

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

Present:Smt. Nimmi Nair. M, Judicial First Class Magistrate-II, Neyyattinkara

Friday, 29th day of May 2026

C.C.512/2006

Complainant : State represented by the Sub Inspector of Police, Vizhinjam Police Station Crime No.159/2006.

(By Sri.Saji. A.V, Assistant Public Prosecutor, Neyyattinkara)

Accused

1. Benny, S/o Solomon, Annai Ellam, Thennoorkonam, Vizhinjam Desom, Vizhinjam Village.
2. Solomon, S/o Alankaram, Near Iceplant, Thennoorkonam, Vizhinjam Desom, Vizhinjam Village. **(No more)**

(By advocate C Kamalasanan)

Offence : Under sections 323, 324 and 506(ii) r/w S.34 of the Indian Penal Code, 1860.

Plea : Not Guilty

Finding : Not Guilty

Sentence : Accused no.1 is found not guilty and acquitted under section 248(1) of the Code of Criminal Procedure, 1973 for the offences under sections 323, 324 and 506(ii) r/w S.34 of the Indian Penal Code, 1860. The bail bond of accused stands cancelled and he is set at liberty. Charge against A2 is abated.

DESCRIPTION OF ACCUSED

Rank & Name	father's name	Age	Residence	Taluk
1.Benny	Solomon	46	Annai Ellam	Neyyattinkara
2. Solomon (No more)	Alankaram	73	Near Iceplant	- do-

DATES OF

Occurrence	Complaint	Apprehension	Period of detention undergone during investigation, inquiry or trial for the purpose of S.428 Cr.PC.	Release on bail	Commencement of trial
11.3.2006	31.7.06	12.06.06	12.06.06	12.06.06	15.5.10
Commencement of evidence		Close of trial	Sentence or order	Reason for delay	
17.9.12		26.5.26	29.5.26	No delay	

This case coming up for final hearing today, the court delivered the following:-

J U D G M E N T

1. This case has been arisen on a final report filed by the Sub Inspector of Police, Vizhinjam Police Station Crime No.159/2006 alleging the commission of offences against the accused under sections 323, 324 and 506(ii) r/w S.34 of the Indian Penal Code, 1860.
2. **The prosecution case in brief is as follows:-** Due to previous enmity towards the charge witness no.1 (CW1), accused nos.1 & 2, in furtherance of their common intention to cause hurt to her, on 11.06.06 at about 5.30 p.m. in Anna Illam near Northern side of Sifis Ice plant, Thennoorkonam in Vizhinjam Village, while CW1 was sitting in a chair, the 1st accused kicked the plastic chair on which she was seated. When CW1 fell down, accused no.2 came to the spot of incident. Thereafter, the accused persons stamped upon and assaulted various parts of her body. The 1st accused beat her with an iron rod on the left side of her head and threatened her that he will kill her. Thus, the accused are alleged to have committed the offences punishable under sections 323, 324 and 506(ii) r/w S.34 of the Indian Penal Code, 1860.
3. On the submission of final report by the Sub Inspector of Police, Vizhinjam, the cognizance was taken by this court for the offences under sections 323, 324 and 506(ii) r/w S.34 of the Indian Penal Code, 1860. The case was taken on file as C.C.512/2006 against the accused nos.1 & 2. On appearance of the accused, copies of all relevant records of the prosecution case were served and thereby

complied with the mandate under section 207 of the Code of Criminal Procedure, 1973. The charge was framed for the offences under sections 323, 324 and 506(ii) r/w S.34 of the Indian Penal Code, 1860 and read over to the accused to which they pleaded not guilty and claimed to be tried. Accused no.2 is no more. Hence, charge against him is abated.

4. In order to prove its case, PW1 to PW6 were examined and Exts.P1, P1(a), P2 to P7 were marked from the side of the prosecution.
5. After prosecution evidence, accused no.1 was examined under section 313(1) (b) of Criminal Procedure Code. He denied all the incriminating circumstances appearing in the prosecution evidence and maintained innocence. Thereafter, the accused was called upon to enter on his defence and to adduce evidence that he has in support thereof.
6. Heard the learned Assistant Public Prosecutor and the learned counsel for the accused.

7. **The points that arise for determination are as follows:-**

1. Whether the accused nos.1 & 2 in furtherance of their common intention, on 11.06.06 at about 5.30 p.m. Northern side of Sifis Ice plant, Thennoorkonam in Vizhinjam Village, criminally intimidated PW1 and thereby guilty for the offence punishable under section 506(ii) r/w S.34 of the Indian Penal Code, 1860, as alleged by the prosecution?

2. Whether the accused nos.1 & 2 in furtherance of their common intention, on 11.06.06 at about 5.30 p.m. Northern side of Sifis Ice plant, Thennoorkonam in Vizhinjam Village, voluntarily caused hurt to PW1 and thereby guilty for the offence punishable under section 323 r/w S.34 of the Indian Penal Code, 1860, as alleged by the prosecution?
3. Whether the accused nos.1 & 2 in furtherance of their common intention, on 11.06.06 at about 5.30 p.m. Northern side of Sifis Ice plant, Thennoorkonam in Vizhinjam Village, voluntarily caused hurt to PW1 with a dangerous iron rod and thereby guilty for the offence punishable under section 324 r/w S.34 of the Indian Penal Code, 1860, as alleged by the prosecution?
4. What if any, punishment to be awarded to the accused no.1?
8. **Point Nos.1 to 3:-** For the sake of convenience, all these points are considered together.
9. PW1 deposed before court that she had sustained injuries in the incident and was undergoing treatment, and she had given a statement, which is marked as Ext.P1. She further stated that the occurrence took place on 11.06.2006 at about 5.30 p.m. At the relevant time, she and her son were residing in the house of her elder daughter. PW1 stated that, at about 5.30 p.m., while she was having tea in the portico of the said house, Benny, the husband of her daughter,

asked her whether she would not consent to the sale of the property and thereafter threatened that he would kill both her and her son. According to PW1, Benny then kicked the plastic chair on which she was seated, causing her to fall onto a nearby toolbox. PW1 further deposed that Accused No.2 Solomon, the father of Benny, stamped upon and assaulted various parts of her body while she was lying on the ground. She stated that, upon seeing her daughter, son, and neighbours approaching the scene, Benny picked up an iron rod measuring about half a metre in length from among the tools and beat her on the left side of her head. She further stated that, as a result of the blow, blood spurted from her forehead onto the body of Benny. According to PW1, when the local people rushed to the spot, Benny and his father fled from the scene. PW1 further stated that the accused persons assaulted her on the allegation that she was the one obstructing the sale of the said property and house. She identified MO1, iron rod used for the assault.

10. PW2 deposed before court that, on the date of the alleged incident at about 5.30 p.m., his mother was sitting in the portico of the house belonging to his sister. He stated that the first accused, Benny, along with his father Solomon, came there and threatened, saying that they would kill both her and her son. According to PW2, the first accused kicked the chair on which his mother was seated, causing her to fall down along with the chair. He further stated that she fell onto a box placed near the fish tank. PW2 further deposed that, at that

time, Accused no. 2. assaulted his mother. He stated that the first accused then took a rod from among the tools and beat his mother on the left side of her forehead. PW2 further stated that thereafter the accused persons left the place. Subsequently, PW2 and his sister took his mother to the General Hospital for treatment. PW2 testified that the assault was committed under the misconception that the mother had thwarted the first accused's attempt to sell the house owned by his sister.

11. PW3 is the Mahazar witness in this case. He identified his signature in the scene mahazar, which is marked as Exhibit P2. On verification it is seen that PW3 is not cross examined. Though coercive steps taken against PW3 and CW5, the doctor, the presence of CW5 and PW3 could not be procured for which a report has been filed by the prosecution. Hence, CW5 and PW3 are given up by learned APP. Since not cross examined the statement of PW3 is eschewed.

12. PW4 deposed before court that on 11.06.2006, while he was working as the SHO of Vizhinjam Police Station. He came to know that CW1, Liby Robinson, had been admitted to the hospital at 5:30 p.m. on the said day. Accordingly, he entrusted CW6 and he recorded the statement of CW1. Based on the statement recorded by CW6 and the body inspection note, the FIR in this case was registered as Ext. P3. Thereafter, he proceeded to the scene of occurrence and

questioned the witnesses present. The scene mahazar prepared at the said place is Ext. P2. The iron rod recovered from the scene is described in the mahazar and is marked as Ext. P4, and as per Form 151A, the said iron rod is MO1. The report identifying the full names and addresses of the accused is marked as Ext. P5. The accused were subsequently released on bail, and Ext. P6 series consists of the bail bonds executed by them. The wound certificate is marked as Ext. P7. He completed the investigation and the final report was submitted before court. He further stated that he identified the accused.

13.PW5 deposed before court that while working as Head Constable attached to Vizhinjam Police Station in June 2006, he was informed by the seventh witness that PW1 had sustained injuries and was undergoing treatment at the Thiruvananthapuram General Hospital at about 5:30 p.m. on 11.06.2006. Upon receiving the said information, he proceeded to the hospital and recorded the statement of the injured as well as the body note. The said body note is marked as Ext. P1(a).

14.PW6 deposed before court that PW1 is her mother, and the 1st accused was her husband. The incident occurred on 11.06.2006 at about 5:30 p.m. while she, along with her mother and younger brother, was sitting in the sit-out of the house after having tea. At that time, her husband Benny and his father arrived, and Benny hit her on the head. When her mother questioned this, the accused

threatened that he would kill her, and kicked her mother along with the chair she was sitting on, causing her to fall. She and her brother lifted her mother up. The accused, Benny, then retrieved an iron rod from the tools kept near the fish tank and beat her mother on the head. When her mother initially parried the blow with her hand, she sustained a contusion on her hand. The second blow beat her head, causing a laceration from which she bleed and collapsed unconscious. Benny further inflicted multiple kicks on her mother's eyes, face, and abdomen with his footwear on. Upon their contacting the police station, Benny fled the scene. They shifted her mother to the General Hospital, Thiruvananthapuram, where she was diagnosed with a hairline fracture and a sprain, and a bandage was applied to her hand. She also had sutures on her forehead and remained hospitalized for two weeks. The property settled on her by her parents was sold to meet the demands of her husband's family, in lieu of which the house, where they resided at the time of the incident was transferred to her name. Consequently, Benny's parents had to relocate, which led to continuous torture. She stated she could identify the iron rod used for the assault, and upon being shown the same, identified it as MO1. She further stated that the person who assaulted her mother was present in court and that the police had questioned her and recorded her statement.

15. On the basis of above evidence, the learned Assistant Public Prosecutor contended that the prosecution case is proved beyond reasonable doubt by

adducing oral and documentary evidence. Evidence given by PW2 and PW3 collaborated each other and contended that the accused no.1 is to be convicted of the offence proved against her.

16. On the other hand, the learned counsel for the accused argued that the accused is totally innocent and he has been falsely implicated in this case. The evidence adduced before the court is not sufficient to prove the guilt of the accused. Learned counsel argued that the independent witnesses did not support the prosecution case and that proves the falsity of the prosecution case. It is further argued that medical report is not proved and that the accused is to be acquitted of the offences alleged against them.

17. In this case, it is alleged that the accused herein committed offences punishable under Sections 506(ii), 323, and 324 of the Indian Penal Code, 1860. Now, let us examine the ingredients of the above offences.

18. As per **Section 506 of the Indian Penal Code, 1860** a person who commits the offence of criminal intimidation is liable for punishment. “Criminal intimidation” has been defined in Section 503 which reads as under: *“Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person*

is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

19. Likewise, if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, increased punishment is provided in Section 506 (ii) of the Indian Penal Code, 1860.

20. Now, let us consider the ingredients of Sections 323 and 324 of the Indian Penal Code, 1860.

Section 323 of the Indian Penal Code reads as follows:

“Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

To establish this offence, the prosecution must prove two core ingredients:

- (a) That the accused performed a voluntary act;
- (b) That such voluntary act caused hurt (bodily pain, disease, or infirmity) to the victim.

Section 324 of the Indian Penal Code reads as follows:

“Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting... or by means of any animal.”

For proving an offence under Section 324, the prosecution must establish:

- (1) That the accused caused bodily pain, disease, or infirmity;
- (2) That it was caused to another person;
- (3) That it was caused intentionally or with knowledge of its likelihood;
- (4) That it was caused by a weapon likely to cause death, or by other dangerous means.

21. In this case, the prosecution alleges that the accused persons, in furtherance of their common intention, voluntarily caused hurt to PW1, assaulted her with an iron rod and also criminally intimidated her. To establish the offences punishable under Sections 323, 324 and 506(ii) read with Section 34 of the Indian Penal Code, the prosecution mainly relies upon the oral testimony of PW1, PW2 and PW6, along with Ext.P7 wound certificate and MO1 iron rod.

22. PW1 is the injured witness in this case. She deposed that on 11.06.2006 at about 5.30 p.m., she was sitting alone in the portico of the house of PW6 and drinking tea. According to PW1, the 1st accused questioned whether she would consent to the sale of the property and thereafter threatened that he would kill both her and her son. PW1 further stated that the 1st accused kicked the plastic

chair on which she was sitting and that she fall onto a nearby toolbox. According to PW1, only thereafter the 2nd accused came to the spot and assaulted her. PW1 further deposed that the 1st accused thereafter beat her on the left side of her forehead using MO1 iron rod. According to her, upon hearing the commotion, her daughter, son and neighbours came to the scene and thereafter the accused persons ran away.

23.PW2, who is the son of PW1, supported the prosecution case to the extent that the 1st accused kicked the chair on which PW1 was sitting and thereafter assaulted her using an iron rod. According to PW1, she was sitting alone at the relevant time and her son reached the scene only after the incident commenced. PW1 specifically stated that upon hearing the commotion, her daughter, son and neighbours came to the spot. However, PW2 deposed in the cross-examination that he had witnessed the occurrence and that he was present in the hall room of the said house. This disparity regarding the very presence of PW2 at the scene at the relevant time is significant and it affects the credibility of his deposition.

24.PW1 specifically stated that only after she fell down from the chair, the 2nd accused came to the spot and assaulted her. However, PW2 deposed that both accused persons came together to the place of occurrence. PW6 also stated in chief examination that both accused persons arrived together. Thus, there is

clear inconsistency regarding the presence and participation of the 2nd accused at the initial stage of the occurrence.

25. There are also material improvements in the evidence of PW6. In chief examination, PW6 deposed that on 11.06.2006 at about 5.30 p.m., she, her mother and younger brother were sitting in the sit-out and were drinking tea when her husband Benny and his father came there. She further stated that Benny first hit her on her head and when PW1 questioned the assault, the 1st accused uttered that it is PW1 and her son to be beaten. and thereafter kicked PW1 together with the chair. According to PW6, she and her younger brother lifted PW1 thereafter. PW6 further stated that construction materials and iron rods were lying near the fish tank and the 1st accused took one such iron rod and beat PW1 on her head. According to her, PW1 initially blocked the blow with her hand and sustained injury on the hand and thereafter the second blow struck on her head causing bleeding and unconsciousness.

26. PW6 further improved the prosecution case by stating that after PW1 fell down unconscious, the 1st accused repeatedly kicked PW1 on her eyes, face and abdomen using his footwear. However, no such allegation is seen in the evidence of PW1. PW1 nowhere stated that she was kicked with footwear on her face, eyes and abdomen after sustaining the alleged iron rod injury. Further, Ext.P7 wound certificate also does not reveal injuries corresponding to

repeated kicking on the face, abdomen or eyes. These omissions and material improvements. of the testimony of PW6 cast doubt on the veracity of the prosecution case.

27. PW6, in her cross examination, stated that she was also present in the sit-out at the time of the incident. However, this version is inconsistent with the testimony of PW1, who had stated that she was alone at the relevant time and that her daughter and son reached the place only after hearing the commotion. Thus, the presence of PW6 at the scene from the very beginning itself becomes doubtful. Further, when PW6 was questioned regarding the nature and description of the iron rod allegedly used in the assault, she could not give any clear or specific answer. PW6 further stated in cross examination that it was the first accused Benny who initially kicked PW1 along with the chair and only after witnessing the same, the father of Benny, namely the 2nd accused, came to the place. This version again materially differs from the evidence of PW2 and also from portions of her own chief examination wherein she stated that both accused persons had come together to the scene of occurrence. PW6 further deposed that the 2nd accused had caught hold of her hair and dragged and assaulted her during the incident. However, no such allegation is seen either in the evidence of PW1 or in the prosecution case from the records. This amounts to a material improvement made during evidence before court.

28.The prosecution has not examined the doctor who issued Ext.P7 wound certificate. Therefore, the medical evidence has not been properly proved. Though Ext.P7 shows injuries including a laceration on the left forehead, contusion and abrasion, the doctor was not examined to correlate the injuries with the prosecution case or to clarify whether such injuries could also be caused by a fall on a toolbox as alleged in evidence. In cross examination, PW2 admitted that he had stated before police that PW1 sustained injury after falling from the chair onto the toolbox. Thus, the possibility that the injuries noted in Ext.P7 could have been caused due to the fall itself cannot be ruled out.

29.Another important circumstance is that though PW1 stated that neighbours rushed to the spot after hearing the commotion, no independent witness from the locality has been examined by the prosecution. PW3, the mahazar witness, was not cross-examined and his evidence has already been eschewed. Therefore, there is no independent corroboration to the prosecution case.

30.In **Hemraj v. State of Haryana (2005) 10 SCC 614**, the Honourable Apex Court held that no independent witness was examined and not even an explanation was sought to be given for not examining such witness. The Honourable Supreme Court of India held that it is a serious infirmity in the prosecution case. The Honourable Supreme Court of India further pointed out

that non-examination of independent witness by itself may not give rise to adverse inference against the prosecution. However, when the evidence of the alleged eye-witnesses raise serious doubts on the point of their presence at the time of actual occurrence, the unexplained omission to examine the independent witness, would assume significance.

31.It has also come out in evidence that there existed prior enmity ,matrimonial disputes. and property disputes between the parties. The prosecution witnesses themselves admitted that disputes had arisen regarding sale of the property and house standing in the name of PW6. It has also been mentioned in Exhibit P1 first information statement. that there existed an injunction order relating to the said property dispute. Hence, the possibility of exaggeration in the prosecution version cannot be completely ruled out. In the above circumstances, foisting a false case against the accused cannot be ruled out.

32.In **Pulicherla Nagaraju @ Nagaraja Reddy v. State of A.P reported in AIR 2006 SC 3010** by the Honourable Supreme Court of India held that evidence of an interested or close relative requires scrutiny with more care and caution. The Honourable Supreme Court of India further held that if the interested witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.

33.The Honourable Supreme Court of India in **Baldev Singh v. State of Punjab**

AIR 2013 SC (Criminal) 2224 pointed out that if there is previous enmity between the witness and the accused, the evidence of the witness has to be carefully scrutinized by the Court before it is accepted. Above dictum laid down by the Honourable Supreme Court of India is squarely applicable to facts and circumstances of the case.

34.To attract Section 323 IPC, the prosecution must establish that the accused voluntarily caused hurt to the victim. To attract Section 324 IPC, the prosecution must further establish that the hurt was caused by means of a dangerous weapon. Similarly, for constituting an offence under Section 506(ii) IPC, the prosecution must prove intentional threat causing alarm to the victim. In the present case, due to the material inconsistencies regarding the occurrence, contradictions relating to the presence of witnesses, improvements in the testimony of PW6, absence of proper medical evidence and non-examination of independent witnesses, this Court is of the view that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Therefore, this Court finds that the prosecution has failed to prove the offences punishable under Sections 323, 324 and 506(ii) read with Section 34 of the Indian Penal Code against accused Nos.1 and 2 beyond reasonable doubt. Accordingly, Point Nos.1 to 3 are found against the prosecution.

35.**Point No.4:-** In view of my findings on Point Nos.1 to 3, it is found that the

accused no.1 is found not guilty of the offences punishable under sections 323, 324 and 506(ii) r/w S.34 of the Indian Penal Code, 1860 and he is entitled to be acquitted of the said offences.

In the result, the accused no.1 is found not guilty of offences punishable under sections 323, 324 and 506(ii) r/w S.34 of the Indian Penal Code, 1860 and accordingly he is acquitted of the said offences under section 248(1) of the Code of Criminal Procedure, 1973. His bail bond stands cancelled and he is set at liberty. Charge against A2 is abated.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me, in open court, on this the 29th day of May 2026).

Sd/-

Judicial First Class Magistrate– II,
Neyyattinkara.

APPENDIX

Witnesses for the prosecution

PW1	:	Liby Robinson	(Informant)
PW2	:	Sandeep Robinson	(Occurrence witness)
PW3	:	Noel Don Thomas	(Occurrence witness)
PW4	:	Sureshkumar	(Police witness)
PW5	:	Sreedharan	(Police witness)
PW6	:	Reena Benny	(Occurrence witness)

Exhibits for the prosecution:-

P1	:	FIS dated 11.6.06 proved through PW1
P1(a)	:	Body note dated 11.6.06 proved through PW5
P2	:	Scene mahazar dated 12.5.06 proved through PW3
P3	:	FIR dated 11.6.06 proved through PW4
P4	:	KPF form dated 12.6.06 proved through PW4
P5	:	Report dated nil proved through PW4
P6series	:	Bail bond dated 11.6.06 proved through PW4
P7	:	Wound certificate dated 11.6.06 proved through PW4

Witnesses & Exhibits for the defence:-NIL

Material Objects:-

MO.1	:	Twisted rod
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Sd/-

Judicial First Class Magistrate– II,
Neyyattinkara.

//True copy//

Judicial First Class Magistrate– II,
Neyyattinkara.