

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE - I  
ETTUMANOOR**

**Present: Sri. Nissam.A, (KL00748)  
Judicial First Class Magistrate-I**

**Dated: Wednesday, the 29<sup>th</sup> day of April 2026  
9<sup>th</sup> Vaisakha, 1948**

**CALENDAR CASE No. 1216/2016**

Complainant		State represented by the Sub Inspector of Police, Kidangoor Police Station, in Crime No. 487/2016 <b>(Rep. By Smt. Reshmi Ramesh, APP, Ettumanoor)</b>
Accused	1	Biju, age 38/16 years S/o. Pappan Mundankunnel House Maridam Kara Kadaplamattom Village <b>(Rep. by Adv: K.R. Manojkumar)</b>
Offences		Under sections 294(b) and 323 of Indian Penal Code
Plea		Not guilty
Finding		Not guilty
Sentence or Order		The accused is acquitted under section 255(1) of Code of Criminal Procedure.

**DESCRIPTION OF THE ACCUSED**

Name	Father's Name	Occupation	Residence	Age
Biju	Pappan	-	Maridam	38/16

**DATE OF**

Occurrence	Complaint	Apprehension or appearance	Release on bail	Commencement of trial
14.05.2016	21.05.2016	-	-	03.10.2019
Close of trial		Sentence or Order	Explanation for delay	
27.04.2026		29.04.2026	No delay	

This case has been heard on 27.04.2026 and this court passed the following on the 29<sup>th</sup> day of April, 2026.

## J U D G M E N T

This is a case charge filed by the Sub Inspector of Police, Kidangoor Police Station, in Crime No. 487/2016 for offences punishable under sections 294(b) and 323 of Indian Penal Code.

2. The prosecution's case, in brief, is as follows: Due to previous enmity towards the de facto complainant, the accused, on 14.05.2016 at 11:30 a.m. at Maridam Kara, Kadaplamattom Village, uttered obscene words and voluntarily assaulted PW1 with his hands. Thus, the accused was alleged to have committed the aforesaid offences.

3. Upon taking cognizance, summons was issued to the accused person. In response, he appeared before the court. On the appearance of the accused, copies of relevant prosecution records were furnished to him in compliance with section 207 of the Criminal Procedure Code. After considering the police report and the documents submitted with it, and after hearing both sides, the court, being satisfied that there were grounds to proceed against the accused, particulars of the offences punishable under sections 294(b) and 323 of the Indian Penal Code were read over and explained to the accused, to which he pleaded not guilty and claims to be tried.

4. In order to prove the prosecution case, PWs 1 to 6 were examined and Exts. P1 to P5 were marked. After closing prosecution evidence, since there were incriminating circumstances against the accused, he was examined under section 313(1) (b) of Criminal Procedure Code. He denied

all the incriminating circumstances. Then he was called upon to adduce defence evidence. No evidence was adduced on the side of defence.

5. Heard both sides.

6. **The points that arise for consideration are :**

- (i) Whether the accused, on 14.05.2016 at 11:30 a.m. at Maridam Kara, Kadaplamattom Village, uttered obscene words to PW1 and thereby committed an offence punishable under section 294(b) of Indian Penal Code?
- (ii) Whether the accused, on 14.05.2016 at 11:30 a.m. at Maridam Kara, Kadaplamattom Village, voluntarily caused hurt to PW1 and thereby committed an offence punishable under section 323 of Indian Penal Code?
- (iii) If so, what shall be the order or sentence ?

7. **Point Nos. (i) & (ii)**: To avoid repetition and for brevity, these points are considered together. The de facto complainant was examined as PW1. He deposed that on a day in the year 2016, the accused, who is the son of his brother, attacked him from a waiting shed at Kizhakkemaridam Kara at 12:00 p.m. He further deposed that while he was at the bus waiting shed at Kizhakkemaridam, the accused came there and uttered obscene words. Thereafter, he ran towards him and slapped him three times on his left cheek. Due to the attack, his hearing capacity was lost. He then went to General Hospital, Pala, and from there to Medical College Hospital, Kottayam. Against the above-mentioned incident, he filed Ext.P1 petition before the police. Further, he deposed that the accused attacked him in consequence of a property dispute.

8. Prosecution examined PW2 and PW4 as occurrence witnesses. But both of them turned hostile to the prosecution case, by stating that they did not know anything as alleged by the prosecution.

9. PW3, while working as a Civil Police Officer at Kidangoor police station, recorded Ext.P1 statement of PW1 and registered Ext.P2 FIR.

10. PW5, while working as Casualty Medical officer at General Hospital, Pala, on 14.05.2016, examined PW1 and issued Ext.P3 wound certificate.

11. PW6, while working as Additional Sub Inspector of Police at Kidangoor Police Station, conducted the investigation of the case. He prepared Ext.P4 scene mahazar and produced Ext.P5 address report of the accused before the court. After completing the investigation, he filed a charge sheet against the accused.

12. The specific allegation against the accused is that on 14.05.2016 at about 11:30 a.m, at a road in front of TS No.19, Toddy shop at Maridam Kara, the accused uttered obscene words against PW1 and also slapped him on his face and thereby committed the above-said offences.

13. The prosecution's case is as follows: The accused is the son of the brother of PW1. There was a persistent property dispute between the two families. On 14.05.2016 at about 11:30 a.m, while PW1 was on the road in front of the toddy shop at Maridam kara, the accused came there and uttered obscene words to him. When PW1 escaped into the toddy shop, the accused followed and attacked him by slapping him on the face. PW1,

injured, went to General Hospital, Pala, and from there to Medical College Hospital.

14. At the outset, it is to be noted that the alleged incident occurred on 14.05.2016, and Ext.P1 FIS and subsequently Ext.P2 FIR were lodged only on 21.05.2016. Thus, there was an 8-day delay in lodging the FIS. In the FIS, it is stated that PW1 believed that the matter had been informed to the police from the hospital, and therefore he could not lodge the complaint in time. However, when examined before the court as PW1, he did not have a specific reason for the delay. Admittedly, the accused and the injured have been at loggerheads due to property disputes. Several litigations were also pending between them. Hence the unexplained delay in filing Ext. P1 complaint would raise doubts about the genuineness of his case. In **State of Andhra Pradesh v. M. Madhusudhan Rao, 2008 (15) SCC 582** it was held that “ *delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant / informant is found to be unreliable, the prosecution case has to be rejected in its entirety*”.

Likewise, in 2012 KLT (4) 382 (Biju v. State of Kerala) Hon'ble High Court of Kerala held that "*FIR should reach before the court forthwith. It is also observed that delay in submission of FIR in court may cause injustice and prejudice to the accused owing to chances of manipulation and distortion of the true facts during the delayed period*". The unexplained delay in lodging a complaint destroys the prosecution's case. Delay, coupled with the absence of documentary evidence to prove the same, warrants giving the benefit of doubt to the accused.

15. As per Ext.P1 FIS, the incident happened in front of a toddy shop, and when PW1 entered the shop, the accused also entered and attacked him. However, before the court, PW1 deposed that the incident happened at a bus waiting shed at Maridam kara. As per Ext.P4 scene mahazar, the incident happened on a road in front of T.S No.19, a toddy shop. Ext.P4 is silent about the incident happening inside the toddy shop. Hence, it does not record the toddy shop as the place of the incident either. So it could be seen that neither the prosecution nor PW1 has a specific case regarding the place of the incident.

16. As per PW1's case, soon after the attack, he went to General Hospital, Pala, and was treated there. PW5, while working as Casualty Medical Officer at General Hospital, Pala, examined and treated him and issued Ext.P3 wound certificate. In the wound certificate, the history of the incident is recorded as "brother's son attacked with hand and a stone". The

role of the stone as a weapon of offence is not at all found in FIS, charge sheet, or the evidence of PW1.

17. As per PW1's evidence, due to the attack, his hearing capacity was lost and he became disoriented. However, Ext.P3 wound certificate reported that PW1 was well oriented, conscious, and without external injuries. There has been no whisper regarding the loss of hearing capacity or bleeding from the ear.

18. It is also deposed that PW1 was taken from the General Hospital, Pala, to the Medical College Hospital and treated there. However, no records showing such a claim were produced before the court to substantiate the same.

19. Considering the above discussion, it is evident that apart from the self-contradictory statement of PW1, nothing has been produced before the court to show that the accused has actually committed the offences alleged against him. I am satisfied that the prosecution has failed to prove the offences charged and alleged against the accused beyond reasonable doubt. The benefit of doubt shall always be given to the accused. If so, the accused is entitled to an acquittal. Thus, these points are found against the prosecution.

20. **Point No. (iii):-** In view of my findings on point Nos. (i) and (ii), it is clear that prosecution has failed to prove the offences levelled against the accused. If so, no punishment would be imposed on him.

In the result, the accused person is found not guilty of the offences punishable under sections 294(b) and 323 of the Indian Penal Code, and is acquitted under section 255 (1) of the Criminal Procedure Code. His bail bond stands cancelled, and he is set at liberty forthwith.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court on, this the 29<sup>th</sup> day of April, 2026.

**Judicial First Class Magistrate-I,  
Ettumanoor**

### **APPENDIX**

#### **Witnesses for prosecution:-**

- PW1 - Raman @ Kunjappan, age 73/16 years, S/o.Theyyathan, Manjappallikunnel House, Thekkummuri Kara, Puliyanloor Village
- PW2 - Jayan, age 55/16 years, S/o.Parameswaran, Elavanal House, Illimukku Bhagom, Kizhakkemaridam Kara, Kadaplamattom Village
- PW3 - Prasanth, Senior Civil Police Officer, Kidangoor Police Station
- PW4 - Biju Mathew, age 44/16 years, S/o. Mathai, Arackal House, Kizhakkemaridam Kara, Kadaplamattom Village
- PW5 - Dr.Geena George, Chief Medical Officer, Taluk Headquarters Hospital, Pala
- PW6 - C.M.Mathew, Sub Inspector of Police, Kidangoor Police Station

