

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS
KODUNGALLUR**

Present:- Smt. Sherin R A., Judicial I Class Magistrate

Dated this the 24th day of March 2026/ 3rd Chaithra 1948 SE

ST. 2713 OF 2017

State represented by the Sub Inspector of Police , Kodungallur P.S in Cr.No. 1154/2017 (By Asst . Public Prosecutor Kodungallur)	:	Complainant
1. Anitha Khader, aged54, W/o Abdul Khadar, Arakkaparambil house, Vellangallur P.O. 2. Muhammed Ashkar, aged 28, S/o Abdul Khadar, Arakkaparambil house, Vellangallur P.O (By Adv. Smt. Remya P)	:	Accused
Offence	:	U/s. 447,427,294(b), 506 r/w 34 of IPC
Plea	:	Not guilty
Finding	:	Not guilty
Order	:	Accused are acquitted of the offences punishable U/Ss. 447,427,294(b), 506 r/w 34 IPC u/s.255(1) Cr.P.C. Their bail bonds stand cancelled and they are set at liberty.

Description of the accused

Sl.No	Name	Father's Name	Occupation	Residence	Age
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1	Anitha Khader	W/ o Abdul Khader	Nil	Vellangallur	54
2	Muhammed Ashkar	Abdul Khader	Nil	Vellangallur	28

Date of

Occurrence	Complaint	Appearance or apprehension	Release on bail	Commencement of trial	Close of trial	Sentence or order	Explanation for delay	Period of detention undergone during investigation, inquiry or trial for the purpose of section 428 Cr.P.C
19.5.2017	30.5.2017	1.6.2019	1.6.2019	20.2.2021	23.3.2026	24.3.2026	No delay	Nil

This case having been finally heard on today the court delivered the following:

JUDGMENT

This case was taken on file based on the final report submitted by the S.I. of Police, Kodungallur Police Station in Crime No. 1154/2017 registered against the accused alleging commission of offences punishable U/ss. 447,427,294(b), 506 r/w 34 of IPC.

2. The prosecution case, in brief, is that PW1 had borrowed some amount from the first accused and, as he failed to repay the said amount, the accused, two in number, on 19.05.2017 at about 10:30 p.m., trespassed into the courtyard of the house of PW1 at 2, Mythri Lane in Lokamaleswaram Village and uttered obscene words at

PW1. They also threatened PW1 with death and destroyed the gate and flower pots, thereby causing a loss of Rs.1000 to PW1. Thus, the accused are alleged to have committed the aforesaid offences in furtherance of their common intention.

3. On receipt of FIS from PW1, PW4 registered the crime against the accused and after completing the investigation, PW5 filed the final report before the court .

4. On appearance, the accused were released on bail and were represented by a counsel of their choice. Copies of all relevant prosecution records were furnished to them under Section 207 of Cr.P.C. After hearing both parties and perusing the records, particulars of offence were read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

5. From the side of the prosecution, PW1 to PW5 were examined and Exts. P1 to P7 were marked. After closing the prosecution evidence, the accused were questioned u/s 313(1)(b) Cr.P.C. They denied all the incriminating circumstances put to them and maintained that they are innocent.

6. The accused were called upon to enter into his defence evidence. Ext.D1 and D2 were marked from the defence side.

7. Heard both sides.

8. The following points arise for consideration:

1. Whether the accused committed criminal trespass into the courtyard of PW1's house, as alleged by the prosecution?

2. Whether the accused uttered obscene words at PW1, as alleged by the prosecution?
3. Whether the first accused committed mischief by damaging the gate and flower pots of PW1, thereby causing a loss of ₹1000/- to PW1, as alleged by the prosecution?
4. Whether the accused criminally intimidated PW1 by threatening him with death, as alleged by the prosecution?
5. Whether the accused committed the aforementioned offences in furtherance of their common intention, as alleged by the prosecution?
6. If the accused are found guilty, what should be the sentence or order?

9. **Point Nos. 1 to 5:** PW1 is the aggrieved informant. PW2 is the wife of PW1 and an occurrence witness. PW3 is the scene mahazar witness. PW4 is the Sub-Inspector of Kodungallur Police Station who recorded the First Information Statement of PW1 and registered the case. PW5 is the Junior Sub-Inspector of Kodungallur Police Station who conducted the investigation and submitted the final report.

10. The accused denied the entire prosecution allegation. According to the accused, PW1 had borrowed some amount from the first accused and, towards repayment of the same, PW2 had issued a cheque and the same was returned unpaid on 30.05.2017. It is contended that, to prevent the institution of prosecution based on

the dishonour of the cheque, this case was fabricated. According to the accused, there is a delay of around 12 days in lodging the FIR and there are material contradictions in the testimony of PW1 and PW2 regarding the occurrence. The learned counsel for the accused pointed out the omissions and contradictions in the testimony of the prosecution witnesses and urged for the acquittal of the accused.

11. PW1 Rahim deposed that at the time of the occurrence he was running a business by name Ayurmix. On 19.05.2017, around 10 p.m., while he was sitting in the sit-out of his house, the first accused Anitha Khadar and her son Ashkar came on a scooter. They parked the scooter in front of his house and uttered obscene words at him. They forcefully entered into the house and continued to utter filthy words. PW1 got angry. The accused threatened him that if the outstanding amount was not repaid then and there, they would destroy the articles in the house. They created a commotion for around one hour. Thereafter, they left the house and, before that, the second accused Ashkar broke the flower pots and damaged the gate. They also created a commotion in the nearby house. According to PW1, at the time of the incident, his wife, their three children and his brother's son were also present at the spot. According to PW1, he had borrowed Rs.5 lakh from the accused and subsequently repaid Rs.1.5 lakh and towards the balance amount he had paid Rs.50,000, but the accused insisted on Rs.1 lakh and created a commotion. According to PW1, he had borrowed Rs.5 lakh for his business purpose. In the incident he

sustained a loss of Rs.5000. He also suffered humiliation among others. He identified the first accused as Anita Khadar, who was present in the court. The second accused was exempted from regular appearance and the counsel for the second accused submitted that the second accused did not dispute his identity. PW1 further stated that the place of occurrence stands in the name of his wife and that he is also in possession of the same.

12. He stated that regarding the incident he had given a statement to the police and the First Information Statement was marked as Exhibit P1. He had also shown the place of occurrence to the police and also shown the broken flower pots and the damaged portion of the gate to the police and the police collected the same from the spot. He identified MO1 series (2 in numbers) as the broken pieces of flower pots. During cross-examination, PW1 stated that the incident occurred on 19.05.2017, but due to some personal inconvenience he could lodge the FIS only on 30.05.2017. He admitted that the first accused is the daughter of his elder brother and the second accused is the son of the first accused, and he mentioned the same in his statement to the police. According to PW1, he had also mentioned the names of the persons who witnessed the incident, but he had no answer when it was specifically confronted that such mentioning was not seen in his statement. He denied having issued any cheque towards the transaction, but admitted that there were two cases (CC 495/2018 and ST 3/20) before JFCM Irinjalakuda and added that in those cases his wife was convicted

and he had preferred appeals against the judgments. He categorically denied having issued any cheque and its dishonour on 30.05.2017. When it was specifically confronted with the omission that there is nothing in his statement that the accused came on a scooter, he stated that he had mentioned the same in his statement.

13. According to PW1, the police collected the pieces of flower pots and pieces of the damaged gate. He admitted that he did not mention that the place of occurrence is in the name of his wife and that he had not produced any document showing the ownership of the place of occurrence to the investigating officer. PW1 denied having given a subsequent statement to the effect that the damage sustained was around Rs.30,000. According to PW1, in the statement given by him on 31.05.2017 he did not mention that the loss sustained was Rs.1000, and the relevant portion in the 161 statement of PW1 was marked as Exhibit D1.

14. PW2 Rasiya deposed that PW1 is her husband. While she, PW1 and their three children were at the sit-out of their house on 19.05.2017 at about 10:30 p.m., PW1's elder brother's wife Anita and her son came to their house and asked about the repayment of the money borrowed from them. According to PW2, they had to repay Rs.1,00,000 to the first accused and towards the same Rs.50,000 was paid and Rs.50,000 remained outstanding. They assured that it would be paid on the coming Monday, but it resulted in an altercation. The first accused got violent and shouted at PW2 and her children in filthy words. The second accused threatened PW1 with

death and thereafter they went outside the house. The second accused broke the flower pot placed outside the house and also broke the gate by stamping on it. They sustained a loss of Rs.1,000. PW2 identified the first accused as Anitha who was present in the court and stated that she could also identify the second accused who was absent in court on the relevant date. According to PW2, the incident occurred following the failure on the part of PW1 to repay the amount borrowed from the accused. According to PW2, the financial transaction was between PW1 and the accused and she had no transaction with the accused. She admitted that the first accused had filed a case against her for the dishonour of a cheque allegedly issued by her, but denied that she had issued any such cheque to the first accused. She admitted that in that case the date of dishonour of the cheque is 31.05.2017 and that she had received a lawyer notice intimating the dishonour of the said cheque. According to PW2, the incident occurred in her house and she had mentioned the same specifically in her statement. She admitted that she had not produced any document before the Investigating Officer showing the ownership and possession of the house in her name.

15. PW4 K.J. Jinesh deposed that while he was working as the Sub-Inspector of Police at Kodungallur Police Station on 30.05.2017, he recorded the F.I. statement of PW1. He identified Ext.P1 F.I. statement. Based on the same, he registered the present case and the FIR was marked as Ext.P3. He further stated that the investigation of the case was conducted by CW7.

16. In cross-examination, PW4 admitted that PW1 gave the First Information Statement only on the 12th day after the alleged date of occurrence and that no explanation regarding the delay was mentioned in the statement or in the FIR. When specifically asked by confronting the omissions and contradictions in the testimony of PW1, PW4 admitted that several facts deposed to by PW1 in court were not stated in the First Information Statement, including that the first accused is the daughter of PW1's elder brother and the second accused is her son, that the incident occurred at about 10 p.m. on 19.05.2017, that PW1's wife and children were present in the house, that the accused came on a scooter, that the incident continued for about one hour, that they created a commotion in nearby houses, that flower pots were taken from the top of the gate and thrown away, and that PW1 suffered humiliation.

17. PW5 Basant deposed that while he was working as the Junior Sub-Inspector of Police at Kodungallur Police Station on 31.05.2017, he took over the investigation of this crime. As shown by PW1 Rahim, he inspected the place of occurrence and prepared Ext.P2 scene mahazar. PW5 further stated that during the inspection of the scene, he found pieces of a broken flower pot lying at the spot. Two such pieces were seized by describing them in the scene mahazar and produced before the court along with the property list. The property list was marked as Ext.P4. He identified MO1 series as the seized pieces of the flower pot. He further deposed that on 03.06.2017 the accused appeared at the station and they were arrested and

released on bail. The arrest memo was marked as Ext.P5 and the bail bond was marked as Ext.P6. PW5 also stated that he later submitted a report before the court incorporating the full names and addresses of the accused, which was marked as Ext.P7. Thereafter he recorded the statements of the witnesses and, upon completion of the investigation, he filed the final report.

18. In cross-examination, PW5 stated that he learnt from the records that the alleged incident occurred on 19.05.2017 and that the case was registered on 30.05.2017. He admitted that there was a delay of 12 days in lodging the complaint and that no reason for the delay was mentioned in the First Information Statement. He further admitted that no documents were produced by the witnesses to show that the place of occurrence belonged to PW1 or PW2 and that no such document was produced before the court.

19. He further stated that only one piece each from two broken flower pots was taken into custody and that he had formed the opinion that the flower pot had been broken recently. He admitted that though the scene mahazar mentioned that a plastic flower pot was also broken, no such piece was seized. He stated that the loss of Rs.1000 was understood on the basis of the statement given by PW1.

PW3 Shashidharan identified his signature in the scene mahazar and it was marked as Exhibit P2.

20. The burden is upon the prosecution to establish the guilt of the accused beyond reasonable doubt. In order to prove the offences alleged, the prosecution mainly relies upon the oral testimony of PW1 and PW2, while PW3 is only a scene mahazar witness and PW4 and PW5 are the official witnesses who registered the crime and conducted the investigation.

21. The prosecution case rests primarily on the testimony of PW1, the de facto complainant. PW2, the wife of PW1, also supports the version of PW1 regarding the alleged occurrence. However, it is pertinent to note that the First Information Statement was lodged only on 30.05.2017, whereas the alleged incident is stated to have occurred on 19.05.2017. Thus, there is an admitted delay of about twelve days in lodging the complaint. PW1 has stated that the delay occurred due to personal inconvenience. However, no satisfactory explanation for the delay is seen mentioned either in the First Information Statement or in the FIR. PW4, the Sub-Inspector who recorded the First Information Statement and registered the crime, has clearly admitted in cross-examination that no explanation regarding the delay was mentioned in the First Information Statement or in the FIR. Such unexplained delay in lodging the complaint assumes significance, particularly when the parties are closely related and there existed prior financial transactions between them.

22. The evidence of PW4 further reveals several material omissions in the First Information Statement when compared with the version given by PW1 before the

court. PW4 has admitted that several facts spoken to by PW1 during trial were not mentioned in the First Information Statement. These include the allegation that the accused came to the house on a scooter, that they entered the house and uttered abusive words, that the incident continued for about one hour, that PW1's wife and children were present in the house at the time of occurrence, that commotion was created in nearby houses and that PW1 suffered humiliation. These omissions relate to the very manner in which the occurrence is alleged to have taken place and therefore assume material significance. The improvements made during trial cast serious doubt on the reliability of the prosecution version. Though the prosecution has denied the defence suggestion that the present case was falsely instituted for the said reason, the existence of such financial disputes between the parties gives rise to a possibility of exaggeration or false implication.

23. The evidence of PW5, the Investigating Officer, also reveals certain deficiencies in the investigation. PW5 has admitted that no document was produced before him to establish that the place of occurrence belonged to PW1 or PW2 and no such document has been produced before the court as well. Though it is alleged that the gate and flower pots were damaged causing a loss of Rs.1000, the loss has been assessed only on the basis of the statement of PW1 and no independent material has been produced to substantiate the same. PW5 has also admitted that though the scene

mahazar mentions that a plastic flower pot was broken, no such piece was seized during the investigation.

24. When the entire evidence on record is appreciated , the material omissions in the F I Statement, the unexplained delay in lodging the FI statement, the admitted financial dispute between the parties and the absence of independent corroboration create serious doubt regarding the prosecution version. Therefore I am of the considered view that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. The accused are therefore entitled to the benefit of doubt. The points are found accordingly against the prosecution.

25. **Point No.6:** In view of my findings on point Nos 1 to 5, this point does not arise for consideration.

1. In the result, accused are found not guilty for the offences under section 447,427,294(b), 506 r/w 34 of IPC and they are acquitted of the said offences u/s.255(1) Cr.P.C.
2. The bail bonds stand cancelled and accused are 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 24th March 2026

JUDICIAL FIRST CLASS MAGISTRATE,
KODUNGALLUR.

APPENDIX

Prosecution witness

PW1	Rahim	CW1	First Informant
PW2	Rasiya	CW2	Eye witness
PW3	Sasidharan	CW5	Mahazar witness
PW4	Jinesh	CW6	SIP Kodungallur
PW5	Basanth	CW7	SIP Kodungallur

Defence witness : Nil

Court witness : Nil

Prosecution Exhibits:

1	P1	F.I. Statement	PW1
2	P2	Scene mahazar	PW3
3	P3	FIR	PW4
4	P4	Property list	PW5
5	P5	Arrest memo	PW5
6	P6	Bail bond	PW5
7	P7	Accused address report	PW5

Defence Exhibits: D1. Relevant portion of 161 statement of PW1

D2 Judgment in ST.3/20 before JFCM Irinjalakuda (certified copy)

Court Exhibits : Nil

Material Objects : Broken pieces of flower pot

JUDICIAL FIRST CLASS MAGISTRATE,
KODUNGALLUR.