

FORM NO. 48(CPC)
 CrI.Justice 470,000 17/144 1 4 2004 GPE @ Govt. of Kerala
 CALENDAR AND JUDGMENT
 (For use in cases where there is only one accused person)
 District of Palakkad Calendar of Cases tried by
 the Judicial Ist Class Magistrate of Ottapalam.

Date of							
Offence	Report or complaint	Apprehension of accused	Release on bail	Commencement of trial	Close of trial	Sentence or order	Explanation of delay and remarks
1.12.02	3.1.03	Nil	17.1.26	4.12.03	22.5.26	23.5.26	No delay

Judgment in ST Case no. 3441/2007 on the file of the
 Judicial Ist Class Magistrate-1 of Ottapalam.

Complainant :State represented by Sub Inspector, Cherpulassery Police Station in crime no. 245/2002.

Sl.No	Name of accused	Age	Father's Name	Residence	Taluk
1.	Vappu @ Shamseer	23	Hamsa	Nellaya	Ottapalam

Offences : U/ss 341, 323, 294(b) r/w 34 IPC.

Finding : Not guilty

Sentence or order : Accused is found not guilty of the offences punishable under sections 341, 323, 294(b) r/w 34 IPC. He is acquitted under sec. 255(1)Cr.PC of the above offences. His bail bond stands cancelled and he is set at liberty.

Judicial First Class Magistrate – I,
 Ottapalam.

DOCKET

Date of receipt :	From
Remarks of the District Magistrate	The Magistrate of.
Date of Despatch	To
“ Receipt 20...	The Hon'ble District & Sessions Judge, Palakkad.
	Reply of the Magistrate
	{of}
Date of despatch }	Calendar case no. of 200.....
“ Receipt }20...	Date of judgment {}
Remarks of the Subdivisional Magistrate	“ of Despatch {}
	“ of Calendar {}
	“ of Receipt {}

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS-1,
OTTAPALAM**

Present. Miss. Sajitha. M. N
Judicial First Class Magistrate

Saturday, 23rd day of May, 2026
2nd Jeshtom, 1948 (S.E)

ST Case no. 3441/2007

Complainant : State represented by Sub Inspector,
Cherpulassery Police Station in crime no.
245/2002.
(By Sri. Muhammed Sajith, A.P.P. Gr.II,
Ottapalam)

Accused : Vappu @ Shamseer aged 23 Years,
S/o Hamsa, Kadavath veedu, Manjakkallu,
Nellaya, Ottapalam.
(By Adv. Sri. Arun. K)

Offence : U/ss 341, 323, 294(b) r/w 34 IPC.

Plea : Not guilty

Finding : Not guilty

Sentence or order : Accused is found not guilty of the offences
punishable under sections 341, 323, 294(b)
r/w 34 IPC. He is acquitted under sec.
255(1)Cr.PC of the above offences. His bail
bond stands cancelled and he is set at liberty.

Description of accused

Sl. no	Name of accused	Age	Father's Name	Residence	Taluk
1.	Vappu @ Shamseer	23	Hamsa	Nellaya	Ottapalam

Date of

Offence	Report or complaint	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence or order
1.12.02	3.1.03	Nil	17.1.26	4.12.03	22.5.26	23.5.26

This case having been heard on 22.5.26 and the court on 23.5.26 passed the following.

J U D G M E N T

The accused persons stand charge sheeted by the Sub Inspector, Cherpulassery Police Station in crime no. 245/2002 alleging commission of offences punishable under sections 341, 323, 294(b) r/w 34 IPC of the Indian Penal Code. (Herein after referred to as IPC)

2. The prosecution case is that on 1.12.2002 at about 15.00 hours, due to the previous animosity towards CW1, accused caught hold on the neck of CW1 and uttered obscene words against CW1, second accused beat on the body of CW1 and first and second accused kicked CW1. Thus, the accused are alleged to have committed the above offences.

3. First Information Report was registered by CW10 the then Head constable of Cherpulassery Police Station. CW11 the then Sub Inspector of Cherpulassery Police Station conducted the investigation and filed final report before the court.

4. Cognizance was taken as ST 261/2003 and summons was issued to the accused persons for having committed the offences punishable u/ss 341, 323, 294(b) r/w 34 IPC. Accused appeared before the court and they were released on bail. The copies of prosecution records were furnished to the accused and thus complied with section 207 Cr.PC. Particulars of offences under sections 341, 323, 294(b) r/w 34 IPC. It was read over and explained to the accused. They pleaded not guilty. They were defended by a counsel of their choice.

5. CW1 to CW11 were cited as prosecution witnesses. Out of that CW1, CW2, CW4, CW11 and CW9 were examined as PW1 to PW5 and Ext. P1 to P4 documents were marked. After examination of PW5 and marking of Ext. P3 document. First accused absconded and case against first accused was split up and refiled as ST 604/2007. Thereafter the case was converted into LP 37/2012. Thereafter accused was arrested and produced before this court on 17.1.2026. Case against accused is refiled from LP 37/2012 as ST 3441/2007. Summons was issued to PW6. PW6 was cross examined and Ext. P4 was marked. On closure of the prosecution evidence, accused was examined u/s 313(1)(b) Cr.PC. He denied all the incriminating circumstances brought out in evidence against him. Then, the case was

posted for defence evidence. No defence evidence adduced.

6. Heard both sides.

7. The points that arise for determination are: -

1. Did the accused on 1.12.2002 at about 15.00 hours, along with other in furtherance of their common intention wrongfully restrained PW1?
2. Did the accused on 1.12.2002 at about 15.00 hours, along with other in furtherance of their common intention voluntarily cause hurt to PW1?
3. Did the accused on 1.12.2002 at about 15.00 hours, along with other in furtherance of their common intention utter obscene words at PW1?
4. Whether the accused are guilty of offences as alleged? If found guilty, what is the order as to sentence?

8. **Point nos 1 to 3** : - These points are considered together for the sake of brevity and convenience. PW1 is the injured in the incident. He deposed that he was a daily labourer. He was cutting grass behind his courtyard. Approximately four years back at around 3.30 p.m, second accused was going through the road. PW1 look at the second accused. The accused herein uttered obscene words against PW1. Thereafter accused herein and his father came to his place accused herein pulled PW1. Father of the

accused herein beat on the cheek of PW1. After hearing the hue and cry of PW1, his younger son came to the place of incident and he was taken to Cherpulassery Government hospital. He identified the accused herein. FIS is marked as Ext. P1. During cross examination, he deposed that no one witnessed the incident apart from PW1. In his cross examination, he deposed that 6 persons along with accused beat and pulled PW1 and he further deposed that accused was in vehicle. He lost his consciousness. The case of the accused is that there was an allegation among the public that PW1 poisoned the cow of the accused herein and this case has been filed as a counter blast to that case.

9. PW2 is the witness to the incident. He deposed that the alleged incident was on near by the back side of the Basheer house. He saw PW1 was lying on the floor. Accused were standing near by PW1. Accused herein beat PW1. At that time PW2 tried to solve the dispute and Gopi came to the place of the incident and PW2 taken PW1 to the hospital.

10. PW3 is the witness to the scene mahazar. Scene mahazar is marked as Ext. P2.

11. PW4 is the Sub Inspector of Cherpulassery Police Station. He deposed that he has prepared the Scene mahazar in this case. Scene mahazar is

marked as Ext. P2. He has verified the statement of witness in this case and he verified the investigation in this case and filed final report before the court.

12. PW5 is the Head Constable of Cherpulassery Police Station. He has recorded the statement of PW1 and thereafter FIR was registered. FIR is marked as Ext. P3.

13. PW6 is the doctor who was treated PW1 at Cherpulassery Community Health Centre and issued Ext. P4 certificate. He deposed that the son of Hamsa teacher, Vappu and Hamsa along with five other persons beat PW1 at 4.00.p.m at Nellaya. This was the statement given by the accused to the doctor.

14. The learned counsel for the accused submitted that the evidence adduced by the prosecution is not sufficient to prove the guilt of the accused beyond reasonable doubt. Hence the accused are entitled to be acquitted.

15. On the other hand, the learned Assistant Public Prosecutor submitted that the evidence adduced by the prosecution is sufficient to prove the guilt of the accused beyond reasonable doubt. Hence accused is liable to be convicted.

16. This court would now address the argument put forward by the learned

defence counsel and the learned Assistant Public Prosecutor and perused the records in the above case. As per the prosecution case the alleged incident was on 1.12.2002 at 15.00 hours. PW1 was beaten by the accused herein and Ext.P1 statement was recorded on 17.15 hours at Cherpulassery Government Hospital. He deposed that accused were went in a vehicle at the time of PW1 was doing work. Thereafter three persons came behind the house of the Basheer and uttered obscene words against him and accused and some other persons beat him. He has given Ext. P1 statement on very same day of the incident. Ext. P4 is the wound certificate. In that wound certificate the cause of injury is the son of Hamsa teacher and Vappu and Hamsa teacher along with other five and more persons beat and kicked him. As per the case of the prosecution no one witnessed the incident. There was no external injury inflicted to PW1 apart from contusion. As per the evidence of PW1, no one witnessed the incident. Whereas as per the evidence of PW2 he witnessed the incident. The evidence of PW1 and PW2 are entirely contrary. There is contradiction with respect to the place of incident and cause of action.

17. PW1 in his FIS stated that he had looked on the children of the accused no. 2 while they were travelling in a jeep on the public roads which is situated near by the house of the Kalpaka Basheer. But he has no such case

before the court. PW1 stated in the FIS that the said persons reached the place of occurrence and left for their house. Thereafter they again reached the place of occurrence and committed the overtact. Whereas PW1 has no such case before the court. He has no case that three persons had reached the place of occurrence. He has also not mentioned about the jeep in his evidence before the court. PW1 has stated to the police in the FIS to the effect that he had asked the children of the accused no. 2 as to why they are standing on the road. Whereas PW1 has no such case before the court. PW1 goes to the extent of stating before the court that he became unconscious due to the attack of the accused persons. But he has no such case before the police. He stated that one of his teeth was shaken due to the attack of the accused. But the wound certificate will not reveal the same. PW1 sustained only one minor injury, contusion, PW1 has stated in his cross examination that there were no persons except the accused persons and himself till he fell down on the ground. If so there is no possibility for PW2 to witness the incident of this case. As per the scene mahazar the place of occurrence is the courtyard and the surroundings of the house of Basheer. If so, the scene of occurrence is totally changed while going through the evidence of the witnesses. It has come out in evidence that there was some allegation to the

effect that PW1 killed the cow of the accused persons by poisoning. There were some allegations against the father of PW2 to the effect of that he had poisoned the cow of the accused persons with the aid of PW1. The evidence of the PW1 and PW2 will throw light on this aspect. Hence the evidence of the PW1 and PW2 cannot be banged upon as trustworthy. Some independent evidence is absolutely necessary to close the alleged offence with the accused no. 1. It cannot be said that PW2 is an independent witness to the incident. He has got some interest in this case. It cannot be said that he is not on good terms with the accused persons due to the allegations levelled against his father. Aside From all these, the witness PW1 has stated to the doctor that he was attacked by 5 or 6 persons. Hence it is evident that the witness PW1 has no specific case with regard to the alleged incident of this case. He would state to the police that 3 persons were participated in the incident. But he would state before the court that 2 persons were involved in this case. At the same time he has stated to the doctor that 6 persons have participated in the incident. Hence I am of the view that the evidence funded by PW1 and PW2 is not at all sufficient to establish the case of prosecution. There is every possibility to pose a false case against him apprehending that the accused persons will make a complaint against the

witnesses. PW1 and PW2 with regard to the poisoning of the cow and dog of the accused persons. In this circumstances, I have to hold that the prosecution has not succeeded in proving the case put forth by it. In other words, the evidence is not at all sufficient to take a view that the accused has committed the offence under Section 323 and 341 of IPC.

18. More over to attract the offence u/s 294(b) IPC, two particulars has to be proved by the prosecution., 1) the offender had done any obscene act in a public place sung or recited or uttered any obscene song or words in or near in public place. 2) has so caused annoyance to others the acts is not so obscene, or not done in any public place or that not caused annoyance to others, no offence is attracted. In order to attract S. 294 (b) IPC, the place of occurrence to be public place or near a public place. Neither his statement nor his evidence, there is any averments that the accused had uttered any obscene words at public place to attract the offence u/s 294(b) IPC. In the present case there is no evidence to show that the ingredients of Sec. 294(b) IPC is attracted. At the outset, it is to be considered whether the ingredients of offence are Se. 294(b) IPC are attracted in this case. The prosecution has to prove that the accused did any obscene act in public place or sang, recited or uttered any obscene songs, ballad or words in or near any public place

and that the act caused annoyance to others. In the case on hand, prosecution has no case that accused had uttered obscene words to PW1 in or near public place. Hence it is clear that there is nothing on record to show that the accused did any obscene act in or near public place. It is also to be noted that the evidence of PW1 would show that the accused did not use any words which create obscene intent at the mind of the person, who heard it. Hence it is clear that the ingredients of section 294(b) IPC are not attracted in this case. Whereas in the evidence of witness, they have not stated the obscene words uttered by the accused. Here, in this case, the word uttered by accused is not obscene word. **In Sangeetha Lakshmanan v. State of Kerala 2008(2) KLT 845**, it was held that, *in order to satisfy the test of obscenity, the words uttered must be capable of arousing sexually impure thoughts in the mind of its hearers*. In the case on hand, the words alleged to have uttered by the accused are not capable of arousing sexually impure thoughts in the mind of its hearers. Hence it is clear that the ingredients of section 294(b) IPC are not attracted in this case.

19. The evidence adduced by PW1 is not sufficient to prove the guilt of the accused beyond reasonable doubt. Hence, the accused is entitled to be acquitted.

20. **Point no. 4**: In view of my finding on point nos. 1 to 3, accused is found not guilty of the offences punishable under sections 341, 323, 294(b) r/w 34 IPC. He is acquitted under sec. 255(1)Cr.PC of the above offences. His bail bond stands cancelled and he is set at liberty.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court, this 23rd day of May, 2026)

**Judicial First Class Magistrate-1,
Ottapalam.**

APPENDIX

WITNESSES EXAMINED FOR THE PROSECUTION

PW 1 : Chami (First Informant and injured witness)

PW 2 : Basheer (eye witness)

PW 3 : Saidalavi (Scene mahazar witness)

PW 4 : K. V. Prabhakaran (Sub Inspector, Cherpulassery Police Station.
(Investigating Officer)

PW 5 : M. Vella (Head Constable of Cherpulassery Police Station.)

PW 6 : Dr. Gopi, Assistant Surgeon, CHC, Cherpulassery.

WITNESSES EXAMINED FOR THE DEFENCE: Nil

EXHIBITS MARKED FOR THE PROSECUTION:

Ext. P1 : FIS dated 1.12.2022 marked through PW1.

Ext. P2 : Scene mahazar dated 30.7.2017 marked through PW3.

Ext. P3 : FIR dated 4.12.2002 marked through PW5.

Ext. P4 : Wound certificate dated 3.12.2002 marked through PW6.

EXHIBITS MARKED FOR THE DEFENCE: Nil.

Judicial First Class Magistrate-1, Ottapalam