not put any question to PW9, the Investigating

Officer, challenging the valuation or disputing the extent of damage alleged by the prosecution. Moreover, it is a matter of common knowledge that the breaking of a window glass pane would ordinarily result in damage exceeding Rs.50/-, so as to attract the value under Section 427 IPC.

16. The defence raised a contention regarding the possibility of seizure of MO1 series as the incident is alleged to have occurred on 18.06.2019 whereas MO1 series were seized on 20.06.2019 as per Ext.P2 scene Mahasar and produced before the Court as per Ext. P5 property list. It is true that such delay requires careful scrutiny. However, the evidence of PW5, an attester to Ext. P2 scene mahazar, clearly shows that he witnessed the seizure of MO1 series broken glass pieces from the place of occurrence. The testimony of PW9, the Investigating Officer, further clarifies that MO1 series broken glass pieces were found at the spot and had not been swept away. The defence argued that since the house was occupied by family members including a child, it is improbable that the broken glass pieces would have remained at the scene without being removed. Though the contention appears to be plausible, it is relevant to note that no specific suggestion to this effect was put to PW2, PW3 or PW5, attester to Ext.P2, during cross-examination. In the absence of such a challenge, the Court cannot presume facts in favour of the defence. The failure to confront the material witnesses on this aspect would demolish the defence contention. In view of the above analysis, I am of the view that the consistent oral evidence regarding the breaking of the window glass coupled with the unchallenged testimony of PW5 and PW9 regarding the seizure of MO1 series would prove that damage was caused to the property of PW2. Further, I also find that the prosecution has succeeded in proving

the ingredients of mischief causing damage exceeding Rs.50/-, as required under Section 427 IPC.

17. Although PW2 and PW3 have attributed the act of mischief to accused No.5, the evidence of PW9, the Investigating Officer, indicates that the witnesses had earlier stated that a “white complexioned lean person” had committed this act. This creates a clear contradiction regarding the identity of the person who committed mischief. Though PW2 and PW3 denied having given such a statement, the version of the PW9, IO, clearly shows that the role now attributed to accused No.5 is an improvement. Since PW2 and PW3 had no prior acquaintance with the accused, the description of the accused given at the earliest point of time assumes great evidentiary value. Any subsequent deviation from such description must be viewed with caution. The shift from a general description of a “white complexioned lean person” to a specific attribution against accused No.5 creates a reasonable doubt that the witnesses are improving their version during the evidence. Hence, I find that the testimony of PW2 and PW3, insofar as it attributes the specific act of mischief to accused No.5, does not inspire confidence. The contradiction between the earlier version as spoken to by PW9 and the improved version before Court creates a serious dent in the prosecution case and entitles the accused to the benefit of doubt on this aspect.

18. Now the crucial question for consideration is with regard to the identity of the accused persons. A careful scrutiny of the testimonies of PW2 to PW4 reveals that two among the assailants rushed towards the house and one among them entered the house and the other stood at the entrance. PW2 and PW3 specifically deposed that

accused No.5 entered the house and accused No.1, namely Shyam Sundar, stood on the steps. Thus, the evidence of PW2 and PW3 is consistent with regard to the overt acts attributed to accused Nos.1 and 5. Further, though PW4 has stated that two persons entered the house, she has not specifically identified which among the accused entered or remained outside. However, her evidence lends assurance to the occurrence.

19. PW2 and PW3 have deposed that accused No.5 entered the house and committed mischief by breaking the window pane. However, it is an admitted fact that both PW2 and PW3 had no prior acquaintance with the accused persons. Thus, the identification of the accused assumes greater significance and requires careful scrutiny. A perusal of Ext. P1 FI Statement shows that PW2 had mentioned the name of accused No.1 at the earliest point of time. Further, the names of the other accused have not been mentioned either in Ext. P1 FI Statement or in Ext.P9 FIR. Ext. P9 FIR merely refers to the presence of another identifiable person without furnishing specific details of the accused No.2 to 5. It is relevant to note that PW2, during cross-examination, stated that she had identified the accused persons as shown by the police. The evidence of PW9, coupled with Ext. P7 series arrest memos reveals that the accused persons were arrested on 28.06.2019, nearly ten days after the date of the alleged incident. However, there is no material on record to indicate the manner in which PW9 traced the accused as the persons involved in this case. In the absence of any evidence explaining the source of identification or the steps leading to the arrest, the prosecution version on the identity of the accused becomes doubtful.

20. In **Prakash vs. State of Karnataka in (2014) 12 SCC 133**, the Apex Court held that “An identification parade is not mandatory nor can it be claimed by the suspect as matter of right. The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable unless the suspect has been seen by the witness or victim for some length of time.” ... However, if the suspect is known to the witness or victim or they have been shown a photograph of the suspect or the suspect has been exposed to the public by the media no identification evidence is necessary. Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution.”

21. In **Dana Yadav @ Dahu and others v. State of Bihar (2002) 7 SCC 295**, the Apex Court held that failure to hold test identification parade does not make the evidence of identification in Court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in Court of an accused by a witness and the same is a rule of prudence and not law. ... Ordinarily, if an accused is not named in the first information report, his identification by witnesses in Court, should not be relied upon, especially when they did not

disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.

22. In this case, it is relevant to note that no Test Identification Parade was conducted during the course of investigation. When the witnesses had no prior acquaintance with the accused, identification for the first time in Court, coupled with the admission that the accused were shown by the police, renders the identification inherently weak and unsafe to rely upon. It is settled law that the identification of the accused person at the dock during trial, in cases of direct evidence, for the first time is inherently of a weak piece of evidence. The admission of PW2 that she identified the accused as shown by the police casts a serious doubt as to the reliability of the identification.

23. It is also pertinent to note that CW5, the son of PW2, though cited as a witness, has not been examined by the prosecution and has been given up. Since the prosecution alleges prior enmity as the genesis of the occurrence, the burden lies on it to place before the Court the best available evidence to substantiate such motive. CW5, being the son of PW2 and the person allegedly sought by the assailants, was the best person to speak about the nature of the alleged enmity. Though CW5 is not an eyewitness, his evidence could have thrown light on the surrounding circumstances including the animosity and motive for the attack. Therefore, non-examination of CW5 deprived the defence to question and impeach his credit as to the motive of the case. Thus, non-examination of CW5, despite his presence, shows that the prosecution has withheld the best evidence as to the motive. Hence, I find that non-examination of such a witness adds to the doubt in the prosecution case.

24. To attract Sections 143 and 147 IPC, the prosecution must establish that five or more persons formed an unlawful assembly with a common object and that force or violence was used in prosecution of that object. In this case, though the prosecution version is that about five persons came to the spot, the evidence on record shows the identity and participation only of accused Nos.1 and 5. The identity and involvement of the other accused have not been proved beyond reasonable doubt. Therefore, when the participation of at least five persons is not proved, the very foundation for constituting an “unlawful assembly” fails. Hence, the offences under Sections 143 and 147 IPC cannot be sustained. Hence, I find that the offences Sections 143 and 147 IPC will not lie in this case.

25. In order to attract an offence punishable under Section 324 IPC, the prosecution must prove that (i) the accused voluntarily caused hurt (ii) such hurt was caused by the use of any dangerous weapon or means and (iii) the act resulted in bodily pain, disease or infirmity. A perusal of the oral testimonies of PW2 to PW4, clearly reveals that PW2 sustained injuries during the course of the incident when the window glass was broken and splinters struck her face and eyes. Further, the evidence of PW7 coupled with Ext. P3 wound certificate also proves that PW2 had sustained a linear abrasion on the forehead and redness in both eyes. However, the main consideration is that whether such hurt must have been caused by the use of a dangerous weapon or means. In this case, the prosecution version itself is that the injury was caused due to glass splinters when the window pane was broken. There is no evidence to show that the accused had used any weapon as such or the breaking of the glass was done with the intention of using the glass as a weapon to cause hurt.

The injury shown in Ext.P3 wound certificate appears to be a consequence of the act of breaking the window rather than a direct and intentional use of a dangerous means to inflict injury. From the above analysis, I find that though the prosecution has succeeded in proving that PW2 sustained simple injuries during the incident, it cannot be concluded that the same was caused by the use of a dangerous weapon or means so as to attract an offence under Section 324 IPC. Hence, I find that the essential ingredients of Section 324 IPC are not made out.

26. Now let me consider whether the prosecution has succeeded in establishing the offence of criminal intimidation as defined under Section 503 IPC and punishable under Section 506 IPC. To prove criminal intimidation, prosecution must prove that there was a threat and such threat was intended to cause or was likely to cause fear of death or injury, or harm in the mind of the victim with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat. It is relevant to note that the testimonies of PW2 and PW3 categorically state that the accused threatened that they had come to kill the son of PW2. However, PW4, has not spoken about any such specific threat. It is also pertinent to note that though PW2 and PW3 have spoken about the alleged threat, their evidence does not disclose the consequence of such threat or the impact it had on the mind of PW2. There is no specific evidence to show that the said threat actually caused alarm to PW2 that she was compelled to act or omit to act in a particular manner as a result of such threat. Mere utterance of words, without any specific consequence, is not sufficient to constitute the offence of

criminal intimidation unless it is shown that the same was intended to cause alarm or was of such a nature as to cause alarm to the person concerned. In the absence of clear and categorical evidence to prove that the alleged threat had the effect of causing alarm in the mind of PW2 and in view of the omission on the part of PW4 to speak about such threat, I am of the considered view that the prosecution has not satisfactorily proved the essential ingredients of criminal intimidation as required under Section 503 IPC. Therefore, I find that the offence punishable under Section 506 IPC is not made out.

27. In view of the above discussion, this Court finds that the prosecution has failed to establish the existence of an unlawful assembly consisting of five or more persons so as to attract Sections 143, 147 and 149 IPC and consequently, the accused are entitled to the benefit of doubt in respect of the said offences. Further, the evidence on record is not sufficient to prove the identity and participation of accused No.5 beyond reasonable doubt, particularly in the absence of prior acquaintance. The discrepancies in the prosecution case regarding the attribution of overt acts coupled with the doubtful nature of identification render it unsafe to hold that accused No.5 committed house trespass or mischief so as to attract Sections 451 and 427 IPC. Moreover, the prosecution also failed to prove the use of any dangerous weapon or means so as to attract Section 324 IPC and has also not established the essential ingredients of criminal intimidation under Section 506 IPC. Accordingly, this Court is of the considered view that the prosecution has failed to prove the charges against the accused beyond reasonable doubt, and therefore, the accused persons are entitled for benefit of doubt. These points are answered against the prosecution.

**28. Point. No. 7:** In view of my finding on point No. 1 to 6, the accused No. 2, 4 and 5 are found not guilty of the offences charged against them. Hence, this point does not arise for consideration.

29. In the result, the accused No. 2, 4 and 5 are acquitted u/s 248 (1) of Cr.P.C for the offences punishable u/ss. 143, 147, 451, 324, 506(i) and 427 r/w 149 of IPC and they are set at liberty. Their bail bonds stand cancelled. Case against accused No.1 is split up and refiled as CC. 1407/2019 and charge against A3 is abated.

The property received as RP 189/19 shall be kept with CC. 1407 /2019.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 24<sup>th</sup> day of March, 2026).

Sd/-  
Judicial First Class Magistrate-I  
Kannur

### **APPENDIX**

#### **List of Prosecution/Defence/Court Witnesses**

##### **A. Prosecution Witnesses**

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
PW1	Sneha Subha	Eye witness
PW2	Shyamala.CH	Informant/Defacto Complainant
PW3	Binsha.C	Eye witness
PW4	Kalpana Bhai.T.K	Eye witness
PW5	Latheesh.M	Other witness
PW6	Girija.M.C	Police witness
PW7	Dr. Muhammed Irshad	Medical witness
PW8	Unnikrishnan.MC	Other witness
PW9	Shali Rosario	Police witness
PW10	Babumon	Police witness

**B. Defence Witnesses::**

NIL

**C. Court Witnesses**

Nil

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

Sl.No.	Exhibit number	Description
1.	Ext.P1/PW10	First Information statement dated 19.06.2019
2	Ext.P2/PW1	Scene Mahazar dated 20.06.2019
3	Ext.P3/PW7	Wound Certificate dated 19.06.2019
4	Ext.P4/PW8	Ownership Certificate dated 05.07.2019
5	Ext.P5/PW9	Property list dated 20.06.2019
6	Ext.P6/PW9	Report to alter section dated nil
7	Ext.P7 series/PW9	Arrest Memo of A1 dated 28.06.2019 Arrest Memo of A2 dated 28.06.2019 Arrest Memo of A3 dated 03.07.2019 Arrest Memo of A4 dated 03.07.2019 Arrest Memo of A5 dated 03.07.2019
8	Ext.P8/PW9	Report to add address of the accused nil
9	Ext.P9 /PW10	First Information report dated 19.06.2019

**B. Defence Exhibits:**

NIL

**C. Court Exhibits:**

NIL

**D. Material Objects**

Sl.No.	Material Objects	Description
1.	MO1	Broken glass pieces

Sd/-

Judicial First Class Magistrate-I  
Kannur

//True Copy//

Judicial First Class Magistrate-I  
Kannur