

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,
ATTINGAL**

Present:- Smt. Sabah Usman.
Judicial I Class Magistrate-II.

Dated this the 17th day of March 2026

Calendar Case No. 1332/2016

Complainant	:	State of Kerala, Represented by the Sub Inspector of police, Kazhakuttom in crime No. 757/16 (By Asst.Public Prosecutor, Attingal)
Accused	:	Gilbert, S/o.Rajayyan, Pushpalayam, Pullannivila, Pattuvilakathu Muri, Ayiroopara Village. By Adv. Sri. M Althaf
Charge	:	u/s. 279 & 304 A of Indian Penal Code 1860
Plea	:	Not guilty
Finding	:	Not guilty
Sentence/Order	:	Accused is acquitted u/s.255(1) of Criminal Procedure Code 1973.

Date of						
Offence	Complaint	Apprehen- sion	Release on bail	Commenc ement of trial	Close of trial	Sentence/ order
27/04/16	13/12/16	14/10/22	14/10/22	14/10/22	12/03/26	17/03/26

DESCRIPTION OF ACCUSED					
Name	Father's name	Calling	Residence	Age	
Gilbert	Rajayyan	...	Ayiroopara Village	60/16	

This case having been finally heard on 12/03/26 and the court on 17/03/26 delivered the following:

JUDGMENT

This is a case in which final report has been filed by Sub Inspector of Police, Kazhakuttom Police Station in Crime No.757/2016 against the accused alleging commission of offences punishable U/S. 279 & 304 A of Indian penal Code 1860.

2. The prosecution case in brief is as follows: The accused drove the autorikshaw bearing number KL-21F7840 in a rash and negligent manner endangering human life through Kazakottam bypass junction- Kazakottam junction road and they hit on the brother of informant who was a pedestrian through the said road causing serious injuries to him. The injured succumbed to the injuries at the hospital on 27.04.2016 at 04.30 p.m. The accused thus committed the offences alleged.

3. On appearance of the accused on summons, he was released on bail and copies of all relevant prosecution records were furnished to him u/s. 207 Cr. PC. Particulars of offences punishable u/s.279 and 304 A IPC were read over and explained to the accused who is facing trial, to which he pleaded not guilty and claims to be tried.

4. On the side of the prosecution CW1 to CW12 were cited and PW1 to PW6 were examined, Ext.P1 to P11 marked. CW4 and CW8 were given up by

the learned APP. Thus the prosecution evidence closed. After the closure of the prosecution evidence the accused was examined U/s.313 (1) (b) Cr.P.C about the incriminating circumstances brought out in the prosecution evidence against him.

5. Heard both sides.

6. The points that arose for consideration are:-

1) Has the accused drove the autorikshaw bearing number KL 21 F7840 in a rash and negligent manner endangering human life through Kazakottam bypass junction-Kazakottam junction road and thereby committed the offence punishable under Section 279 of IPC?

2) Has the accused at the said time and place hit his autorikshaw on the brother of PW1 causing serious injuries to him and thereby causing his death and committed the offence punishable under Section 304A of IPC??

3) Sentence or Order?

7. **Point Nos. 1 & 2** :-These points are considered together for the sake of convenience. The informant was examined as PW1. He testified that the deceased person is his brother and the incident occurred on 27.04.2016 between 06.00 and 06.30. According to him, the incident occurred at the pavement near Anand Fast Food Kazhakottam Junction. He has only hearsay knowledge about the incident. The statement he gave to police was marked as Exhibit P1. PW2, one of the occurrence witnesses prosecution examined supported their case. According to him, the incident occurred in front of Anand Fast Food Kazhakottam Junction. He

testified that the deceased person was walking in front of him and the auto driven by the accused hit on the person who was walking in front of him from his back. According to him, the auto skid and hit on the pedestrian. He testified that he has previous acquaintance with the accused. During cross-examination, he testified that he gave statement to the police that it was the accused who driven the auto. He also testified that the place of occurrence is the pavement near Anand Fast Food.

8. PW3, another occurrence witness also supported the prosecution case. According to him, the accused who was the driver of the autorikshaw was in an intoxicated state from consuming alcohol and then hit on the pedestrian. He testified that the auto was coming from the back side of the pedestrian and then hit on him.

9. PW5 testified that on 28.04.2016, while he was working as Sub Inspector of Police at Kazhakottam Police Station, he conducted investigation in the case. The inquest report of the deceased was marked as Exhibit P3 through him. He visited the place of occurrence and prepared Exhibit P4 scene mahazar. According to him, the place of occurrence is the road in front of Anand Fast Food Kazhakootam leading to Kazhakottam market junction from Kazhakottam bypass junction. The accused was arrested and released on bail. The bail bond was marked as Exhibit P5. The vehicle mahazar of the vehicle involved in the case was marked as Exhibit P8. He completed investigation in the case and laid the charge sheet before court.

10. PW6 testified that he has recorded the statement of PW1 in the case and registered FIR in the case. The FIR was marked as Exhibit P11.

11. PW2 and PW3 are the occurrence witnesses who supported the prosecution case. According to them, the place of occurrence is the pavement in front of Anand Fast Food, Kazhakottam. However, PW5, the Investigating Officer who has prepared scene mahazar in the case, testified that the place of occurrence is the road in front of Anand Fast Food, Kazhakottam. Ext. P4 also shows that the place of occurrence is the road. The scene mahazar do not show the existence of a pathway near the place. Thus, there is contradictions in the evidence adduced from the prosecution side regarding the place of occurrence.

12. According to PW2, the autorikshaw skid and hit on the deceased person. His deposition is silent about any rashness or negligence on the part of the accused in driving the autorikshaw. According to PW3, the accused had consumed alcohol at the time of accident. The prosecution has no such case. There is no evidence to prove that the accused was in an intoxicated state at the time of accident. Moreover, the deposition of PW3 is also silent about any rashness or negligence on the part of the accused in driving the autorikshaw. In order to attract an offence punishable under Section 279 or 304A of IPC, the prosecution is duty bound to prove the rashness or negligence on the part of the accused in driving the vehicle. Here the evidence adduced from the side of the prosecution is not sufficient to prove rashness or negligence on the part of the accused and hence they failed to prove the guilt of the accused beyond reasonable doubt.

13. Thus, the evidence adduced from the side of the prosecution is not sufficient to prove the guilt of the accused and hence, he is entitled for an acquittal.

14. **Point No. 3** :-

In light of the findings in point Nos. 1 & 2, I am of the view that the prosecution has failed to prove that the accused has committed the offences alleged against him.

In the result, the accused is found not guilty for the offences punishable U/S. 279, 304 A of Indian Penal Code 1860 and he is acquitted of the said offences u/s. 255(1) Cr.P.C. His bail bond stands cancelled and he is set at liberty.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this, the 17th day of March, 2026.

Judicial First Class Magistrate-II,
Attingal.

APPENDIX

List of Prosecution/Defence/Court Witnesses

Prosecution Witnesses:-

Sl. No.	Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
1	PW1	Mohanakumar	Informant

2	PW2	Gopakumar	Other witness
3	PW3	Anilchandran	Other witness
4	PW4	R Rajan	Expert witness
5	PW5	T Seetharam	Police witness
6	PW6	G Sunil	Police witness

B. Defence Witnesses: Nil

C. Court Witnesses: Nil

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits:

Sl. No.	Exhibits	Description	Date
1	P1/PW1	FIS	27/04/2016
2	P2/PW4	Inspection Report	
3	P3/PW5	Inquest report	28/04/2016
4	P4/PW5	Scene mahazar	28/04/2016
5	P5/PW5	Bail Bond
6	P6/PW5	Address Report
7	P7/PW5	Report
8	P8/PW5	Mahazar	28/04/2016
9	P9/PW5	151 A form	20/05/2016
10	P10/PW5	Postmortem certificate
11	P11/PW6	FIR	27/04/2016

B. Defence Exhibits: Nil

C. Court Exhibits: Nil

Material Object marked : Nil

Judicial First Class Magistrate-II,

Attingal.