

| IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE KUTHUPARAMBA | |
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| Present:- Sri Pradheep K U Judicial First Class Magistrate, Kuthuparamba | |
| Dated this the, 16 th day of March, 2026 (21 st day of Phalguna, 1947 S.E) | |
| <u>CC 546/2019</u> | |
| Complainant | : State of Kerala, Rep. by Sub Inspector of Police, Kelakam Police Station (Cr. No. 193/2019) (By Smt. Diya Deepthi C, APP-Gr.II, Kuthuparamba) |
| Accused | : 1. Balakrishnan V V, S/o Velayudhan, Aged 55/19, Vattakkatt (H), Kanichar Amsom Desom, Kannur. 2. Ajithkumar V, S/o Bhaskaran, Aged 48/19, Vazhayil (H), Kanichar Amsom Desom, Chanappara, Kannur. (By Adv. E G Roy) |
| Offence | : U/s. 324 r/w 34 IPC |
| Pleading | : Not Guilty |
| Finding | : Not Guilty |
| Sentence or Order | : Accused persons are found not guilty of the offences punishable U/s. 324 r/w 34 IPC and they are acquitted U/s. 248(1) of Cr.PC. |

Description of Accused

| Sl.No. | Name | Father's Name | Occupation | Residence | Age |
|--------|------------------|---------------|------------|-----------|-------|
| 1 | Balakrishnan V V | Velayudhan | Nil | Kanichar | 55/19 |
| 2 | Ajithkumar V | Bhaskaran | Nil | Kanichar | 48/19 |

Date of:-

Offence : 10-06-2019

Complaint : 15-06-2019

| | | |
|--------------------------|---|------------|
| Apprehension | : | 01-06-2022 |
| Release on bail | : | 01-06-2022 |
| Commencement of trial | : | 25-10-2022 |
| Close of trial | : | 12-03-2026 |
| Sentence/Order | : | 16-03-2026 |
| Service copy of judgment | : | |

This case, having been finally heard on 12-03-2026, stood over for consideration on this day, and this court delivered the following:

J U D G M E N T

This case has been instituted based on the final report filed by the Officer-in-Charge of Kerala Police Station in Crime No. 193 of 2019, alleging commission of an offence punishable under Section 324 r/w Section 34 of the Indian Penal Code.

2. **The prosecution's case, in brief, is as follows:** On 10.06.2019 at about 7.00 p.m, while PW1 was waiting at the shop to purchase goods, the first accused, in furtherance of the common intention with the second accused, called PW1 to the nearby footpath. Thereafter, the second accused, without any provocation, allegedly attacked PW1 by hitting him with an iron hook on the right side of his face. The prosecution alleges that the iron hook used for the attack is a dangerous weapon. Thus, both the accused are alleged to have committed the offence punishable under Section 324 read with Section 34 of the Indian Penal Code.

3. This case was taken on file by the learned predecessor of this court and process was issued to both the accused. Both accused entered

appearance before the court and were enlarged on bail. They were represented by a counsel of their own choice. Copies of the relevant prosecution records were furnished to them in compliance with Section 207 of the Code of Criminal Procedure.

4. After hearing both sides and upon perusing the materials available on record, the learned predecessor in this office framed a charge against both the accused under Section 324 read with Section 34 of the Indian Penal Code. When the charge was read over and explained to the accused in Malayalam, which is the language known to them, they pleaded not guilty and claimed to be tried. Thereafter, the case was posted for prosecution evidence.

5. On the side of the prosecution, PW1 to PW6 were examined and Exts. P1 to P5 were marked. On completion of the prosecution evidence, both accused were questioned under Section 313(1)(b) of the Code of Criminal Procedure. They denied all the incriminating circumstances appearing in evidence against them when it was put to their notice, and they reiterated their innocence. The accused persons were thereafter called upon to enter upon their defence and to adduce defence evidence, if any. However, no oral or documentary evidence was adduced from the defence side. During the cross-examination of PW3, the contradictory portion of his statement recorded under Section 161 of the Cr.PC was marked as Ext. D1.

6. Heard both sides and perused records.

7. The following points arise for consideration in this case:

1. Whether the accused persons, in furtherance of their common intention, caused hurt to PW1 using an iron hook, which is alleged to be a dangerous weapon, as alleged by the prosecution?
2. If so, what offence, if any, has been committed by the accused?
3. What sentence or order is to be passed?

8. **Point Nos. 1 and 2:-** The only offence alleged against the accused persons is under Section 324 read with Section 34 of the Indian Penal Code. The learned Assistant Public Prosecutor argued that the evidence of PW1 clearly establishes that he was attacked with an iron hook, which is a dangerous weapon. According to the prosecution, the testimonies of PW2 and PW3 corroborate the version of PW1. Further, the evidence of PW4, the medical witness, proves the injuries sustained by PW1. Hence, the learned Assistant Public Prosecutor contended that the prosecution had succeeded in establishing the guilt of the accused beyond a reasonable doubt and prayed that both accused be convicted under Section 324 read with Section 34 of the Indian Penal Code.

9. On the other hand, the learned defence counsel argued that the present case is a politically motivated false case foisted against the accused persons. It was contended that there is an unexplained delay in lodging the First Information Report, which strikes at the root of the prosecution case. It was

further argued that the occurrence witnesses who support the prosecution's case are persons having rival political interests. According to the defence, their evidence is interested and partisan in nature and therefore unreliable. It was also pointed out that the testimonies of prosecution witnesses suffer from several inconsistencies and omissions, which render their testimony doubtful and untrustworthy.

10. PW1 is the de facto complainant in this case. PW2 is an occurrence witness and also a witness to Ext.P2 scene mahazar prepared by the police. PW3 is another witness to the alleged occurrence. PW4 is the doctor who treated PW1 and issued Ext.P3 wound certificate. PW5 was working as a Senior Civil Police Officer at Kelakam Police Station at the relevant time. He registered Ext.P4 First Information Report in this case on the basis of Ext.P1 First Information Statement given by PW1. He also conducted the initial investigation, prepared Ext.P2 scene mahazar and issued notice under Section 41A of the Code of Criminal Procedure to both the accused. He also filed a report incorporating the full name and address of both the accused, which is marked as Ext.P5. PW6 was the Sub Inspector of Police at Kelakam Police Station at the relevant time. He verified the preliminary investigation conducted by PW5, collected the wound certificate and produced the same before the court. Thereafter, he completed the investigation and laid the final report against the accused persons.

11. The first aspect to be considered in this case is the delay in setting

the criminal law in motion. From the testimony of PW1 and other witnesses, it can be seen that the alleged incident occurred on 10.06.2019 at about 7.00 p.m. However, as per the testimony of PW5 and on perusal of Ext.P4 FIR, it is evident that the FIR in this case was registered only on 15.06.2019 at 18:09 hours. Further, it is seen from the endorsement on the Ext.P4 FIR that the same reached the court only on 17.06.2019.

12. While considering whether such a delay has any impact on the prosecution case, reference has to be made to the following decisions of the Hon'ble Apex Court on this point.

13. The Hon'ble Supreme Court in *Thulia Kali v. State of Tamil Nadu*, **AIR 1973 SC 501**, has held that the First Information Report in a criminal case is an extremely vital piece of evidence for the purpose of corroborating the oral evidence adduced at trial. Delay in lodging the FIR often results in embellishment and creates the danger of the introduction of a coloured version or exaggerated account after deliberation and consultation. Similarly, in *Apren Joseph v. State of Kerala (1973) 3 SCC 114*, the Hon'ble Supreme Court observed that undue and unreasonable delay in lodging the FIR inevitably gives rise to suspicion and requires the court to scrutinise the explanation for such delay. In *State of M.P. v. Ratan Singh (2020) 12 SCC 630*, it was further observed that courts must examine whether the explanation for delay is plausible in the facts and circumstances of each case.

14. The above decisions make it clear that a delay in lodging the FIR can be fatal to the prosecution's case if it is not properly explained. Whether the delay is reasonable or not is a matter to be determined by the court on the facts and circumstances of each case.

15. On going through the evidence in this case, it can be seen that the alleged motive for the occurrence is political rivalry. The witnesses supporting the prosecution also appear to have been in a politically rival interest with the accused. PW1 also admitted his political hostility with the accused and the existence of a connected criminal case, wherein he is arrayed as an accused. The defence contention on the point is that this case was concocted after due political consultation and deliberation, to meet the case registered against PW1. As the witness admits a connected political case, the prosecution witnesses' evidence requires extra careful scrutiny in assessing the impact of the delay in lodging the FIR.

16. There is no reason for delay in informing the police of the incident, as it is not mentioned in column number 8 of the FIR. Instead, PW5, the officer who registered the FIR, stated that no such reason was mentioned to him by PW1. However, the explanation offered by PW1 during cross-examination for the delay in lodging the complaint is that he was undergoing treatment and hospitalisation.

17. Ext.P1 First Information Statement given by PW1 shows that he claims to have taken treatment at multiple hospitals following the alleged

incident. According to him, he was first taken to the Taluk Hospital in Peravoor. The next day, he allegedly received treatment at Archana Hospital in Perumbunna. He has undergone a CT scan and an X-ray. Thereafter, he claims to have taken further treatment at AKG Hospital, Kannur.

18. However, this explanation appears to be improbable and not convincing for the reason that the only medical record produced before the court is Ext.P3 wound certificate issued by PW4, which relates to the treatment taken at Taluk Hospital, Peravoor, on the date of the incident. If PW1 had actually taken treatment at Archana Hospital, Perumbunna, and at AKG Hospital, Kannur, as claimed by him, the corresponding medical records ought to have been produced before the court. However, no such records have been produced or marked by the prosecution. During cross-examination, PW1 admitted that he had not produced any medical records before the Investigating Officer to show that he had taken treatment at the said hospitals. He has also not offered any satisfactory explanation for such omission. This renders the explanation offered by PW1 regarding the delay doubtful.

19. Further, PW1 admitted during cross-examination that he had informed the doctors at Archana Hospital and AKG Hospital that the injury was sustained in the alleged incident. He also admitted that he was admitted to AKG Hospital on 12.06.2019 and discharged on 13.06.2019. If that is so, it is reasonable to expect that the hospital authorities would have informed the police about the medico-legal case, or the police would have recorded the

statement of PW1 from the hospital itself. The absence of any such step raises serious doubt regarding the prosecution's version. Therefore, this court finds that the delay in informing the police of the incident and in registering the crime remains unexplained on the part of the prosecution, and such delay strikes at the root of the prosecution's case.

20. It is apposite to note that though the FIR was registered on 15.06.2019, the FIR reached the court only on 17.06.2019. The officer in charge of the police station was expected to forward the FIR immediately after registration. But it was not seen done in this case. For that, no explanation was offered in the prosecution's evidence. It renders the prosecution's case more doubtful, as the delay would leave room for manipulation of the case records, based on political intervention, as rightly contended by the learned defence counsel.

21. Another aspect highlighted by the defence relates to the history recorded in Ext.P3 wound certificate. It is pointed out that PW1 had disclosed the name of the second accused alone to the doctor, whereas the name of the first accused was not mentioned at all in the history recorded in Ext.P3. However, both the accused were later shown as assailants in the First Information Report. It is true that, as a trite law, a medical officer examining an injured person in a medico-legal case is not expected to conduct any enquiry regarding the identity of the assailants, nor is the doctor required to record the names of the assailants in the wound certificate. The primary duty of the doctor

is only to record the injuries and provide medical treatment. However, in the present case, a perusal of Ext.P3 wound certificate reveals that the history of the injury was narrated to the doctor by the injured himself. When the injured had furnished the details of the occurrence, the name of one of the accused to the doctor and it was correctly recorded in the wound certificate, it would be natural and expected that the injured would also disclose the names of the other accused, who also participated in the incident.

22. In such circumstances, the omission to mention the name of the first accused in the history recorded in Ext.P3 assumes greater importance. Especially when the FIR itself was registered with considerable delay, for which the prosecution has offered no satisfactory explanation. In such circumstances, the possibility of the name of the first accused being introduced subsequently after deliberation and consultation cannot be completely ruled out. When the injured had the opportunity to disclose the names of the assailants at the earliest point in time before the doctor, the absence of the name of the first accused creates a serious doubt regarding the prosecution's version.

23. It is also relevant to note that PW2 and PW3 claim to be eyewitnesses to the occurrence. However, they have not reported the incident to the police, even though the alleged act constitutes a cognizable offence. Their failure to inform the police also creates doubt regarding their claim that they had actually witnessed the occurrence.

24. The next aspect to be considered is the inconsistency between the ocular version of PW1 and the medical evidence. As per the testimony of PW4 and Ext.P3 wound certificate, the only external injury noted on the body of PW1 is an abrasion measuring 2 x 2 cm on the right side of the face near the eye. However, PW1 has stated before the court that the accused hit him several times on his head and near his eye. During cross-examination, he reiterated that the accused had hit him several times, though he could not state the exact number of blows or the exact parts of the body where he was hit. If PW1 had been attacked in the manner stated by him, the injury noted in Ext.P3 appears to be inconsistent with such a version. The injury noted is only a minor abrasion and does not tally with the allegation of repeated blows with an iron hook. Further, PW1 has not stated to the investigating officer during the investigation that the accused had hit him several times. This omission appears material and constitutes a contradiction, further weakening the credibility of his testimony, and these discrepancies create a reasonable doubt about the prosecution's version.

25. Another important aspect relates to the use of an alleged weapon in the incident. According to PW1 to PW3, the accused attacked PW1 using an iron hook. However, the alleged weapon was not recovered or produced before the court. It is true that recovery of the weapon is not always a sine qua non for sustaining a conviction under Section 324 IPC if the oral evidence convincingly proves the use of such a weapon. However, in the present case, none of the

witnesses has clearly described the nature or specific characteristics of the weapon. Further, it is already found that the injuries noted do not tally with the ocular version.

26. PW1 stated in the witness box that the hook had a wooden handle and an iron portion. However, such a description is not found stated in his earlier statements to the police. This omission is material and amounts to a contradiction. PW2 and PW3 have also not described the nature of the weapon. Further, during cross-examination, PW3 admitted that he came to know later that the accused had an iron hook in his hand. This admission makes it clear that the version of PW3 regarding the use of a weapon is based on hearsay and not on what he actually witnessed.

27. In such circumstances, the non-production of the weapon assumes significance, especially when there is no clear ocular evidence regarding the nature and description of the weapon to determine whether it falls within the category of a dangerous weapon under Section 324 IPC. Thus, the basic ingredient to attract the offence under Section 324 IPC itself is not made out in evidence. However, from the testimony of PW1 and PW4 and Ext.P3 wound certificate, it is evident that PW1 had sustained some injury. But during cross-examination, PW4 admitted that such an injury could also be caused by an accidental fall. Therefore, the possibility of such injury being caused otherwise cannot be ruled out.

28. It is also admitted by the witnesses that there existed political

rivalry between them. PW1 himself stated that he is a sympathiser of the BJP and that the accused are sympathisers of the CPI(M). PW1 also admitted that he is an accused in a connected political case. The defence specifically suggested that the present case was politically motivated and was registered after deliberation and consultation due to political rivalry. The defence also contended that the delay in lodging the FIR was occasioned by such political consultation. In light of the other discrepancies and infirmities in the prosecution's evidence, such a possibility cannot be completely ruled out.

29. At this juncture, the learned defence counsel argued that PW1 to PW3 are interested witnesses. While addressing this contention, it is also relevant to note that PW2 admitted he is a BJP sympathiser and that he works at the shop of PW1. PW3 also admitted that he is a worker at the shop of PW1. During cross-examination of PW2, it was brought out that his normal working hours are only up to 5.00 p.m. and that he resides about 15 kilometers away from the shop of PW1. Ordinarily, he used to leave the shop by 5.00 p.m. The alleged incident occurred at about 7.00 p.m. However, PW2 has not explained why he remained at the shop beyond his normal working hours on that particular day. This circumstance also casts doubt on his presence at the place of occurrence. Similarly, PW3 stated that he had witnessed the occurrence because he was on night duty that day. However, he had not stated this fact before the Investigating Officer. This omission regarding a material aspect also amounts to a contradiction.

30. Thus, the testimonies of PW1 to PW3 are surrounded by suspicious circumstances and suffer from material omissions and contradictions. Ext.D1 contradiction was also marked during the cross-examination of PW3. In the light of these infirmities, their evidence cannot be accepted as wholly reliable. Further, the circumstances brought out during cross-examination indicate that PW2 and PW3 are interested witnesses, being employees of PW1. Further, PW1 is having a political rivalry with the accused. Thus, there is no doubt that all the witnesses who supported the prosecution's case are interested witnesses having an interest in the outcome of the prosecution.

31. It is a settled principle of criminal jurisprudence that the burden always lies upon the prosecution to prove the guilt of the accused beyond a reasonable doubt. Suspicion, however strong, cannot take the place of proof. In the present case, the prosecution's case is riddled with several glaring infirmities, as aforesaid. It gives room for reasonable doubts in the eyes of an ordinary, prudent man. Therefore, this court is of the considered view that the prosecution has failed to establish the guilt of the accused beyond a reasonable doubt. Therefore, the benefit of doubt must necessarily go to the accused. If so, no conviction is legally possible given the acceptance of suspicious evidence. Thus, the accused persons are entitled to an order of acquittal, extending the benefit of doubt in their favour. Hence, these points are found against the prosecution.

32. **Point No. 3:-**- In view of the findings on points no. 1 and 2, the

accused persons are found not guilty of the offences punishable U/s. 324 r/w 34 IPC. Hence, this point does not require further discussion.

In the result, the accused persons are acquitted u/s 248(1) of Cr.PC for the offences punishable U/s. 324 r/w 34 IPC, and they are set at liberty. Their bail bonds stand cancelled.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 16th day of March, 2026).

Sd/-
Judicial First Class Magistrate
Kuthuparamba

APPENDIX

WITNESS EXAMINED FOR THE PROSECUTION

| Prosecution Witness No. | Name of Witness | Description |
|--------------------------------|------------------------|--------------------|
| PW1 (CW1) | Shaji M K | Informant |
| PW2 (CW3) | Santhosh | Occurrence witness |
| PW3 (CW4) | Vijayan V K | Occurrence witness |
| PW4 (CW6) | Dr. Nishanth M C | Medical witness |
| PW5 (CW7) | Raju Joseph | Police witness |
| PW6 (CW9) | Krishnan M K | Police witness |

EXHIBITS MARKED FOR THE PROSECUTION

| Exhibit No. | Description of the Exhibit | Proved by/ Attested by |
|--------------------|-----------------------------------|-------------------------------|
| Ext.P1 | FIS dated 15-06-2019 | PW1 |

| | | |
|--------|------------------------------------|-----|
| Ext.P2 | Scene mahazar dated Nil | PW2 |
| Ext.P3 | Wound certificate dated 10-06-2019 | PW4 |
| Ext.P4 | FIR dated 15-06-2019 | PW5 |
| Ext.P5 | Address adding report dated Nil | PW5 |

WITNESS EXAMINED FOR THE DEFENCE

Nil

EXHIBITS MARKED FOR THE DEFENCE

| Exhibit No. | Description of the Exhibit | Proved by/ Attested by |
|--------------------|--|-----------------------------------|
| Ext.D1 | Part of 161 statement dated 16-06-2019 | PW3 |

MATERIAL OBJECTS

Nil

Sd/-
Judicial First Class Magistrate
Kuthuparamba

//True Copy//

Judicial First Class Magistrate
Kuthuparamba