

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

Present :- Niyatha Prasad,
Judicial First Class Magistrate – II, Kanjirappally
Monday, the 23rd day of March, 2026
(02nd day of Chaitram, 1947)

CC No. 991/2017

Complainant : State of Kerala represented by the Sub-Inspector of Police, Karukachal PS in
Crime 55/2013
(By Sri. Shajahan K.S, APP-II,
Kanjirappally)

Description of accused

SL. No.	Name	Father's Name	Age	Occupation	Residence
A1.	Aseena	Ali Rawther	30/13	...	Pidivettiyl (H), Punnaveli Bhagam, Nedumknnam Village.
A2.	Aneesh (Split up)	Ali Rawther	32/13	...	Pidivettiyl (H), Punnaveli Bhagam, Nedumknnam Village.

(By.Adv.Sri. Girish K.S, Legal Aid Counsel)

Offence : Under sections 323, 451 r/w 34 of IPC

Plea : Not Guilty.

Finding : Not Guilty.

Sentence/Order : 1st accused is acquitted u/s.255 (1) of Criminal Procedure Code, 1973. Case against A2 is split up.

Date of offence	Date of Complaint	Date of apprehension	Date of release on	Date of commencement	Date of closure of	Date of sentence or	Reason for
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			bail	nt of trial	trial	order	delay
16.01.13	17.01.13	03.02.13	03.02.13	27.07.13	17.03.26	23.03.26	No delay

J U D G M E N T

This is a case charge sheeted by the Sub Inspector of Police, Karukachal Police Station in crime No. 55/2013, against the accused alleging commission of offences punishable under sections 323, 451 r/w 34 of the Indian Penal Code (hereinafter referred to as IPC).

2. **The prosecution case in brief is as follows:-** On 16.01.2013 at 06.00 p.m the accused due to their enmity towards CW 1 and CW2 and with the intention to cause hurt to them pelted a stone at CW2, who was sitting in the sit out of Arshana Manzil (H), and caused injury on the back of CW2. The accused then in furtherance of their common intention, criminally trespassed into the sit out of the said house and cuffed CW1 on her cheek, kicked on her stomach and caused pain to her. Thereby the accused persons are alleged to have committed the offences punishable under sections 323, 451 r/w 34 of IPC.

3. On the basis of the information given by the informant to CW6, he registered FIR under sections 323, 451 r/w 34 of IPC. Final report was filed before the court and cognizance was taken for the offences punishable under sections 323, 451 r/w 34 of IPC and the case was initially taken on file as CC 129/2013 before JFCM-I, Changanasserry. Case was then refiled as CP 33/2015 as the case was exclusively triable by the Hon'ble Children's Court. Copies of all relevant prosecution records were furnished to the accused persons and thereby the mandate under section 207 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") was complied with. On appearance of accused persons, they were enlarged on bail and as per the order dated 24.02.2016. The case was committed to Hon'ble Children's Court, Kottayam. Subsequently, as per the order of the Hon'ble Children's Court, Kottayam the case was transferred to this court for trial. As per the order dated 30.01.2017 the learned predecessor in office took the case

on file and numbered it as CC 4956/2017. Summons was issued to the accused persons. The 1st accused appeared before the court and bail was granted to her. On appearance of the 1st accused, plea was read over and explained to her under section 251 Cr.P.C. for the offences punishable under sections 323, 451, r/w 34 of IPC to which the accused pleaded not guilty and claimed to be tried. As per the O.M No. 1306/25 dated 19.03.2025 of the Hon'ble Chief Judicial Magistrate Court, Kottayam, the file was transferred to this court and it was taken on file as CC 991/2017 on 21.06.2025. 2nd accused did not turn up and hence his case was split up.

4. From the side of prosecution, PW1 to PW6 were examined and Exts. P1 to 7 were marked. Since there were incriminating circumstances against the 1st accused, she was examined under section 313 (1)(b) Cr.P.C and she denied all the incriminating circumstances against her and maintained the plea of innocence. During 313 Cr.P.C examination, the accused stated that she is innocent in this case and that she has no connection with the alleged offences. Neither oral nor documentary evidence was adduced from the side of defence.

5. Heard both sides. Perused the records.

6. Points that arise for consideration are: -

(i) Whether the 1st accused caused hurt to PW1 and PW3 and thereby committed the offence punishable u/s. 323 of IPC?

(ii) Whether the 1st accused wrongfully restrained PW3 and thereby committed the offence punishable u/s. 341 of IPC?

(iii) Whether the 1st accused trespassed into the sit out of the house of PW1 and thereby committed the offence punishable u/s. 451 of IPC?

(iv) If found guilty, order as to sentence?

7. **Point Nos.(i) to (iii)**: Since these points are interconnected, they are

considered together in order to avoid repetition. Prosecution case started when PW6 registered Ext. P4 FIR on the basis of information given by PW1. The learned APP argued that the prosecution has adduced enough evidence to prove the guilt of the accused and hence she is liable to get maximum punishment. *Per contra*, the learned counsel for the accused argued that the prosecution has failed to prove its case beyond all reasonable doubt and hence the accused is entitled to get a clean acquittal.

8. The specific case of prosecution is that, on 16.01.2013 at 06.00 p.m the accused due to their enmity towards PW 1 and PW3 and with the intention to cause hurt to them pelted a stone at PW3, who was sitting in the sit out of Arshana Manzil (H), and caused injury on the back of PW3. The accused then in furtherance of their common intention, criminally trespassed into the sit out of the said house and cuffed PW1 on her cheek, kicked on her stomach and caused pain to her.

9. PW1 is the informant in this case. The learned counsel for the accused submitted that it is absolutely a false and fabricated case. According to him the prosecution case is highly unbelievable and there are major discrepancies and contradictions in the statements of the prosecution witnesses. Keeping in mind the submissions put forward by the learned APP and the counsel for the accused, we can now analyse the evidence of this case in detail.

10. PW1 stated that on 16.01.2013 at around 04.00 p.m. the alleged incident occurred in front of the house where she was working at Punnaveli. PW1 stated that the accused and PW4 are relatives and they were residing in the same building. The accused persons were residing on the upper floor and PW4 was living in the ground floor along with the family. On the date of alleged incident, while PW1 was sweeping the courtyard, the second accused pelted a stone at PW3. Hence she enquired as to why he was throwing stones at PW3. Immediately both the accused persons came down to the ground floor and the first accused slapped on her left cheek. Thereafter the second accused took a wooden stick and

attempted to assault her. At that time the father of the accused interfered and there occurred a scuffle between them. Meanwhile, PW1 immediately entered into the sit-out of the house of PW4. But the second accused followed her and kicked her and she fell on the floor. The accused then stamped on her stomach causing pain. PW4 took PW1 and PW3 to the hospital. Hence she gave a statement to the police which is marked as Exhibit P1.

11. PW3 is another injured in this case. She stated that on 16.01.2013 while she was standing in front of her house along with PW1, the accused together pelted stones at them. One of the stone hit on the back of her head and she sustained injuries. On seeing the same, PW1 enquired as to why they were pelting stones and hence the accused persons came near PW1 and slapped on her face. The second accused then kicked PW1 and she fell to the sit-out of their house. PW4 then took both of them to the hospital. PW2 and PW4 are the occurrence witnesses. Both of them deposed that they had seen the alleged incident.

12. PW5, the doctor who had examined PW1 and PW3 deposed that while he was working as Medical Officer at Mercy Nursing Home at Karukachal, on 16.01.2013 at 07.00 p.m. he had examined a patient named Sethu, 35-year-old female patient who came with alleged history of assault at 06.00 p.m. on the same day at Mulayamveli. On examination contusion on the left shoulder and contusion on the right cheek were noted. The patient was admitted and treated as IP No. 9785 and discharged on 17.01.2030. In his opinion, it could be as alleged and to that aspect he had issued the wound certificate which bears his signature and seal of the hospital which is marked as Exhibit P2. On the same day at 07.15 p.m. he had examined a patient named Arfa, 7-year-old female child brought by her mother Seenath with alleged history of assault at 06.00 p.m. on the same day at their residence at Punnaveli. On examination contusion on the occipital region was noted. The patient was admitted and treated as IP No. 9786 and discharged on 17.01.2013. Exhibit P3 is the wound certificate with respect to PW3.

13. The learned counsel for the accused submitted that as per the evidence

of PW1, the accused pelted stones at PW3 and when the same was questioned by PW1, the accused persons came down and then assaulted her. It has come out in evidence that the accused persons and PW4 are living in the same building and the accused persons on the upper floor and PW4 on the ground floor. If that be so, after pelting stones at PW3, the accused persons came down and assaulted PW1. The learned counsel submitted that the prosecution does not have a case that the accused persons were in possession of any stones to throw at PW3. Further it is not known where the child was standing for the accused to throw stones from the upper floor. The argument raised by the counsel becomes relevant for the reason that the mahazar prepared by PW6 does not clearly indicate the lie of the house in question. Further as per the version of PW1, the first accused had slapped on her left cheek whereas the injury is seen noted on right side of her cheek. The learned counsel also submitted that the father of the first and accused had interfered and there occurred a scuffle between them. But he is not made a witness in this case. He also brought before this court that as per the version of prosecution, three material objects were used by the accused persons in this case including stones, a wooden stick and roof tile pieces. But nothing was recovered by the prosecution. If though it is the settled position of law that non recovery of material objects is not fatal to the prosecution case, the prosecution must give an explanation as to what had happened to the same. As per the evidence of PW2 before this incident there had occurred some verbal altercation between the second accused and PW4 and thereafter the incident again occurred by around 05.00 p.m. But PW1, PW3, PW4 did not depose anything regarding that aspect. PW2 also does not have a case that he saw the accused throwing stones at the PW2.

14. During cross examination PW2 deposed that he did not see the accused stamping PW1. But he stated that he saw PW1 being slapped. But the evidence of PW2 does not show who had slapped PW1. As per the evidence of PW3, during cross-examination, it was in the sit-out that the first accused had slapped PW1. Whereas according to PW1 she was slapped by PW1 and then the second accused

kicked her and she fell to the sit out. These facts does not tally with each other. The Investigation Officer, PW6 also deposed that in his investigation, the use of any stones or roof tile was involved. The specific case of the defence is that there are civil disputes between PW4 and the accused and due to the said animosity, they were falsely implicated in this case. The same is admitted by PW3 and PW4. Hence the chance of false implication cannot be ruled out. It is the settled law that in criminal jurisprudence, the guilt of the accused must be proved beyond all reasonable doubts. Further, if two views are possible, the one in favour of the accused must be taken into account. Considering the evidence on record by yardstick of probabilities, its intrinsic worth and animus of witness, this court is of the view that 1st accused is entitled to get the benefit of doubt in her favour. Hence point nos. (i) to (iii) are found against the prosecution.

15. **Point No. (iv):** In view of point Nos. (i) to (iii), this point does not arise for consideration. Hence, the 1st accused is found not guilty for the offence punishable under sections 323, 451 r/w 34 of IPC and she is liable to be acquitted for the said offences.

In the result: -

The 1st accused is acquitted U/s. 255(1) Cr.P.C. for the offences punishable under section 323, 451 r/w 34 of IPC. Bail bond executed by the 1st accused stands cancelled and she is set at liberty.

(Dictated to Adalat Ai software, corrected by me and pronounced in the open court on this the 23rd day of March, 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	Sethu	Informant
PW2	Titto	Eye witness
PW3	Arfa	Eye witness
PW4	Zeenath Beegam	Eye witness
PW5	Dr.V.M.Vidyadharan	Medical witness
PW6	Satheesh Babu	Investigation Officer

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	FIS dated 17.01.2013
2	Ext.P2	Wound Certificate (Sethu) dated 16.01.2013
3	Ext.P3	Wound Certificate (Arfa) dated 16.01.2013
4	Ext.P4	FIR dated 17.01.2013
5	Ext.P5	Scene Mahazar dated 17.01.2013

6	Ext.P6	Bail bond dated 03.02.2013
7	Ext.P7	Address report dated 17.01.2013

B. Defence Exhibits

Sl.No	Exhibit Number	Description
	Nil	

C. Court Exhibits

Sl.No	Exhibit Number	Description
	Nil	

D Material objects

Sl.No	Material object	Description
	Nil	

Sd/-

**JUDICIAL FIRST CLASS MAGISTRATE-II,
KANJIRAPPALLY**

Judgment in

CC No. 991/2017

Dated : 23.03.2026