



Bail Slip

1. Jeyavel, S/o.Karuppiyah, Male, aged about 45/2015 (Accused No.1), 2. Kundumani, S/o.Karnan, Male, aged about 32/2015 (Accused No.2), 3. Mayilvahanan, S/o.Rajangam, Male, aged about 38 years (Accused No.3), 4. Karthik @ Karthikeyan, s/o.Ramasubramanian, Male, aged about 31/2015 (accused No.4), and 5. Manikandan, S/o.Pichai, Male, aged about 33 years (Accused No.5) were released on bail vide Court order dated 14/10/2015 made in MP(MD)No.1 of 2015 in CRL A(MD) No.299 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: **22.11.2019**

Pronounced on: **29.11.2019**

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl. A. (MD) No.299 of 2015

1.Jeyavel
2.Kundumani
3.Mayilvahanan
4.Karthik @ Karthikeyan
5.Manikandan

... Appellants/Accused 1 to 5

Vs.

The State
Rep. by Assistant Commissioner of Police,
Anna Nagar Sub Division,
Madurai

(Crime No.908 of 2008

On the file of E1, K.Pudur PS, Madurai) ... Respondent/Complainant

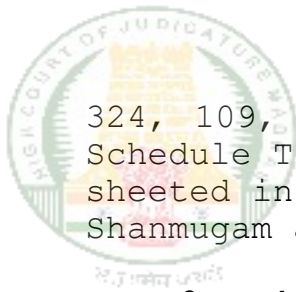
PRAYER: Criminal Appeal is filed under Section 374(ii) of the Criminal Procedure Code against the judgment and conviction passed by the learned 3rd Additional District and Sessions Judge (PCR), Madurai, in S.C.No.63 of 2010 dated 23.09.2015.

For Appellants	: Mr.Isaac Mohanlal, Senior Counsel for Mr.G.Thalai Mutharasu
For Respondent	: Mr.V.Neelakandan, APP

J U D G M E N T

The appellants before this Court are the accused 1 to 5. They were charged for the offences under Sections 147, 148, 341, 149,

<https://hcservices.ecourts.gov.in/hcservices/>



324, 109, 323 IPC and Section 3 r/w 3(1) of Scheduled Castes and Schedule Tribes Attrocities Act, 1989. Totally 7 accused were charge sheeted in this case. During the course of trial, two accused namely Shanmugam and Ranjith @ Ranjith Kumar died.

2. The offences against the accused No.1 and the sentence imposed on him are as under:

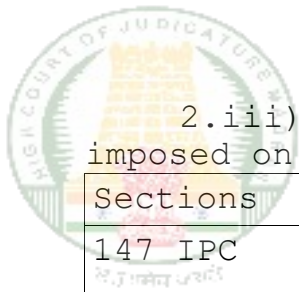
Sections	Sentence
147 IPC	To pay a fine of Rs.500/- in default to undergo one month simple imprisonment
323 r/w 109 IPC	To undergo six months r.i and to pay a fine of Rs.500/- in default to undergo 1 month s.i
324 r/w 149 IPC (3 counts)	To undergo 1 year r.i and to pay a fine of Rs.750/- for each counts in default to undergo 1 month s.i

2.i) The offences against the accused No.2 and the sentence imposed on him are as under:

Sections	Sentence
147 IPC	To pay a fine of Rs.500/- in default to undergo one month simple imprisonment
323 r/w 109 IPC	To undergo six months r.i and to pay a fine of Rs.500/- in default to undergo 1 month s.i
324 r/w 149 IPC (3 counts)	To undergo 1 year r.i and to pay a fine of Rs.750/- for each counts in default to undergo 1 month s.i

2.ii) The offences against the accused No.3 and the sentence imposed on him are as under:

Sections	Punishment
148 IPC	To pay a fine of Rs.500/- in default to undergo one month simple imprisonment
323 r/w 149 IPC	To undergo six months r.i and to pay a fine of Rs.500/- in default to undergo 1 month s.i
324 IPC (2 counts)	To undergo 1 year r.i and to pay a fine of Rs.750/- for each counts in default to undergo 1 month s.i



2.iii) The offences against the accused No.4 and the sentence imposed on him are as under:

Sections	Punishment
147 IPC	To pay a fine of Rs.500/- in default to undergo one month simple imprisonment
323 r/w 149 IPC	To undergo six months r.i and to pay a fine of Rs.500/- in default to undergo 1 month s.i
324 r/w 149 IPC (3 counts)	To undergo 1 year r.i and to pay a fine of Rs.750/- for each counts in default to undergo 1 month s.i

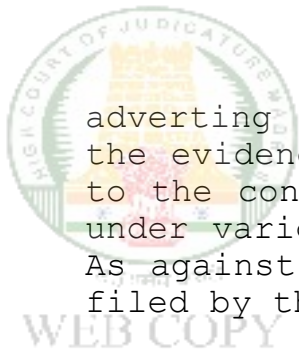
2.iv) The offences against the accused No.5 and the sentence imposed on him are as under:

Sections	Punishment
147 IPC	To pay a fine of Rs.500/- in default to undergo one month simple imprisonment
323 r/w 149 IPC	To undergo six months r.i and to pay a fine of Rs.500/- in default to undergo 1 month s.i
324 r/w 149 IPC (3 counts)	To undergo 1 year r.i and to pay a fine of Rs.750/- for each counts in default to undergo 1 month s.i

Apart from the above, all the accused were convicted for the offence under Section 341 IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act').

3. The case of the prosecution is that the accused together had attacked P.W.1 to P.W.4 on 16.09.2008 at about 4.00 p.m at near D.R.O. Colony Mosque. During the course of the attack by the accused, P.W.1 to P.W.4 suffered injuries and were admitted in the hospital for treatment. A complaint was lodged and thereafter, First Information Report was registered on 16.09.2008 at about 09.00 p.m and investigation was set in motion. After completion of investigation, the police filed a report charging the accused for various offences as stated above.

4. The trial court has observed the formalities as provided under the Code of Criminal Procedure. On behalf of the prosecution, P.W.1 to P.W.17 were examined and 16 documents were marked as Ex.P.1 to Ex.P.16. Two Material Objects were produced. On the side of the defence, no witness was examined and no document was marked. After



adverting to various materials made available and after examining the evidence of the prosecution witnesses, the trial court has come to the conclusion against the appellants/accused and convicted them under various sections as set out in paragraph No. 2 of this order. As against the conviction and sentence, the present appeal has been filed by the appellants/accused.

5. Mr.Isaac Mohanlal, learned Senior Counsel appearing on behalf of the appellants/accused would draw attention of this Court to the First Information Report, which is said to have been registered at 09.00 p.m on 16.09.2008. He would submit that the statements of two witnesses were recorded by the police. One witness is P.W.5, who is the father of P.W.1. He deposed that immediately after the occurrence he had given statement to the police. According to the learned Senior Counsel, time of occurrence was 04.00 p.m and the injured persons were admitted in the hospital at various time commencing from 5.10 p.m on that day, so that the statement of P.W.5 would have been recorded between 4.00 p.m to 5.00 p.m. However, the same is not reflected in the First Information Report registered against the accused. Further, P.W.2, who is one of the injured persons, has deposed that the police have enquired with him at 06.00 p.m at 16.09.2008. The statement obtained from P.W.2 was also not reflected in the First Information Report. Pointing out the same, the learned Senior Counsel appearing for the appellants/accused would submit that preparation of the First Information Report itself suffers from material contradictions. According to the learned Senior Counsel, the truthfulness and veracity of the First Information Report is also rather doubtful, but the trial court has not appreciated the lacuna in registration of the First Information Report, which is the foundation of the prosecution. Adding further, the learned Senior Counsel would submit that the First Information Report, which has a doubtful origin, cannot lead to ultimate conviction and sentence of the appellants/accused.

6. More over, the learned Senior Counsel appearing on behalf of the appellants/accused would submit that P.W.1 in his deposition has stated that the police had enquired with him in the hospital for half an hour and the police had noted whatever he has stated during the enquiry. However, P.W.16, the Investigating Officer had deposed in his chief-examination that P.W.1 has given a written complaint to the police. Therefore, it emerges that the preparation of the First Information Report and its truthfulness is highly questionable since it once again suffers from material contradiction.

7. Further, the learned Senior Counsel would submit that there is no direct evidence at all that the attack was carried out by the appellants on P.W.1 to P.W.4, who are the victims in this case. In fact, P.W.s 3, 4 and 5 would depose in their evidence that they did not see the occurrence at all. The learned Senior Counsel would draw attention of this Court to the specific reference to their evidence

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in his evidence would state that he was not in the place of occurrence at all and as per his friend's request he has stated his version. P.W.4 has deposed that he was working inside the service centre and he was not aware the incident happened outside. P.W.4 further deposed that he was not aware that which accused had attacked and by which weapon, as he was not able to witness the attack at all. P.W.5 deposed that by the time he went to the scene of occurrence, everything was over and he did not see anything at all.

8. By quoting the aforesaid evidences, the learned Senior Counsel appearing on behalf of the appellants/accused would submit that there was no specific evidence to show that the appellants/accused attacked the victims. But the prosecution did not declare these witnesses as hostile. The trial court ought to have referred to their evidence at all, which supports the case of the defence.

9. Further, the learned Senior Counsel would submit that as per the Accident Register, P.W.1 was admitted in the hospital only at 7.10 p.m, whereas the other injured persons appeared to have been admittedly earlier at 5.10 p.m. It is specific contention of the learned Senior Counsel that the prosecution wanted to implicate the accused for offence under Section 3(1)(x) of SC/ST Act and therefore, P.W.1 was roped in this case. He would further submit that though the statement obtained at 5.p.m and 6.00 p.m were not part of the First Information Report, which was registered only at 09.00 p.m, the police were clever enough to implicate P.W.1, who was said to have been admitted in the hospital at 7.10 p.m. The prosecution had roped in P.W.1 as if the appellants used obscene language against him and also attacked him to implicate the appellants for the offence under Section 3(1)(x) of SC/ST Act in addition to the other offences of Indian Penal Code.

10. The learned Senior Counsel would submit that the charge of unlawful assembly is concerned, P.W.1's evidence was that there were 6 people in the gang, whereas the other witnesses have deposed that there were 15 people. Specific deposition in regard to those witnesses was referred to by the learned Senior Counsel. He would therefore submit that the entire prosecution case suffers from too many material contradictions and by referring them, the trial court ought to have held that the appellants/accused are not guilty of the offences alleged against them.

11. According to the learned Senior Counsel, there is only specific overt act attributed against the third accused and there were no specific overt act attributed against other accused and hence, there would be no common intention among them for carrying out the attack on P.W.1 to P.W.4. The learned Senior counsel would in all submit that these material contradictions would go to the root of the prosecution. In view of such contradictions and lacuna



trial court has to be construed as being vitiated and flawed. Despite the existence of several contradictions right from the registration of the First Information Report, the trial court had unfortunately overlooked all contradictions and recorded conviction of the appellants/accused and sentenced them to undergo imprisonment for various periods for the offences said to have been committed by them.

12. The learned Senior Counsel appearing for the appellants/accused would rely on the following decisions in support of his contentions:

12. i) **2005 2 L.W. Crl. 77 in Secretary @ Mara Naicker & 7 others Vs. State by Sub Inspector of Police, Sathyamangalam.** The learned Senior Counsel appearing for the appellants/accused would refer to paragraph 15 onwards in the order passed by the Division Bench of this Court, which are extracted hereunder:

15. In the instant case, according to the prosecution the occurrence took place at 05.00 p.m and Ranga Naicker was seriously injured, but he was not taken to the hospital immediately, but, was taken to the hospital only by 8.15 p.m. It is curious to know that P.W.1, who was injured in the same occurrence, went to the hospital at 6.10 p.m and the intervening circumstance between the admission of P.W.1 at 6.10 p.m and the medical treatment to Ranganaicken at 8.15 p.m was the information given to the police, P.W.13 by P.W.1. According to the evidence of P.W.13, he came to know about the occurrence, on the intimation sent by the doctor, and he went to the hospital and recorded the statement of P.W.1, based on which he registered a case. But, it is doubtful as to whether this first information could have been given, as alleged by P.W.13, in his evidence, for the simple reason that at the time of cross examination, P.W.2, has categorically admitted that he saw Ranga Naicker giving a statement to the police, when the police came to the scene of occurrence, and the same was recorded and therein the deceased has affixed his thumb impression. Under such circumstances, it is highly unbelievable whether the first information, which came into existence and what is before the Court, could have been the first information.

16. Apart from that, according to the evidence of P.W.1, he went to the hospital at 6.10 p.m and treatment was given to him. It is also made clear from the evidence of P.W.9 and the accident register issued by him, but, according to the evidence of P.W.2, P.W.1 came from the hospital to



the place of occurrence and police also came there. It is clear that P.W.1 was never treated as inpatient. If to be so, from the evidence of P.W.2, it would be quite clear that P.W.1, after going to the hospital, went to the place of occurrence and took P.W.2 and others to the hospital and under such circumstances, he could not have been the author of Ex.P.1, as put forth by the prosecution case.

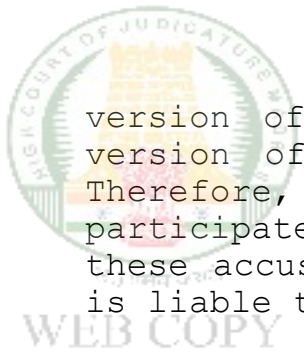
17. Yet another circumstances, which would go against the prosecution case is that Ranga Naicker, who was admitted at 8.15 p.m has made a statement to P.W.9, the doctor that 10 known persons attacked him while P.W.1 would say that they were attacked by 20 known and unknown persons and the other injured witnesses have given statements to the doctor coming out with different versions as to how many persons participated in the crime, and thus, it would be doubtful whether such an occurrence would have taken place. Therefore, it would be unsafe to rely on the evidence of the prosecution witnesses to sustain the conviction.

18. The lower court has relied on the evidence of P.W.s 1 to 3 to find that all the appellants formed themselves into an unlawful assembly and six persons armed with weapons involved in rioting and committed the murder of the deceased. A contention was put forth by the Counsel for the State that the weapons used by all the accused were recovered from the second accused at the time of arrest, pursuant to the confession statement recorded by P.W.14. But that would be a single piece of evidence and that alone cannot be looked into without any supporting evidence on the side of the prosecution.

19. In such circumstances, this Court is of the opinion that the prosecution has not proved its case beyond all reasonable doubt and on the evidence available, it would be unsafe to find the appellants guilty and the lower court erroneously found them guilty which has got to be set right and that could be done only by upsetting the judgment of the lower court and it is accordingly set aside.

20. In the result, the criminal appeal is allowed. All the appellants are acquitted of all the charges. The bail bonds executed by the appellants shall stand cancelled.

The facts in the above case are almost similar to the case on hand. In that case, the Court found that when different versions were given by the witnesses in regard to the persons participated in the crime, it would be doubtful whether such an occurrence would have taken place. In this case also, there was a huge difference from the



version of P.W.1 who deposed that there were 6 persons and the version of P.W.2 who deposed that there were about 15 persons. Therefore, in the absence of clarity in regard to how many persons participated in the crime, the trial court's conclusion as against these accused for unlawful assembly and commission of other offence is liable to be faulted.

ii) 1989 SCC (Cri) 490 in Allauddin Mlan and others Sharif Mian and Another Vs. State of Bihar.

The learned Senior Counsel appearing for the appellants/accused would only rely on the observation of the Hon'ble Supreme Court of India, which is extracted hereunder:

In the instant case, however the members constituting the unlawful assembly had gone to the house of P.W.6 to kill him. That was the common object of the unlawful assembly. For accomplishing that common object it was not necessary to kill the two girls who were not an hindrance to accused 1 and 2 accomplishing their common object. We are, therefore, of the opinion that accused 3 to 6 cannot be convicted for the injuries caused to the two minor girls by accused 1 and 2 with the aid of Section 149, IPC. We, therefore, set aside the conviction under Section 326/149 IPC., and also the sentence imposed on accused 3 to 5 on that count.

In view of the above judgment, the learned Senior Counsel appearing for the appellants/accused submitted that in the present case, the common intention is not established since the overt act is attributed only against the third accused and not against others. Therefore, the above observation would be squarely applicable to the facts of the present case.

iii) 1976 Crl.L.J.1987 in Musakan and others Vs.State of Maharashtra.

The learned Senior Counsel would rely on the observation of the Hon'ble Supreme Court of India in regard to unlawful assembly and the observation is extracted hereunder:

It is well settled that a mere innocent presence in an assembly of persons, as for example a bystander does not make the accused a member of an unlawful assembly, unless it is shown by direct or circumstantial evidence that the accused shared the common object of the assembly. Thus a court is not entitled to presume that any and every person who is proved to have been present near a riotous mob at any time or to have joined or left it at any stage during its activities is in law guilty of every act committed by it, from the beginning to the end or that each member of such a crowd must from the beginning have anticipated and contemplated the nature of the illegal activities in,



which the assembly would subsequently indulge. In other words, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage. But at all the crucial stages and shared the common object of the assembly is wholly lacking in this case where the evidence merely shows that some of the accused were members of the unlawful assembly at one particular stage but not at another. In these circumstances, therefore, the accused who were not present or who did not share the common object of the unlawful assembly at other stages cannot be convicted for the activities of the assembly at those stages.

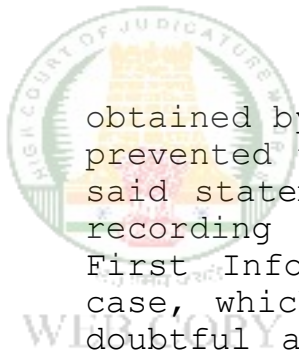
The Hon'ble Supreme Court of India held that unless the cogent evidence to show that how many persons participated and how many persons shared the common object of the unlawful assembly in different stages, the persons cannot be convicted for such offence.

13. In these circumstances, the learned Senior Counsel would submit that the prosecution has not proved the guilt of the appellants/ accused beyond all reasonable doubt as mandated by law. In the absence of sufficient evidence and in view of several contradictions in the prosecution story, the conviction recorded by the trial court is bound to be set aside by this Court by exercising its appellate jurisdiction.

14. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State would submit that P.W.1 and others were injured and admitted in the hospital. The trial court has gone to the evidence of other prosecution witnesses and also appreciated the materials placed on record and found that these appellants/accused involved in the crime and the charges for various offences were held to be established with the sufficient evidence. The contradictions that were pointed out by the learned Senior Counsel appearing for the appellants were too minor in nature, which were rightly ignored by the trial court. The learned Additional Public Prosecutor would further submit that the conviction recorded by the trial court does not call for interference by this Court. Therefore, the present appeal filed by the appellants/accused is devoid of merits and the same is liable to be dismissed.

15. This Court gave its anxious consideration to the submissions made by the learned Senior Counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State. This Court has also perused the materials and pleadings placed on record.

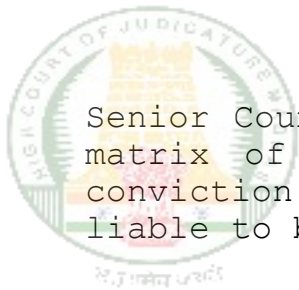
16. As rightly pointed out by the learned Senior Counsel appearing for the appellants/accused, right from the registration of the First Information Report on 16.09.2008 at 09.00 pm, the role of the appellants/accused appeared to be questionable. When the statements were



obtained by the prosecution witnesses at 5.00 p.m and 6.00 p.m, what prevented the police namely, the Investigating Agency to record the said statements in the First Information Report? In the absence of recording such statements, the truthfulness and veracity of the First Information Report become doubtful too and the prosecution case, which was built on such First Information Report also become doubtful and shaky. As pointed out by the learned Senior Counsel there were not only one or two contradictions in the case of the prosecution but there were contradictions galore throughout the story of the prosecution. This Court finds that there were gapping holes in the prosecution which ought to have acquitted the appellants/accused from the charges levelled against them. Unfortunately, the trial court appears to have brushed aside all the material contradictions, which were narrated above and recorded the conviction and imposed sentence on the appellants/accused.

17. As rightly contended by the learned Senior Counsel P.W.s 3, 4 and 5, who are the prosecution witnesses have deposed that they did not see the occurrence at all and therefore, the trial court ought not to have taken that evidences into consideration for recording conviction. More over, even earlier at the time of preparation of the First Information Report, there were contradictions as P.W.1 would say that the police had recorded the version spoken by him at the time of enquiry in the hospital, whereas P.W.16, who is the Investigating Officer deposed that he had received a written complaint from P.W.1 which was a glaring contradiction in the prosecution story. Unfortunately, the trial court has not taken note of such contradiction, which demonstrates about the validity of the First Information Report itself prepared against the appellants/accused. More over, the exact time of admission of P.W.1 in the hospital and the time of admission of other injured person would also give rise to legitimate doubt in the case of the prosecution. As rightly contended by the learned Senior Counsel appearing for the appellants/accused, that it was probably intended to implicate the appellants/accused for the offence under Section 3(1)(x) of SC/ST Act P.W.1 was roped in the case belatedly. When the preparation of the First Information Report and the various offences alleged against the appellants/accused become doubtful, the prosecution story becomes rather shaky and faulty. When the origin of the First Information Report is doubtful, the entire prosecution story built on that report will crumble, thereby causing fatality to the prosecution in its entirety.

18. More over, the contradiction in regard to number of persons participated in the crime is too glaring since P.W.1 would state that there are 6 persons as against the other version of P.W.s 2 to 4, there were 15 persons, which was ignored by the trial court. In fact, in one of the judgments cited supra, it is stated that in case of doubt about the number of persons participated in the crime, it is too unsafe to hold guilty of the accused for offence of unlawful common intention. The judgment cited by the learned



Senior Counsel on this aspect is squarely applicable to the factual matrix of the present case on hand. On this ground alone, the conviction recorded by the trial court for the aforesaid offence is liable to be interfered with.

19. The offence under Section 3(1)(x) of SC/ST Act was not established at all by the prosecution. There was no independent witness to prove whether any such offence was committed by the appellants/accused. Moreover, it was also established on behalf of the defence that there was property dispute between the first accused and P.W.1. Such dispute coupled with the fact of glaring contradictions in the prosecution theory, would raise a question whether the trial court was right in recording the conviction of the appellants/accused for the offence alleged against them? The answer is negative. Unfortunately, the trial court in order to convict the appellants/accused has overlooked the several contradictions which undermined the prosecution story. The overt act is attributed only against the third accused and against not other accused. In such event, the question of common intention did not arise at all. On the whole, as contended there were no sporadic contradictions, which could be rightly overlooked and legitimately ignored. But, when the prosecution theory is beset with contradictions all through, the natural corollary of all such contradictions are the result of complete absence of cogent and inspiring piece of evidence against the accused. The trial court ought to have given at least the benefit of doubt in favour of the accused herein. On the other hand, the trial court brushed aside the dented prosecution and recorded conviction as against the appellants/accused.

20. This Court while dealing with citation relied on by the learned Senior Counsel is in agreement with the observation made by the Hon'ble Courts, as those observations are squarely applicable to the factual matrix of the present case. This Court has therefore come to the inexorable conclusion that the conviction recorded by the trial court against the appellants/accused is liable to be interfered with. Accordingly, the judgment passed by the learned 3rd Additional District and Sessions Judge (PCR), Madurai, in S.C.No.63 of 2010 dated 23.09.2015 is set aside and the appellants/accused are acquitted from all the charges. Fine amount, if paid, shall be refunded to the appellants accused. Bail bonds, if any, executed by the petitioners, shall stand cancelled.

21. In the result, this criminal appeal is allowed.

Sd/-

Assistant Registrar

// True Copy //



1. The 3rd Additional District and Sessions Judge (PCR),
Madurai.
2. The Judicial Magistrate, No.VI,
Madurai
3. The Chief Judicial Magistrate,
Madurai
4. The Assistant Commissioner of Police,
Anna Nagar Sub Division,
Madurai
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.G. THALAIMUTHARASU, Advocate (SR-102720[F] dated
29/11/2019)

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29.11.2019

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