

IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE.I, MANANTHAVADY

Present : -Sri. Anand Parathara,Judicial First Class Magistrate. I, Mananthavady

Saturday, this the 25th day of April, 202605th day of Vaisakha, 1948 (S.E)**Calendar Case No.119/2017**

Complainant	State represented by the Sub Inspector of Police, Vellamunda in Crime No.34/2017 (By Sri.Firos.E.S, APP Gr. II)
Accused	1.Anto @ Joseph, S/o Manuel, aged 40/17, Pathikunnel House, Panavally, Thirunelly. 2.Rajesh, S/o Kumaran, aged 34/17, Puthanparambil House, Ondayangadi, Payyampally Amsom, Mananthavady. 3.George @ Saju, S/o Joseph, aged 43/17, Thruthel House, Payod, Nalloornadu Amsom. 4.Thomas, S/o Mathayi, aged 34/17, Erath House, Paingatteri, Nalloornadu Amsom. 5.Antony, S/o Varghese, aged 47/17, Kurisinkal House, Thonichal, Nalloornadu Amsom. (Rep. By. Adv.Saji Mathew)
Offence	U/Ss.143, 147, 148, 341, 323, 324, 452 and s.427 r/w 149 IPC
Plea	Not guilty
Finding	Not guilty
Sentence or order	Accused are found not guilty of the offence punishable under sections 143, 147, 148, 341, 323, 324, 452 and s.427 r/w 149 of the IPC. They are acquitted under section 248(1) of the Code of Criminal Procedure and set at liberty. Bail bonds executed by them hereby discharged.

DESCRIPTION OF ACCUSED:-

Sl.No.	Name	Father's name	Residence	Occupation	Age
1	Anto @ Joseph	Manuel	Panavally		40/17
2	Rajesh	Kumaran	Ondayangadi		34/17
3	George @ Saju	Joseph	Payod		43/17
4	Thomas	Mathayi	Paingatteri		34/17
5	Antony	Varghese	Thonichal		47/17

Date of

Offence	Report or complaint	Apprehensio n of accused	Released on bail	Commence ment of trial	Close of trial	Sentence or order	Explanati on of delay and remarks
25.01.2017	01.04.2017	25.01.2017	27.01.2017	13.03.2018	22.04.2026	25.04.2026	-

This case having been heard finally and stood over to this day's proceedings, the court passed the following:-

J U D G M E N T

This case was instituted on a report filed by the Sub Inspector of Police of Vellamunda Police Station in Cr.No.34/2017, alleging the offence punishable under sections 143, 147, 148, 341, 323, 324, 452 and s.427 r/w 149 of the IPC

2. The prosecution allegation is that at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled with deadly weapon and trespassed into the shop namely Global Glass Designs and wrongfully restrained CW1 (Manas Thomas) and beaten him with hands and a stick. The accused further overturned a glass table inside the shop and thereby committed mischief by causing a loss of ₹40,000/-. Thus the accused are alleged to have committed the offences punishable under s. 143, 147, 148, 341, 323, 324, 452 and s. 427 of the Indian Penal Code r/w s. 149 of the Indian Penal Code (hereinafter referred to as the IPC) .

3. On appearance of the accused, copies of relevant prosecution records were furnished to them under section 207 of Cr.P.C. Thereafter, charge under sections 143, 147, 148, 341, 323, 324, 452 and s.427 r/w 149 of the IPC framed and read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

4. From the side of the prosecution, PW1 to PW14 were examined and Exts.P1 to P7 and MOs 1 and 2 were marked. Ext.D1 marked on the side of the defence. After closing prosecution evidence, the accused were questioned under section 313 (1) (b) of Cr.P.C and they denied all the incriminating circumstances appearing in evidence

against them. Thereafter, the accused were called upon to adduce his evidence. No evidence adduced on the side of the defence.

5. Heard both sides.

6. From the above facts and evidence, the following points are raised for consideration:

1. Whether at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled, trespassed into the shop namely Global Glass Designs and thereby committed the offence punishable under s. 143 IPC read with s. 149 of IPC?
2. Whether at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled, trespassed into the shop namely Global Glass Designs and engaged in rioting and thereby committed the offence punishable under s. 147 IPC read with s. 149 of IPC?
3. Whether at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled, trespassed into the shop namely Global Glass Designs, engaged in rioting being armed with deadly weapon and

thereby committed the offence punishable under s. 148 IPC read with s. 149 of IPC?

4. Whether at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled, trespassed into the shop namely Global Glass Designs, wrongfully restrained PW1 and thereby committed the offence punishable under s. 341 IPC read with s. 149 of IPC?
5. Whether at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled, trespassed into the shop namely Global Glass Designs, voluntarily inflicted injury to PW1 and thereby committed the offence punishable under s. 323 IPC read with s. 149 of IPC?
6. Whether at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled, trespassed into the shop namely Global Glass Designs, voluntarily inflicted injury to PW1 using dangerous weapon and thereby committed the offence punishable under s. 324 IPC read with s. 149 of IPC?

7. Whether at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled, trespassed into the shop namely Global Glass Designs, voluntarily inflicted injury to PW1 using dangerous weapon and thereby committed the offence punishable under s. 452 IPC read with s. 149 of IPC?
8. Whether at 6.30 pm on 25/01/2017, at Porunnannoor at Karakkamala, due to a previous enmity, in prosecution of their common object, the accused unlawfully assembled, trespassed into the shop namely Global Glass Designs, committed mischief by caused a loss to the tune of ₹40,000/- to PW1 and thereby committed the offence punishable under s. 427 IPC read with s. 149 of IPC?
9. If so, what shall be the punishment to be imposed?

7. **Points Nos. 1 to 8 : -** There points are considered together as they are closely related and for the sake of brevity. The prosecution case in brief is that , on 25/01/2017 at about 6:30 PM, at Porunnannoor, Karakkamala, the accused, owing to prior enmity and in furtherance of their common intention, unlawfully assembled while armed with deadly weapons and trespassed into the shop named *Global Glass Designs*, where they wrongfully restrained PW1 and assaulted him using their hands and a stick. The previous enmity was due to the fact that PW1 did not repair the leakage of the

aquarium bought from the shop. The accused also overturned a glass table inside the shop, thereby committing mischief and causing a loss estimated at ₹40,000/-.

8. PW1 in this case, PW1 is the victim. He deposed that 7 persons entered the office room where he was sitting in the office of the glass shop , at 6.30 pm on that day. He narrated the incident that 7 persons exited from a red car while he was sitting in the office. They enquired about Mr. Tejus. One of those persons stated to PW1 that they came to receive the money for the glass. So PW1 asked for the bill of the said transaction. Then one of the persons slapped PW1 on his face. The other person who stood nearby took a glass display piece and hit PW1 on his head. Two of the said persons restrained PW1. One of the persons swished a knife aiming the throat of PW1 who blocked the attack using his hands. PW1 received wound on near his right elbow. The accused also hit PW1 on his knee using a stick. When PW1 screamed, the other staff came there and took him to the hospital. PW1 was asked what he felt when he was hit by the stick. To this question he answered that he felt pain. PW1 identified the accused as the persons who attacked him. He also identified the MO1 stick, as the one used to attack him. PW1 continued that during the incident, the accused destroyed everything inside the office including the computers. He identified the glass pieces as (MO2) as the remnants. Accordingly, PW1 gave the First Information Statement to the police. The same is marked as Ext.P1.

9. During the cross examination PW1 reiterated that though he had stated to the police that 3 persons came to the office, there were in fact 7 persons. PW1 further deposed to the effect that he has taken no legal action or steps as there are only 5 persons accused in this case. Pw1 deposed that he is aware that the charge is laid against

only 5 persons. He is acquainted with one Mr. Anto from St. Patricks School. PW1 deposed that in the said shop, they properly maintain the accounts and stock registers. The loss happened to the shop due to the alleged acts would have been reflected in the stock registers. PW1 deposed that the said stock register is not submitted with regard to this case. There were no other customers at the relevant time. There are several residents nearby. PW1 deposed that there was hues and cries. The neighbours did not come there. Until PW1 was taken to the hospital, the police did not come there. PW1 was asked whether he scratched the vehicle in which the accused arrived. To this question PW1 answered in the negative. PW1 deposed that his father is a politician and a ward councillor. PW1 does not know who informed the police. The police came to the hospital to receive the written complaint from PW1. PW1 had a bleeding injury on his head as he was hit by the glass piece. PW1 explained that the glass used to attack him did shatter and PW1 had shown the bleeding injury to the doctor. There were no sutures though. PW1 did not notice anything unusual with the accused when they arrived at the office. He did not notice them carrying the wooden stick. PW1 admitted that he does know that a wooden stick and a reaper are not the same. He also admitted that MO1 is a reaper. PW1 admitted that there is no specific reason for not stating in Ext. P1 that he was hit with a reaper. PW1 had no answer when he was asked whether there is any reason for not stating in Ext. P1 that he was attacked by a knife as aforesaid and also with regard to the deposition that he was hit on his knee. But PW1 added that the knee was bleeding though there were no sutures. PW1 could not recollect whether he was there while the police seized MO1 and MO2 in this case. PW1 admitted that there is no specific logo or sign on MO1 and MO2 though there is a painting on the same. PW1

admitted that he did not state to the police with regard to the computer that was deposed to be destroyed by the accused during the incident and there is no reason for not stating so. PW1 admitted that the first accused had bought an aquarium on behalf of St. Patricks School. It had a leak and PW1 was ready to repair the same. But the bill was not issued in the name of the first accused. PW1 denied the suggestion that he destroyed the aquarium brought by the accused and injured himself in that act.

10. PW2 to 6 are examined as the eye witnesses in the alleged incident. PW2 deposed that the incident was on 25/01/2017 at 6.30 pm at their office. The accused had bought an aquarium which had a leak and the same was repaired. When it further leaked, the accused created the problem. The accused destroyed the table inside the office. They attacked with a piece of wood. PW2 identified the accused persons and also MO1.

11. During the cross examination PW2 deposed that he is the owner of the shop and he had stated the same to the police. He holds the license to run the shop. But PW2 admitted that he did not submit the licence to the police. PW2 also admitted that there are several residents nearby the shop and they had arrived at the place of incident. The police had questioned them also. Pw2 was there when the police arrived. PW2 was at the godown at the relevant time and he did not see the incident PW2 deposed that the police had shown the accused thereafter and conducted an identification parade. PW2 admitted that he had sold an aquarium to the first accused. PW2 denied the suggestion that he and PW1 attacked the accused.

12. PW3 was working in the glass shop at the relevant time. He deposed that while he was working so, he heard a noise and when ran to the place he saw that PW1 was being beaten. PW3 was not able to identify the accused.

13. PW5 was working as the accountant with PW1. He deposed that the incident was at 5.30 pm on 25.01.2017. He saw PW1 being beaten. PW1 was bleeding from his face, knees and elbows. PW1 was taken to the hospital. PW5 deposed that PW1 was being beaten with glass. PW1 was also kicked by the accused by keeping him to one corner of the shop. PW5 identified the accused persons.

14. During the cross examination PW5 deposed that there is an attendance register maintained in the office. His duty time is till 7 pm. The attendance register would reflect the presence of PW5 in the office at the relevant day. PW5 denied the suggestion that he was not working in the office. PW5 admitted that he did not state to the police as to who attacked PW5 with the glass. PW5 saw the glass pieces shattered there. PW5 admitted that he did not state to the police as to the specific role of each accused. PW5 explained that he was not acquainted with the accused. He suddenly took PW1 to the hospital. PW5 admitted that the aquarium sold to the accused was leaking recurrently though it was repaired once.

15. PW6 is the brother of PW1 and PW2. The incident took place at about 6pm on 25/01/2017. PW6 saw that PW1 was being kicked by about 6 people. PW6 identified all the accused persons. During the cross examination PW6 deposed that the police came there within about 20 minutes. PW6 ascertained that the accused did not bring the aquarium in the office as the same was so big to bring inside the office room.

16. PW7 was working as the Sub Inspector at Vellamunda Police Station at the relevant time. While he was doing patrolling duty, he got the information regarding the alleged incident. He came to the spot at about 7.30 pm. He saw that the accused were being restrained by the owners of the glass shop and other people. The key of the vehicle in which the accused arrived there was being kept by PW2. When PW7 obtained the key from PW2 and inspected the vehicle he saw that its paint was scratched off. Though PW7 deposed that he could identify the accused, during the cross examination he admitted to the effect that he is not sure with regard to the identification. PW7 took the accused to the station as he apprehended that the people gathered there would attack the accused. PW7 also deposed that PW2 was among them.

17. PW8 is the owner of the building in which the aforesaid glass shop was. He deposed that there was a loss of about 2 lakh. PW8 admitted that the licence to the shop was not allowed as there were complaints from the people nearby. PW8 denied having stated so to the investigating officer. The relevant portion in the statement of PW8 under s. 161 of the Code of Criminal Procedure, is marked as Ext.D1 wherein he admitted that there was no licence to the shop. PW8 added that the stock register of the shop would reflect the loss that happened due to the mischief.

18. PW9 is the witness to Ext.P2 scene mahazar. He also witnessed the police seizing MO1 and MO2. PW9 identified the same. PW9 deposed that MO1 and Mo2 were sealed and labelled. PW9 did not see the vehicle involved. PW9 admitted that he has been acquainted with PW1 for several years.

19. PW10 was working as the casualty medical officer at district Hospital , Mananthavady. While so, at 7 pm on 25/01/2017, he examined pW1. The alleged history

stated to PW10 was that PW1 assaulted by 7 persons. PW1 was hit on his head with glass. His head was hit against the wall and that the assailants lifted PW1 catching hold of him by his neck. PW10 deposed that PW1 complained of head ache, pain on both forearms and in the neck. There were multiple aberrations on the neck and on both the forearms. PW10 deposed that he issued Ext.P3 wound certificate and that in his opinion, the injuries could be as alleged. During the cross examination PW10 deposed that PW1 had stated to him that he did not know the name of the assailant. PW10 deposed that he did not note any bleeding injury. It is also stated that PW1 did not state that he was attacked by any wooden stick or reaper. PW10 added that he did not note any such injury evincing that PW1 was attacked with a glass.

20. PW11 was working as the Assistant Engineer at the building section of the office of Public Works Department at Mananthavady. He issued Ext.P4 valuation certificate. He valued the loss to the tune of ₹8855/- after inspecting the building pertaining to the place of incident. It is also stated that he could not ascertain the value of the supporting structure and the fittings to the glass. During the cross examination he deposed that the request for the evaluation was received on 27/01/2017. Ext.P4 was issued on 16/03/2017. There is no explanation for the delay. There is no statement as to the changes caused during the period of delay.

21. PW12 was Vellamunda Panchayat secretary and he issued the ownership certificate of the building pertaining to the place of incident. The same was marked as Ext. P5.

22. PW13 was working as the Senior Civil Police Officer at Vellamunda Police Station at the relevant period. While so, at 21.10 hours on 25/01/2017, he

recorded the statement of PW1. He inspected the injuries of PW1 and also reported the same as Ext.P1(a). Thereafter he returned to the station and registered the First Information Report (Ext.P6). During the cross examination PW13 admitted that PW1 did not state that he was attacked with a knife and a reaper. The specific role of each accused is not stated. Their names are not stated. PW13 denied the suggestion that he recorded the injuries as stated in Ext.P1(a) in order to favour PW1. It is not stated that the injuries had happened during the alleged incident.

23. PW14 was working as the Sub Inspector at Vellamunda Police Station at the relevant period. He conducted the investigation in this case. After concluding the same, he submitted the final report. The investigating officer who conducted the investigation previously was no more. PW14 identified his signature. The arrest and inspection memo with regard to the accused were marked as Ext.P8 (5 in numbers). The address adding report is marked as Ext.P9. PW14 admitted that he did not seize or submit the licence with regard to this case. The exact place of incident PW14 admitted that in the First Information Statement, it was stated that there were 7 persons who attacked PW1. There has been no investigation with regard to that and no explanation but there are only 5 accused herein. Though it is deposed that PW1 was struck with a reaper, there is no such statement in the First Information Statement. PW14 did not seize the attendance register or stock register from the shop. No knife is seized with regard to the alleged incident. There is no statement in Ext.P1 that any glass was broken by the accused. PW14 is not aware as to where the accused were taken after they were taken into custody by PW7 till the time of their arrest.

24. The learned Assistant Public Prosecutor argued that in this case, PW1 deposed supporting the prosecution case. The eye witnesses also deposed in tune with PW1. There are no material contradictions proved as per law. Mere suggestions do not affect the prosecution case. The injuries deposed by PW1 is evidence from the wound certificate marked as Ext. P3 and from the evidence of the doctor (PW10).

25. The learned counsel for the accused argued that in this case, there are only 5 accused. But the complaint (Ext.P1) is with regard to 7 persons. There is no case for the prosecution that it is an approximate number. PW1 is certain that there were 7 persons. Hence the identification of the accused is doubtful. It is evidence that the first accused had bought an aquarium from PW1. Hence they are acquainted in that aspect only. It is the prosecution to prove that it is the accused who inflicted the injuries and committed the offences alleged. The identity of the accused is the primary aspect. It is admitted by the investigating officer that there is no explanation for such discrepancy in the array of the accused. It is also pertinent to note that PW1 admitted that he was aware that the case was being proceeded against 5 persons only and that he has taken no legal action against this. Hence the prosecution case is doubtful with regard to the array of accused. It is also pertinent to note that no names are mentioned in Ext. P1 when the first accused is admittedly a customer of PW1.

26. The learned counsel for the accused also pointed out that PW1 admitted that he does know that a wooden stick and a wooden reaper are different articles. In Ext. P1 , there is no statement that PW1 was attacked by a wooden reaper. This is different from that of the evidence of PW1. There is doubt with regard to the identification of MO1. Further, there is no statement that PW1 was hit with a glass in

Ext. P1. There is doubt with regard to the identification of MO1 and MO2. There is discrepancy in the evidence with regard to this aspect in the evidence of PW1 and PW2. The prosecution case is that the accused overturned the glass table in the office of PW1 and caused the mischief. In the evidence of PW1 and PW2, it is further developed and they deposed that the computer was also destroyed. There is no investigation or explanation from the part of the prosecution with regard to this.

27. PW1 was alone at the office. The other witnesses ran there after hearing the hues and cries. There is a chance for the other witness to see the aftermath of the alleged incident. Yet there is no cogent evidence that PW1 was attacked with a knife. There is no investigation in this aspect. Hence it can only be considered as exaggerations from PW1. PW10, the medical officer deposed that he did not see any bleeding injuries on PW1. Ext.P1(a) is the portion where PW13 recorded the injuries he saw on PW1. He recorded the same in Ext.P1. But it is to be noted that PW13 inspected PW1 after the medical examination by PW10. There were no bleeding injuries at the time of examination by P10 soon after the alleged incident. Hence the evidence of PW13 is doubtful. In this regard it is pertinent to note that PW7 is the police officer who came to the scene at the first instance upon getting the information. But he did not register the crime upon such information of a cognizable offence having committed. In the evidence of PW7 it is stated that he took the accused from the place as they were restrained by some people which included PW2. PW7 obtained the keys to the vehicle of the accused, from the custody of PW2. Hence the prosecution case itself in this case is highly doubtful. PW1, 2 and 6 are brothers. The accused has a case that they are interested witnesses. Hence their evidence has to be considered with caution. It is

admitted that they maintain the attendance register and stock register in the shop. Such registers are not produced in this case. If the registers were produced, it would have proved if PW3 to 5 were the staff at the shop and if they were present there at the relevant day. Further, if the stock register was produced, it would have reflected the alleged mischief.

28. The learned counsel for the accused pointed out that, in this case, the accused were devoid of a chance to cross examine the investigating officer as he is no more. There are a lot of contradictions in the evidence of PW1 to 6 which could have been proved if the investigating officer was examined.

29. The learned counsel for the accused also pointed out that PW 7 went to the alleged place of incident soon after. PW2 is admittedly present when PW7 came there. It is also evident that PW7 got the information about a cognizable offence and did not register the crime. This aspect renders the prosecution case highly doubtful. As discussed above, PW7 deposed that he took the accused herein into custody in order to prevent attack from the shop owners and the people gathered there. Further, the keys of the vehicle was in the custody of PW2. The learned counsel also pointed out that the written complaint was 'collected' as per the version of PW1. There was a written complaint. There is the suppression of the same. Hence this case is only an afterthought and out of political influence. PW8 who is the father of PW1, is a politician. Though there is no cogent evidence for the said argument, it is considered that the evidence of PW7 read with that of PW1 puts the prosecution case itself in the shadow of doubt.

30. In the evidence of PW10, he did not see any bleeding wound. Only abrasions were noted. This does not tally with the narration of the alleged incident by

PW1. Thereafter PW13 noted bandages on PW1 regarding which, the corresponding injuries were not noted by the doctor (PW10). There is no mention that PW13 went to the hospital upon receiving intimation. Hence there is lacuna in the investigation also. Further, these aspects are not explained by the prosecution.

31. PW14 inspected the place after 2 months. The evaluation is highly doubtful. The learned counsel pointed out that in this case, there are several contradictions and omissions. PW10 investigated the case. But he is no more. Hence the contradictions could not be proved through him.

32. Ext. P8 series are the arrest memo. PW7 arrested the accused. The place mentioned is Vellamunda. But the alleged place of incident is at Karakkamala. There is no explanation from the prosecution with regard to the interim custody of the accused till the time of the arrest.

33. It is also evident that there are people living nearby. It is also admitted that there were several people gathered there at the time of the alleged incident . Yet the staffs of PW1 and his brothers are the witnesses cited. There is no explanation from the prosecution for not including such witnesses.

34. The learned counsel for the accused pointed out that in the incident pertaining to the counter case, the accused are injured. In such a situation, the prosecution has to explain herein with regard to such injuries. Especially when there are interested witnesses, the prosecution ought to have explained the injuries of the accused persons. The learned counsel for the accused pointed out that in the decision in **Ashokan v. State of Kerala**, reported as [2017 (2) KHC 669], it was held so. Hence in this case, the presence of the accused therein is not totally denied. Hence the prosecution

has failed to disclose the full and true facts transpired at the alleged place of incident. Hence the prosecution case is highly doubtful.

35. The learned counsel for the accused also pointed out that in the decision in **Madathil Narayanan and Others v. State of Kerala and Another** reported as [2017 (1) KHC 418] it was held that the victim not disclosing the names of the accused as on the date of the incident renders the prosecution case doubtful. In this case, the names of the accused are not disclosed till now. As discussed above, there are 7 persons mentioned in the First Information Statement and also by PW1. But the case is against only 5 persons. There is no mention regarding their particular involvement. Their names are not disclosed. It attains relevancy as the first accused is admittedly a customer at the shop of PW1.

36. In the backdrop of the infirmities already noted with respect to the identification of the accused and the inconsistencies in the prosecution evidence, this Court is required to examine whether the ingredients of the offences alleged under Sections 143, 147 and 148 of the Indian Penal Code stand established. To attract Section 143, there must be cogent proof of an unlawful assembly as defined under Section 141 IPC, along with a common object shared by all its members. In the present case, the very composition of the alleged assembly is rendered doubtful, inasmuch as the prosecution case oscillates between the presence of seven persons and the arraignment of only five accused, without any satisfactory explanation. This discrepancy strikes at the root of the prosecution case regarding the existence of a definite unlawful assembly. In the absence of clear and consistent evidence as to the identity and number of participants, the essential requirement of a common object cannot be safely inferred.

Consequently, the allied offences under Sections 147 and 148 IPC, which presuppose the existence of such an unlawful assembly and the use of force or deadly weapons, also fail to stand proved beyond reasonable doubt, particularly in view of the contradictions relating to the alleged weapons used.

37. With regard to the offences under Sections 341, 323 and 324 IPC, the prosecution is obliged to establish wrongful restraint and the causing of hurt, including by dangerous weapons or means. However, the evidence on record does not inspire confidence in this regard. The version of PW1 concerning the manner of assault and the weapons used suffers from material omissions in Ext.P1 and subsequent embellishments during trial. The absence of any reference to certain weapons in the earliest version, coupled with discrepancies between the testimonies of PW1 and PW2, raises serious doubts as to the occurrence in the manner alleged. More importantly, the medical evidence adduced through PW10 does not corroborate the allegation of injuries inflicted by dangerous weapons, as no bleeding injuries were noted and only minor abrasions were recorded. This inconsistency assumes significance in evaluating the charge under Section 324 IPC. In such circumstances, even the lesser offence under Section 323 IPC cannot be said to have been proved with the degree of certainty required in a criminal trial.

38. The charge under Section 452 IPC, which relates to house trespass after preparation for hurt, assault or wrongful restraint, also does not stand substantiated. The prosecution has not placed reliable evidence to establish that the accused had made any prior preparation for committing such acts before entering the premises. The licence to the shop is not produced. There is no explanation in that regard. The evidence

adduced is neither consistent nor sufficient to prove the element of preparation, which is a sine qua non for attracting Section 452 IPC. Similarly, the allegation of mischief under Section 427 IPC is not supported by satisfactory evidence. While the prosecution case is that a glass table was overturned and certain articles were damaged, the evidence in this regard appears to be embellished during trial, with witnesses introducing new elements such as destruction of a computer, which find no mention in Ext. P1. The non-production of stock registers or other documentary evidence to substantiate the alleged loss further weakens the prosecution case.

39. Viewed cumulatively, the prosecution evidence suffers from material contradictions, omissions and investigative lapses, including the failure to examine independent witnesses, the non-explanation of injuries on the accused in the alleged counter case, and procedural irregularities in the registration and investigation of the crime. These deficiencies assume greater significance in light of the defence allegation that the key witnesses are closely related and thus interested. This necessitates cautious scrutiny of their testimony. The failure of the prosecution to dispel these doubts and to establish the essential ingredients of the offences alleged under Sections 143, 147, 148, 341, 323, 324, 452 and 427 IPC beyond reasonable doubt entitles the accused to the benefit of doubt. Accordingly, this Court finds that the prosecution has not succeeded in proving its case beyond reasonable doubts.

40. **Point No. 9**:- After considering the findings in Points No. 1 to 8, I find that this point does not arise for consideration and the same is answered accordingly.

In the result, accused are found not guilty of the offence punishable under sections 143, 147, 148, 341, 323, 324, 452 and s.427 r/w 149 of the IPC. They are

acquitted under section 248(1) of the Code of Criminal Procedure and set at liberty. Bail bonds executed by them hereby discharged. MOs 1 and 2 being valueless shall be destroyed as per law.

(Dictated to the Confidential Assistant, transcribed and typed by him corrected and pronounced by me in the open Court on this the 25th day of April, 2026)

**JUDICIAL FIRST CLASS MAGISTRATE. I
MANANTHAVADY**

APPENDIX

A. WITNESSES EXAMINED FOR PROSECUTION:-

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
PW1	Manas Thomas	Eye witness
PW2	Lins	Eye witness
PW3	Jaseer	Eye witness
PW4	Ansar	Eye witness
PW5	Ajesh	Eye witness
PW6	Sonu	Eye witness
PW7	K.Ajith	Eye witness
PW8	P.J.Thomas	Other witness
PW9	Sayd	Other witness
PW10	Dr.Praveen	Medical witness
PW11	Navya Krishnan	Expert witness
PW12	Sanalkumar	Police witness
PW13	Noushad	Police witness
PW14	Manoharan	Police witness

B. Defence Witness : Nil

C. Court Witness : Nil**List of Prosecution/Defence/Court Exhibits:-****A. Prosecution Exhibits:**

1	Exhibit P1/PW1	First Information Statement
2	Exhibit P1(a)/PW13	Physical condition report
3	Exhibit P2/PW9	Scene mahazar
4	Exhibit P3/PW10	Wound certificate
5	Exhibit P4 /PW11	Valuation certificate
6	Exhibit P5/PW12	Ownership Certificate
7	Exhibit P6/PW13	FIR
8	Exhibit P7/PW14	Property list
9	Exhibit P8 series/PW14	Arrest and inspection memos
10	Exhibit P9/PW14	Address adding report

B. Defence Exhibits:

1	Exhibit D1/PW8	Relevant portion of 161 statement of PW8
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C. Court Exhibits: Nil**D. Material Objects:**

1	MO1	Stick
2	MO2	Pieces of glass

**JUDICIAL FIRST CLASS MAGISTRATE.I
MANANTHAVADY**