

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I
ALAPPUZHA

Present : Smt. Shana Beegam, Judicial First Class Magistrate

Dated this, the 18th day of April, 2026

CC No.1627/2017

Complainant	:	State represented by Sub Inspector of Police, Alappuzha Traffic Police Station in Crime No.656/2017 By Asst. Public Prosecutor, Alappuzha
Accused	:	Sreekumar aged 38/17, S/o Thulasidharan Pillai, Vattavila Veedu, P.N.P. junction, Kalakkode PO, Poothakkulam Panchayath Ward No.18, Kollam Taluk By Adv. Shalon Salus
Offence	:	U/s.279, 337 and 304(A) IPC
Plea	:	Not guilty
Finding	:	Not guilty
Sentence	:	Accused is acquitted u/s.255 (1) Cr.P.C.

DESCRIPTION OF THE ACCUSED

Sl. No.	Name	Father's name	Caste	Calling	Residence	Taluk	Age
1.	Sreekumar	Thulasi-dharan Pillai	...	...	Vattavila Veedu, P.N.P. junction, Kalakkode PO, Poothakkulam Panchayath Ward No.18, Kollam Taluk	...	38/17

DATE OF							
Occurrence	Complaint	Apprehension	Released on bail	Commencement of trial	Close of trial	Sentence or order	Explanation for delay
18.07.17	21.07.17	19.08.17	19.08.17	27.10.23	18.04.26	18.04.26	No delay

This case having been finally heard on 18.04.2026 and on the same day the court delivered the following :

J U D G M E N T

1. This case is initiated against the accused on the basis of a final report filed by the Sub Inspector of Police, Alappuzha Traffic Police Station in Crime No.656/2017 alleging commission of offences u/s.279, 337 and 304(A) IPC.
2. The prosecution case, in brief, is that the accused drove a tempo traveller bearing registration No.KL 2 AX 3342 along Alappuzha-Ernakulam NH road in a rash and negligent manner so as to endanger human life on 18.07.2017 at 21:00 hours and hit on a scooter bearing registration No.KL 32 J 2327 ridden by CW1 along with his wife Aisha Kumari as pillion rider in front of Enkeys restaurant, Pathirappally and both of them thrown to the road sustained injuries including fracture to the left

femur and right foot of Aisha Kumari and injuries to CW1 and while undergoing treatment, Aisha Kumari succumbed to injuries on 09.08.2017 at 01:50 AM at Medical College Hospital, Vandanam. Thus the accused is alleged to have committed the offences mentioned above.

3. Accused appeared before the court and he was released on bail. Copies of relevant prosecution case records were furnished to him. Particulars of offences u/s.279, 337 and 304(A) IPC read over and explained to the accused to which he pleaded not guilty.
4. Prosecution cited CWs 1 to 16 to prove their case and PWs 1 to 10 were examined and Exts.P1 to P15 were marked. Examination of CW5 to CW9 and CW11 were given up by the prosecution. After the closure of prosecution evidence, accused was examined u/s.313(1) (b) Cr.P.C. He pleaded to be innocent. Exts. D1 to D3 were marked. No other evidence was adduced on the side of the defence. Heard both sides.
5. Points that arise for consideration are :
 1. Whether the accused drove tempo traveller bearing reg. No. KL 2 AX 3342 along Alappuzha-Ernakulam NH road in a rash and negligent manner so as to endanger human life on 18.07.2017 at 21:00 hours and hit on a scooter bearing registration No.KL 32 J 2327 ridden by PW1 and thereby caused injuries to PW1 and also grievous injuries to Aisha Kumari, wife of PW1 resulting to the death of the said Aisha Kumari as alleged ?
 2. Finding and order ?

6. **Point Nos.1 and 2** : As the factual and evidential aspects to be considered are same these points are discussed together. As per the prosecution case, the accused drove a tempo traveller bearing number KL-AX-3342 in a rash and negligent manner, so as to endanger human life along Alappuzha- Ernakulam NH from north to south direction and by overtaking another vehicle on 18.07.17.21 p.m. hit on the right handle side of the scooter bearing registration number KL 32J2327 which was ridden by CW1 along with CW2, his wife as pillion rider and thereby both of them were overthrown to the road and thereby PW1 suffered injuries on his left knee and left ankle and his wife succumbed to the injuries while she was undergoing treatment at MCH Vandanam on 09.08.2017 at 01.50 a.m. and thereby the accused had committed the alleged offences.
7. PW1 deposed that he knew about the accident which was happened on 18.07.2017 at 09.00 p.m. at Pathirapally National Highway. The deceased was his wife. They went to meet his brother-in-law who was admitted in MCH Vandanam and while they were returning, the accident occurred. While the vehicle reached at the place of occurrence, the tempo traveler hit on the back side of the vehicle and he thrown away. His wife was thrown towards the middle portion of the road. He suffered injuries on both of his legs and hand. His wife's left leg got fractured. They were taken to General Hospital, Alappuzha at first hand and from there to Medical College, Vandanam. The number of the vehicle which hit on their vehicle was KL-ZX-3342. He also identified the accused. After treatment he had filed Exhibit P1 complaint before the police. His wife succumbed to the injuries. He also deposed that he identified the accused in the light of the lorry.
8. PW2 deposed that he witnessed the accident which has happened during 2017. However, he could not recollect the exact date. The time was in between 08.30 to 09.00 p.m. at National Highway near N. K. Tourist Homes, Pathirapally. While he

was about to purchase household items, he had witnessed a tempo traveller hit on the back side of a scooter. The scooter was coming from south to north and the tempo traveller was also in the same direction. After the accident both of the travellers in the scooter thrown towards the ground and suffered injuries. They were taken to the hospital. However he deposed that he could not identify the injured. The accused who drove the vehicle also deposed that the tempo traveller was in overspeed.

9. PW3, the other occurrence witness cited, turned hostile to the prosecution by deposing that he had not witnessed the accident.
10. PW4 deposed that while the Investigating Officer prepared Exhibit P3 inquest report, he was present there and he had put his signature in the inquest report.
11. PW5 deposed that while the Investigating Officer prepared Exhibit P4 mahazar he was present there and he had put his signature in the mahazar.
12. PW6 deposed that on 19.08.2017 while he was working as Motor Vehicle Inspector's RT Office, Alappuzha, he had inspected LMV contra carriage tempo traveller and issued Exhibit P5 vehicle inspection report. There was no damages found on the vehicle. The brake system was efficient and no other mechanical defects was noted. He had also inspected motorcycle bearing number KL-32J-2327. On inspection, left hand side body of the vehicle was found damaged. The brake system was efficient. There were no mechanical defects . Thereafter he had issued Exhibit P6 inspection report.
13. PW7 deposed before the court that while he was working as Medical Officer in the Department of Forensic Medicine at Govt. TD Medical College, Alappuzha, on 09.08.2017 he had conducted the post mortem examination of the wife of PW1. There were 13 injuries found on the body. Surgical wounds in the healing stage

was found on lower lips. All the abrasions were in healing stage with loosely adherent brown scab and condition were bluish green in colour. From the findings the age of the injuries were found more than one week. His opinion as to the cause of death was due to pulmonary thrombo embolician following injury sustained to right lower limb. He had prepared Exhibit P7 post mortem certificate.

14. PW8 deposed that while he was working as Assistant Surgeon at General Hospital, Alappuzha on 18.07.2017 at 10.50 a.m. he examined PW1 who came with alleged history of road traffic accident. Two wheeler which he was riding met with an accident with a four wheeler at 10.30 p.m. on the same date at Pathirapally. The history was stated by the patient himself. The injuries noted are abrasions 2x1cm over the left knee, 3x2cm over the left foot and swelling over the right hand of 3x1cm. The injuries were fresh and his opinion is as could be as alleged. After examination he had issued Exhibit P8 wound certificate.
15. PW9 deposed that on 09.08.2017 while he was working as Sub Inspector of Police at Alappuzha traffic police station, he had prepared Exhibit P3 inquest report. Thereafter the investigation was conducted by CW16. While preparing the inquest report, he had noted the tag which was tied around the right hand of the deceased Aisha Kumari aged 40 IP No. 34160. Female. Date of admission 19.07.2017. Date and time of death 09.08.2017 at 01.50 a.m.
16. PW10 deposed that on 18.07.2017 while he was working as SHO at Alappuzha traffic police station on the basis of information received he had registered Exhibit P9 FIR. Thereafter during investigation as it was revealed that Section 134(a)(b) of MV Act had not occurred he had prepared Exhibit P10 report in this regard. Thereafter on 09.08.2017 on getting information that the wife of PW1 succumbed to the injuries by deleting 338 IPC and by adding 304A IPC, he had prepared Exhibit P11 report and sent the same to the court. On 22.07.2017 at 11.00 a.m., he

had inspected the place of occurrence and prepared Exhibit P4 mahazar. Thereafter, the accused who surrendered before the police along with sureties was released on Exhibit P12 bail bond. He had also prepared Exhibit P13 vehicle inspection report after inspecting the vehicles involved in the accident. While the two wheeler was released to its RC owner Exhibit P14, third party keychit was prepared and while the two wheeler was released to its registered owner Exhibit P15, third party keychit was prepared. The owner of the said vehicle is Mr. Akhil Uthaman. He also deposed that PW3 had given Exhibit P2 statement to him. He could identify the accused. Thereafter investigation was completed and charge sheet had been laid before the court against the accused.

17. The offences alleged against the accused are under sections 279, 337, 338 and 304 A IPC Now, I may discuss whether the prosecution succeeded in establishing the alleged offences against the accused on the basis of above evidence.
18. As per Sec. 279 IPC, whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person is said to commit the offence. As per sec. 337 IPC, whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others is said to commit the offence. As per sec. 338 IPC, whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others is said to commit the offence. In order to bring home an offence under section 304A, the prosecution should have to prove that the death was caused by the person doing any rash or negligent act not amounting to culpable homicide. It can be gathered that the common ingredient or the basic core of the above mentioned sections are “rash and negligent act” done by the accused.

19. Coming to the present facts of the case, only the evidence of PW1 is before the court. PW3, one of the occurrence witness turned hostile to the prosecution. The other occurrence witness, PW2, though deposed that he had witnessed the incident, failed to identify the accused before the court. Moreover, none of the witnesses examined by the prosecution had stated that the accused drove the motor cycle in a rash or negligent manner so as to cause the death of the deceased. With respect to the evidence of PW1, he had deposed that on the alleged date of accident, a tempo traveller hit on his scooter from back. However, as per the prosecution case the hit was on the right handle of the scooter. From the side of accused, Exhibit D1 was marked, which is the statement given by PW1 to the police, that the tempo traveller was coming from north to south and by overtaking another vehicle, and it hit on the right side handle of the scooter. The prosecution's story also lies in a similar way. However, while PW1 deposed before the court, the entire direction of the vehicle was changed. It is also to be noted that, as per the prosecution case, the accident was happened at Pathirapally National Highway. However PW1 deposed that the same was happened at Thumpoly Junction. He further deposed that the autorikshaw driver Who had taken them to the hospital had stated that the place of occurrence was Pathirapally or Thumpoly. During cross-examination, PW1 deposed that damages were on the back side of his scooter and he admitted the fact that as the hit was from behind, he could not state the travelling condition of the vehicle which hit his scooter. He also admitted the fact that as it was night he could not identify the person who drove the tempo travler. Learned counsel for the accused relied on the decision *Suresh v State of Kerala* reported in 2018 1 KHC 735 Wherein it is held that identification of accused by the witness for the first time in the court, who have no previous acquaintance of the accused and no occasion to see the accused during investigation, cannot be given much weight. The learned counsel also relied on the decision. *Raj kumar@ Bheema V NCT Delhi*

Reported in 20257 KHC SN 28 wherein it is held that material improvements regarding identifying features in testimony absent in the previous police statement recorded under Section 161 casts serious doubt on reliability of dock identification and are indicative of a clear attempt to fill critical gaps in the prosecution case, thereby rendering such identification unreliable.

20. From the side of the accused, Exhibit D2 and Exhibit D3 statement of PW2, the occurrence witness was also marked. Exhibit D2 is the contradiction statement of PW2 and it is proved from the side of the accused through the Investigating Officer as well. Further Exhibit D3 statement would show that PW2 had given a statement to the effect that the tempo traveller was coming from north to south. Learned counsel for the accused relied on the decision Manu G Rajan V State of Kerala reported in 2021 5 KHC 767 Wherein it is held that when there are material contradictions in statements given by witnesses before police and evidence tended in the court, and when they are so inconsistent or irreconcilable with each other, that both of them cannot co-exist, it can be stated that one contradicts the other. This makes evidence tended by witnesses before court as wholly unreliable. Going through the evidence of PW2, it can be clearly gathered that there are material contradictions in his statement.
21. Moreover Exhibit P6 vehicle inspection report prepared by PW6 also not supporting the case of the prosecution. PW6 deposed that he had not noted any damages on the back side of the motor cycle. He also deposed that he had also not noted any damages on the right side portion of the vehicle. He could only see damages on the left-hand side body portion of the motorcycle. Further from the evidence of PW7, the doctor who conducted the post mortem examination, it could be gathered that the deceased was under hospitalisation for about 21 days and the death was due to deep vein thrombosis which would developed after prolonged

immobilisation due to trauma or surgery and pulmonary thromboembolism that develops as a complication of that trauma.

22. Interestingly PW10 the Investigating Officer deposed before the court that he had not produced any documents that would show that the deceased Aisha Kumari had undergone treatment with respect to the accident alleged herein. He had not produced any scrap of paper to show that she had undergone treatment. He also deposed that the distance between Thumpoly Junction and Pathirapally Junction is about 3 km. He also admitted the fact that PW1 had not given any statement that would show that his wife had expired due to the alleged accident.

23. It is settled that , “it is incumbent on the part of the prosecution to prove the condition of the road at the occurrence place, the amount of traffic at the time of the accident and the number of persons frequently moving on the road as some of the factors to be taken into consideration in assessing the rashness or negligence on the part of the driver” (Rahim Abboobaker Chirayathu veedu V State of Kerala reported in 2020 ICO, 4957). It is also settled that “the width of the road, density of traffic, an attempt to overtake, tyre marks are also criterion for deciding rash and negligent act. (P Muhammed V State of Kerala in ILR 2021(1) Kerala, 939). Here, in the present facts of the case, the attending and surrounding circumstances are not proved in evidence”. PW1 though deposed that the bike ridden by the accused hit from back on the motor cycle ridden by him, from his entire evidence, it can be gathered that he had not seen how the said bike was moving through the road before hitting them. His evidence is also silent regarding the traffic at that time and the number of vehicles moved through the road. Exbt P6 didnot reveals the damages sustained by the motor cycle ridden by PW1. As the prosecution thoroughly failed to establish the core ingredient of sec. 279, 337 and 304(A) the accused cannot be fastened into these offences. From the discussions made above,

I am of the view that the prosecution miserably failed to prove the guilt of the accused beyond reasonable doubt. Point Nos.1 is found in favour of the accused.

24. **Point No.2** : In the light of the findings on point Nos.1, accused is found not guilty of the offences u/s.279, 337 and 304(A) IPC.

25. In the result, accused is acquitted of the charge under Section 255 (1) Cr.P.C. He is set at liberty and his bail bond stands cancelled.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me on this the, 18th day of April, 2026.)

SD/-

Judicial First Class Magistrate-1
Alappuzha

APPENDIX

Prosecution Witnesses :

PW1	:	Uthaman
PW2	:	Vijayarajan
PW3	:	Vishnu
PW4	:	Unnikrishnan
PW5	:	T.P. Shaji
PW6	:	Vinesh K.
PW7	:	Dr. Sreelekshmi J.
PW8	:	Dr. S. Sujithkumar
PW9	:	R. Sumithran
PW10	:	R. Vasudevan

Prosecution Exhibits :

P1	:	FI Statement dated 21.07.2017 marked through PW1
P2	:	Portion in 161 statement of CW2 marked through PW3

- P3 : Inquest report dated 09.08.2017 marked through PW4
- P4 : Scene mahazar dated 22.07.2017 marked through PW5
- P5 : Inspection report dated 19.08.2017 marked through PW6
- P6 : Inspection report dated 19.08.2017 marked through PW6
- P7 : Postmortem examination certificate dated 09.08.2017
marked through PW7
- P8 : Wound certificate dated 18.07.2017 marked through PW8
- P9 : FIR dated 21.07.2017 marked through PW10
- P10 : Section alteration report marked through PW10
- P11 : Section adding report marked through PW10
- P12 : Bail bond dated 19.08.2017 marked through PW10
- P13 : Vehicle mahazar dated 19.08.2017 marked through PW10
- P14 : Third party kaichit marked through PW10
- P15 : Third party kaichit marked through PW10

Witnesses for the defence : NIL

Exhibits for the defence :

- D1 : Portion in 161 statement of CW1 marked through PW1
- D2 : Portion in 161 statement of CW3 marked through PW2
- D3 : Portion in 161 statement of CW3 marked through PW2

Material objects marked : NIL

SD/-
Judicial First Class Magistrate-1
Alappuzha