

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -II,
KANJIRAPPALLY**

Present: Niyatha Prasad,
Judicial First Class Magistrate – II, Kanjirappally

Thursday, the 07th day of May, 2026
(17th day of Vaishakham, 1948)

CC No. 360/2022

Complainant : State of Kerala represented by the Sub-Inspector
of Police, Erumely PS in **Crime 610/22**.

(By Sri. Shajahan K.S, APP-II, Kanjirappally)

Description of accused

Sl. No.	Name	Father's Name	Age	Occupation	Residence
A1.	Joy V. D	David	60/22	Coolie	Vallimala (H), Kanamala P. O, Erumely South Village.
A2.	Baby P. K	Kunjoonju	63/22	Coolie	Pannikkakavu (H), Pannikkakavu Bhagam, Kanakappalam P. O, Erumely South Village.
A3.	Gopi P. P	Kunjoonju	59/22	Coolie	Pannikkakavu (H), Pannikkakavu Bhagam, Kanakappalam P. O, Erumely South Village.

(By Adv. Sri. Rajmohan)

Offence : Under sections 427 & 447 r/w 34 of IPC.

Plea : Not Guilty.

Finding : Not Guilty.

Sentence/Order : Accused No. 1 to 3 are acquitted u/s. 255(1) of
Criminal Procedure Code 1973.

Dates of :-

Offence	Complaint	Apprehension	Release on bail	Commitment	Commencement of trial	Commencement of evidence
04.06.22	13.06.22	29.06.22	29.06.22	...	06.03.23	12.12.24

Close of trial	Sentence or order	Service of copy of judgment or finding on accused	Explanation of delay	Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.P.C
04.05.26	07.05.26	...	No delay	

This case was finally heard on 04.05.2026, and today this Court delivered the following:-

JUDGMENT

This is a case charge-sheeted by the Sub Inspector of Police, Erumely Police Station, against accused 1 to 3, alleging commission of offences punishable under sections 447 & 427 r/w 34 of the Indian Penal Code (herein after referred to as “IPC”).

2. The prosecution case in brief is as follows:- On 04.05.2022, at 01.00 p.m, the accused, in furtherance of their common intention, criminally trespassed into the property of Erumely Dewasom Board, where CW1 is working as the administrative officer, and cut and removed trees, causing loss of Rs. 43,665/- to Dewasom Board. The accused had thereby committed the offences punishable under sections 447 & 427 r/w 34 IPC.

3. Final report was filed before the court, and the case was taken on file as C.C. 360/2022. Upon receipt of the summons, accused 1 to 3 appeared before the court and were released on bail. Copies of all relevant prosecution records were furnished to the accused, and thereby mandate under section 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') was complied with. Particulars of the offence were read over and explained to the accused 1 to 3 under section 251 Cr.P.C., for offences punishable under sections 447 & 427 r/w 34 IPC, to which the accused persons

pleaded not guilty and claimed to be tried.

4. From the side of the prosecution, PW1 to PW9 were examined. Ext.P1 to Ext.P8 were marked. Since there were incriminating circumstances against the accused 1 to 3, they were examined under section 313 (1)(b) Cr.P.C. The accused persons denied all incriminating circumstances against them and maintained their plea of innocence. Neither oral nor documentary evidence was adduced from the side of the accused.

5. Heard both sides. Perused the records.

6. Points that arise for consideration are:-

- (i) Whether the accused 1 to 3, in furtherance of the common intention of all, trespassed into the property of Dewasom and thereby committed the offence punishable u/s.447 r/w 34 of IPC?
- (ii) Whether the accused 1 to 3, in furtherance of the common intention of all committed mischief and thereby committed the offence punishable under section 427 r/w section 34 IPC?
- (iii) If found guilty, order as to sentence?

7. **Point Nos. (i) & (ii):-** Since these points are interconnected, they are considered together for the sake of brevity and to avoid repetitions. Prosecution case started when PW7 registered Ext. P4, First Information Report on the basis of the statement given by PW1. The investigation of the case was conducted by PW6, and after the completion of the investigation, the final report was also filed by him. The learned Assistant Public Prosecutor (APP) argued that the prosecution has proved the case against the accused 1 to 3 beyond a reasonable doubt, and hence the accused are liable to be punished for the alleged offences. *Per contra*, the learned counsel for the accused argued that the prosecution failed to prove the case against the accused and hence they are entitled to get a clean acquittal.

8. In order to bring home an offence punishable under section 447 IPC against the accused, the prosecution has to prove that the accused persons entered upon the property in the possession of Dewasom with intent to commit an offence or to

intimidate, insult or annoy anyone who is in possession of the property. PW1 deposed that during the year 2022, she was working as a Junior Superintendent at the Travancore Devasom Board, Mundakkayam Group Office, and was holding the additional charge of Administrative Officer of the Erumeli Devasom Board. While so, on 04.06.2022 at around 02.00 p.m., PW2 telephoned her and informed her that some persons had trespassed into the Devasom board property in Erumeli South Village, comprised in Re-survey No. 152/6, and cut and removed the trees standing in the said property. Hence, the next day she went to the place, found the information correct, and gave a statement to the police, which is marked as Exhibit P1. As per the evidence of PW1, the Devassom Board sustained a loss of ₹ 75,000/- due to the acts of the accused.

9. Admittedly, PW1 did not witness the actual incident. PW1 received the information about the alleged incident from PW2. PW2 deposed that on 04.06.2022, he was working as watcher, at Erumeli Devasom Board, his friend Rajan had telephoned him and informed that some persons had trespassed into the property of Devasom Board at Erumeli and cut and removed some trees. Hence, he informed the matter, to PW1 who directed him to visit the property and verify the information. Hence, he went to the place of occurrence along with PW6 and found two trees cut down and one tree in the process of being cut down. He also deposed that the Dewasom board sustained a loss of ₹ 75,000/- in the alleged incident. He also identified the accused who were present in the dock. PW3 who is cited as an occurrence witness, turned hostile to the prosecution case by deposing that he neither saw the incident nor gave any statement to the police.

10. PW7 deposed that on 13.06.2022, while he was working as Sub Inspector of Police at Erumely Police Station, on the basis of Exhibit P1 statement given by PW1, he registered Exhibit P4 FIR, and visited the place of occurrence and prepared Exhibit P5 scene mahazar in the presence of witnesses. Thereafter, the accused were arrested and released on Exhibit P8 bail bond. Exhibit P7 is the complete address report. He obtained the possession certificate from the Village Officer and the evaluation certificate from the Social Forestry Department, and produced the same before the court. After the investigation was completed, he submitted the final report.

11. The learned counsel for the accused submitted that the place of occurrence

does not belong to Erumeli Dewasom Board, and the same was given to the forefathers of the accused as early as in the year 1954. The Learned APP, on the other hand, submitted that if the accused had a case that the property in question belongs to them, they ought to have proved the same with the help of documentary evidence. During the examination of the accused under Section 313 (1) (b) of CrPC, they filed an additional statement under Section 313 (5), contending that the property in question originally belonged to Paschima Devaswam and, thereafter, it was given to various families around 100 years ago. He further submitted that as per the order of the Special Munsiff Land Tribunal, Kottayam, dated 29.10.1976, in order No. 3684, the property in question was given to the forefathers of the accused and hence the property does not belong to Erumeli Devasom. Further, it is contented that the trees that were causing a threat to the general public were cut and removed by the panchayat authorities and PW1 under the misunderstanding that it was cut and removed by the accused persons who filed this false complaint against them.

12. The learned APP argued that the defence case is not believable. But, the onus of proving everything essential to prove the charge against the accused persons lies upon the prosecution. The honorable Apex Court in **Vijayee Singh and Ors. vs. State of U.P.** reported in **AIR 1990 SC 1459** held that: *“The phrase "burden of proof" is not defined in the Act. In respect of criminal cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts.”* It is settled that the persuasive burden namely the burden of proving all issues remains with the state. Hence, I am not inclined to accept the argument of the learned A.P.P regarding the liability of the accused persons to disprove the prosecution case.

13. PW4 deposed that on 24.06.2022, while he was working as the Village Officer of Erumeli South Village, on the basis of the letter issued by the Investigating Officer, he visited the place of occurrence and prepared Exhibit P2 report. As per Exhibit P2, the property comprising 16.20 Ares in Resurvey No. 152/6 in Block No. 23 of Erumeli South Village, Kanjirapally Taluk, belongs to Erumeli Paschima Devasom. However, during cross-examination, PW4 admitted that from Exhibit P2, the boundaries of the property cannot be identified and that he is not aware of in the civil case with

respect to the said property. It is relevant to note that during cross-examination he deposed that എരുമേലി തെക്ക് വില്ലേജിൽ ഒട്ടുമിക്ക സ്ഥലങ്ങളും പശ്ചിമ ദേവസ്വത്തിന്റെതാണ് എന്ന് പറഞ്ഞു കേട്ടിട്ടുണ്ട് ആ വസ്തുക്കൾ പലതും പതിച്ചു നൽകി എന്ന് പറഞ്ഞാൽ ശരിയാണ്. The learned counsel for the accused submitted that the evidence of PW4 supports the case of the accused, that the property was entrusted to the forefathers of the accused 100 years ago.

14. The honorable High Court of Kerala in **Anila Kumari v. State of Kerala** reported in **ILR 2019(3) Ker. 71** held that; “*another offence alleged to have been committed by the petitioner is punishable under S.447 I.P.C. S.441 of the Indian Penal Code defines the offence of criminal trespass. It provides that whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'.* On perusal of the evidence on record, it can be seen that the ingredients necessary to constitute the offence of trespass are absent in this case. Further, nothing is on record to show that the property upon which the accused persons are alleged to have been trespassing was in actual possession of the Dewasom Board.

15. The learned counsel for the accused also argued that there was an inordinate delay in lodging Ext.P4. PW7 deposed that the incident happened on 04.06.2022 and Ext.P4 was lodged only on 13.06.2022. PW7 deposed that nothing is stated in Ext.P4 regarding delay in lodging the same. The learned APP argued that there was no serious delay in lodging Ext.P4 and the same is not fatal to the prosecution case. The learned counsel for the accused counter argued that the delay is not properly explained and hence the same is fatal to the prosecution case. The honorable Apex Court in **Tara Singh & Ors. v. State of Punjab**, reported in **AIR 1991 SC 63** held that”: “*There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR*”. It is settled that delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. But, the first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of

corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained by the prosecution. In the instant case, it is to be seen that PW1 deposed before this court that she had given a written complaint to the police on the same day itself. But PW7 denied having received any such complaint. If the deposition of PW1 is true, the prosecution has suppressed the actual first information in this case. In this case the delay is not at all explained and the same can be only treated as fatal to the prosecution case.

16. The accused persons are also alleged to have committed the offence punishable under section 427 IPC. Wrongful loss, as defined in section 23 IPC, means loss by unlawful means of property to which the person losing it is legally entitled. It is relevant to note that section 427 is not attracted where the accused persons are not alleged to have committed any act with the intent to cause or knowing that they are likely to cause wrongful loss or damage to the Dewasom Board.

17. The honorable Apex Court of India in **Krishna Gopal Singh v. State of UP** reported in **2000 SCC (Cri.) 96** held that *“Similarly, the offence under S.427 also cannot be pressed into service as none of the appellants is alleged to have committed any act "with intent to cause or knowing that he is likely to cause, wrongful loss or damage to the public or to any person". The offence of mischief as defined in S.425 can be established only with strength of the allegations covering the ingredients enumerated in the said section.”* But in this case, the prosecution failed to prove the necessary ingredients for proving the offence under section 427 IPC.

18. Even though the prosecution had cited 9 witnesses in this case, that was not found sufficient to prove the case against the accused persons. It is settled that in the matter of the appreciation of evidence of witnesses, it is not the number of witnesses but

the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. It is to be concluded that the prosecution had failed the above test. Hence, point Nos.(i) and (ii) are found against the prosecution.

19. **Point No. (iii):** In the view of point Nos. (i) and (ii), this point does not arise for consideration. Hence, the accused 1 to 3 are found not guilty for the offences punishable under sections 427 & 447 r/w 34 IPC, and they are liable to be acquitted for the said offences.

In the result:-

The accused 1 to 3 are acquitted U/s.255(1) Cr.PC for the offences punishable under sections 427 & 447 r/w section 34 IPC. Bail bonds executed by the accused 1 to 3 stand cancelled and they are set at liberty.

(Dictated to Adalat Ai software, corrected by me and pronounced in open court on this the 7th day of May, 2026.)

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE-II
KANJIRAPPALLY

APPENDIX

List of Prosecution /Defence/Court Witnesses

A. Prosecution witnesses

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
PW1	S. Sreelekha	Informant
PW2	Prasanth P. N	Occurrence witness
PW3	Ambi	Occurrence witness
PW4	Varghese Joseph	Village Officer

PW5	Harikumar	Range Forest Officer
PW6	Anoop A. V	Occurrence witness
PW7	Aneesh M. S	Investigation officer
PW8	Ramesh C. M	Scene mahazar witness
PW9	Anil Kumar	Scene mahazar witness

B. Defence Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
	Nil	

C. Court Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
	Nil	

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits

Sl.No	Exhibit Number	Description
1.	Ext P1/PW1	FIS dated 13.06.2022
2.	Ext P2/PW4	Possession certificate dated 24.06.2022
3.	Ext P3/PW5	Report dated 02.07.2022
4.	Ext P4/PW7	FIR dated 13.06.2022
5.	Ext P5/PW7	Scene mahazar dated 13.06.2022
6.	Ext P6/PW7	Report dated 13.06.2022
7.	Ext P7/PW7	Address report dated 29.06.2022
8.	Ext P8/PW7	Bail bond dated 28.06.2022

B. Defence Exhibits

Sl.No	Exhibit Number	Description
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C. Court Exhibits

Sl.No	Exhibit Number	Description
	Nil	

D. Material objects

Sl.No	Material object	Description
	Nil	

Sd/-

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KANJIRAPPALLY