

IN THE COURT OF THE ASST. SESSIONS JUDGE OF PAYYANNUR

Present:- **Smt.Alshari.A**, Asst. Sessions Judge

Tuesday, the 31st day of March, 2026

(10th Chaithra, 1947)

SESSIONS CASE No:452 OF 2015

Committed by Sri.K.Vidyadharan, Judicial First Class Magistrate,
Payyannur, in C.P. No.98/2013 in Crime No.166/2013 of Payyannur
Police Station.

Complainant	: The Station House Officer, Payyannur Police Station (Prosecution conducted by P.V.Madhu, Additional Public Prosecutor)
Accused	: 1. Shihab.K, S/o.Kunhahammed, Aged 33/2012, Kochan House, Payyannur amsom, Kavvayi.
	: 2. Abdul Rasheed, S/o.Abdulla, Aged 26/2013, Vattyan House, Payyannur amsom, Kavvayi
Defended by	: Adv. Sri.V.Shahul Hameed
Charge	: U/s.447,436,153 r/w 34 of IPC
Plea of the Accused	: Not guilty.
Finding of the Judge	: Not guilty.
Sentence/ Order	: The accused No.2 is acquitted of the offences punishable under Sections 447, 436 and 153 r/w 34 of IPC u/s 235 of the Cr.P.C. The bail bonds of the Accused No.2 is cancelled and he is set at liberty. Accused No.1 is absconding at the time of 313 examination. Hence case against accused No.1 split up in this case. Address Hon'ble Court of Session, Thalassery to assign new case number with respect to the case against accused No.1.

J U D G M E N T

The cases in S.C.No.452/15 and SC 299/2017 arose out of a single final report filed with respect to a single incident. The cases happened to numbered separately only because the cases with respect to the accused happened to be committed at different stages vide separate committal orders. Since S.C.No.452/15 and SC 299/2017 are originated from the same crime, SC 299/2017 was clubbed with SC 452/15 and the accused in SC 299/2017 was arrayed as accused No.2 in SC 452/2015.

2. Accused are put on trial by the Sub Inspector of police, Payyannur Police Station for the offences punishable under Sections 447, 436 and 153 r/w 34 of IPC, 1860.

3. Prosecution case in brief is that, on 14.02.2013 at 02.20 hours, at Payyannur, Kavvayi, the accused No.1 and 2, committed criminal trespass upon the building bearing No.XXXII/654 and set fire to the Motor Cycle kept in the compound of the said shop, owned by CW1 bearing Nos.KL-13P-2026 and KL-13F-7600, thereby caused a loss to the tune of ₹28,000/- and caused damage to the building and flag post of CPIM/DYFI, thereby accused committed the offences punishable under

Sections 447, 436 and 153 r/w 34 of I.P.C, allegedly.

4. Upon receiving the final report, the Judicial First Class Magistrate Court, Taliparamba has taken the case on file as C.P. No.98/2013, as the offences were alleged against the accused were exclusively triable by the Court of Session. The accused appeared and released on bail, and copies of all records on which the prosecution relied on were given to them in compliance of Sec.207 Cr.P.C. and counsel was also appointed to defend them. Thereafter the learned Magistrate committed the case against the accused to the Hon'ble Court of Session, Thalassery as per Sec.209(a) Cr.P.C which was taken on file and made over to this court for disposal.

5. Pursuant to the process, Additional Public Prosecutor opened the case in accordance with Sec.226 Cr.P.C and briefly stated about the evidence proposed to adduce in support of the case against the accused. Thereafter, I perused the records and heard both sides in order to determine whether it was a fit case in which the accused has to be discharged U/s.227 Cr.P.C or to be proceeded against them in accordance with Sec.228 Cr.P.C. From the facts highlighted by both side and on perusal of the case records, I was of the opinion that there were

sufficient grounds for presuming that the accused committed the offence, hence charge was framed for the offences punishable under Sections 447, 436 and 153 r/w 34 of IPC and it was read over and explained to the accused to which they pleaded not guilty and claimed to be tried. The case was then adjourned in terms of Sec.230 Cr.P.C to enable the prosecution to adduce evidence in support of the case.

6. In order to prove the prosecution case, the prosecution examined PW1 to PW14 as witnesses and Ext.P1 to Ext.P15 accused was examine u/s 313(1)(b) of Cr.P.C to explain the incriminating circumstances brought out in prosecution evidence. They denied all incriminating circumstances and maintained the plea of innocence. Accused No.1 was absconding at the time of 313 examination.

7. Heard the counsel for the accused and prosecutor under Sec. 232 of Cr.P.C. There were no circumstances to acquit the accused under Section 232 of Cr.P.C. Hence the accused No.2 was called upon to enter into defence. No evidence was adduced on the defence side.

8. Heard the prosecutor and the defence counsel.

9. Points that arose for consideration are:-

1. Whether the accused persons in furtherance of their

common intention had done mischief by fire or explosive substances intended to destroy Motorcycles bearing Nos.KL-13- P-2026, KL 13 F 7600 on 14.02.2013, at 02.20 hours, thereby, accused had committed an offence punishable under Sec.436 r/w 34 of IPC,1860?

2.Whether, the accused in furtherance of the common intention criminally trespassed into the shop of PW1 at Payyannur, Kavvayi on 14.02.2013, at 02.20 hours, thereby accused committed an offence punishable under Sec.447 r/w 34 of IPC,1860?

3.If found guilty what shall be the order of Sentence?

10. **Point Nos.1 to 3:-** For brevity and convenience, these points can be considered together. As per the case of prosecution, the accused on 14.02.2013 at about 02.20 hours committed criminal trespass into the Building No. XXXII/654. and set fire to the motorcycle bearing No.KL-13 P-2026, KL-13F-7600 kept in the compound of the said shop owned by CW1, causing a loss to the tune of ₹28,000 and the accused had also caused damage to the building and flag post of CPI(M)/DYFI.

11. CW1 was examined as PW1. He deposed that motorbikes bearing numbers KL-13B-2026 and KL-13F-7600, was owned by him. His labourers Sandeep and Vijesh were using the said bikes. He got information from the labourers, that somebody had set fire to the bikes which were kept in front of the shop. He sustained a loss to the tune of ₹40,000. The complaint preferred by him before the police was identified and marked as Ext. P1. He was not aware, who had set fire to the bikes at the time of giving complaint. Thereafter, on investigation, it was revealed that the accused had committed the offence.

12. So as per the evidence of PW1, he had not seen the incident and was not aware, who had set fire to the bikes and committed the offence as alleged. As per the evidence of PW1, he came to understand the involvement of the accused, after the investigation of the case, which would reveal that he is not aware of the involvement of the accused in the commission of the offence at the time of incident or subsequent to the same, till the investigation is conducted. On the day of the accident, PW1 came to know that, the motor bike belonged to him was being destroyed by fire. But he had not seen the incident. PW2 did not identify the accused to be the person who had committed the offences alleged.

PW5 had deposed that he had also not seen the alleged incident, by which the accused had set fire to the motorbikes belonging to PW1.

13. PW6 had deposed that he had not heard the accused doing confession to the friend of the 1st accused. So the material witness who are arrayed as eye witness to the incident did not support the prosecution case and turned hostile. So the evidence of PW2, PW5 and PW6 are not helpful to see the involvement of the accused in the commission of the offence. From the earlier discussions it can be seen that PW1 had also not seen the incident and he got knowledge regarding the involvement of the accused only on the investigation of the case. PW3 and PW4 are the witnesses to Ext.P2 scene mahazar. The evidence of PW3 and PW4 also not helpful to see the involment of the accused as they are not eye witness to the incident alleged.

14. PW7 is the witness to Ext.P3 seizure mahazar. As per the evidence of PW7, he had seen the forensic scientific assistant collecting the remnants of the bike from the place of incident. PW11 had deposed that, during the investigation he had prepared Ext.P2 scene mahazar and also had seized the motorcycles involved in the incident. Scientific Assistant had collected the remnants from the place of incident while

preparing Ext.P3 seizure Mahazar. He collected the remnants of motorbikes from the place of incident on preparing seizure mahazar. He collected the remnants in a jar which was identified by him and marked as MO1. So the evidence of PW3, PW4, PW7, PW11 and PW13 would go to show the preparation of scene mahazar and the seizure of remnants of motorcycles from the place of incident on preparing Ext.P3 mahazar. The evidence of these witnesses does not refer to anything, which shows the connection of the accused to the alleged offence.

15. PW14 had conducted the investigation. He identified the report submitted by adding the full address and details of the accused, marked Ext. P8. The arrest memo prepared on the arrest of the accused persons was marked as Ext.P9. The report submitted by deleting the offences included in the F.I.R was marked as Ext. P10. The property list prepared and marked as Ext. P11. The forwarding note submitted to sent the remnants collected from the place of incident, for forensic analysis is marked as Ext.P12. Ext.P13 is a report submitted by correcting the actual time of incident. The RFSL report submitted is produced and marked as Ext.P15. The inspection reports regarding the vehicles involved in the accident were marked as Ext. P6 and P7. PW12 had issued Ext. P6 and Ext. P7 inspection reports, identified by

him and marked through him. PW8 issued ownership certificate, identified by him and marked as Ext.P4. PW14 identified Ext.P4 to be collected by him. The site plan submitted by PW10 was identified by PW10 and marked as Ext. P5. PW14 had identified Ext.P5 to be the site plan, submitted before the Court. PW9 had registered the FIR marked as Ext.P1(a). The evidence of PW9 and PW14 are also not helpful to see the involvement of the accused in the offences alleged and their connection to the alleged incident. So from the available evidence, it is not possible to see the connection of the accused with the alleged incident and the involvement of the accused in the commission of the offence alleged. In view of the above discussions, I could not find the the prosecution to have established the alleged offences against the accused beyond reasonable doubt. Therefore, I could only find that the accused No.2 is entitled for an acquittal.

16. **Point No.4:-** Upon my finding in the above points, there is no legally admissible evidence to connect the accused No.2 with the incident. Hence, accused No.2 is entitled to be acquitted under Sec. 235 of the Cr.P.C of all offences charged against him.

As a result, the accused No.2 is acquitted of the offences punishable under Sections 447, 436 and 153 r/w 34 of IPC u/s 235 of the Cr.P.C.

The bail bonds of the Accused No.2 is cancelled and he is set at liberty. Accused No.1 is absconding at the time of 313 examination. Hence case against accused No.1 split up in this case. Address Hon'ble Court of Session, Thalassery to assign new case number with respect to the case against accused No.1.

(Dictated to the Confidential Asst., typed by him, corrected and pronounced by me in open Court, this the 31st day of March, 2026).

Sd/-
Asst. Sessions Judge

Prosecution Exhibits:-

P1	14.02.2013	First Information Statement
P1(a)	14.02.2013	First Information Report
P2	15.02.2013	Scene Mahazar
P3	15.02.2013	Seizure Mahazar
P4	11.06.2013	Ownership Certificate
P5	12.04.2013	Cite Plan
P6	02.07.2013	Inspection report
P7	02.07.2013	Inspection report
P8	14.02.2013	Name and address report
P9	14.02.2013	Arrest Memo
P10	13.02.2013	Section adding and reducing report
P11	15.02.2013	Property list
P12	15.02.2013	Forwarding note

P13	13.02.2013	Report of Time correction
P14	15.02.2013	Property List
P15	27.03.2015	Regional Forensic Science Report

Prosecution Witnesses:-

PW1	Gireesh.C
PW2	Mukesh.B
PW3	Jijith.M.V
PW4	Faisal.A.P
PW5	Shamsudheen
PW6	Ibrahim Kutty
PW7	Vijayan.C
PW8	Radhakrishnan. P
PW9	Sarngadharan
PW10	Abdul Muthalib.T
PW11	Rjan.M
PW12	Premarajan
PW13	Dr.Jayachandran.K
PW14	Shaji

Defence Exhibits & Witness :- NIL

Sd/-
Asst. Sessions Judge