

**IN THE COURT OF THE JUDICIAL I CLASS MAGISTRATE-II, ALUVA**

**Present: Sri. Santhosh T.K, Judicial First Class Magistrate-II**

Thursday, 13<sup>th</sup> day of July, 2023/22<sup>nd</sup> Ashadam, 1945

**CALENDAR CASE NO: 116/15**

Complainant	:	State Represented by the S.I. of Police, Binanipuram P.S, in Cr.323/13  (By APP-II, Aluva)
Accused	...	.. ..  (By Adv.V.K.Siddik)
Offence	:	Under Sections 354 and 506(1) of Indian Penal Code
Plea	:	Not Guilty
Finding	:	Not Guilty u/s.354 IPC Guilty u/s.506(1) IPC
Sentence or Order	:	The accused is found not guilty and acquitted under Section 248(1) of Cr.P.C. for the offence under Section 354 of IPC. The accused is found guilty and convicted under Section 248(2) of Cr.P.C. for the offence under Section 506(1) of IPC. The accused is sentenced to undergo simple imprisonment for a period of two years and to pay fine of Rs.5,000/-. In default, simple imprisonment for two months. If the fine amount is realized, it shall pay to PW1.

**Date of**

Offence	Complainant	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence or order	Explanation for delay
20.4.13	21.4.13	22.4.13	24.4.13	27.3.21	7.7.23	13.7.23	-

**Description of accused**

Name of accused	Age	Father's name	Caste or religion	Calling	Residence	Taluk
Anoop	29/13	Purushothaman	-	-	.. . .	-

**J U D G M E N T**

The accused in the above crime facing trial for the offences punishable under Sections 354 and 506(1) of Indian Penal Code following the final report submitted by the Sub Inspector of Police, Binanipuram Police Station, in Crime No. 323/13 against the accused.

2. The prosecution case is as follows: On 20.4.2013 at 9.00 p.m. when CW1 was waiting for prayer in a temple the accused came there and caught hold the hand of CW1 with an intent to outrage her modesty and with an intent to cause alarm, the accused threatened CW1 that he would kill her and thereby committed offences punishable under Sections 354 and 506(1) of IPC.

3. The final report in this case was filed before JFCM, North Paravur and cognizance was taken for the offences punishable under Sections 354 and 506(1) of IPC and the case was taken on file as CC 728/14. Later the case was transferred to this court and this court has taken the case on file. Summons was issued to the accused. The accused entered appearance and he was enlarged on bail. He was served with copies of prosecution records under Sec.207 of The Code of Criminal Procedure, 1973. The charge was framed, read over and explained to the accused under Sections 354 and 506(1) of IPC to which he pleaded not guilty and claimed to be tried.

4. PW1 to PW4 were examined and Exts.P1 to P4(a) were marked on the side of the prosecution.

5. After the prosecution evidence was closed, accused was questioned under Section 313(1)(b) of Code of Criminal Procedure, 1973 in order to enable him to personally explain the incriminating circumstances in evidence against him. He denied all the incriminating circumstances in evidence against him and claimed to be tried. Ext.D1 was marked on the side of the accused. No oral evidence was adduced from his side.

6. Heard both sides.

7. The following points arise for consideration:

1) Did the accused caught hold of the hands of CW1 with an intention to outrage her modesty and thereby committed offence punishable under Section 354 of IPC ?

2) Did the accused with an intention to cause alarm to CW1 threatened her that he would kill her and thereby committed the offence punishable under Section 506(1) of IPC ?

3) What is the finding and sentence ?

8. **Point Nos.1 and 2:-** Since these points are inter-related and therefore considered together for the sake of convenience. CW1 was examined as PW1. The case of the prosecution is that PW1 was the victim and she was criminally intimidated by the accused. She averred that on 20.4.2013 at 9.00 p.m. while she was praying at Kuttikulangara temple, the accused came there and caught hold of her hand. According to her a criminal case instituted by her against the accused is the reason for the alleged overt act. The police who was on duty in the temple taken the accused. PW1 identified the accused. She also identified Ext.P1 which is the First Information Statement made to the police. She was cross-examined in detail. She would say that after the festival in the day time, the procession of 'Deeparadhana' was going on and the incident was happened when she was praying during Deeparadhana. She averred that she has given First Information Statement on the next day despite she went police station on the day of overt act itself. According to her the police sent her back and told her to come on the next day. Ext.P1 is dated 21.4.2013 on the next day of the alleged incident. PW1 stated in Ext.P1 that the accused caught hold on her right hand and threatened that he would kill her and when the people gathered there started to watch the incident, the accused was withdrawn from the scene and went down to the road. While PW1 was examined she testified that the police has taken the accused from the place of incident. The person who registered the FIR was examined as PW4. The aforesaid contradiction in Ext.P1 was marked as Ext.D1. It's a contradiction because PW1 stated in Ext.P1 that after the incident the accused went down to the road whereas during in cross-examination she would say that the police taken the accused from the place of incident. However, it can only be considered as a minor discrepancy which is not material at all. But the fact to be ascertained is that whether the ring of truth is available to the case of the prosecution after evaluating all the evidence in this case.

9. While PW1 was praying in temple the accused caught hold of her hand and threatened that he would kill her is evident from the oral testimony of PW1.

CW3 was examined as PW2. The case of the prosecution is that he is an eye witness to the incident. PW2 is the brother of PW1. He has given evidence that the accused has caught hold on the hand of PW1. Immediately the police on duty was taken the accused. He has also identified the accused. He has also identified the scene mahazar which was marked as Ext.P2. Even during cross-examination, PW2 reiterated that the accused caught hold of the hands of PW1. During cross-examination, PW2 would say that accused threatened PW1 that he would kill PW1. The evidence of PW2 is corroborated with the evidence of PW1.

10. CW2 was examined as PW3. PW3 is the husband of PW1. He would also say that accused has caught hold of the hands of PW1 and threatened that he would kill her. He has also identified the accused. Though PWs 2 and 3 were cross-examined, no material elicited to discredit the veracity of their evidence.

11. PW4 who was the Sub Inspector of Police, Binanipuram Police Station registered the FIR which was marked as Ext.P3. He has also prepared Ext.P2 scene mahazar. The arrest memo and inspection memo were marked as Exts.P4 and P4(a) through PW4. The learned counsel for the accused contented that except the relatives neither any police on duty nor the people gathered were cited as a witness to the case of prosecution. Admittedly, neither any police who were on duty nor any of the persons gathered there were not cited as a witness. But for said mere that reason, it cannot be said that the prosecution case is not believable. Moreover, for the mere reason that PWs 2 and 3 are relatives of PW1, it cannot be said that they are interested witnesses. The matter to be looked into is whether the evidence of the witnesses are cogent and creditworthy as far as the case is concerned. I have evaluated the evidence in this case. PW1's evidence was fully corroborated with the evidence of other witnesses. On evaluating the entire evidence in this case, there is no reason to disbelieve the case of the prosecution. The prosecution succeeded to establish that the accused caught hold of the hands of PW1 and threatened that he would kill her.

12. The question to be determined is whether the overt act of the accused is sufficient to meet the ingredients for the offences under Sections 354 and 506(1)

of IPC. The prosecution succeeded to establish that the accused has caught hold of the hand of PW1. But whether such an overt act is sufficient to attract the offence u/s.354 of IPC. What the accused was done that he caught hold of the hand of PW1 and threatened her that he would kill her. It is not enough merely to show that the accused used criminal force or assaulted a woman. But it was further to be proved that he did so either with an intention to outrage her modesty or with the knowledge that it was likely that he will thereby outrage her modesty. The evidence of witnesses would itself shows that the accused has caught hold PW1's hand and threatened her. The motive behind the incident is PW1 has instituted a criminal case against the accused. The prosecution case is that she was caught hold by the accused in the presence of a gathering in the temple. But the prosecution failed to show that the accused uttered any indecent words or he has any intention to use the victim to satisfy his lust. To put in another way, there is absolutely nothing on record to show that the accused uttered any indecent words or her had any intention to use the victim to satisfy his lust. Mere assault or criminal force does not amount to an offence. The culpable intention to outrage the modesty of the victim is to be proved. Mere holding PW1's hand and threatened her that he would kill her will not attract offence under Section 354 of IPC. Therefore the prosecution failed to prove the ingredients of offence under Section 354 of IPC against the accused.

13. The next question to be determined is whether the prosecution succeeded to prove that the ingredients under Section 506(1) of IPC against the accused. In order to prove 506(1) of IPC the prosecution has to prove that the accused intimidated PW1 as defined under Section 503 of IPC. The essential ingredients are (1) there should be a threat of injury to a person, reputation or property (2) to the person or reputation of any person in which the person is interested (3) threat must be with intend to cause alarm to that person or to cause that person to do an act which is not legally bound to do as the means to avoiding the accused of such threat (4) to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding the causing of such threat. While appreciating the evidence in this case, it is very well established by the

prosecution that the accused has threatened PW1 that he would kill her. A mere threat without causing any alarm does not amount to a criminal intimidation. But if the threat is made with intend to cause alarm to another person threatened, the offence will automatically come into play. It is immaterial whether the recipient of threat caused alarm or not. Therefore the soul of the definition of criminal intimidation is the intention which has to be gathered from the surrounding circumstances and the words used by the person intimidating. It is the case of the prosecution that PW1 has filed a criminal complaint against the accused is the motive for the accused to commit the offence. Moreover in order to wreck the personal animosity towards PW1 he caught hold of her hand and threatened her that he would kill her. After appreciating the entire evidence and considering the surrounding circumstances it cannot be said that the accused did not have any intention to cause alarm to CW1. He caught hold of the hands of PW1 and threatened her only with an intention to cause alarm her. Moreover whether PW1 was caused alarm or not is immaterial. The only question is whether the accused had intention to cause alarm PW1. Since PW1 had filed a criminal case against the accused and due to the personal animosity towards PW1, the came while PW1 was praying in the temple and he caught hold her and threatened her that he would him. The motive and other surrounding circumstances and evidence of the case would itself transpire that the accused had an intention to cause to alarm PW1 while he threatened PW1. It is evident from the previous animosity towards PW1 that the accused had an intention to cause alarm PW1. The prosecution succeeded to prove that the accused had an intention to cause alarm to PW1. The prosecution proved the ingredients under Section 506(1) of IPC against the accused beyond reasonable doubt.

14. **Point No.3:-** In the result, the accused is found not guilty and acquitted under Section 248(1) of Cr.P.C. for the offence under Section 354 of IPC. The accused is found guilty and convicted under Section 248(2) of Cr.P.C. for the offence under Section 506(1) of IPC. The accused is sentenced to undergo simple imprisonment for a period of two years and to pay fine of Rs.5,000/-. In default,

simple imprisonment for two months. If the fine amount is realized, it shall pay to PW1.

Dictated to C.A. transcribed by her, corrected and pronounced by me in open court on this the 13<sup>th</sup> day of July, 2023.

Sd/-

**Judicial I Class Magistrate – II, Aluva**

**APPENDIX**

**A-Prosecution Witnesses:**

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witnesses	Date
PW1	Jaya Dileep (CW1)	Eye witness	11.1.2022
PW2	Shibu (CW3)	Eye witness	4.5.2022
PW3	Dileep Kumar (CW2)	Eye witness	4.5.2022
PW4	A.Faisal (CW5)	Police witness	14.7.2022

**B-Defence Witness:Nil**

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witnesses

**C-Court Witness: Nil**

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witnesses

**A-Prosecution Exhibits marked:**

SL No	Exhibit No.	Date	Description
1.	Ext.P1	21.4.2013	FIS (marked through PW1 Jaya Dileep)
2.	Ext.P2	21.4.2013	Scene mahazar (marked through PW2 Shibu)
3.	Ext.P3	21.4.2013	FIR (marked through PW4 A.Faisal)
4.	Ext.P4	-	Arrest memo (marked through PW4 A.Faisal)
5.	Ext.P4(a)	-	Custody memo (marked through PW4 A.Faisal)

**B-Defene Exhibits:Nil**

SL No.	Exhibit No.	Date	Description
1	Ext.D1	21.4.2013	The relevant portion of 161 statement of

		CW2(marked through PW3 Dileep Kumar)
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C-Court Exhibits: Nil

SL.No.	Exhibit No.	Description
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Material Objects : Nil

SL.No	Material Objects	Description
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**Sd/-  
Judicial First Class Magistrate-II,  
Aluva.**

**//True copy//  
Judicial First Class Magistrate-II,  
Aluva.**



Form No.48(CPC)

**CALENDAR AND JUDGMENT**

(For use in cases where there is only one accused person)

District of Ernakulam

Calendar of Cases tried by

**the Judicial I Class Magistrate of Court II, Aluva**

Date of

Offence	Complaint	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence or order
20.4.13	21.4.13	22.4.13	24.4.13	27.3.21	7.7.23	13.7.23

**Judgment in Calendar Case No.116/15**

Complainant : State Represented by the S.I. of Police, Binanipuram P.S, in Cr.323/13

## Description of accused

Name of accused	Age	Father's name	Caste or religion	Calling	Residence	Taluk
Anoop	29/13	Purushothaman	-	-	.	-

Offence : Under Sections 279, 337 and 304(A) of Indian Penal Code

Plea : Not guilty

Finding : Not Guilty u/s.354 IPC  
Guilty u/s.506(1) IPC

Sentence : The accused is found not guilty and acquitted under Section 248(1) of Cr.P.C. for the offence under Section 354 of IPC. The accused is found guilty and convicted under Section 248(2) of Cr.P.C. for the offence under Section 506(1) of IPC. The accused is sentenced to undergo simple imprisonment for a period of two years and to pay fine of Rs.5,000/-. In default, simple imprisonment for two months. If the fine amount is realized, it shall pay to PW1.

Magistrate

**DOCKET**

Date of Receipt.....

From

Remarks of District Magistrate

The Judicial I Class Magistrate II, Aluva.

Date of Despatch

To

Date of Receipt .....20...

The Hon'ble Chief Judicial Magistrate,  
Ernakulam.

Reply of the .....Magistrate

Date of Despatch

Date of Receipt .....20...

Remarks of the Sub divisional Magistrate

Calender Case No. C.C. 116/15

Date of Judgment : 13.7.2023

Date of Despatch : 14.7.2023

Date of Calendar : 14.7.2023