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Crl.A.Nos.380 and 525 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.08.2024

Delivered on : 23.08.2024

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN
Crl.A.Nos.380 and 525 of 2018

Kichan @ Krishnamurthy

... Appellant in Crl.A.No.380 of 2018/
Accused No.3

Nagaraj
Jai Shankar
Prema

... Appellants 1 to 3 in Crl.A.No.525 of 2018 /
Accused Nos.1, 2 and 4

Vs.

State by the Inspector of Police,
Ooty Town B1 Police Station,
Ooty, Nilgiris District.
(In Crime No.154 of 2013)

... Respondent in both
Criminal Appeals /Complaint

Prayer in both Criminal Appeals: These Criminal Appeals are filed under Section 374(2) of Criminal Procedure Code against the Judgment dated 31.01.2018 passed in S.C.No.28 of 2015 on the file of the learned Sessions Judge of Magalir Needhi Mandram (FTMC), Uthagamandalam at Nilgiris and acquit the appellants by setting aside the conviction and sentence imposed against them.

For Appellant in

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Crl.A.No.380 of 2018 : Mr.T.Sai Krishnan

For Appellants 1 to 3 in
Crl.A.No.525 of 2018 : Mr.T.Muruganantham

For Respondent in
both Criminal Appeals : Mr.A.Gokulakrishnan
Additional Public Prosecutor

COMMON JUDGMENT

C.KUMARAPPAN, J.

Both the criminal appeals have been filed against the judgment dated 31.01.2018 passed by the learned Sessions Judge of Magalir Needhi Mandram (FTMC), Uthagamandalam at Nilgiris, in Sessions Case No.28 of 2015. The third accused in S.C.No.28 of 2015 is the appellant in Criminal Appeal No.380 of 2018. The first, second and fourth accused in S.C.No.28 of 2015, are the appellants in Criminal Appeal No.525 of 2018. Since both the appeals are arising from the same judgment passed in S.C.No.28 of 2015, they have been taken up for hearing jointly and disposed of by way of this common judgment. For ease of reference, the details of offence, for which the appellants/accused were convicted and sentenced by the trial Court, are as follows:-



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S.No.	Rank of the Accused	Offence for which convicted	Sentence
1.	A1	Section 302 IPC	Life imprisonment and fine of Rs.3,000/- and in default to undergo three months Simple Imprisonment.
2.	A2	Section 302 IPC	Life imprisonment and fine of Rs.3,000/- and in default to undergo three months Simple Imprisonment.
3.	A3	Section 302 r/w. Section 34 of IPC	Life imprisonment and fine of Rs.3,000/- and in default to undergo three months Simple Imprisonment.
4.	A4	Section 302 r/w. Section 34 of IPC	Life imprisonment and fine of Rs.3,000/- and in default to undergo three months Simple Imprisonment.

2.The case of the prosecution runs thus:

2.1. The two deceased, Aruldas and Franklin, are relatives. The defacto complainant by name, Velankanni Louis, is related to both the deceased. While the first deceased, Aruldas, is his maternal uncle, the second deceased, Franklin, is the son through another maternal uncle. According to the defacto complainant, there was previous enmity between the Aruldas family and the accused family on account



of collecting water from the street pipe. According to the prosecution, on the fateful day of 15.04.2013, at about 8.30 p.m. the first deceased Aruldas's son Arunraj and the other deceased, Franklin, were riding a two-wheeler. While so, all the accused waylaid them and questioned their rash driving, and abused them with filthy language. Such conduct was objected to by the deceased Franklin. Meanwhile, another deceased Aruldas came to that place and also questioned the high-handedness of all the accused. At that time, the first accused-Nagaraj, with an intent to kill Aruldas, and in assistance of fourth accused-Prema, who caught hold of the deceased Aruldas, stabbed him multiple times in the neck and chest. Similarly, the third accused, Kicha *alias* Krishnamoorthy, caught hold of Franklin, and the second accused, Jaishankar, stabbed Franklin with a brandy bottle, thereby caused grievous injuries to Franklin. While Aruldas succumbed to his injuries immediately, Franklin died in the hospital.

2.2. At the time of occurrence, the relatives of the deceased, P.W.3 Sumitha, P.W.4 Arockiyaraj and P.W.5 Antony Prabhu, were present. After the incident, the defacto complainant gave Ex.P1-complaint, at about 1.00 a.m. on 16.04.2013 which was received by P.W.20 Manoj Kumar, Sub Inspector, who registered the First Information Report in Crime No.154 of 2013 for the offences under Sections 294(b), 341, 342, and 302 of IPC. Upon registration of the FIR, he



forwarded the same to the concerned Jurisdictional Magistrate and to the Investigating Officer-P.W.21. On receipt of the information, P.W.21, Investigating Officer, proceeded to the scene of occurrence at about 1:45 a.m., prepared the observation mahazar and rough sketch in the presence of P.W.10 Lawerence and one Mani. Further, he also recovered the bloodstained dress materials of Franklin and Aruldas, besides collecting blood-stained soil and sample soil. After that, at about 3:30 a.m., he visited the Government Hospital, Udagamandalam, where the body of both the deceased were kept. He prepared the inquest report for both the deceased Aruldas and Franklin. He also recorded the statement of P.W.1 to P.W.5 and other witnesses at about 7:30 a.m., and arrested the fourth accused, Prema.

2.3. On arrest, the fourth accused, Prema, voluntarily gave confession statement, which was recorded in the presence of one Ranjith and Rajkumar (P.W.11). Based on the same, the Investigating Officer recovered the bloodstained shawl of the fourth accused. At about 11:00 a.m., the Investigating Officer-P.W.21 arrested the third accused, Kicha *alias* Krishnamurthy. On the same day, he recorded the statements of P.W.8 Rasheed, P.W.6 Ramesh, P.W.7 Subramani, P.W.11 Rajkumar, and other witnesses. He also made arrangements for the post-mortem of both the deceased. On 17.04.2013, he arrested the first and second accused at Coimbatore Medical College Hospital, where they were undergone



treatment, and recorded the confession statement of the first accused, Nagaraj, and recovered the knife and bloodstained brandy bottle. Thereafter, he remanded all the accused and forwarded the recovered materials to the Jurisdictional Court under Form 95. He also arranged to take photographs and video of the scene of occurrence. Further, he recorded the statements of the doctors who had treated the accused, as well as the doctors, who recorded the accident register and performed the post-mortem. The Investigating Officer-P.W.21 also recorded the statements of the forensic experts. On his transfer, P.W.22-Vinayagam continued the investigation, examined the witnesses who were earlier examined by the previous Investigating Officer, P.W.21, and laid the charge sheet against the accused 1 to 4 under Sections 120 B, 302 read with Section 34 IPC.

3. In order to prove the charges, framed against the accused, the prosecution examined 22 witnesses and marked 54 documents and 28 material objects. However, no document was marked and no witness was examined on the side of the accused. The trial Court after having considered evidences, material objects, documents and facts and circumstances of the case, arrived at a conclusion that the prosecution has proved the charges against the first and second accused under Section 302 and the third and fourth accused under Section 302 r/w 34 of IPC beyond all reasonable doubt and awarded the punishment of life imprisonment



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and fine, against all the accused. Aggrieved with the said conviction and sentence, the accused are before this Court.

4. Mr.T.Sai Krishnan, learned counsel appearing on behalf of the third accused / appellant in Criminal Appeal No.380 of 2018 would vehemently submit that all the witnesses are interested witnesses and closely related to the deceased, and there were a material discrepancy about the weapon used, and there was no explanation for the injuries sustained by the accused. It is also the further submission of the learned counsel that there was an inordinate delay in registering the FIR and there were many contradictions in the recovery witnesses. It is the further submission of the learned counsel that the prosecution has miserably failed to prove the motive. In addition, the learned counsel would submit that the way in which the occurrence took place was nothing but a sudden provocation and there was no premeditation and there were no specific overt acts against the third accused except his presence at the scene of occurrence. Therefore, the learned counsel would contend that the prosecution has miserably failed to prove the charges framed against the third accused beyond reasonable doubt, and hence prayed to set aside the judgment passed by the learned Sessions Judge. In support of his contentions, the learned counsel has relied upon the following judgments:-



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- (i) ***Jaseep Singh Vs. State of Punjab*** [2022 2 SCC 545]
- (ii) ***Gargi Vs. State of Haryana*** [(2019) 9 SCC 738]
- (iii) ***Nagarathinam and Others. Vs. State represented by Inspector of Police*** [(2006) 9 SCC 57]
- (iv) ***Lakshmi Singh & Others Vs. State of Bihar*** [1976) 4 SCC 394]

5. In addition to the above submissions, Mr.T.Muruganantham, learned counsel appearing for the accused 1, 2, and 4/appellants in Crl.A.No.525 of 2018, would vehemently contend that there is a serious doubt in respect of the presence of the accused at the relevant point of time, and there are lot of contradictions in the prosecution witnesses and the learned counsel would also contend that the presence of the fourth accused at the scene of occurrence is highly doubtful and the recovery of the shawl from the fourth accused will in no way support the prosecution case. Hence, the learned counsel prayed for allowing this appeal by setting aside the judgment passed against these accused 1, 2 and 4.

6. We have given our anxious consideration to the submissions made by learned counsel on either side and also perused the records.



7. It is seen from the records, more particularly, Ex.P3-post-mortem report that the deceased Aruldas sustained the following injuries:-

"External injuries:

Irregular laceration measuring 5 x 3 x 2 cm present over the left infra cardiac region / anterior axillary line 2) punctured wound measuring 2 x 2 x 1 cm over the suprasternal notch on the right

"Internal examination:

Examination of the wound: 1) revealed extension soft tissues between the sixth and seventh ribs and into the thoracic cavity punctured hole in the pericardial cavity. Pericardial cavity filled with 1000 ml of blood. A punctured wound in the apex of the left ventricle, heart was empty lungs normal penetrating injury entering the right internal jugular vein. Abdominal cavity (N) brain and meninges normal.

Hyoid: bone intact right and left lungs were normal."

Ex.P7 post-mortem report pertaining to the deceased Franklin would disclose that he sustained the following injuries:-

"External injuries:

Sutured wound over left chest (3 cm x 1 1/2 cm ribs depth)

2 x 1 x 5 cm depth sharp incised wound over epigastrium

Multiple abrasions over right chest, right hip, right elbow, left zygoma left knee.



Internal examination:

Blood clots over sternum adjacent left chest locm depth incised wound seen in epigestrum extending to penetrate anterior chamber of heart 1 x 1/2 x 1C x cm sharp penetrating injury over anterior chamber of heart about 1.5 litre blood clots seen in thoracic cavity. Lungs c/s congested.

Ribs intact hyoid bone :intact

Abdomen Stomach 50 ML of light brown colour liquid Intestine gas with faeces."

Both the postmortem certificates were marked and exhibited through P.W.9 Dr.Anupama who conducted postmortem on Mr.Aruldas. From the evidence of Dr.Anupama, P.W.9, both the deceased died due to injuries sustained by them. Let us see whether the prosecution has proved that these injuries were caused by the accused, so as to rope them with the charges.

8. The learned counsel for the third accused/appellant in Crl.A.No.380 of 2018 would urge before this Court that there was no previous enmity between the third accused and the deceased, and that there was no common intention on his part to commit murder. In this regard, the learned counsel would rely upon the evidence of P.W.1 and would contend that the second accused suddenly took up a brandy bottle, which was lying nearby and stabbed. Therefore, even if there was



any occurrence, it was only due to sudden provocation and there is no material for premeditation. In this regard, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court reported in ***Jaseep Singh Vs. State of Punjab*** [2022 2 SCC 545] , wherein the Hon'ble Supreme Court held that if the evidence of the witness implicating the main accused is unbelievable, then the question of invoking Section 34 does not arise. For ready reference, paragraph No.35 is hereby extracted:

"35. There is no evidence at all on record to hold that A3 and A4 were aware of the fact that A1 was having a gun with him. The prosecution wanted to implicate A3 and A4 mainly on the evidence of PW13. Once the said evidence was not accepted, more care ought to have been taken before convicting A3 and A4 under Section 34 IPC. We have no difficulty in holding that a common intention can be formed at the time of the occurrence. However, the evidence available is not sufficient enough to hold that Section 34 IPC is attracted as against A3 and A4, especially when the testimony of PW13 did not find favour with the courts. We further note that except the statement said to have been made by A3 and A4, there was no other material to implicate them."

But contrary to the reported judgment, in the instant case PW1, who according to the prosecution is the eye-witness, while narrating the course of event has specifically spoken about the overt act of each and every accused. She had deposed that A4 caught hold of the deceased Aruldas's hand and instigated the first accused to stab him and in furtherance thereof, the first accused stabbed Aruldas on his neck and on the left side stomach. Similarly, she has also spoken about the overt act of

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the accused 2 and 3. She narrated about the third accused catching hold of Franklin's hand, when the second accused caused stab injury on his chest with the brandy bottle. In similar lines, the other eye witnesses PW2-Arunraj, PW3-Sumitha and PW4-Arockiyaraj had consistently narrated the specific overt acts of the accused 1 to 4 and their statements are consistent with that of PW1. As a matter of fact, all the witnesses were consistent, in spite of arduous cross examination and they have consistently withstood through out their examination.

9. It is the specific contention of the learned counsels appearing on behalf of all the accused that the eyewitnesses are interested witnesses and that there is no corroboration from any independent witnesses. In this regard, it is useful to refer to the evidence of P.W.6 to P.W.8. Though the witnesses P.W.6, P.W.7, and P.W.8 did not speak about the specific overt act of all the accused, they have categorically spoken about the occurrence, time and place and more particularly, the presence of the accused and the prosecution witnesses at the scene of the occurrence. It is true that the witnesses P.W.6 to P.W.8 have turned hostile, but a mere declaration of the witness as hostile does not eschew their entire evidence. It is a well-settled principle of law that the evidence of a hostile witness also equally admissible in evidence.



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10. Thus, while harmoniously reading the evidences of P.W.6 to P.W.8, the previous occurrence, qua the rash driving of the vehicle, which was the trigger point for the subsequent murder, had been dealt with, and all the witnesses have spoken about all the accused and witnesses arrival and presence at the relevant point of time. However, curiously such portions of the evidence have not been challenged by accused/appellants. Therefore, while construing the evidence of P.W.1 to P.W.5 in the backdrop of the evidence of P.W.6 to P.W.8, no grounds are emerging before this Court to suspect the credibility of the eyewitnesses, though they are relatives of the deceased. Thus P.W.1 to P.W.5 are wholly reliable witnesses and the trial Court has rightly appreciated their evidence. Once this Court believes the evidence of the eyewitnesses, the contradictions in the testimony of the recovery witnesses loses its significance. It is also a well-settled principle of law that when there is trustworthy eyewitness's testimony, even in the absence of proof regarding motive will lose its significance.

11. The learned counsels for all the accused would further urge before this Court that even the accused 1 and 2 have sustained injuries, whereas the prosecution has miserably failed to prove the cause of those injuries and therefore,



contended that this raises a serious doubt in the prosecution case. In this regard, this Court would like to refer to the judgment of the Hon'ble Supreme Court reported in ***State of Gujarat Vs. Bai Fathima*** [(1975) 2 SCC 7], wherein it was held that when the prosecution fails to explain the injuries on the person of an accused, then the following three results may follow:

1. That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.
2. The prosecution's occurrence itself becomes doubtful.
3. Even such non-explanation will in no way affect the prosecution case.

12. Here it is the contention of the learned counsel for the accused that the deceased Aruldas was wielding the cycle chain, therefore, they projected it as a case of private defence. In this regard, it is useful to refer to the evidence of P.W.17-Dr.Mohankumar, who administered treatment at the first instance to the first and second accused. He also prepared accident Register for the first and second accused in Exs.19 and P20 respectively. According to his evidence, the injuries sustained by the first and second accused are not serious in nature and would have been sustained while they fell on the ground. Even while perusing the accident report of the first and second accused, Ex.P19 and P.20, it indicates only minor injuries, which could normally result in an altercation.



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13. More curiously, both the accused did not speak about the cycle chain. While the first accused says that he was assaulted with a belt, the second accused did not refer to any weapon. Even the discharge summary suggests minor injuries as spoken by P.W.17 doctor. It is a well-settled principle of law that the non-explanation of these minor injuries will in no way affect the prosecution case, when the prosecution witnesses have explained the injuries sustained by the deceased.

14. However, the learned counsel for the appellant relied upon the judgments of the Hon'ble Supreme Court in **Nagarathinam and Others Vs. State** reported in [(2006) 9 SCC 57] and in **Lakshmi Singh and Others Vs. State of Bihar** reported in [(1976) 4 SCC 394], and would contend that when they raise the plea of self defence, the non explanation of the injury on the accused assumes significance.

15. In **Nagarathinam's case (supra)**, the accused therein had suffered serious injuries on the vital parts of their bodies with knife and bottles and in



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consideration of the same, the Hon'ble Supreme Court had held that the exercise of a right of private defence must be determined, having regard to the entire factual

scenario. Likewise, in **Lakshmi Singh's case (supra)** also, as many as 13 to 14 serious injuries were sustained by the accused and the Hon'ble Supreme Court, in this given scenario, had held that failure of the prosecution to explain the injuries on the accused, may entitle the accused to take the plea of self-defence. Apart from holding so, the Hon'ble Supreme Court had also placed reliance on a decision in the case of **Puran Singh Vs. State of Punjab** reported in **(1975) 4 SCC 518** and observed that when the injuries sustained by the accused are minor and superficial, non-explanation of the injuries may not affect the prosecution's case. However, in the present case, admittedly, the injuries sustained by the accused are minor and superficial and the evidences indicate that the accused could have sustained them while they fell on the ground. In this given scenario, even assuming that the plea of self-defence is considered, it can only be held that the accused had exceeded the right of his defence. Thus, the decisions in both the cases, relied upon by the learned counsel for the appellant, are clearly distinguishable and hence, would be of no avail to the appellant.



16. The learned counsel for the appellant also relied upon the Division Bench judgment of this Court made in **Crl.A.No.178 of 2018** [*Nandiswaran and others Vs. State*], where one of us [M.S.R.,J] was the party to the judgment. In the above judgment, the Division Bench found that the injury sustained by the accused are not minor and that there was a suppression of Accident Register copy of the accused before the Trial Court. Only in that context, the Division Bench of this Court has held that the non explanation of the serious injury on the accused found to be fatal to prosecution case. But, in the case on hand, there is no suppression of material. As a matter of fact, the accused 1 & 2 Accident Register copy and discharge summary were marked before the Trial Court. According to those records, the injuries of the accused 1 and 2 are minor in nature. Therefore, the above ruling is also not applicable to the facts of this case. Apart from that, it is well settled principle of law that the non explanation of minor and superficial injuries are not fatal.

17. Therefore, the evidence of P.W.1, which is consistent and creditworthy and outweighs the theory projected by the accused. Though it was suggested to the witnesses that Aruldas was wielding the cycle chain, while the first accused was admitted to the Ooty Hospital, he himself stated that he was attacked by known persons with a belt. Therefore, this Court is of the firm view that the



injuries sustained by the accused 1 and 2 are superficial and minor in nature, which could be the result of their own aggressive conduct. Therefore, the non-explanation of the injuries sustained by the accused will in no way affect the prosecution case.

18. The learned counsel also relied upon yet another judgment of the Hon'ble Apex Court reported in ***Gargi Vs. State of Haryana*** [(2019) 9 SCC 738], and contended that the non-lifting of fingerprints would also go against the prosecution case. However, we disagree with the submissions made by the learned counsel for the appellants, as the prosecution has established its case through the eyewitnesses. The above ratio laid down by the Hon'ble Supreme Court in the case arising out of circumstantial evidence, whereas our case in hand is based on ocular evidence.

19. The learned counsel for the accused would also contend that there is a contradiction in respect of the weapon used against the deceased Aruldas. The learned counsel invited the attention of the Court to Ex.P1-complaint, wherein it has been referred to as a foldable knife, whereas the material object produced, qua, M.O.1, is a plain knife. Though there is a contradiction, what matters is a knife. While giving a complaint after the perilous incident, the parties will be little nervous and may not be in their composure. Therefore, the mere reference to a foldable knife in the complaint, will in no way affect the prosecution's case. The fact that the



complainant presumed the knife to be foldable by its appearance does not mean that the accused did not possess any knife at all in his hand. The trial Court dealt with the weapon and the injury. Therefore, this Court is of the firm view that such a mere insignificant contradiction in respect of the model of weapon will in no way affect the prosecution's case.

20. The learned counsel for the accused would submit that there is a delay in registering the FIR. According to the evidence of P.W.20, the FIR was registered on 16.04.2013 at about 1 a.m., Here, the occurrence took place on 15.04.2013 at about 8:30 p.m. and both the injured were immediately taken to the hospital, and both of them died. So, in that background, the registration of the FIR at about 1 a.m. midnight, cannot be doubted in the light of the gravity of seriousness of two murders and the shock undergone by the relatives of the deceased. Therefore, even on the ground of delay in the registration of the FIR, this Court does not find any ground to doubt the prosecution case.

21. The learned counsel for the accused would also contend that the involvement of accused 3 and 4 cannot be brought under Section 34 of IPC as there was no common intention among them. It is pertinent to mention that the factum of common intention is a psychological fact, and the same could be formed before the



actual happening of the incident. Here, from the very act of the third and fourth accused being caught holding the respective deceased Aruldas and Franklin, which had been spoken through the prosecution witnesses, the common intention of the third and fourth accused could be very much visible. Therefore, the imposition of punishment, even against the third and fourth accused, cannot be faulted.

22. The learned counsel for the third accused would make a faint attempt that there is no premeditation and that the occurrence was the result of a sudden provocation. We are not in agreement with the submissions made by the learned counsel, as the occurrence was voluntarily invited by the accused and further, at the time of occurrence, the deceased did not have any weapon except belt. Apart from that, the seat of attack against the deceased are also relevant. Furthermore, the attack is not a sudden single blow, but rather indiscriminate multiple stabs on the vital parts. Therefore, we are of the firm opinion that there are no grounds to bring the case of the appellant under any of the exceptions provided under Section 300 of IPC.

23. Therefore, this Court is of the firm view that the prosecution has proved the charges beyond all reasonable doubts and the trial Court, after a thorough analysis of the evidence, rightly arrived at the conclusion and imposed the



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appropriate punishment against the accused through the judgment impugned herein. We find no infirmity or illegality in the same. Hence, the criminal appeals are liable to be dismissed.

24. In the result, the Criminal Appeals are dismissed. As a result, the bail bonds executed by the appellants shall stand cancelled. The appellants shall surrender before the trial Court within 20 days from today, to undergo their remaining period of sentence, failing which, the respondent-Police shall secure and commit them to prison to undergo the remaining period of sentence.

[M.S.R., J.] [C.K., J.]
23/08/2024

Index: Yes.
Speaking order.
Neutral Citation: Yes.



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To

- 1.The Sessions Judge of Magalir Needhi Mandram (FTMC),
Uthagamandalam at Nilgiris.
- 2.The Inspector of Police,
Ooty Town B1 Police Station,
Ooty, Nilgiris District.
- 3.The Additional Public Prosecutor,
Madras High Court,
Chennai.
- 4.The Section Officer,
Vernacular Section,
Madras High Court,
Chennai.



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M.S.RAMESH, J.
AND
C.KUMARAPPAN, J.

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Judgment made in
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