

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

Present: Smt. Asha K.N., Judicial First Class Magistrate – I,
Dated this the 05th day of May, 2026.
(The 15th day of Vaishaka, 1948 of Saka Era)

CALENDAR CASE NO. 481 OF 2017

State represented by the Sub Inspector of Police Kolathur police station Cr. 72/2017 (By Sri. Navabkhan E, APP. Perinthalmanna)	:	Complainant
A1. Muhammed Kutty, Age. 50/17, S/o. Muhaamed Haji, Parayarukundil House, Kalluvettukuzhi, Moorkkanad Amsom A2. Muhammed Fawas, Age. 21/17, S/o. Muhmmmedkutty, Parayarukundil House, Kalluvettukuzhi, Moorkkanad Amsom (By Adv. Sri. K. Benny Thomas)	:	Accused
Offences	:	u/ss. 448, 323, 294 (b) and 354 A r/w 34 of IPC.
Plea	:	Not guilty
Finding	:	Guilty of the offences u/ss. 448 and 323 r/w 34 of IPC. Not guilty of the offences u/ss. 294(b) and 354 A of IPC.

Order	1. The accused no. 1 and 2 are found guilty of the offences 448 and 323 r/w 34 of IPC and they are convicted of the same u/s.248 (2) of Cr.P.C. 2. The accused no. 1 and 2 are found not guilty of the offences 294(b) and 354 A of IPC and they are acquitted of the same u/s.248 (1) of Cr.P.C. 3. The accused no. 1 is sentenced to undergo simple imprisonment for a period of 3 months and to pay fine of Rs. 1000/- u/s 448 IPC. In default of payment of fine amount, he shall undergo simple imprisonment for a period of 15 days. 4. The accused no. 1 is sentenced to undergo simple imprisonment for a period of 3 months and to pay fine of Rs. 1000/- u/s 323 IPC. In default of payment of fine amount, he shall undergo simple imprisonment for a period of 15 days. 5. The substantive sentence shall run concurrently. 6. case against accused no.2 is split up and refiled as CC 176/2026 for the purpose of hearing on sentence and passing of sentence.
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Description of the accused

Sl.No	Name	Father's Name	Occupation	Residence	Age
1	<i>Muhammed Kutty</i>	Muhammed Haji		Parayarukundil	50/17
2	<i>Muhammed Fawas</i>	<i>Muhammed Kutty</i>		Parayarukundil	21/17

Date of

Occurrence	Complaint	Appearance or apprehension	Release on bail	Commencement of trial	Close of trial	Explanation for delay	Sentence or order

11.04.17	13.04.17	15.04.17	19.05.17	27.11.25	22.04.26	One of the accused remained absent	05.05.26
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This case having been finally heard on 22.04.2026, this day the court delivered the following:

J U D G M E N T

This case is taken file on the final report submitted by the Inspector of Police, Kolathur Police Station, against the accused in crime No.72/2012 alleging commission of the offences punishable under sections 448, 323, 294(b) and 354 (A) r/w 34 of IPC.

2. The prosecution case, in brief, is as follows:- On 11.04.2017 at about 18.00 hours accused 1 and 2 in furtherance of their common intention to commit offence, trespassed into the residential house of PW1 at Ambalappadi, Kolathur and in connection with financial transaction in between accused and CW3, the accused uttered obscene words at CW3 and also voluntarily caused hurt to CW3 with bear hands. When PWs 1 and 2 intercepted, the accused forcefully pushed them down. It is also alleged that first accused grabbed on the breast of PW1 and thereby committed sexual harassment. Thus, the accused are alleged to have committed the aforesaid offences.

3. On the basis of FIS given by PW1, PW7 registered the crime and PW8 filed final report after completing investigation.

4. Pursuant to the filing of the final report, cognizance was taken on the aforesaid offences. On issuance of summons, the accused appeared before the court. Copies of the relevant records were furnished to them and they were released on bail. Accused were defended by a counsel of their choice. Thereafter, particulars of offences under section 448, 323, 294(b) and 354(A) r/w 34 of IPC

were read over and explained to the accused in Malayalam. They pleaded not guilty and claimed to be tried.

5. From the side of the prosecution, PW1 to PW9 were examined and Ext.P1 to P10 series were marked. After the closure of prosecution evidence, accused were questioned under section 313(1)(b) of Cr.P.C as to the incriminating circumstances appearing in evidence against them. They denied all such evidence and maintained to be innocent in this case. Accused No.2 was exempted as per order in CMP 04/2026 and his questioning u/s 313 was conducted through his counsel as per order in CMP. 03/2026.

7. Accused were called upon to enter into their defence. Exts. D1 and D2 were marked from the side of accused.

8. Heard both sides.

9. The following points arise for consideration:-

1. *Whether the accused criminally trespassed into the residential house of PW1 as alleged?*
2. *Whether the 1st accused committed sexual harassment against PW1 as alleged?*
3. *Whether accused voluntarily caused hurt to CW3, PW1 and PW2 as alleged?*
4. *Whether the accused uttered obscene words at CW3 as alleged?*
5. *Whether the accused acted in furtherance of their common intention as alleged?*
6. What are the offences if any, proved to have committed by the accused?
7. If the accused are found guilty, what should be the proper sentence?

10. **Points 1 to 6:-** The specific case of the prosecution is that, on 11.04.2017 at about 06.00 p.m, both accused along with another person, trespassed into the residential house of PW1 at Ambalappadi, Kolathur and uttered obscene words against CW3, who is the son in law of PW1 as “എടാ മൈരാ നീ എനിക്ക് പണം തരാനില്ലേ ?” . Then the accused started to assault CW3 using bear hands. At that time, PW1 and 2 have tried to prevent the accused. Then, the 1st

accused pushed PW1 by pressing on her breast. It is also alleged that the accused voluntarily caused hurt to PW1 and 2.

11. PW1 is the first informant and one of the injured. PW2 another injured and occurrence witness. PW3 and 4 are the occurrence witnesses. PW5 is a mahazer witness. PW6 is an official witness. PW7 and 8 are the police officers of Kolathur Police station.

12. The accused denied the entire case of prosecution. As per the case of the accused, CW3 has sexually harassed son of 1st accused and crime no. 71/2017 u/ss 7 and 8 of POCSO Act has been registered in Kolathur police station. PW1 and other prosecution witnesses No. 1 to 5 are close relatives and this case has been registered as a shield to the aforesaid POCSO case. The said POCSO case against CW3 is pending before Hon'ble Fast Track Special Court II, Perinthalmanna as SC 1124/2017 and the accused (CW3 herein) went absconding. From the side of accused, certified copy of FIR and final report in Crime No. 71/2017 were marked as Ext.D1 and D2.

13. PW1, Pathukkutty is the most material witness examined from the side of prosecution. She deposed that, on 11.04.2017 at about 06.00 p.m. she was talking with her husband, daughter and son in law at her house. At that time, both accused and another person have entered into their house and uttered obscene words at CW3 Sainul Abid. They had an altercation regarding the financial transaction. Accused No. 2 slapped on the face of CW3. When she attempted to prevent him, 1st accused pushed her down by pressing on her breast, she felt ashamed. At that time, her daughter Majida and her husband also have tried to prevent the accused. The 2nd accused then wrongfully restrained Majida, her daughter. After some times, neighbours came and intervened. At about 07.00 p.m they went to the District Hospital and got admitted. On the next day, she has filed a petition before the police. Ext.P1 is the FIS. She identified the 1st accused as one of the assailant, who was the present in the dock. She deposed that 2nd accused is the son of 1st accused and she could identify him also. PW1 deposed that she has previous acquaintance with the accused for a long period. She deposed that she felt body pain due to the incident.

14. PW2 is the another injured. PW2, Majida deposed that, on 11.04.2017 at her paternal house, while they were sitting at the sit out, the accused came into the house and assaulted CW3 in connection with some financial transaction. The 2nd accused wrongfully restrained her when she attempted to prevent the accused. 1st accused forcefully pushed PW1, her mother and thereby PW1 fell down. The accused also assaulted her father and brother in law(CW3). When her husband and other neighbours came, the accused went back. She felt bodily pain and went to the hospital. She also identified accused No. 1 in the dock and deposed that she could identify accused No. 2 who was exempted from personal appearance.

15. PW3 is another occurrence witness. PW3, Muneesa deposed that, on 11.04.2017 at about 06.00 p.m, the accused trespassed into their house and had an altercation with her husband, CW3. It was with respect to an agreement regarding payment of 8,00,000/- by CW3. When CW3 refused to sign in the agreement, 2nd accused uttered obscene words at her husband. Both accused voluntarily caused hurt to CW3. Her mother PW1, and sister PW2, have attempted to prevent the accused. At that time, 2nd accused wrongfully restrained PW2, 1st accused grabbed on the breast of her mother PW1 and forcefully pushed her down. Again they assaulted her husband. At that time, neighbours and PW2's husband came and they prevented the accused. Later, PWs1 and 2 and CW3 went to the hospital. She also identified accused No. 1 in the dock. Accused No. 2 remained absent.

16. On consideration of the above discussed evidence of PWs 1 to 3, I am of the view that, all of them have deposed unanimously with respect to the incident occurred. Though there are some minor contradictions as argued by the learned counsel for accused, all of them are minor and to be discarded.

17. PW4 is an independent witness examined from the side of prosecution. PW4, Ibrahimkutty deposed that he is a neighbour of PW1. He had witnessed the incident which had happened on 11.04.2017 at about 06.00 p.m. He heard some weird noises from the house of PW1. He proceeded to the house of PW1 and found that, the accused uttering obscene words against CW3. When PW1 prevented the accused, 1st accused pushed PW1 pressing on her breast. 2nd accused wrongfully restrained PW2. Along with one Mr. Nishad. PW4 prevented the accused. PW4

also identified accused No. 1 in the dock and deposed that he could identify accused No. 2 also. Even after cross examination, his evidence appears to be reliable and he vehemently deposed that he had witnessed the incident as described above. Accused has not established that, PW4 had any enmity towards the accused. So, the evidence of PW4, the independent witness further corroborated the evidence of PWs 1 to 3. 17. Learned counsel for accused argued that, CWs 1 to 6 cited by the prosecution, are close relatives and therefore, they shall be considered as interested witnesses. I can not accept the said argument on the ground that, the alleged incident occurred inside a residential house, and therefore, the inmates of the house and the neighbours shall be the natural witnesses. Therefore, merely because CWs 1 to 6 were happened to be relatives, their evidence could not be discarded.

18. PW1 has given Ext.P1 FIS to the police with respect to the incident. PW7 Vishnu, deposed that while he was working as Station House Officer of Kolathur police station, on 13.04.2017, PW1 came to the police station and gave Ext.P1 FIS. On receipt of Ext.P1, he has registered Ext.P4 FIR. On perusal of Ext.P1 FIS, it is found that Ext.P1 clearly corroborated the oral evidence of PW1 in the dock. No contradiction were marked while cross examination of PW1. There was no challenge regarding the delay in lodging the FIS. PW1 deposed that soon after the incident, she went to the hospital and got admitted. Only after discharge, she lodged Ext.P1 FIS. Therefore, Ext.P1 FIS further corroborated the evidence of case of prosecution.

19. PW7 further deposed that he undertook investigation and proceeded to the place of occurrence. He prepared Ext.P2 scene mahazer identifying the place of occurrence. PW5, Musthafa is a witness to Ext.P2. PW5 deposed that he is a resident of Ambalappadi, Kolathur and a neighbour of PW1. He had hearsay knowledge about the incident. He had seen the police inspecting the house of PW1, which is the place of occurrence. He also stood as a witness and signed in Ext.P2 mahazar. PWs 1 to 3 deposed that they had shown the place of occurrence to the police during investigation. PW7 questioned the witnesses and arrested the accused. Ext.P5 is the arrest cum inspection memo. Ext. P6 is the intimation

notice. He filed Exts. P7 and P8 report showing complete address of accused. He also filed Ext.P9 to delete 3rd accused in the FIR from the array of accused. He deposed that the further investigation was conducted CW14.

20. CW14 was examined as PW8. PW8, Suresh Babu deposed that in the month of May, 2017 he was working as SHO of Kolathur Police station. He verified the previous investigation and further questioned the witnesses. He collected the Ext.P3 ownership certificate and produced in court. Ext.P10 series wound certificates which were prepared by CW11, were collected by him and produced in court. After completing the investigation, he submitted the final report before the court.

21. PWs 1 to 3 have deposed that soon after the incident, they went to the District Hospital and got admitted for treatment. CW11 is the medical practitioner who had examined PWs 1 and 2 and CW3. She was reportedly abroad and could not be examined. Therefore, the learned Assistant Public Prosecutor took steps and summoned the PW9 as additional witness. PW9, Dr. Simi deposed that, while she was working as Junior consultant in District Hospital, Perinthalmanna, she had worked with Dr. Sheeja Beegaum (CW11). She knew the handwriting and signature of Dr. Sheeja Beegaum in Ext.P10 series 3 in numbers. PW9 deposed that on perusal of Ext.P10 series, CW11 had examined one Mrs. Pathutti (PW1), Majida (PW2) and Sainul Abid (CW3) on 11.04.2017 at about 07.45 p.m., who came to the hospital with alleged history of assault by Muhammed Fawas and other known persons at their house. So, the evidence of PW9 along with Ext.P10 series wound certificates further corroborated the evidence of PWs 1 to 4. It is true that ,the contents of Ext.P10 series could not be proved since CW11 was not examined. However, it is proved by the prosecution that PW1,2 and CW3 have treated in the District Hospital Perinthalmanna, on 11.04.2017. PWs1 and 2 deposed that they sustained bodily pain due to the incident. Therefore, in order to prove the subjective feeling of body pain, the medical evidence is not material. Hence, the non examination of CW11 is not fatal to the prosecution.

22. The case put forwarded by the accused is that it is falsely fabricated case since a POCSO case is pending against CW3 for harassing younger son of 1st

accused. Ext.D1 and D2 are the certified copy of FIR and final report in the POCSO case. As per Ext.D1, the FIS shows that, the incident occurred on 11.04.2017 on the which date, the incident in the instant case had happened. As per Ext.D1 FIS, the accused admitted that, the accused and the victim in the above said POCSO case have went to the house of PW1 on 11.04.2017 and had a scuffle. Thus, the presence of accused at the place of occurrence on the date of incident is admitted to that extent. At the same time, the oral evidence of injured and occurrence witnesses along with the evidence of other officials corroborated the case of prosecution. Hence, I have no hesitation to hold that, the prosecution succeeded to prove the incident alleged against the accused.

23. Now it is to be analysed what are the offences proved to have been committed by the accused. The alleged offences are u/ss 448, 323, 294(b) and 354 A r/w 34 IPC. As per the evidence of PWs 1 to 4 the accused trespassed in to their residential house and assaulted them. PW7, the investigating officer deposed that, the place of occurrence is the house of PW1. PW6, Sharafudheen deposed that, he was the then secretary of Moorkanad Panchayat and he issued Ext.P3 certificate which would show that, the building no.8/208 of his Panchayat belongs to one Pathutty(PW1). There was no cross for accused. Hence, the evidence of PW6 corroborated that, the place of occurrence belongs to PW1 wherein the incident occurred. The PWs 1 to 4 categorically deposed that, the accused voluntarily caused hurt to PWs 1 and 2 and CW3. It is true that, the CW3 not turned up even after coercive steps. However, the evidence of PWs 1 to 4 shows that, the accused attacked PWs 1, 2 and CW3. The subjective feeling of pain by PWs 1 and 2 stands proved by their evidence also. The conduct of the accused shows that, there was pre-meeting of mind and they shared common intention in doing those acts. The accused caused hurt to PWs 1,2 and CW3 voluntarily knowing its consequences. Hence, the above discussed evidence is sufficient to prove that, the accused have committed offence punishable u/ss. 323 and 448 r/w 34 IPC.

24. The one of other offences alleged against the accused is u/s 354 A IPC. As per case of prosecution the 1st accused pushed PW1 by touching on her breast and thus, PW1 felt ashamed. PW1 also deposed to the effect that, when she tried to

prevent the accused from assaulting CW3, the 1st accused pushed her down by pressing her breast. S.354A of IPC deals with sexual harassment and punishment for sexual harassment. It reads as follows:

"354A. Sexual harassment and punishment for sexual harassment (1) A man committing any of the following acts--

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks,
- shall be guilty of the offence of sexual harassment."

25. There is nothing in the evidence of PWs 1 to 4 that, accused have committed any of the above acts. Therefore mere using of force will not enough to attract the offence of sexual harassment. The remaining offence is u/s 294 (b) IPC. In order to attract S.294(b) of IPC, the following two ingredients are to be satisfied. (i) The offender has sung, recited or uttered any obscene song or word in or near any public place and (ii) has so caused annoyance to others. If the act is not obscene, or is not done in any public place, or the song recited or uttered is not in or near any public place or that it caused no annoyance to others, no offence is committed.

26. Admittedly, the place of occurrence is the residential house of PW1. It can never be termed as a public place or near public place. There was nothing to show that, the house is situated nearby any public place. That apart, in order to satisfy the definition of obscenity to attract S.294(b) of IPC, the words uttered must be capable of arousing sexually impure thoughts in the minds of its hearers. There is no case for the prosecution that the words allegedly uttered by the petitioner aroused sexually impure thoughts in the minds of the hearers. In these circumstances, I am of the view that the basic ingredients of S.294(b) of IPC are not attracted. The points are answered accordingly.

27. **Point No.7:-** As per my finding on point Nos.1 to 6, both accused are found guilty of offences u/ss 448 and 323 r/w 34 IPC and they are to be convicted

for the same u/ss 248(2) Cr.P.C. The accused no. 1 and 2 are found not guilty of the offences 294(b) and 354 A of IPC and they are to be acquitted of the same u/s.248 (1) of Cr.P.C.

Considering the fact that the accused had trespassed into a residential house and assaulted the prosecution witnesses, they are not entitled to benefit of Probation of Offenders Act. The accused shall be heard on question of sentence.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court this the 05th day of May, 2026).

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28. The accused no.2 remained absent even after continuous directions. He is reportedly abroad. Hence, heard accused no.1 and his counsel. They pleaded for mercy. On considering the facts of the case and the offences proved against the accused, I am of the view that, imposing sentence of simple imprisonment for 3 months each and to pay fine of Rs.1000/- each with default sentence u/ss 448 and 323 IPC would meet the purpose.

In the result,

7. The accused no. 1 and 2 are found guilty of the offences 448 and 323 r/w 34 of IPC and they are convicted of the same u/s.248 (2) of Cr.P.C.
8. The accused no. 1 and 2 are found not guilty of the offences 294(b) and 354 A of IPC and they are acquitted of the same u/s.248 (1) of Cr.P.C.
9. The accused no. 1 is sentenced to undergo simple imprisonment for a period of 3 months and to pay fine of Rs. 1000/- u/s 448 IPC. In default of payment of fine amount, he shall undergo simple imprisonment for a period of 15 days.
10. The accused no. 1 is sentenced to undergo simple imprisonment for a period of 3 months and to pay fine of Rs. 1000/- u/s 323 IPC. In default of payment of fine amount, he shall undergo simple imprisonment for a period of 15 days.

11. The substantive sentence shall run concurrently.
12. case against accused no.2 is split up and refiled as CC 176/2026 for the purpose of hearing on sentence and passing of sentence.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court this the 05th day of May, 2026).

Judicial First Class Magistrate-I
Perinthalmanna

APPENDIX

Prosecution witness

PW1	Pathutty	Informant and Injured
PW2	Majitha	Occurrence Witness and Injured
PW3	Muneesa	Occurrence Witness
PW4	Ibrahim Kutty	Occurrence Witness
PW5	Musthafa	Mahazer witness
PW6	Sharafudheen	Official Witness
PW7	Vishnu	Investigating Officer
PW8	Suresh babu	Investigating Officer
PW8	Dr. Sini	Additional Witness

Defence witness : Nil

Court witness : Nil

Prosecution Exhibits:

1	Ext.P1/PW1	FIS dated 13.04.17
2	Ext.P2/PW5	Scene Mahazer dated 14.04.17
3	Ext.P3/PW6	Ownership certificated
4	Ext.P4/PW7	FIR dated 13.04.17
5	Ext.P5/PW7	Arrest cum Inspection Memo dated 15.04.17
6	Ext.P6/PW7	Intimation notice dated 15.04.17
7	Ext.P7/PW7	Report to add full name and address of the 2 nd accused
8	Ext.P8/PW7	Report to add full name and address of the 1 st accused
9	Ext.P9/PW7	Report to delete 3 rd accused in FIR

10	Ext.P10/PW8	Wound Certificated dated 11.04.17
11	Ext.P10 (a)	Wound Certificated dated 11.04.17
12	Ext.P10 (b)	Wound Certificated dated 11.04.17

Defence Exhibits : Nil

Court Exhibits : Nil

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