

IN THE COURT OF SESSION, THALASSERY

Present :- Smt. Ruby K Jose, Addl. Sessions Judge-III,
Thursday, the 12th day of March, 2026/21st Phalguna, 1947.

CRIMINAL APPEAL No.84 OF 2019

From which court the appeal is Preferred	:	Judl. First Class Magistrate-I. Kannur.
Number of case in that Court	:	CC No.1689/2015.
Name and description of the Appellant	:	Gafoor, S/o.Jaleb Khan, Aged 41 years, 58 village Kushkmajra, Faridabad, Gulavoor (PO), Hariyana.
Name and description of the Respondent	:	State : SHO, Kannur Traffic Police Station rep. by the Public Prosecutor, Thalassery.
The Sentence and the provision of law under which it was imposed by the lower court	:	<p>i) accused is sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.1000/- u/s 279 of IPC. In default of payment of fine, he shall undergo simple imprisonment for 7 days. Simple imprisonment for six months and to pay a fine of Rs.5000/-u/s 304-A of IPC. In default of payment of fine, he shall undergo simple imprisonment for 30 days.</p> <p>ii) the period of detention, if any, undergone by accused during the investigation, inquiry or trial of this case shall be set off against the term of imprisonment imposed on him.</p> <p>iii) Substantive sentence imprisonment shall run concurrently. of</p>
Whether confirmed, reversed or modified and if modified,	:	Modified. The appeal is allowed in part as follows:-

the modification.	<p>i. The finding of guilt arrived at by the trial court and the conviction passed against the appellant under Sections 279 and 304A of the IPC are hereby confirmed.</p> <p>ii. The substantive sentence of imprisonment u/s.279 of IPC is altered to a fine of Rs.1,000/-, in default of payment of fine, the accused/appellant shall undergo simple imprisonment for seven days.</p> <p>iii. The substantive sentence of imprisonment u/s.304A of IPC is modified to 5 months and to fine of ₹25,000/-, in default of the payment of fine, the accused/appellant shall undergo simple imprisonment for three months.</p> <p>iv. If the fine amount is realised, ₹20,000/- shall be released to the legal heir of the deceased Shaheer as compensation under Section 357(1) Cr.P.C.</p> <p>v. The trial court will take steps to execute the modified sentence.</p>
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Date of – or on which

Presentation	Filing	Issuance of notice to the respondent	Appearance of respondent
1	2	3	4
22-03-2019	23-03-2019	23-03-2019	23-07-2019
Appellant ordered to appear	Release on execution of bail bond	Final hearing	Judgment
5	6	7	8
...	25-02-2026	12-03-2026

This appeal coming on for hearing before me, upon perusing the appeal and the record of the evidence and proceedings and upon duly considering the same, of Sri.K.Ranjith, Advocate for the Appellant; of the Addl. Public Prosecutor for the State/Respondent; I do adjudge and pass the following:

JUDGMENT

The above appeal has been filed by the appellant u/s.374 of Cr.P.C.

2. The appellant is accused in CC No.1689/2015 on the file of the Court of Judicial First Class Magistrate-I, Kannur. The trial court as per judgment dated 22.02.2019 found the accused guilty and convicted and sentenced him. The appellant being aggrieved has come up in appeal.

3. The gist of the prosecution case is as follows:- On 04.07.2015 at about 8.20 a.m., at Thana, while the deceased Shaheer was driving a mini lorry bearing Registration No. KL-58-H-6908 from Kannur towards Melechovva, the accused drove a container lorry bearing Registration

No.HR-38-U-5421 in the opposite direction in a rash and negligent manner, so as to endanger human life and public safety, and hit against the mini lorry driven by the deceased. As a result of the said impact, Shaheer sustained grievous injuries and subsequently succumbed to the injuries. Thus, the accused is alleged to have committed the aforesaid offences.

4. Originally, the case was registered as Crime No.835/2015. After the completion of the investigation, the final report was filed against the appellant/accused alleging commission of the above mentioned offences.

5. The accused appeared before the trial court and he was given copies of relevant prosecution records. After hearing both sides, charge was framed against the accused for the offence punishable u/ss.279 and 304 A of IPC and read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

6. On the side of the prosecution, PW1 to PW12 were examined and Exts. P1 to P12 were marked.

7. When the accused was questioned u/s.313(1)(b) of Cr.P.C, he denied the incriminating circumstances appearing in evidence against

him and stated that he was innocent. The accused did not adduce any evidence.

8. The trial court after considering the evidence on record found the accused guilty u/ss.279 and 304A of IPC and convicted him. After hearing the accused/appellant on the question of sentence, he was sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.1,000/- u/s. 279 of IPC, in default shall undergo SI for seven days. The accused further sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.5,000/- u/s.304A of IPC and in default of payment of fine, he shall undergo SI for 30 days. Against the aggrieved order, the accused/appellant filed this appeal and the same is made over to this court for disposal.

10. Heard both sides and perused the records of the case.

11. The following point arise for consideration in this case:

- i) *Whether the accused committed the offences as alleged by the prosecution?*
- ii) *Whether the trial court was correct in entering into the finding of guilty?*
- iii) *If so, whether the sentence imposed upon the appellant is proper?*
- iv) *Whether the judgment of the trial court require interference in any manner?*

12. **Point Nos. i to iv:-** The said points are considered and answered together for brevity considering the facts and circumstances of the case. The allegation against the accused is that on 04.07.2015 at about 8.20 a.m., at Thana, the accused drove a container lorry bearing Registration No. HR-38-U-5421 in a rash and negligent manner and hit the mini lorry bearing Registration No. KL-58-H-6908 driven by Shaheer, who was proceeding from Kannur to Melechovva. As a result of the accident, Shaheer sustained grievous injuries and later he died.

13. PW1 deposed that he was residing at Mahe. He stated that he knew Shaheer in connection with the motor vehicle accident. He further stated that he had witnessed the inquest conducted on the body of the deceased. When the inquest report was shown to him in court, he identified and admitted his signature in the said document. Accordingly, the inquest report was marked as Ext.P1.

14. PW2 deposed that he was a resident of Thalassery and that the deceased Shaheer P.K. was a native of his locality. He stated that on 04.07.2015, while proceeding from Thalassery to Kannur in connection with his employment, he got down from a bus at Thana and was walking towards the HDFC Bank where he was employed. When he reached near Sadu Kalyana Mandapam, he witnessed a road traffic accident.

According to him, a mini lorry coming towards Thana from the Caltex side collided with a container lorry coming from the opposite direction. He stated that he remembered the number of the container lorry as HR 38 V 5412. On hearing a sudden loud sound, he looked towards the road and saw the accident. He stated that the tipper lorry was proceeding in the proper direction, whereas the container lorry had moved from the middle of the road towards the right. After the collision, he saw the driver of the container lorry getting down from the vehicle and running away from the scene. He described the impact as very severe. He further stated that when he went near the spot, he saw that the cabin on the driver's side of the mini lorry had been crushed and jammed due to the impact with the container lorry. The driver of the mini lorry was found trapped in a severely crushed condition. He suspected that the driver had already died. Thereafter, the local people and the police together cut open the door of the mini lorry and extricated the driver from the vehicle. The injured person was taken to A.K.G. Hospital in a police vehicle. PW2 stated that he followed them to the hospital in another vehicle and when he arrived there, he came to know that the driver had died. According to him, the accident occurred because the container lorry, while attempting to overtake a bus which had stopped nearby, came at excessive speed and collided with the mini lorry. He also stated

that he would be able to identify the driver of the container lorry if he saw him. At that time, the accused was absent, and the accused's identity was not disputed. He further stated that he had given a statement to the police. When the First Information Statement was shown to him, he admitted his signature therein and the same was marked as Ext.P2. When it was suggested to him that the number of the container lorry involved in the accident was HR 38 U 5421, he admitted that the number was correct and explained that the earlier number he had mentioned was due to a lapse of memory. During cross-examination, PW2 stated that he had been working in HDFC Bank for the last twelve years and that his working hours were from 9.30 a.m. to 5.30 p.m. He stated that his office was situated about 300 metres from the place of occurrence. He admitted that other persons might also have witnessed the incident and that the police arrived at the scene within about ten minutes. He further stated that he had no prior acquaintance with the driver of the container lorry and that during the course of investigation he had not been called upon to identify him. He also stated that he had not given any identifying features of the driver to the police. He deposed that while he was coming towards Kannur he was walking along the right side of the road and that the incident occurred in front of him, but he had not stated before the police that he was walking along the right

side of the road. He further stated that the driver of the mini lorry was placed into the vehicle by the police and the local people together. He also stated that he had not told the police that the cabin of the mini lorry was jammed due to the collision.

15. PW3 deposed that he was residing at Pinarayi. He stated that on 04.07.2015 he was transporting sand in a tipper lorry from Kannur towards Melechovva. Another tipper lorry driven by Shaheer was proceeding ahead of him carrying sand. When they reached near Sadu Kalyana Mandapam, traffic was blocked. When he got down to see what had happened, he saw that the vehicle driven by Shaheer had been hit by a national permit lorry coming from the opposite direction. He further stated that Shaheer was trapped inside the cabin of his vehicle. The police and local people broke open the door of the cabin and took him out. According to the witness, he himself helped in lifting Shaheer and placing him in the police vehicle. By the time they reached the hospital, Shaheer had died. He deposed that he had not witnessed the accident. He stated that he was driving three or four vehicles behind the vehicle driven by Shaheer. He also stated that he did not see the driver of the vehicle which came from the opposite direction. He had given a statement before the police. He stated that he did not remember the number of the vehicle that caused the accident, but that the number of

the vehicle driven by Shaheer was KL 58 H 6908. According to him, the impact occurred between the front driver-side portions of both vehicles. He further stated that the vehicle driven by Shaheer was lying in the correct direction, whereas the national permit lorry was lying on the wrong side of the road. During cross-examination, he stated that since the national permit lorry was found on the wrong side of the road, the accident might have occurred due to the negligence of its driver.

16. PW4 deposed that he was residing at Chokli and that the deceased Shaheer was a person from his locality. He stated that he had witnessed the police preparing the inquest report on the body of the deceased and that he had signed the same as a witness. When the inquest report was shown to him, he identified the document and his signature therein. The document was already marked as Ext.P1.

17. PW5 deposed that he was residing at Chembra in Mahe and that the deceased Shaheer was his friend. He stated that he had witnessed the police conducting inspection at the place of occurrence and that he had signed the seizure mahazar as a witness. When the document was shown to him, he admitted his signature therein. The seizure mahazar was marked as Ext.P3. During cross-examination, he stated that he had signed the mahazar at about 2.00 p.m. on 04.07.2015.

18. PW6 deposed that while he was working as a Senior Civil Police Officer at Kannur Traffic Police Station, he had witnessed the Investigating Officer taking into custody the container lorry bearing registration No. HR 38 U 5421 and the mini lorry bearing registration No. KL 58 H 6908 involved in the case on 04.07.2015. He stated that he is an attester to Ext. P4 seizure mahazar.

19. PW7 deposed that while he was working as a Civil Police Officer at Kannur Traffic Police Station, on 07.07.2015 at about 4.30 p.m., while he was on station duty, one P. Venugopalan Nair produced the GVR of the lorry involved in the case before the Investigating Officer. PW7 is an attester to Ext. P5 seizure mahazar.

20. PW8 deposed that while he was working as Junior Consultant in Forensic Medicine at District Hospital, Kannur, he conducted the post-mortem examination on the body of Shaheer T.K., aged 30 years, on 04.07.2015 in connection with Crime No. 835/2015 of Kannur Traffic Police Station. He stated that during the examination he noted 32 ante-mortem injuries on the body. According to him, the death was due to multiple injuries sustained to the head, chest, both lower limbs and the pelvis. He further stated that the post-mortem certificate issued by him bearing his signature was shown to him and the same was marked as

Ext.P6. The history furnished indicated that there had been a collision between two lorries and that the deceased was the driver of one of the vehicles. He stated that the injuries noted could be sustained in such an incident.

21. PW9 deposed that while he was working as Motor Vehicle Inspector in the Kannur RTO Office, he inspected the container lorry bearing registration No. HR 38 U 5421 involved in the accident on the request received from Kannur City Traffic Police Station dated 07.07.2015. He conducted the inspection on 08.07.2015 at the police station premises. He stated that the certificate issued by him in respect of the inspection was shown to him and the same was marked as Ext.P7. He noted damages such as bending on the right side of the front bumper, deformation of the front panel and crushing of the front grill. He stated that the braking system was efficient and that no mechanical defect was noted. He further stated that he also inspected the mini lorry bearing registration No. KL 58 H 6908 involved in the same accident and that the certificate issued by him in that regard was marked as Ext.P8. He stated that the entire front cabin of the vehicle was completely destroyed and that the engine, chassis, suspension system and other mechanical components in the front portion were severely damaged. According to him, about three-fourths of the vehicle was completely destroyed. He

also stated that no mechanical defect was detected in the vehicle, though the braking system could not be tested due to the extensive damage.

22. PW10 deposed that on 04.07.2015 he was working as Additional Sub Inspector at Kannur Traffic Police Station. At about 8.20 a.m., he received information that a motor vehicle accident had occurred at Thana. He immediately proceeded to the spot. Near Sadu Kalyana Mandapam on the National Highway, he saw the container lorry bearing registration No. HR 38 U 5421 and the mini lorry bearing registration No. KL 58 H 6908 lying in a collided condition. The front portion of the mini lorry was found completely damaged and a person was seen trapped in the steering portion of the vehicle. The driver of the container lorry was not present at the spot. He further stated that with the help of another driver present at the scene, the container lorry was slightly moved backwards and, with the assistance of the persons present there, the driver of the mini lorry was extricated from the vehicle. He was then taken to A.K.G. Hospital in the police jeep. The doctor who examined him declared him dead. He later came to know that the deceased was Shaheer. He further stated that the container lorry was proceeding from Chovva towards Caltex and the mini lorry was coming from the opposite direction. He also noticed that the container lorry was positioned about one metre north of the white centre line on the road. Both vehicles were

later taken to the police station with mechanical assistance. He had given his statement before the Investigating Officer. During cross-examination, he denied the suggestion that the accident occurred on the south-western side of the road. He further stated that, from what he had seen, the accident occurred due to the negligence of the driver of the container lorry, which was found on the wrong side of the road.

23. PW11 deposed that at the relevant time he was working as Assistant Sub Inspector at Kannur Traffic Police Station. On 04.07.2015 at about 9.30 a.m., while he was on duty at the police station, Sajith Kumar, son of Kunjappa Nambiar, appeared before him and gave a statement. He recorded the said statement, which was shown to him in court and identified by him as Ext.P2. Based on the said statement, he registered the FIR in the case, which was shown to him and marked as Ext.P9.

24. From the evidence on record, the occurrence in question is a road traffic accident which resulted in the death of Shaheer, the driver of the mini lorry bearing registration No. KL 58 H 6908. The prosecution has examined PWs 1 to 11 and produced Exts. P1 to P9 to establish the manner in which the accident occurred and the culpability of the accused. PW1 is an attesting witness to the inquest. His evidence shows that he had witnessed the preparation of the inquest report on the

body of the deceased and that he had signed the inquest report, which is marked as Ext.P1. PW4 has also corroborated this aspect by stating that he had seen the police preparing the inquest report and had signed the same as a witness. Conjoint treading of the testimony of Pw1 and 4 proves the factum of the inquest and the death of Shaheer following the accident. PW2 is an independent witness who had no prior acquaintance with the accused. His presence at the scene is natural, as he was walking towards his workplace at HDFC Bank situated about 300 metres from the place of occurrence. PW2 categorically deposed that when he reached near Sadu Kalyana Mandapam, he witnessed the collision between the mini lorry driven by the deceased and the container lorry bearing registration No. HR 38 U 5421. According to him, the mini lorry was proceeding in the proper direction, while the container lorry had moved from the middle of the road towards the wrong side and collided with the mini lorry. He further deposed that the impact was severe and that the driver of the container lorry got down and ran away from the spot immediately after the accident. His evidence also reveals that the cabin of the mini lorry was crushed and the driver was trapped inside, and that the police and local people had to cut open the door to extricate him before taking him to A.K.G. Hospital, where he was declared dead. The testimony of PW2 remains substantially intact in cross-examination.

Though certain omissions were suggested to him, nothing has been elicited to discredit his presence at the scene or the core of his testimony regarding the manner of the accident. The defence could not establish any motive for PW2 to falsely implicate the accused. PW3, deposed that he was driving a tipper lorry a few vehicles behind the mini lorry driven by Shaheer. When the traffic was blocked and he got down from his vehicle, he saw that Shaheer's vehicle had been hit by a national permit lorry coming from the opposite direction. He further stated that the vehicle driven by Shaheer was lying in the correct direction, whereas the national permit lorry was lying on the wrong side of the road. His evidence thus supports the version that the offending vehicle had come to the wrong side and caused the collision.

25. The evidence of PW5, PW6 and PW7 proves the seizure of the vehicles and related documents through Exts.P3, P4 and P5. Their evidence establishes the procedural aspects of the investigation and there is nothing in their testimony to create any doubt regarding the prosecution case. PW8, who conducted the post-mortem examination, noted 32 ante-mortem injuries on the body of the deceased and opined that death was due to multiple injuries sustained to the head, chest, both lower limbs and pelvis. He further stated that such injuries could be sustained in a road traffic accident involving collision between heavy

vehicles. The post-mortem certificate issued by him is marked as Ext.P6. Thus, the medical evidence fully corroborates the prosecution version regarding the violent impact of the collision. PW9, the Motor Vehicle Inspector, inspected both the vehicles involved in the accident and issued Exts.P7 and P8 certificates. His evidence shows that there was no mechanical defect in the container lorry which could have contributed to the accident. He also noted extensive damage to the mini lorry, particularly the complete destruction of the front cabin, which is consistent with the prosecution case regarding the severity of the collision. PW10, the Additional Sub Inspector who first reached the scene, gave a clear account of the position of the vehicles immediately after the accident. He stated that the container lorry bearing registration No. HR 38 U 5421 and the mini lorry bearing registration No. KL 58 H 6908 were found in a collided condition near Sadu Kalyana Mandapam on the National Highway. The driver of the mini lorry was found trapped in the steering portion and had to be extricated with the help of persons present at the scene. Significantly, PW10 deposed that the container lorry was positioned about one metre beyond the white centre line towards the opposite side of the road, indicating that it had encroached onto the wrong side. In cross-examination also he maintained that the accident occurred due to the negligence of the driver of the container

lorry which was found on the wrong side. PW11 proved the registration of the crime. He deposed that he recorded the statement of Sajith Kumar and registered the FIR on its basis, which is marked as Ext.P9.

26. When the evidence of the eyewitness PW2 is read along with the corroborative evidence of PW3 and PW10 regarding the position of the vehicles, it clearly emerges that the container lorry driven by the accused had come to the wrong side of the road and collided with the mini lorry driven by the deceased. The evidence of PW9 rules out any mechanical defect in the offending vehicle. The medical evidence of PW8 establishes that the death of Shaheer occurred due to the injuries sustained in the said collision. Conjoint reading of the testimony of PW2, PW3, PW8, PW9, PW10 conclusively proves that accused drove the container lorry in a rash and negligent manner and thereby caused the death of Shaheer. The death of Shaheer being the direct consequence of the said rash and negligent act and hence offence under Section 279 and 304 of IPC is clearly attracted against the accused.

27. On re-appreciation of the evidence, this court finds that the evidence adduced is sufficient to prove that the appellant committed the offences of which he was found guilty by the trial court and the trial court was correct in arriving at the finding of guilty. Having

established the guilt of the accused, next point is to be considered is that whether the sentence imposed by the trial court is appropriate or not. The learned defence counsel argued for leniency. The alleged incident occurred 10 years ago. Hence, the conviction passed by the trial court u/s.279 and 304A of IPC against the appellant is confirmed, but the substantive sentence of imprisonment u/s.279 of IPC is altered to a fine of Rs.1,000/-, in default of payment of fine, the accused/appellant shall undergo simple imprisonment for 7 days and the substantive sentence of imprisonment u/s.304A of IPC is modified to 5 months and fine of ₹25,000/-, in default of the payment of fine, the accused/appellant shall undergo simple imprisonment for three months. If the fine amount is realised, ₹20,000/- shall be released to the legal heir of the deceased Shaheer as compensation under Section 357(1) Cr.P.C.

In the result, the appeal is allowed in part.

- i The finding of guilt arrived at by the trial court and the conviction passed against the appellant under Sections 279 and 304A of the IPC are hereby confirmed.
- ii The substantive sentence of imprisonment u/s.279 of IPC is altered to a fine of ₹1,000/-, in default of payment of fine, the accused/appellant shall undergo simple imprisonment for seven days.

- iii The substantive sentence of imprisonment u/s.304A of IPC is modified to 5 months and to fine of ₹25,000/-, in default of the payment of fine, the accused/appellant shall undergo simple imprisonment for three months.
- iv If the fine amount is realised, ₹20,000/- shall be released to the legal heir of the deceased Shaheer as compensation under Section 357(1) Cr.P.C.
- v The trial court will take steps to execute the modified sentence.

(Dictated to the Confidential Assistant, typed by her directly to the computer, corrected and pronounced by me in open Court, this the 12th day of March, 2026).

ADDL. SESSIONS JUDGE-III

Appendix:- Nil.

ADDL. SESSIONS JUDGE-III

PM.

COURT OF SESSION, THALASSERY (Addl. Sessions Court-III, Thalassery)	
CRL. APPEAL No.84/2019	
JUDGMENT	
DATED : 12-03-2026.	

To,	
1.	The Registrar, High Court of Kerala, Ernakulam, Kochi - 682031.
2.	Judl. First Class Magistrate-V, Kannur.
3.	The Public Prosecutor, Thalassery.
4.	The Appellant.
