

IN THE COURT OF SPECIAL JUDICIAL FIRST CLASS
MAGISTRATE, (MARAD CASES), KOZHIKODE

*Present:-Sri. K S Akshay Mohan, Special Judicial First Class Magistrate,
(Marad Cases), Kozhikode*

Dated this 15th day of June, 2026

CC No. 352 of 2017

Complainant	: State of Kerala Rep. By Assistant Sub Inspector of Police, City Traffic Police Station, Kozhikode in Crime No.7/2017 (By Smt. Ayswarya.K.G., APP. Grade II)
Accused	: Rohan Y M, aged 22/17, S/o Suresan, Yogi Madam House, Makkada (PO), Kakkodi. (By Adv. Ajay T S)
Offence	: Sections 279, 338 of IPC.
Plea of Accused	: Not guilty
Finding	: Guilty
Sentence or order	: (i)The accused is convicted of the offences punishable under Sections 279 and 338 of IPC under Section 255(2) of CrPC. (ii)The accused is sentenced to pay a fine of Rs.1000/- u/s 279 IPC, in default of payment of fine he shall undergo simple imprisonment for 3 days. (iii)The accused is sentenced to undergo simple imprisonment for 3 months and pay compensation of Rs.15,000/- u/s 338 IPC, in default of payment of compensation he shall undergo simple imprisonment for 15 days.

(iv) Compensation of Rs. 15,000/- if paid/realised, Rs. 5,000/- each shall be paid to PW1, PW3 and Mr. Vignesh u/s 357(1)(b) CrPC.

	Name of Police Station & Cr.No.	<u>Description of the accused</u>				
		Name & Rank	Fathers Name	Occupation	Residence	Age
1	2	3	4	5	6	7
1	City Traffic Police Station, Kozhikode. Cr.No.7/2017	Rohan Y M	Suresan	-	Yogi Madam House, Makkada (PO), Kakkodi.	22/17

Date of:

Occurrence	Complaint	Apprehension/surrender	Release on bail	Commitment	Commencement of trial	Commencement of evidence	Close of trial	Sentence or order	Service of copy of Judgment or finding on accused	Explanation of delay	Period of detention undergone during investigation, inquiry or trial, for the purpose of Sec. 428 Cr.P.C.
8	9	10	11	12	13	14	15	16	17	18	19
31.12.16	25.04.17	07.08.17	07.08.17	-	07.08.17	08.11.17	25.10.25	15.06.26	Accused Convicted u/s 255(2) Cr.PC	No delay	Nil

This case having been heard finally on the 10th day of June 2026, this court on this the 15th day of June 2026, passed the following:

J U D G M E N T

This case has arisen from a final report filed by the Assistant Sub Inspector of Police, City Traffic Police Station, Kozhikode for the offence punishable under

Sections 279, 338 of the Indian Penal Code (hereinafter referred to as 'IPC' for brevity).

1. **The prosecution case in brief is as follows:-** On 31.12.2016 at 24:00 hrs, when PW1 was driving a scooter bearing registration number KL 11 AL 5413 with Mr. Vignesh as its pillion rider, from Kakkodi towards Karaparamba direction, when they reached the public road in front of Lessly Villa near Karaparamba Homeo College, the accused riding a motor cycle bearing registration number KL 11 AC 5002 with pillion rider (PW3) coming from the opposite direction from Karapparamba to Kakkodi, while overtaking an autorickshaw in a rash and negligent manner so as to endanger human life, hit the above said scooter, resulting in PW1, Mr. Vignesh, the accused and PW3 getting thrown off. Thereby, Mr. Vignesh lost his left eye, PW1 sustained injury to his right eye and PW3 sustained fracture on the skull and other grievous injuries. Thus, the accused is alleged to have committed offences punishable under Sections 279 and 338 of IPC.
2. On appearance of the accused, copies of all prosecution records were furnished to him. After considering the police report and documents submitted along with that report, this court being satisfied that there were grounds to proceed against the accused, particulars of offence u/ss 279, 338 of IPC were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
3. In order to prove the allegations, the prosecution examined PW1 to PW15 and Ext P1 to P15 were marked. The accused was examined under section 313(1)(b) of the Code of Criminal Procedure Code (hereinafter referred to as 'CrPC' for the sake of brevity) to answer the incriminating circumstances appearing in evidence against him. The accused has not adduced any evidence on his side.

4. Heard both sides and perused the records.
5. **On considering rival contentions and materials on record, the following points arose for consideration:-**
 - i. Whether the accused drove a motor cycle bearing registration No. KL 11 AC 5002 in a rash and negligent manner so as to endanger human life on 31.12.2016 at 24:00 hrs, along Karapparamba - Kakkodi road in front of Lessly Villa near Karaparamba Homeo College?
 - ii. If so, whether such act of the accused resulted in causing grievous hurt to PW1, Mr Vignesh and PW3 ?
 - iii. What is the order or sentence?
6. **Point Nos. (i) & (ii):-** For the sake of brevity, convenience and to avoid repetition of facts these points are considered together.
7. PW1 deposed that he got injured in the incident that happened on 31.12.2016 at about 12 am. He was traveling from his house towards Kozhikode town in scooter with his friend Mr. Vignesh as its pillion rider. When they reached near Homeo College near Karapparamba, a motor cycle coming in the opposite direction overtaking an autorickshaw, hit their scooter and resultantly PW1 and Mr. Vignesh got thrown off. PW1 sustained fracture in his head and face and injury to his eye. Thereafter, they were taken to the Medical College hospital, Kozhikode by local people who gathered therein. He also deposed that later he was taken to Baby Memorial hospital. PW1 also deposed that Mr. Vignesh lost his right eye, also lost his memory and not able to properly walk. He deposed the cause of accident to be the overspeedness and carelessness of the accused. He also identified the accused in court.
8. PW2 was the father of Mr. Vignesh and he deposed that he has not seen the incident. He deposed that upon receiving the information, he took firstly to Medical College hospital, Kozhikode and thereafter to Baby Memorial

hospital and therein he informed police about the incident and Ext P1 FIS was recorded by the police. He also deposed that his son got injured in his head, lost one eye and lost his memory. He also added that his son did not get his memory back and occasionally turns violent. During cross examination he stated that Ext P1 FIS was given only on 02.01.2017 even though the accident occurred on 31.12.2016 since his son was in ventilator and hospitalised.

9. PW3 deposed that he got injured in the incident that happened on 31.12.2016 at around 12:30 am. He deposed that on that day while he was travelling as pillion rider on the bike driven by the accused from Kozhikode town towards his home, when they reached near Homeo College Karapparamba, a bike coming from the pocket road in overspeed hit into their vehicle. He deposed that he got injured in his head and shoulder and also deposed that the accused also got injured in his head and was also having problem with his memory occasionally. He deposed the cause of accident to be the carelessness of the bike coming from pocket road. Thus, he was declared hostile to the prosecution case by the learned Assistant Public Prosecutor (hereinafter referred to as 'APP' for brevity and convenience). He also deposed that the other vehicle came directly towards them and hit their vehicle. He deposed that the incident occurred in front of Kozhikode – Balusseri road lying in front of Leslie super market.
10. PW4 deposed that he has seen the incident that happened on 31.12.2016 at around 12 am. While he was returning from his job in a bike towards his house at Karapparamba, when he reached near Homeo College, a bike driven by the accused overtook him in over speed and carelessly. While the said vehicle was trying to overtake an autorickshaw traveling in front of PW4, the said vehicle collided with a scooter coming in the opposite direction resulting in the falling of two vehicles and causing injuries to four people traveling in the two vehicles. Immediately, he parked his vehicle and rushed to the scene

of occurrence and made arrangements for the injured Mr. Vignesh to be taken to the hospital in the above said autorickshaw which the accused was trying to overtake. He also got in the autorickshaw and took Mr. Vignesh to Medical College hospital. Thereafter, when his family members came, he was taken to Baby Memorial hospital. He deposed the cause of accident to be the overspeedness and carelessness of the accused. He also identified the accused in court. He also deposed that there was light in the locality and also deposed that he was seeing the accused for the first time therein and he also saw the accused at the hospital and police station.

11. PW7 deposed that on 31.12.2016 at around 12:30 am when he was returning from town to his home and near Karaparamba junction he saw four people lying on the road due to a collision of two bikes. Thereafter, he took PW3 to the hospital in an autorickshaw.
12. As per the prosecution records, the alleged incident occurred on 31/12/2016 at 24.00 hrs, whereas, the incident was reported to police as per Ext P1 FIS only on 02/01/2017 at 12.15 hrs. Hence, there is a delay of almost 1.5 days in reporting the incident to police. PW2 stated that it was due to the fact that his son Mr. Vignesh was in ventilator at the hospital, that the delay occurred in reporting the incident. Ext P1 FIS also states that Mr. Vignesh was in ICU at the time of recording the same. Hence, this court finds that the delay has been properly explained by the prosecution.
13. At the outset, it is pertinent to note that in order to constitute an offence punishable u/s 338 IPC, grievous hurt should be caused to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others. The prosecution alleges that the accused drove a bike in a rash and negligent manner as to endanger human life and hit the scooter driven by PW1 and caused grievous hurt to PW1, PW3 and Mr. Vignesh.

14. In this context, the learned counsel for the accused vehemently argued that the prosecution has miserably failed to prove that it was the accused who rode the bike at the time of the alleged accident. He raised a contention that the accused has not been properly identified by any of the witnesses in this case and thus the identification of the accused in this case was not proper.
15. It is to be noted that in this case PW1, who was the driver of the scooter against whom the vehicle allegedly driven by the accused rammed into, deposed that he saw the accused for the first time while the accused was overtaking the autorickshaw and before hitting his vehicle. Hence, according to the version of PW1, he got only a glimpse of the accused while the accused was coming in overspeed and overtaking the autorickshaw and before hitting him. He also denied that he lost his consciousness after the accident. However, PW1 has not deposed that he has seen the accused immediately after the accident. Hence, PW1 has only had a glimpse of the accused right before the accident. Moreover, the learned counsel for the accused also pointed out that as per Ext P5, there was an optic nerve injury occurred to PW1. Hence, this would necessarily imply that PW1 would have got only a lessened vision due to the injury to the eye. Thus, he would not be in a position to properly identify the accused and according to the learned counsel, his identification of the accused in court was not proper.
16. When it comes to the deposition of PW4 who was the eye witness in this case, he deposed that he saw the accused firstly at the scene of occurrence. He deposed that there was light available at the scene. He also added that thereafter he saw the accused at the hospital and also at the police station. The learned counsel for the accused vehemently put forth that the said identification of the accused by PW4 cannot be taken into account considering the fact that he has not stated before police the existence of light at the scene enabling him to see the face of the accused. In this context, this court cannot

sail with the said contention of the learned counsel considering the fact that PW4 has categorically deposed before this court that he firstly saw the accused at the scene of occurrence and thereafter at the hospital as well. Hence, PW4 got multiple opportunities and time to see the face of the accused. Moreover, PW4 has stated that after the accident he proceeded to the scene of occurrence and he took one of the injured in this case to the hospital. Hence, he would have got ample time and opportunity to remember the face of the accused as he was involved in the taking one of the injured persons to the hospital. It is not a case wherein after seeing the accident, PW4 did not involve in any of the activities for taking the injured persons to the hospital. He deposed that when the accident occurred all the 4 persons in the 2 vehicles were injured. Hence, he has had every opportunity to identify the face of the accused. This aspect gets fortified when PW4 deposed that he also saw the accused at the hospital. This evidence of PW4 remains uncontroverted before this court. Hence, this court finds that there is nothing to disbelieve the identification of the accused by PW4.

17. PW3 who was the pillion rider of the vehicle allegedly driven by the accused deposed that the vehicle was driven by the accused. But it is to be noted that PW3 has not identified the accused in court. It is in this context the learned counsel for the accused placing reliance on the decision of the Hon'ble High Court of Kerala in ***Rajesh v. State of Kerala*** (reported in 2025 KLT online 2598) wherein it was held by the Hon'ble High Court that even if the accused were known to the witnesses, it does not take away the legal requirement to identify the accused in dock. Hence, applying the above said dictum, since PW3 did not identify the accused in court, he has not identified the accused before this court.
18. Hence, to conclude, it is not safe to rely on the identification of the accused by PW1 considering the fact that he has had only a glimpse of the accused right

before the accident and he has not stated the same before police. As discussed earlier, PW3 has not identified the accused in court. Nevertheless, and most importantly, PW4 who was the eye witness in this case has properly identified the accused in court as per the discussion that has preceded. Hence, the prosecution has successfully proved that it was the accused who rode the vehicle at the time of accident.

19. The next aspect that requires to be addressed is whether the accused drove the bike in a rash or negligent manner as to endanger human life. The Hon'ble High Court of Gujarat in ***Yunusbhai Anwarbhai Karodia v. State of Gujarat and Another*** (reported in 2018 KHC 4284) has held regarding rashness and negligence as thus:

“20. It must be pointed out that rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness and in order to amount to criminal rashness or criminal negligence one must find that the rashness has been of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences. Criminal negligence is gross and culpable neglect, that is to say, a failure to exercise that care and failure to take that precaution which, having regard to the circumstances, it was the imperative duty of the individual to take. Culpable rashness is acting with consciousness that mischievous consequences are likely to follow although the individual hopes, even though he hopes sincerely, that such consequences may not follow. The criminality lies in not taking the precautions to prevent the happening of the consequences in the hope that they may not happen....”

20. In the case at hand, both PW1 and PW4 deposed that the accused was overtaking an autorickshaw just before colliding with the scooter of PW1. PW4 added that he was travelling in his bike behind the autorickshaw and the accused coming from the back overtook him in overspeed and carelessly. Thereafter, the accused tried overtaking the autorickshaw travelling just in front of him and thereby crashed into the motor cycle of PW1. Hence, the case of PW1 and PW4 remains consistent to the aspect that the accused in overspeed and carelessly was trying to overtake an autorickshaw just before hitting the motor cycle of PW1. Whereas PW3 who was the pillion rider of the motor cycle of the accused deposed that there was no autorickshaw in their vicinity at the time of accident. He deposed that the road was empty and the bike coming from pocket road (road in front of homeo college) came carelessly and hit towards their vehicle. An important aspect to be noted in the deposition of PW3 is that he stated that they were travelling in the center of the road as the road was empty.
21. In this context it would be apposite to discuss the scene of occurrence of this case. Ext P2 is the scene mahasar and Ext P2(a) is the site plan. PW14 who was the investigating officer has deposed the scene of occurrence before this court. As per the prosecution records, the accused was travelling in west to east direction from Karapparamba to Balussery direction. Whereas PW1 was travelling from east to west from Homeo college towards Karaparamba direction. At this juncture, the learned counsel for the accused raised a contention that the version of PW4 eye witness could not be believed as he has deposed an inconsistent case that he was travelling from east to west direction. Hence, going by the said direction deposed by PW4, the accused would also be on the same direction. He also deposed that Mr. Vignesh (pillion rider of PW1) was travelling from west to east direction. However, this court cannot find this discrepancy fatal to the prosecution case considering the fact that although PW4 failed to consistently depose the direction name wise but he has

successfully deposed a consistent version with the prosecution case when deposing the direction with places. He has stated that he was coming from Karapparamba to Homeo college direction. Hence, PW4 has only failed to correctly state direction wise. But he has stated a consistent version with the prosecution case when he stated his direction citing the place from which he was coming and the place to which he was heading. Hence, this court cannot sail with the said contention of the learned counsel for the accused as it is only a minor discrepancy that could be overlooked for the reason aforesaid.

22. PW1 and PW4 stated that the accused was trying to overtake an autorickshaw. PW3 deposed that they were travelling at the center of the road. As per Ext P2(a), the entire width of the road is 6.5 meters and the accident occurred 1.25 meters far from the center of the road towards that part of the road wherein PW1 was travelling. In other words, the accident occurred 1.25m after the center of the road towards the southern side of the road. Hence, reading the evidence of PW1, PW3 and PW4 along with Ext P2 and P2(a), it is established before this court that the accused was coming in the wrong side of the road at the time of accident.

23. The accused went to the wrong side since he was trying to overtake an autorickshaw after overtaking PW1. Although, PW3 denied the existence of the vehicle of PW1 and autorickshaw, there is ample evidence available as per the evidence of PW1 and PW4 before this court to discern the existence of autorickshaw. Also, PW3 stated that they were travelling at the center of the road and he deposed that the motor cycle driven by PW1 directly came towards them and hit their vehicle. If that was the case, the accident would have occurred at the center of the road. But looking at Ext P2(a), the accident did not occur at the center but 1.5 m far from the center towards the wrong side of PW3. There is nothing placed to disbelieve Ext P2(a). The accused does not have a case that the accident occurred at the center. Hence, the

version of PW3 that the vehicle of PW1 came towards them and hit their vehicle is not believable.

24. Hence the accused in this case in overspeed and carelessly overtook the vehicle of PW4 and also tried overtaking the autorickshaw travelling right in front of the vehicle of PW4. While trying to overtake the autorickshaw, the accused went to the wrong side of the road and collided with the vehicle driven by PW1.
25. Regulation 14 of the Motor Vehicles (Driving) Regulations, 2017, stipulates the duties of a driver while overtaking. It states that no vehicle shall be overtaken if such overtaking is likely to impede the oncoming traffic. Apart from that no overtaking is allowed at junctions and intersections. In the case at hand, there is evidence before this court to show that the accused was overtaking an autorickshaw and resultantly went on the wrong side and hit the oncoming vehicle of PW1. Also, the accused was approaching an intersection/junction as per Ext P2(a) site plan. Hence, the accused has not followed the rules and duties of a driver while overtaking another vehicle.
26. Primarily, the accused should have been extra cautious when he was approaching an intersection wherein there would be incoming traffic from multiple sides and also pedestrian crossings. By overtaking a vehicle while approaching an intersection, the accused becomes aware that a vehicle would approach from any direction since he was approaching an intersection. Same is the case when PW3 stated that they were going at the center of the road. Hence, he becomes aware that mischievous consequences are likely to follow from his act of overtaking while approaching an intersection. Moreover, Ext P2(a) would show that the accident occurred at the wrong side of the direction of the accused. Hence, approaching an intersection the accused was coming in overspeed and that too trying to overtake an autorickshaw. Knowing the consequences, he acted without any difference and proceeded with speeding

the bike and overtaking the autorickshaw while approaching an intersection. Hence, this court finds that there were elements of criminal rashness in the act of the accused while driving the bike.

27. Also, the accused has neglected to follow the duty cast upon him as per law to follow while overtaking a vehicle. As per law and as per the circumstances of the case, the accused was duty bound to take all necessary precautions while overtaking another vehicle. First of all, he was not supposed to overtake a vehicle while approaching an intersection. Secondly, he should not have overtaken a vehicle if it impedes oncoming traffic. This would effectively mean that the accused is not at all expected to overtake even if it impedes the oncoming traffic. Hence the fact that the accused hit the vehicle of PW1 at the wrongside infers a strong conclusion that he has blatantly violated regulation 14 of the Motor Vehicles (Driving) Regulations, 2017.
28. In order to prove negligence in criminal law, firstly it needs to be established that there was existence of a duty. It has been established before this court that the accused was driving the bike at the time of accident and hence being a driver, a primary duty of care is imputed into a driver and the same needs to be safeguarded. This duty gets enhanced especially when the driver approaches a junction wherein there are possibilities of incoming traffic from other sides and people crossing the road and the driver is heavily bound to take extra caution and speed down when approaching an intersection or junction. The same has been held by the Hon'ble High Court of Kerala in ***State Insurance Department, Kozhikode v. Joy Wilson M. V*** (reported in 2023 (1) KHC 661) wherein it was held that the Rules of the Road Regulations, 1989, render it statutorily obliged for the driver of a Motor Vehicle to slow down at a road intersection, a road junction, pedestrian crossing or a road corner and the standard of care in such cases are high on the driver of the vehicle.

29. In the case at hand, the accident occurred just before the accused was approaching an intersection. PW1 and PW4 deposed that the accused was in overspeed and carelessly overtaking an autorickshaw. Hence, there was a heavy duty cast upon the accused to drive the bike carefully especially when he was approaching an intersection. Hence, the accused ought to have been extra cautious. Instead, he came in overspeed approaching the intersection and also overtaking an autorickshaw which he was lawfully not allowed to do so as per the discussion that has preceded. Hence this court is of the finding that the prosecution has proved there existed a duty on the accused and also the accused breached such duty. A mere breach of such duty would not constitute criminal negligence as held by the Hon'ble Supreme Court in **Malay Kumar Ganguly v. Sukumar Mukherjee & Ors** (reported in AIR 2010 SC 1162) and it needs to be characterised as grossly negligent. As held by the Hon'ble Supreme court in **Sushil Ansal v. State Through CBI** (reported in 2014 KHC 4153), what is 'gross' would depend upon the fact situation in each case and cannot be defined with certitude. Here in this case, the accused was overtaking an autorickshaw approaching an intersection wherein he was not lawfully bound to overtake. By doing so he went to the wrong side of the road and collided with the oncoming vehicle from the opposite direction. Hence this Court is of the finding that the act of the accused can be considered so grossly negligent in order to attract criminal negligence.

30. The next aspect that requires consideration is whether there is any direct nexus with the injuries caused and the rash or negligent act of the accused to constitute offence punishable u/s 338 IPC.

31. In this context, the learned counsel for the accused pointed out a discrepancy in the prosecution case. As per the evidence of PW1 and PW4, the injured Mr. Vignesh and PW1 was firstly taken to Medical College Hospital, Kozhikode and thereafter taken to Baby memorial hospital. However, no records have

been placed before this court to show that they were taken to Medical College Hospital. The records of Baby memorial hospital also do not reveal as to whether they were referred from Medical College Hospital. This attains its relevance when the time of examination as per Ext P4 and P5 are looked into. As per Ext P4 (wound certificate of Mr. Vignesh), the time of examination is 3.45AM on 01/01/2017, whereas Ext P5 (wound certificate of PW1), would reveal the time of examination as 2 AM on 01/01/2017. It is noteworthy that there seem to be a correction made by the author of Ext P5 regarding the date of examination and it was pointed out by the learned counsel for the accused. However, this correction which has been initialled by the author does not raise any doubt about the veracity of the document as it can be considered as a clerical error that has been corrected. No challenge regarding the same was also made by the accused during examination of PW9.

32. Hence, as per Ext P4, there appears to be difference of about 3 hours delay for getting treatment from the alleged time of accident. According to the learned counsel for the accused, since there are no documents produced to show that they were treated at Medical College Hospital, it raises a serious doubt in the case of the prosecution as to whether the accident as claimed by the prosecution apparently occurred at the alleged time.

33. However, this court cannot sail with the said argument of the learned counsel for the following reasons. Firstly, and most importantly, the evidence of PW1, PW4 and PW2 remains consistent with the fact that firstly PW1 and Mr. Vignesh were taken before Medical College Hospital, Kozhikode and only thereafter they were shifted to Baby memorial hospital. The case of the prosecution remains consistent on this aspect. PW1 and PW4 further stated that after the parents came, Mr. Vignesh and PW1 were taken to Baby memorial hospital. PW8 and PW12 also deposed that Mr. Vignesh and PW1 were taken from medical college hospital to baby memorial hospital. Hence,

the fact that PW1 and Mr. Vignesh were taken to medical college hospital and thereafter to Baby memorial hospital is established before this court. In this context it is also relevant to note the deposition of PW15 wherein the doctor of Medical college hospital deposed that patients with similar injuries as in Ext P4 and P5 upon their arrival in medical college would be given immediate treatment and they would be treated only upon their registration. But he also stated that records would be available only to patients getting treatment as in-patient. He also deposed that there were also patients who would take back the records as well. Nevertheless, there is evidence of PW1 and PW4 to establish that Mr. Vignesh and PW1 was initially taken to medical college hospital. There are also materials to show that they were taken to baby memorial hospital thereafter. Even Ext P15 would only reveal the date of examination of PW3 at the medical college hospital to be 01.05AM on 01/01/2017. The time of examination of PW1 at Baby memorial hospital is 2 AM. Hence there is no delay with respect to treatment of PW1 as it is established before this court he was firstly taken to medical college hospital and thereafter to baby memorial hospital. However, Ext P4 would reveal the date of examination of Mr. Vignesh as only 3.45 AM. Hence there is a delay in treating Mr. Vignesh. But this delay does not take away the evidence that the accused rode the vehicle in a rash and negligent manner causing the accident and injuries to PW1, PW3 and Mr. Vignesh. Hence, this court finds that this is not fatal to the prosecution case considering the fact that the factum of taking both the patients to Medical College hospital and Baby memorial hospital has been placed. Nevertheless, PW3 was treated at medical college hospital and there is evidence to show that PW3 was also injured in the accident. Hence there arise no doubt in the case of the prosecution regarding the time of accident as the same has been categorically stated by the occurrence witnesses. There arise no room for any doubt in the cases of PW1 and PW3. However, there is delay in Mr. Vignesh getting the treatment, but this court has for the aforesaid reason, found that it is

not fatal to the prosecution case. The accused having raised a case that the accident occurred at a different time totally inconsistent with the case of the prosecution remains as mere assertion of the accused without any corroboration by evidence so as to raise a suspicion in the case of the prosecution .

34. In this context, the learned counsel for the accused also raised a contention pertaining to Ext P5, as per which, in the column number 9, the incident is stated to have occurred at 11 PM on 31/12/2016. Per contra, the learned APP pointed out that PW1 has deposed before this court that after the accident, he was partly unconscious and by the time he was taken to baby memorial hospital, he was fully unconscious. He also stated that after he felt conscious, the doctor enquired about the details of the accident and thereafter wound certificate was prepared. According to learned APP, the fact that a different time has been stated in wound certificate does not affect the case of the prosecution especially considering the purpose for which wound certificate was usually prepared. Hence, it is apparent before this court that the wound certificate was prepared after the doctor enquired with PW1 regarding the details. At the same time, it is pertinent to note that the injuries caused to PW1 were severe injuries to face and head. Hence, this court cannot rule out a possibility that he would not be in a position to recollect the exact time at which the accident occurred especially taking into account the injuries to head and face. There is also a possibility that someone else who took the injured to the hospital or any bystander of PW1 would have stated the time. The same was also not challenged by the accused during the examination of PW9. He would have been the apt person to depose and clarify the same. Moreover, it is also notable that there is no considerable difference in the time stated as per Ext P5 and the prosecution case. Hence, this court finds the same to be a minor discrepancy that does not attribute a doubt in the case of the prosecution.

35. The injuries occurred to PW1 in pursuance to the accident as per Ext P5 are head injury namely cerebral contusion and acute sub dural haematoma. There were multiple fractures on the skull and facial bones. He also had optic nerve injury. CT of the head and face were taken. PW9 who treated PW1 stated that the injuries were grave in nature and also stated his opinion as to cause of injury. The evidence of PW1 also revealed that he sustained fracture in his head, injury to his eye and fracture in his face.
36. Mr. Vignesh also had head injuries namely cerebral contusion and sub arachnoid haemorrhage. He also had fracture in frontal bone, maxilla, orbit, zygomatic arch and radius. His CT of face and head was also taken. PW9 who also treated Mr. Vignesh stated that the injuries were grave in nature and also stated his opinion as to cause of injury. PW2, who was the father of Mr. Vignesh deposed that his son got injured in his head, lost one eye and lost his memory. The injuries of PW1 and MR. Vignesh were also deposed by PW9.
37. The injuries caused to PW3 were lacerated wound, multiple fractures on brain with haematoma, fracture on scapula, left frontal region and orbit. PW15 was the doctor who treated PW3 and he deposed the injuries before court and his opinion. PW3 as well deposed that head injuries were caused to him in the result of the accident.
38. It is to be noted that PW9 deposed that the injuries caused to PW1 and Mr. Vignesh were grave. Hence, multiple fractures on skull and face along with other severe injuries were caused to PW1, PW3 and Mr. Vignesh. The evidence of PW1, PW2 and PW3 regarding the injuries caused to PW1, Mr. Vignesh and PW4 remains consistent with the case of the prosecution as per medical records. Considering the nature of injuries caused, it can be confirmed that grievous hurt was caused to PW1, PW3 and Mr. Vignesh. PW1, PW3 and PW4 stated that the injuries occurred due to the accident. It has come out in evidence that the accused was the one driving the bike and the accident

occurred due to the rashness and negligence of the accused as to endanger human life. Hence, this Court is of the finding that the act of the accused played a substantial part in causing the said injuries to the above said persons and this court rules out other cause or negligence which would have caused any of the injuries. The injuries are found to be reasonably the probable consequence of the act of the accused. Hence, this Court comes to a conclusion that the act of the accused is the proximate, immediate or efficient cause of the injuries without the intervention of any other person's negligence.

39. It is noteworthy that as per Ext P8, there was no mechanical defect or failure of brake in the vehicle driven by the accused. Same was the case with the vehicle driven by PW1. PW11 opined that the incident was not due to any mechanical defect. Also, the accused has no defence of any mechanical failure of the vehicle in this case. The damages noted in the vehicle of the accused were fork assembly with handle bend, headlight broken, indicators front left and right side broken, fuel tank assembly crushed and left and right side cover damaged. The damages noted in the vehicle driven by PW1 were fork assembly with handle bend, headlight broken front panel cover broken, front mudguard crushed and platform damaged. These damages were also deposed by PW11 before this court. Reading together these damages in the said vehicles, it corroborates the case of the prosecution regarding a direct collision of the vehicles. There arises no room for any doubt as to the accident from the damages seen noted as well.

40. The learned counsel for the accused also raised a contention that as per the version deposed by PW3 and PW4, the accused also got injured in the accident. However, no records have been placed before this court to bring the said fact before this court. According to the learned counsel for the

accused, since it is the case of the prosecution that the accused also got injured, it was incumbent upon the prosecution to prove the said aspect as well. However, this court cannot sail with the said contention of the learned counsel considering the fact that even though PW3 and PW4 categorically stated that accused also got injured in this case, failure of the prosecution to establish the said fact does not affect the case of the prosecution. This does not affect the case of the prosecution since the court has already found that the accused drove the bike in a rash and negligent manner endangering human life and the said bike got involved in an accident which resulted in causing serious injuries to PW1, Mr. Vignesh and PW3.

41. The learned counsel for the accused also raised a contention that the autorickshaw driver and Vignesh were not examined by the prosecution which naturally raises a suspicion of the bonafides of the prosecution case. However, this court cannot uphold the said contention of the learned counsel for the accused considering the fact that from the witnesses that have been cited and examined before this court, the prosecution has successfully proved that the accused drove the bike in a rash and negligent manner resulting in an accident, causing grievous injuries to others. Hence, the fact that some of the witnesses have not even been cited by the prosecution and examined before this court as pointed out by the learned counsel for the accused, is not fatal to the prosecution unless those witnesses would have been in a position to clearly state those facts which remains not established before this court. In the case at hand, prosecution has successfully proved the case beyond the shadow of any reasonable doubt. Hence, non-citing and non-examination of the said witnesses does not affect the case of the prosecution. Reliance could be placed on the dictum of the Hon'ble Supreme Court in **Guru Dutt Pathak vs. State of U.P.** (reported in (2021) 6 SCC 116) wherein it was held that

where there is clinching evidence of eyewitnesses, mere non-examination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution. Here in the case at hand, there is direct evidence to prove the case of the prosecution beyond reasonable doubt as discussed earlier. Hence, applying the said dictum, non-examination and non-citing of other witnesses does not strike any fatal blow to the case of the prosecution.

42. Hence, considering the above discussion, this court finds that the prosecution has proved beyond reasonable doubt the guilt of the accused. Hence, upon considering the entire evidence adduced in this case, this court finds that the accused is found guilty of having committed offences punishable u/ss. 279 and 338 of IPC. Hence point nos. (i) and (ii) are answered in favour of the prosecution.

43. **Point No. (iii)** - In the light of findings in point nos. (i) and (ii), the accused is found guilty and is convicted of having committed offences punishable u/ss. 279 and 338 of IPC u/s 255(2) CrPC. Considering the nature of the offences alleged and also considering the fact that serious injuries have been caused to PW1, PW3 and Mr. Vignesh, this court is not inclined to invoke the benevolent provisions of the Probation of Offenders Act. Hence, this court is of the finding that the following sentence shall meet the ends of justice.

44. In the result,

- i. The accused is convicted of the offences punishable under Sections 279 and 338 of IPC under Section 255(2) of CrPC.

- ii. The accused is sentenced to pay a fine of Rs.1000/- u/s 279 IPC, in default of payment of fine he shall undergo simple imprisonment for 3 days.
- iii. The accused is sentenced to undergo simple imprisonment for 3 months and pay compensation of Rs.15,000/- u/s 338 IPC, in default of payment of compensation he shall undergo simple imprisonment for 15 days.
- iv. Compensation of Rs. 15,000/- if paid/realised, Rs. 5,000/- each shall be paid to PW1, PW3 and Mr. Vignesh u/s 357(1)(b) CrPC.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, on this the 15th day of June, 2026)

**Special Judicial First Class Magistrate
(Marad Cases), Kozhikode**

APPENDIX

Witness examined for prosecution

Prosecution Witness No.	Name of Witness	Description
PW1/CW1	Abhishtapradhan B P	Occurrence Witness
PW2/CW3	Rajeev Rathan A R	First Informant
PW3/CW2	Dhaneesh K P	Occurrence Witness
PW4/CW4	Vipulnath P	Occurrence Witness
PW5/CW6	Navaneeth V M	Scene Mahasar Witness
PW6/CW8	Subinraj P	Body Mahasar Witness
PW7/CW11	Vidhun P	Other Witness
PW8/CW10	P Vikraman	Other Witness
PW9/CW14	M Sivakumar	Medical Witness
PW10/CW9	Sumesh C	Other Witness
PW11/CW13	Jinesh M	AMVI

PW12/CW12	Sudheeshkumar	Other Witness
PW13/CW16	Ravi P	Police Witness
PW14/CW17	Prabhakaran K	Investigating Officer
PW15/CW15	Ranjith Kishore	Medical Witness

Exhibits marked for Prosecution:

Exhibit No.	Description of the Exhibit	Proved/Attested by
P1	First Information Statement	PW2
P2	Scene Mahasar	PW5
P2(a)	Sketch Plan	PW14
P3	Body Mahasar	PW6
P4	Wound Certificate of Mr. Vignesh	PW9
P5	Wound Certificate of PW1	PW9
P6	Reply to Section 133 MV Act Notice	PW10
P7	Kychit	PW1
P8	AMVI report of the Vehicle bearing registration No. KL 11 AC 5002	PW11
P9	AMVI report of the Vehicle bearing registration No. KL 11 AL 5413	PW11
P10	First Information Report	PW13
P11	Report to add name and address of the accused	PW14
P12	Report to alter section	PW14
P13	Report to correct occurrence time	PW14
P14	Notice U/s 41A(1) Cr.PC	PW14
P15	Wound Certificate of PW3	PW14

Material objects marked:

Material Object No.	Description of the exhibit	Proved by/Attested by
---NIL---		

Witness examined for defence :

Defence Witness No.	Name of Witness	Description
---NIL---		

Exhibits marked for Defence:

Exhibit No.	Description of the Exhibit	Proved by/Attested by
	---NIL---	

**Special Judicial First Class Magistrate
(Marad Cases), Kozhikode**