

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II, MAVELIKARA

Present:-

Smt. Viveeja Raveendran, LL.M., Judicial First Class Magistrate

Dated this the 3rd day of July, 2018

C.C. No.21/14

Complainant : State of Kerala – rep. by Addl. S.I. of Police,
Nooranad in Cr.No.102/13.

(by Senior Gr. APP-I, Mavelikara)

Accused : A1. George Thomas @ Sunny.
A2. Anikuttan.

*(by Adv. Stephen J. Daniel for A1; and
Adv.G. Madhu for A2)*

Offence : U/ss.114, 451 and 506(i) r/w S.34 of IPC.

Plea : Not guilty.

Finding : Not guilty.

Sentence or order : Accused are acquitted u/s.255(1) Cr.P.C.

DESCRIPTION OF THE ACCUSED

Sl.No.	Name	Father's name	Occupation	Residence		Age
1	George Thomas @ Sunny, Pallatharayil Veedu, Naduvile Muri, Nooranad Village.					49/14
2	Anikuttan S/o Krishnan, Ancy Bhavan, Kokkolimoola bhagom, Pulimel Muri, Nooranad from Elamthengu Vayalnikathu Veedu, Attukal Kalady, Manakkad Village, Thiruvananthapuram.					37/14
Date of occurrence	Date of complaint	Date of apprehension	Release on bail	Commence-ment of trial	Close of trial	Sentence or order
22/01/13	20/01/14	29/04/14 (A1) 16/06/14 (A2)	29/04/14 16/06/14	29/04/14 16/06/14	02/07/18	03/07/18

This case coming on this day for consideration, the court delivered the following:-

J U D G M E N T

Accused, 2-in numbers are put in trial for the offences punishable under Sec.114, 451 and 506(i) r/w S.34 of IPC.

2. Prosecution case in brief is as follows:- The defacto complainant – Shaji (CW1) had got registered a case against A1 before the Nooranad Police Station. Due to this animosity, on 22/01/13 at 10.30 a.m., A2 at the instigation of A1 reached the house of CW1 in a motorcycle and standing at the front door of the sit-out of his house, criminally intimidated him by threatening that he was given quotation by A1 for finishing CW1 off and for the same, he was given an advance amount of Rs.5,000/- and hence he is planning for a hit and run using a vehicle with the help of his men. The accused thus committed the offences alleged above.

3. During investigation, A2 alone was arrested by the police and enlarged on bail. A1 went absconding. Hence, after the investigation with a report that A1 is absconding, the police filed a final report alleging the offences above before the court.

4. On appearance of the accused before the court, they were furnished with copies of all the relevant prosecution records. Particulars of offences were read over and explained to them, to which they pleaded not guilty.

5. To prove its case, the prosecution examined **PW's 1 to 6** and marked Exts.P1 to P4. CW2 is no more and his death certificate is produced . Though coercive steps were taken against CW7, his presence could not be procured by the prosecution. Hence, the prosecution evidence is closed.

6. On completing the prosecution evidence, the accused were examined u/s.313 Cr.P.C., during which they denied all the incriminating circumstances appearing in the prosecution evidence against them and added that they are innocent of the allegations levelled against them. A1 also denied having any connection with the alleged incident. According to him, on an earlier occasion, the defacto complainant had approached the Hon'ble High Court of Kerala alleging that he was attempted to be killed by A1 with a vehicle. The matter was inquired into and rejected by the High Court. A2, on the other hand admitted that he had reached the house of the defacto complainant on the date of alleged incident. According to him, he was called over phone by the mother-in-law of the defacto complainant and asked him to come to the house of the defacto complainant for doing some spade work in the property. He was also informed that Shaji would be standing on the road side waiting for him. Believing her words, he went to the house of Shaji in his motorcycle. As informed, Shaji was standing on the road side waiting for him. On seeing A2, the defacto complainant asked him to get into his house; but he did not enter the house. He was then asked to do the work, who in turn informed that he

had other works. Shaji then asked him to get into the sit-out of his house and offered a chair. He was also given a glass of water and asked him to sit for about 10 minutes. Thereafter, Shaji closed the grill of the sit-out. Another man introduced to be a friend of Shaji was also sitting there. While A2 was drinking the water, the other man slapped him. When questioned, he was informed that they are waiting for a person and the reason behind the attack would be stated to him on his arrival. Thereafter, Sivadasan Sir from the Nooranad police station reached the house of Shaji and questioned about his company with A1 and was thrown into the police jeep. He was thus deliberately trapped in this case by the defacto complainant for the reason that he is a labourer of A1.

7. Heard both sides.

8. The points that arise for consideration are:-

- (1) *Whether A2 trespassed into the sit-out of the house of PW1 and thus committed the offence punishable u/s.451 of IPC?*
- (2) *Whether A2 criminally intimidated PW1 and thus committed the offence punishable u/s.506(i) of IPC?*
- (3) *Whether the offences u/s.451 and 506(i) of IPC were committed by A2 at the instigation of A1 and in his presence and thus committed the offence punishable u/s.114 of IPC?*
- (4) *Whether the accused acted in furtherance of their common intention?*
- (5) *What is the punishment, if any to be imposed to the accused?*

9. Point nos.1 to 4:- For the sake of convenience, this points are taken together for consideration. PW1 - Shaji is the defacto complainant. The offences are allegedly committed against him. He is an Ex-serviceman. He had taken part several wars including the Kargil War. He is residing at Shaji Bhavanam in Naduvile Muri of Nooranad Village. PW2-Chandralekha is his wife and PW5-Rajamma is his mother. PW1 is living in animosity with A1 – George Thomas. He had got registered a crime against A1 as Crime No.747/11 of Nooranad Police Station. A1 also got registered several cases against PW1.

10. On 22/01/13 at 10.30 a.m., A2 reached the house of PW1. He was later arrested and taken to the police station from the house of PW1 and got registered the above crime against him and A1. PW1 was under police protection during that period. PW3 is the civil police officer attached to the Nooranad police station deputed for providing police protection to PW1 on that day.

11. It is alleged by the prosecution that A2 reached the house of PW1 at the instigation of A1 and standing at the door of the house of PW1, he criminally intimidated him which ultimately led the registration of the above crime against the accused persons. A1 totally denied the allegations. Whereas, A2 admitted that he had reached the house of PW1. According to him, he reached the house in response to a phone call made by the mother-in-law of

PW1 for doing some spade work in the property of PW1. He did not know that it was a trap made by PW1 against him and A1. He never criminally intimidated PW1; it is contented.

12. To prove its case, the prosecution got examined the defacto complainant as PW1 and three other witnesses viz. Chandralekha, Unnikrishnan and Rajamma as PW's 2, 3 and 5, who according to the prosecution are the occurrence witnesses. Of them, PW5 who is none other than the mother of PW1 did not support the prosecution. She did not admit that she had seen the incident. She also denied having given any statement before the police. Hence except the evidence of PW5, the evidence of other witnesses are reproduced hereunder for an easy reference.

13. According to PW1, on 22/01/13 at 10.30 a.m., A2 reached his house in a motorcycle bearing Regn.No.KL-04/R-3348 and pushing open the grill of the house, trespassed into it and criminally intimidated him by threatening that unless he withdraw the Crime 747/11 got registered against A1, he would be killed and a quotation for the same was given to him for an amount of Rs.5,000/-. He was also told that A2 is therefore, planning for a hit and run using a vehicle with the help of his men. PW3 was present at the house and he heard the threat held out by A2. Thereafter, the police was duly alerted by PW3 and got arrested A2; it is deposed. It is also deposed that on that very day itself, he had given Ext.P1 FIS before the police.

14. According to PW2, who is none other than the wife of PW1. On 22/01/13 at 10.30 a.m., A2 reached her house in a motorcycle bearing Regn.No. KL-04/3348 and entered the house and threatened PW1 that he was given quotation by A1 for finishing PW1 off using a vehicle. PW3 was present at the house and he immediately alerted the police and got arrested A2; it is deposed. It is also deposed that she had also seen A1 standing to the east of her house.

15. According to PW3, on 22/01/13, he was deputed for protection duty at the house of PW1. He reached there at 8.00 a.m. At about 10.30 a.m. while he was sitting along with PW1 at the sit-out of his house, A2 reached there in a motorcycle and standing at the door of the sit-out of PW1, talked to him. Thereafter, he heard A2 threatening PW1 and went towards them. He was then informed by PW1 that A2 was threatening him, who in turn duly alerted the police and got arrested A2, it is deposed.

16. At the very outset, I may point out that though the specific case of the prosecution is that A2 committed the offences at the instigation of A1, no investigation is seen conducted to find out the role of A1 in the alleged incident. On the other hand, the investigating officer (PW6) simply accepted the statement of PW1 in his Ext.P1 that he was told by A2 that he was given quotation for finishing PW1 off by A1 and for the same, he was paid an advance amount of Rs.5,000/-, to array A1 as an accused in this case. Had PW6

conducted an effective investigation, he could have unearthed the connection between A1 and 2, the communication, if any between them prior to the alleged incident and the connection of A2 with any quotation team etc. However, unfortunately no investigation is seen conducted by PW6 to find out the above aspects. On the other hand, as I have stated above, the investigating officer simply believed PW1 and arrayed A1 as an accused in this case for the simple reason that they are living in animosity. Coming to the evidence side, the prosecution solely relied on the evidence of PW's 1 and 2 to connect A1 with the alleged incident. PW1 categorically deposed before the court that it was at the instigation of A1 that A2 committed the above offences against him. According to him, he was told by A2 that it was A1 who had given him quotation for finishing PW1 off and hence, he came to the conclusion that it was at the instance of A1 that A2 committed the above offences against him. To strengthen his evidence, he also deposed in his cross-examination that he had seen A1 standing near his house while A2 was arrested and taken from his house by the police. It may be noted that, PW1 had no such case in his Ext.P1 which is the first available version regarding the incident. To put it other evidence, the said evidence is nothing but an improvement made by him before the court to strengthen his claim that it was at the instigation of A1 that A2 committed the above offences against him. Needless to say that, the said evidence is only to be rejected. I do so. Needless to say, as I have stated above

that the prosecution has thoroughly failed in adducing any satisfactory evidence to connect A1 with the alleged offence and hence he is only to be acquitted for the offences alleged against him.

17. The sole question which may be considered as to whether the evidence of PW's 1, 2 and 5 could be relied upon in proof of the fact that A2 has committed the offences punishable u/s.451 and 506(i) of IPC. Admittedly A2 entered the house of PW1 at 10.30 a.m. on 22/01/13. According to the prosecution, he entered the house in order to criminally intimidate PW1 and did do the same. Whereas according to A2, he was asked to come to the house of PW1 by his mother-in-law over phone for doing some spade works in the property and hence he reached there. He also denied having criminally intimidated PW1 as alleged by the prosecution. PW1 did support the prosecution allegations. PW's 2 and 3 also supported him. However, analysing the evidence of PW's 2 and 3, for the following reasons, I am not inclined to accept their evidence to corroborate the case of PW1. PW2 who is none other than the wife of PW1 is undoubtedly an interested witness. Though she categorically deposed in her evidence in chief that she had seen A2 criminally intimidating PW1, her cross-examination reveals that she was not present at the sit-out of the house where the alleged incident took place and she rushed to the spot on hearing the hue and cry from her sit-out. Needless to say that she never had an occasion to see or hear A2 criminally intimidating PW1 as claimed by

her in the examination-in-chief. To put it otherwise, her evidence in chief was on the basis of hearsay knowledge and hence no reliability can be placed upon it in support of the evidence of PW1.

18. Coming to the evidence of PW3, I am also satisfied for the following reasons that he is an unreliable witness and that no reliability can be attached to his evidence in support of the evidence of PW1. As I have stated above, PW3 is a Civil Police Officer attached to the Nooranad Police Station. According to him, he was on the protection duty of PW1 on the alleged date of incident and while he was sitting at the sit-out of the house of PW1 with him, A2 reached there and criminally intimidated PW1. PW's 1 and 2 also categorically deposed in their respective evidence that PW3 in uniform was present at their house when the alleged incident took place. Can it be believed? For the following reasons, I disbelieve the same. PW3, according to himself and PW's 1 and 2, was in police uniform. A2, according to them also saw him sitting at the sit-out of the house of PW1. Despite the same, according to PW's 1 and 2, A2 criminally intimidated PW1, which conduct of A2 in my opinion is quite unnatural or against ordinary course of human conduct. No man will dare do it as claimed by PW's 1 and 2 in the presence of a police officer in uniform and thereby put his life under risk of arrest etc. at the hands of that police officer. The evidence of PW3 before the court also support my above view. He only stated before the court that while PW1 was talking with A2 at the door of the

sit-out of his house, he heard A2 threatening PW1. What was the threat which he claimed to have heard? His evidence is silent as to the same. He is also not seen stated it before the police in his 161 statement. Why did not he state it either before the police or before the court in his evidence? The answer is simple. He was not there at the house of PW1 and witnessed the incident as claimed by himself and PW's 1 and 2. Had he been there, his evidence would not have been the one as I have stated above. On the other hand, he could have very well deposed in his evidence before the court the threatening words allegedly used by A2 to criminally intimidate PW1. It appears to me that it was only after the alleged incident that he reached the house of PW1 in connection with his duty and to cover up the same that he gave statements before the police claiming that he had witnessed the incident. Hence, for the reasons above stated, I also reject his evidence as unreliable one.

19. Then the sole evidence left to be considered is that of the highly interested uncorroborated testimony of PW1 himself. As I have stated above, he did support the prosecution allegations in his evidence before the court. He categorically deposed before the court that after entering his house, he was criminally intimidated by A2 by threatening that unless he withdrew the Crime No.747/11 which he had got registered against A1, he would be killed with a vehicle and a quotation for the same was given to him for an amount of Rs.5,000/-. It may be noted that in his Ext.P1, which is the first version

regarding the incident, PW1 had no case that A2 demanded him to withdraw the crime which he had got registered against A1 to avoid the execution of the threat held out by him; where on the other hand, he only stated that A2 entered his house and criminally intimidated him by saying that he was given a quotation by A1 to finish him off and for the same, he accepted an advance amount of Rs.5,000/- from A1 and despite the quotation, he is only planning not to kill PW1 but cause to hit him with a vehicle using his men. To put it otherwise, PW1 had no case in his FIS that A2 had told him the purpose behind the threat to avoid its execution. The eagerness of PW1 to connect A1 to the alleged incident is also evident in his statement before the court which also casts doubt in me regarding the reliability of the evidence of PW1 in proof of the prosecution allegation. PW1 had no case in his Ext.P1 that he had seen A1 standing somewhere near his house when A2 was arrested and taken by the police from his house. But in his evidence before the court, he deposed in categorical terms that A1 was present somewhere near his house at the time of the alleged incident and that he had seen him there when A2 was taken by the police from his house which amounted to material contradiction affecting his credibility, and the same was also proved by A2 through the investigating officer (PW6). The admitted animosity of PW's 1 and A1 further casts doubt in me regarding the reliability of the evidence of PW1. It may be noted that there are several criminal cases pending between PW1 and A1. Some are got

registered by PW1 against A1 and some others are got registered by A1 against PW1. It is also come out in evidence that barely 12 days after the alleged incident, another case under the POCSO Act was got registered against PW1 at the instance of A1 through the minor daughter of A2 which according to the learned Counsel for PW1 is a retaliation to the above case got registered by PW1 against A1 and A2. Considering all these aspects, I am of the opinion that it is quiet unsafe to rely upon the sole uncorroborated interested testimony of PW1 in proof of the fact that A2 has committed the offences alleged against him. Hence, I reject his evidence also as unreliable one. Needless to say that the prosecution has miserably failed to prove beyond reasonable doubt that A2 has committed the offences alleged above. This points are thus found against the prosecution.

20. Point no.5:- In view of my finding on point nos.1 to 4, I find the accused not guilty of the offences punishable u/ss.114, 451 and 506(i) r/w S.34 of IPC and accordingly they are acquitted u/s.255(1) Cr.P.C. Their bail bonds stand cancelled and they are set at liberty. Item in TR 32/18 on bond shall be made absolute.

(Dictated to the C.A., data entered by him, corrected and pronounced by me in Open Court on this the 3rd day of July, 2018).

Judicial First Class Magistrate-II,
Mavelikara.

APPENDIXWitnesses for prosecution:-

PW1-Shaji.

PW2-Chandrakleha.

PW3-Unnikrishnan, Civil Police Officer.

PW4-Anu.

PW5-Rajamma.

PW6-M. Sivadasan, Addl. SI of Police.

Exhibits for prosecution:-*(marked through)*

P1-First Information Statement dtd.22/01/13. PW1

P2-Scene mahazar dtd.22/01/13/ PW4

P3-First Information Report dtd.22/01/13. PW6

P4-Address report. “

Witnesses & exhibits for defence:-

N I L

Judicial First Class Magistrate-II,
Mavelikara.

pk/-