2025:KER:91907

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 28TH DAY OF NOVEMBER 2025 / 7TH AGRAHAYANA, 1947

CRL.A NO. 596 OF 2019

CRIME NO.257/2009 OF Aryancode Police Station, Thiruvananthapuram

AGAINST THE JUDGMENT DATED 29.04.2019 IN SC NO.877 OF 2012 OF ADDITIONAL SESSIONS COURT, NEYYATTINKARA

ARISING OUT OF CP NO.32 OF 2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,NEYYATTINKARA

APPELLANTS/PETITIONERS/ACCUSED 1 TO 3:

1 BINU THANKAPPAN,
AGED 49 YEARS, S/O. THANKAPPAN,
PERUNTHOTTATHU VEEDU,
VAZHICHAL, VAZHICHAL VILLAGE,
THIRUVANANTHAPURAM 629 101

2 ANEESH,
AGED 32 YEARS, S/O. CHANDRAN NAIR,
ANEESH VIHAR,
VAZHICHAL DESOM, OTTASEKHARAMANGALOM,
THIRUVANANTHAPURAM 629 101

3 SHAJI,
AGED 45 YEARS, S/O. THANKAYYAN NADAR,
KALIYAL VEEDU,
VAZHICHAL DESOM, OTTASEKHARAMANGALOM,
THIRUVANANTHAPURAM 629 101

BY ADVS.
SRI.S.RAJEEV
SRI.V.VINAY
SRI.M.S.ANEER
SHRI.SARATH K.P.
SHRI.PRERITH PHILIP JOSEPH
SHRI.ANILKUMAR C.R.

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SHRI.K.S.KIRAN KRISHNAN
SHRI.ABDUL RASHEED N.

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA,
REP BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM,
REPRESENTING CIRCLE INSPECTOR OF POLICE,
VELLARADA POLICE STATION,
THIRUVANANTHAPURAM DISTRICT.

BY SMT.SREEJA V., PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19.11.2025, THE COURT ON 28.11.2025 DELIVERED THE FOLLOWING:

2025:KER:91907

"C.R."

BECHU KURIAN THOMAS, J.

Crl. Appeal No.596 of 2019

Dated this the 28th day of November, 2025

JUDGMENT

The appellants were accused Nos. 1 to 3 in S.C. No. 877 of 2012 on the files of the Additional Sessions Court, Neyyattinkara. They are aggrieved by the conviction and sentence imposed upon them by judgment dated 29.04.2019. As per the impugned judgment, the appellants have been found guilty for the offences under sections 143, 147, 148, 452 r/w section 149, 323 r/w section 149, 332 r/w section 149, 294(b) r/w section 149, 354 r/w section 149 apart from section 3(1) of the Prevention of Damage to Public Property Act, 1984 (for short 'PDPP Act'). The maximum sentence of five years was imposed for the offence under section 452 IPC and the sentences were directed to run concurrently.

2. Prosecution alleged that a group of people under the leadership of the 1st accused, created public nuisance at 9.15 pm on 16.08.2009 at Vazhichal junction in connection with an election to the Service Co-operative Bank at Ottasekharamangalam. The prosecution alleged that

after the above incident, at 9.45 pm on the same day, under the leadership of the 1st accused, a group of people numbering to fourteen, formed themselves into an unlawful assembly. Thereafter, in prosecution of their common object, they trespassed into the Aryancode police station and committed rioting, armed with deadly weapons. In that process, the accused caused hurt to the policemen on duty, apart from outraging the modesty of a woman Police Constable, who was on sentry duty. The accused also shouted obscene words, while accused 2 and 3 attempted to commit culpable homicide not amounting to murder on PW2 by kicking on his vital parts which if not warded off, would have resulted in his death. The accused restrained PW9 and damaged his name plate and whistle chord, apart from damaging the chairs and the collapsible grill gate of the police station, thereby causing a loss of Rs.15,000/- to the Government and thus committed the offences under sections 143, 147, 148, 149, 452, 323, 332, 308, 294(b), 354 and 427 IPC, apart from sections 3(1) of the PDPP Act.

3. In order to prove the prosecution case, PW1 to PW10 were examined and Exhibit P1 to Exhibit P14 were marked while the defence examined DW1 to DW5 and marked Exhibit D1 to Exhibit D3. MO1 was also marked on behalf of the prosecution.

4. During the course of trial, the 5th accused died and the proceedings against him abated. The trial court, after analysing the

evidence adduced, came to the conclusion that accused 4 and 6 to 14 were not guilty, while accused 1 to 3 were guilty of the offences, except under section 308 IPC.

5. Sri. S. Rajeev and Sri. V. Vinay, the learned counsel for the appellants contended that the entire prosecution allegations are without any basis and hence the conviction and sentence imposed upon the appellants are liable to be set aside. In support of his contentions, the learned counsel submitted that the evidence of PW1 and other witnesses ought to have been discarded by the trial court as they were all interested witnesses and in the absence of any independent witness, the court ought not to have relied upon their evidence to arrive at a finding of guilt on the appellants. The learned counsel further submitted that the crime was registered with a political motive and the 1st appellant, who was the Vice-President of the Panchayat, was targeted by the police with ulterior motives and further that the benefit of doubt ought to have been extended to the said accused. It was also argued that the prosecution had failed to prove that the injured witnesses were on duty to attract the offence, apart from failing to explain the injuries on the accused. The learned Counsel also submitted that in any event, after the acquittal of accused 4 and 6 to 14, the trial court could not have convicted the appellant for unlawful assembly as there were no five persons to form such an assembly and further that police station could not have been

regarded as a house for committing the offence under section 452 IPC.

6. Smt. Sreeja V., the learned Public Prosecutor on the other hand submitted that the trial court had properly evaluated the entire evidence and came to the conclusion regarding the guilt of only three of the accused out of fourteen and therefore the judgment does not warrant any interference. The learned Public Prosecutor also pointed out that the witnesses had deposed in tune with the prosecution case and also that they had identified the involvement of accused 1 to 3 in the crime. Referring to the evidence of PW1 to PW3, it was submitted that the involvement of the 1st accused has been specifically spoken to and that he was even identified by name and there is nothing to disbelieve the prosecution version. Adverting to the specific arguments on behalf of the appellants, it was submitted that a police station is a place of custody of property and hence the offence of section 452 IPC will be attracted. The learned Prosecutor also submitted that the injuries on the accused were minor and from the defence witnesses themselves, it had come out that there was hardly any injury on the accused.

7. I have considered the rival contentions and have also analysed the evidence adduced in the case.

8. Out of the fourteen accused arrayed by the prosecution, the trial court found accused 1 to 3 alone as guilty. The three accused were convicted and sentenced. The rest of the accused, except the fifth

accused, against whom the proceedings had abated, were acquitted. Although the prosecution had alleged that the accused had committed the offence punishable under section 308 IPC, the appellants were acquitted by the trial court for the said offence. However, they have been found guilty for the offences under sections 143, 147, 148, 452 r/w 149, 323 r/w 149, 332 r/w 149, 294(b) r/w 149, 354 r/w 149, apart from section 3(1) of Prevention of Damages to Public Property Act. Having regard to the contentious advanced by the learned counsel, the issues that need an answer, are the following:

(i). Whether the appellants can be convicted for being part of an unlawful assembly?

(ii). Whether a house trespass can be committed by trespassing into a police station and if so, whether the finding of guilt for the offence under section 452 IPC is proper?

(iii). Whether the finding of guilt of the appellants for the remaining offences alleged are sustainable?

(iv). Whether the alleged injuries on the accused are fatal to the prosecution case?

9. The above issues are considered as below,

Issue No. (i). *Whether the appellants can be convicted for being part of an unlawful assembly?*

10. As the appellants have been found guilty for the offence under section 149 of IPC, the first issue to be considered is whether they could have been found guilty for being part of an unlawful assembly. Section 141 of IPC stipulates that an unlawful assembly is formed only when five

or more persons come together with any one of the common objects stipulated in the provision. The existence of a minimum of five persons is an essential requirement to attract the provision. Though the assembly of persons must be a minimum of five, to even allege the existence of an unlawful assembly, it is not the mandate of law that only if five persons are convicted can there be an unlawful assembly. If the court comes to the conclusion that there was, in fact, an assembly of five or more persons, but the persons arrayed by the prosecution were not entirely those five, still, nothing prevents the court from convicting those persons who were found to be part of the unlawful assembly. Reference to the decision in **Dalip Singh and Others v. State of Punjab** [AIR 1953 SC 364] is appropriate in this context.

11. In **Khem Karan and Others v. The State of U.P. and Another**, [(1974) 4 SCC 603] the Supreme Court had observed that even if a large number of accused have been acquitted and the remaining who have been convicted are less than five, still, it cannot vitiate a conviction under S.149 read with the substantive offence, if the court has taken care to find that there were other persons who might not have been identified or convicted, but were parties to the crime and together they constituted the statutory number. Similarly, in **Dharam Pal and Others v. State of U.P**., [(1975) 2 SCC 596] the above principle was observed with clarity as follows: " ……..*If, for example, only five known persons*

are alleged to have participated in an attack but the Courts find that two of them were falsely implicated, it would be quite natural and logical to infer or presume that the participants were less than five in number. On the other hand, if the Court holds that the assailants were actually five in number, but there could be a doubt as to the identity of two of the alleged assailants, and, therefore, acquits two of them, the others will not get the benefit of doubt about the identity of the two accused so long as there is a firm finding based on good evidence and sound reasoning that the participants were five or more in number……."

12. Thus, it is competent for a court to come to a conclusion that there was an unlawful assembly of five or more persons, even if the number of convicted persons is less than that, provided, the evidence adduced by the prosecution discloses the existence of other persons as part of the unlawful assembly. Further, the court must be convinced that there were other persons involved in the assembly, who numbered totally more than five. The decision in **Subran Alias Subramanian and Others v. State of Kerala** [(1993) 3 SCC 32] is relevant in this context.

13. Analysing the evidence adduced in the case on hand, it is discernible that PW2 gave evidence that around 25 persons came to the police station and 14 of them entered inside the station. However, PW2 identified only accused 1 to 3 as persons who had come inside the police station. PW9 was the Sub Inspector of police who identified the first

accused as a person who had come to the police station. Though there are references in his evidence about the presence of a large number of persons, considering that it was an election day and certain issues had arisen in the election, it cannot be assumed that large persons had gathered with the common object of committing criminal trespass or assault on an officer on duty. Evidence in that regard is lacking and even the trial court had not entered a finding with certainty that there were more than five members who had formed themselves into an unlawful assembly.

14. In this context, it is appropriate to bear in mind that an assembly would not become unlawful unless there was a common object and that common object runs through a minimum of five persons. In the instant case, there is a total dearth of evidence to convince this Court that there were five persons or even more who had entertained a common object to commit an offence as prescribed under section 141 IPC. Thus, it cannot be held that there was an unlawful assembly and hence, section 143, 147 and 148 are not attracted, while accused 2 and 3 cannot be roped in under section 149 IPC.

Issue No.(ii). *Whether a house trespass can be committed by trespassing into a police station and if so, whether the finding of guilt for the offence under section 452 IPC is proper?*

15. The accused have been found guilty for the offence under section 452 IPC. One of the ingredients of the offence under section 452 IPC is

the commission of house trespass, which is defined in section 442 IPC and reads as below:

> "S.442. **House Trespass.-** Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass"."

16. If a police station falls under any of the categories of buildings mentioned in section 442 IPC, the contention raised by the accused regarding inapplicability of the offence under 452 IPC will have to be rejected. A police station is no doubt a building. It cannot be regarded as a building used for human dwelling or as a place of worship, even if some persons may sleep there at night or even conduct prayers for themselves. Thus, the consideration narrows down to whether a police station can be regarded as a building used for the custody of property. Section 2(s) of Cr.P.C defines a police station as "any post or place declared generally, or specially by the State Government, to be a police station.....". Section 5 of the Kerala Police Act, 2011 (for short 'the KP Act') provides for establishment of police stations while section 6 deals with facilities at police stations. Section 6(2) of the KP Act stipulates that there must be sufficient storage space for the safe keeping of articles in custody, official records and official arms and ammunition and even sufficient facilities for the safe custody of the accused and those in

custody. A combined reading of the above statutory provisions makes it explicit that police stations in Kerala can be regarded also as buildings used for the custody of property, thereby satisfying the definition of house under section 442 IPC.

17. The evidence of the prosecution witnesses reveals that there were two incidents with the first one occurring at 9:15 PM and the second at 9:45 PM, the latter being the subject matter of this crime. After the first accused was directed by the sub inspector of police to disburse from Vazhichal Junction, where they allegedly caused public nuisance, few persons under the leadership of the first accused obstructed, the police jeep and caused damage, which was the subject matter of Crime No.256/2009. The present crime is an offshoot of the above referred crime, as the accused became agitated and rushed to the police station with the first accused causing hurt to PW9 and other policemen on duty, outraged the modesty of PW3 - a woman police officer and even caused damage to the chairs and other furniture kept in the police station. All the witnesses had spoken about the involvement of the first accused while there are inconsistencies regarding the involvement and role of the second and third accused. PW5 had not revealed the involvement of accused two and three to the investigating officer, which contradiction was brought to his notice during evidence and even admitted. The witnesses have also deposed that the first accused

came inside the police station, assaulted the police officers and even caught hold of the uniform of PW9 - the sub Inspector of police and damaged his name plate and whistle chord. It is therefore evident that the first accused had entered the police station and it being a place for custody of articles, the offence section 452 IPC gets attracted as against the first accused. As far as second and third accused are concerned, there is no convincing evidence to come to a conclusion that they trespassed into the police station. They are hence entitled for the benefit of doubt.

Issue No. (iii). *Whether the finding of guilt of the appellants for the remaining offences alleged are sustainable?*

18. The accused contended that the prosecution failed to produce any material to show that PWs 1, 2, 3 and 5 were on official duty. The accused is alleged to have trespassed into a police station and assaulted the police officers. The penal provision requires that the assault or criminal force should be to deter the public servant who was discharging his official duty. Merely because a person is in uniform, the same by itself cannot necessarily be a reason to conclude that he was discharging his duties. To attract Section 332 IPC, it is necessary for the prosecution to prove beyond reasonable doubt that at the time the accused caused hurt to a public servant, he was discharging his duty as such public servant. In the instant case, the prosecution failed to adduce any

evidence to prove that any of the persons who were assaulted by the accused were discharging their official duties as public servants. In fact a specific question was put to the witness, regarding any document available to prove that they were discharging their duties at the relevant time. Curiously, no document was produced to show any of the injured being on duty as a public servant. In view of the above, this Court finds that the prosecution had failed to prove the offence under section 332 IPC as against the accused.

19. The evidence of prosecution witnesses revealed that the first accused had assaulted PW5 and PW9. Criminal force was also used against PW3, a woman police officer. The overt acts alleged against the first accused while assaulting the prosecution witnesses were specific and the witnesses consistently deposed to the nature of assault committed by the first accused. There is no reason to doubt the veracity of the statement. Thus the prosecution had proved beyond reasonable doubt that the first accused had used criminal force and assaulted the prosecution witnesses. In view of the above, this Court is of the view that the offence under section 323 IPC is attracted against the first accused.

20. The prosecution evidence as regards the destruction of the plastic chairs kept inside the police station and other public property is also convincing. Destruction of public property has to be viewed seriously

and under the guise of protests or similar strikes, no person can take law into his hands and destroy property belonging to the Government. MO1 series, which are broken pieces of plastic chairs and the evidence of PW2, PW3, PW5, PW7, PW9 and PW10 indicate that apart from damaging the chairs, the accused also destroyed a collapsible grill gate as well. The conclusion of the trial court in that regard does not warrant any interference. Hence, the first accused is found guilty for the offence under section 3(1) of the PDPP Act.

21. The specific case of the prosecution was that the first accused and other persons trespassed into the police station and PW3 who was a woman police officer on sentry duty in that station was pushed aside by the first accused after catching hold of her shoulders and shouted obscene words. No evidence has been adduced by the prosecution to indicate that the said word allegedly used by the first accused satisfies the requirement of section 294(b) IPC. The etymological derivation of the word only indicates that it is a word referring to a person as silly or as dumb. In the absence of any material to show that the word used is an obscene word, or is one capable of causing annoyance, the first accused cannot be found guilty for the offence under section 294(b) IPC.

22. As far as the allegation under section 354 IPC is concerned, the evidence adduced by the prosecution only indicates that the first accused had caught hold of the shoulder of PW3 - a women police constable on

sentry duty, and pushed her aside while entering into the police station. There is no evidence to come to a conclusion that the use of criminal force was with intent to outrage her modesty. Hence the accused cannot be found guilty for the offence under section 354 IPC as well.

Issue No. (iv). *Whether the alleged injuries on the accused are fatal to the prosecution case?*

23. As far as injuries on the first accused is concerned, it is evident from the deposition of DW3, the Doctor who examined the accused and who was cited as a witness by the defence themselves, that the accused came to the hospital and left without even being treated as an inpatient and no wound certificate was even issued since it was not a Medico-legal case. It was also deposed by the said witness that the injuries on the first accused were minor and that the first accused left the hospital immediately without even paying any amount. Apart from the above, prosecution also attempted to explain the injuries on the first accused through the investigating officer who pointed out that those injuries would have been caused when his fingers got trapped in the grill of the collapsible gate, and also when he fell down while trying to escape from the police station after committing the offence. The nature of evidence adduced by the prosecution as well as the defence, persuades this Court to conclude that the injuries on the body of the accused, despite being very minor had even been explained satisfactorily by the prosecution.

In the result,

(a) The finding of guilt and conviction imposed on the first accused/first appellant for the offences under sections 452 and 323 IPC apart from section 3(1) of the PDPP Act are affirmed.

(b) The finding of guilt, conviction and sentence imposed on the first accused/first appellant for the offences under sections 143, 147, 148, 149, 332, 294(b) and 354 IPC are set aside and he is acquitted for those offences.

(c) The second and third accused are found not guilty of any of the offences alleged against them and they are acquitted.

(d) The sentence of imprisonment imposed on the first accused for the offence under 452 IPC is reduced to rigorous imprisonment for three years with a fine of Rs.10,000/- (Rupees Ten thousand only).

(e) The sentence of imprisonment and fine imposed on the first accused for the offences under section 323 IPC and that of section 3(1) of the PDPP Act are confirmed. The sentences imposed shall run concurrently

The criminal appeal is allowed in part.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps