

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, PAYYANNUR

Present: Smt. V. Sheeja,
Judicial First Class Magistrate.

Tuesday, the 13th day of December, 2022/22nd day of Agrahayana, 1944

CALENDER CASE NO.1238/2022

Complainant : The SHO, Payangadi Police Station,
Crime No.504/14,
(By APP Grade – II, Payyannur)

Accused : Arshad. V. V., S/o Ashraf, Aged 19/14,
Valiya Valappil (H), Mattool amsom,
Nr. Village Office, Mattool South.
(By Adv. Sri. P. Rajesh)

Offence : U/s 279,337 & 304-A of IPC

Plea : Not Guilty.

Finding : Not Guilty.

Sentence or Order : Accused is acquitted u/S 255(1) of Cr.P.C.

DESCRIPTION OF ACCUSED

Sl. No.	Name of the P.S.& No. Cr. of offence	Name	Father's Name	Occupation	Residence	Age
1.	Pazhayangady, Cr.no. 504/14	Arshad,	Ashraf		Mattool	19/14

Date of:

1. Occurrence	:10.08.2014
2. Complaint	:17.08.2014
3. Apprehension	:01.09.2014
4. Release on bail	:01.09.2014
5. Commencement of trial	:11.10.2022
6. Close of trial	:09.12.2022
7. Sentence or order	:13.12.2022
8. Service copy of judgment	:Copy is ready
9. Explanation for delay	:No delay

This case came up for consideration during today's proceedings and the court delivered the following :

J U D G M E N T

1. This is a case charge sheeted by Sub Inspector of police Payangadi PS in Cr. No.504/14 for the offence punishable u/S 279,337 & 304A of IPC.

2. **Prosecution case in brief is as follows:**

On 10.08.2014 at 16.45 while CW1 was riding the Motor motorcycle bearing registration No. KL 13 AA 5646 carrying one Muhammed Sahid as pillion rider towards Kavileparamba and when he reached nearby Jaseentha Bus shelter at Mattool a motorcycle bearing registration No. KL 13 V 7590 driven by the accused came from Kavileparamba side in a rash or negligent manner hit the motor cycle driven by CW1 and he sustained simple injury and Muhammed Sahid sustained grievous head injuries and he succumbed to death. Thereby the accused committed the offences punishable u/s 279,337 and 304A of IPC.

3. The court took cognizance of offences and issued process against accused. Originally the case was taken on file as CC 214/15 against this accused. On appearance of accused, copies of all relevant prosecution records are furnished to him. Particulars of offences were stated to him to which he pleaded not guilty and claimed to be tried. In that case, after the examination of PW6, the accused was absconded and the case was transferred to LP register as LPC 172/2022. On surrender of accused the case was refiled as the above CC 1238/22.

4. On the side of prosecution PW1 to PW6 were examined and Exts. P1 to P5 were marked. CW1, the defacto-complainant did not turn up as he was abroad before the Court in spite of coercive steps taken against him. PW1, PW2 and PW4 turned hostile to the prosecution case. Since there is no material evidence, the learned Asst Public Prosecutor rightly given up remaining witnesses and the prosecution evidence closed. After closing the prosecution evidence, accused was questioned u/s 313(1)(b) of Cr.PC. Accused denied all the incriminating circumstance that appeared in evidence against him. Thereafter the accused was called upon to enter his evidence, but no defence evidence was adduced on behalf of the accused.

5. Heard both sides.

6. **Point arise for consideration :**

1) Whether the accused had driven a motorcycle bearing registration No. KL 13 V 7590 on a public road in rash or negligent manner so as to endanger human life and thereby committed the offence u/S 279 of IPC?

2) Whether the accused has driven the motorcycle in a rash or negligent manner and caused hurt by an act which endangers human life and thereby committed the offence u/S 337 of IPC?

3) Whether the accused had driven motorcycle in a rash and negligent manner and caused death of one Muhammed Sahid and thereby committed the offence u/S 304-A of IPC ?

4) If the offence is proved, what is the order as to sentence?

7. **Point Nos. 1 to 3 :** These points are considered together for the sake of convenience. Prosecution has examined 6 witnesses. CW1, the defacto

complainant did not turn up before the Court in spite of coercive steps taken against him. He is reported abroad. CW2 is the eyewitness to the incident and he is examined as PW1. He deposed that he didn't see the incident as alleged by the prosecution. Though learned Asst Public Prosecutor permitted to put questions u/s 154 of Indian Evidence Act nothing has come out from his evidence to support the prosecution case. CW3 is the inquest witness examined as PW6. He deposed that the deceased was his neighbour and when his body was in Pariyaram MC Hospital he was there and he has signed in the inquest Report. CW4 and CW5 are the Scene Mahazar witnesses. They were examined as PW2 and PW4 and the Scene Mahazar is marked as Ext P1 through PW2. Though they are admitted the signature in the Ext P1 they haven't know about the place of incident. None of the witnesses examined by the prosecution deposed that the accident was occurred due to the negligence of the accused. CW14 ,the Investigating Officer is reported no more and death certificate is produced.

8. 10. CW7 is Village Officer, Mattool village ,examined as PW5 he issued site plan which is marked as Ext.P4.

9. CW13 is the Senior Civil Police Officer of Payangadi PS, examined as PW3 who recorded the F I statement of one Ashraf, S/o Abdul Kareem at the police station which is marked as Ext.P2 and as per Ext P2 he registered FIR which is marked as Ext.P3.

10. I have gone through the evidence on record. It is the case of the prosecution that the accused has driven a motorcycle bearing registration No. KL 13 V 7590 in a rash and negligent manner and hit on a motorcycle bearing registration No. KL 13 AA 5646 which was driven by CW1 with one Muhammed Sahid as pillion rider and they fell down in the road and thereby CW1 was sustained simple injury and Muhammed Sahid sustained grievous head injuries and he succumbed to death. CW1, the defacto-complainant did not turn up before the Court in spite of coercive steps taken against him. PW1, the eyewitness in this case denied their case in toto and turned hostile to the prosecution case. PW2, PW4 and PW6 are the material witnesses to the incident and they turned hostile to the prosecution. Though learned Asst. Public Prosecutor permitted to put questions u/s 154 of Indian Evidence Act nothing has come out from their evidence to support the prosecution case. Though Ext.P1 is marked through PW5, who recorded the same, the same cannot be relied to prove its contents since CW1 has not examined before the court. Since no eye witnesses supported the prosecution case, the learned Asst. Public Prosecutor has rightly given up the remaining witnesses. PW3 and 5 are officials and they deposed the roles played by them and the same is not enough to prove the guilt of the accused. Like wise the Scene Mahazar also doesn't give any indication to the effect that the accident was occurred due to the negligence of the accused. None of the witnesses examined by the

prosecution deposed that the accident was occurred due to the negligence of the accused.

11. Ongoing through the entire evidence, I find that the prosecution has not succeeded to prove the case against the accused. Therefore, in the above said scenario, I am of the view that the prosecution could not succeed in proving the guilt of the accused beyond reasonable doubt. Hence I find that the accused is found not guilty of the offence alleged against him. Hence these points are answered against the prosecution.

12. **Point No.4:** In view of my finding on point Nos. 1 to 3, accused is found not guilty of the offences punishable u/S 279,337 & 304-A of IPC.

In the result,

Accused is acquitted u/S 255(1) of Cr PC of the offences punishable u/S 279,337 & 304-A of IPC and his bail bond stands cancelled and he is set at liberty.

(Dictated to Confidential Assistant, transcribed and typed her, corrected and pronounced by me, in open court this on the 13th day of December, 2022.)

Sd/-
Judicial First Class Magistrate,
Payyannur.

APPENDIX:

WITNESSES FOR THE PROSECUTION :

PW1	: Sandeep, S/o Balan
PW2	: Vinod, S/o Kunhiraman
PW3	: Satheesan, [SCPO, Pazhayangady PS]
PW4	: Sajith Kumar, S/o Kannan

PW5 : Shaji P V[Village Officer, Mattool Village]

PW6 : P P Abdul Gafoor, S/o Badarudheen

EXHIBITS FOR THE PROSECUTION :

Ext.P1 : Scene Mahazer dtd. 18.08.14 marked through PW2.

Ext.P2 : F I Statement dtd. 17.08.14 marked through PW3

Ext.P3 : F I Report dtd. 17.08.14 marked through PW3.

Ext.P4 : Site plan dtd. 05.01.15 marked through PW5.

Ext.P5 : Inquest Report dtd. 17.08.14 marked through PW6.

MATEIRAL OBJECTS MARKED :

Nil.

WITNESSES FOR THE DEFENCE :

Nil

EXHIBITS FOR THE DEFENCE :

Nil

MATERIAL OBJECTS MARKED :

Nil

Sd/-

Judicial First Class Magistrate,
Payyannur.

//True copy//

Judicial First Class Magistrate,
Payyannur.