



Crl.A.Nos.383 & 892 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>09.07.2024</i>
<i>Pronounced on</i>	<i>02.08.2024</i>

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.383 & 892 of 2019

P.Kuppuraj ... *Appellant in Crl.A.No.383/2019*

Dasthagir ... *Appellant in Crl.A.No.892/2019*

Vs.

State rep. by,
The Inspector of Police,
Sevappettai Police Station,
Salem District.
(Crime No.194/2017)

... *Respondent in both the appeals*

Common Prayer: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed by the learned III Additional District and Sessions Judge, Salem in S.C.No.303 of 2017 dated 25.04.2019 and allow the Criminal Appeals.

For Appellant in Crl.A.No.383/2019 : Mr.E.C.Ramesh

For Appellant in Crl.A.No.892/2019 : Mr.R.Sankara Subbu



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For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

COMMON JUDGMENT

M.S.RAMESH,J.

The first appellant herein is the first accused and the second appellant is the second accused. The appellants have been convicted and sentenced to the imprisonment, through the judgment of the learned III Additional District and Sessions Judge, Salem passed in S.C.No.303 of 2017 dated 25.04.2019, in the following manner:-

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1	under Section 294(B) IPC	3 months rigorous imprisonment;
	under Section 302 IPC	Life imprisonment along with a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment;
	under Section 506(ii) IPC	3 years rigorous imprisonment.
A2	under Section 302 IPC	Life imprisonment along with a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment.
A3 – Umaiyaan @ Sakhinsa was acquitted from all the criminal charges.		

The sentences of imprisonments were ordered to run concurrently for both the appellants.

2. The aforesaid judgment of the Sessions Court is put under



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challenge by P.Kuppuraj/A1 in Crl.A.No.383 of 2019 and Dasthagir/A2 in Crl.A.No.892 of 2019. For the sake of convenience, the parties to the appeals are addressed according to their rank in the Trial Court.

3. Since both the appeals arise out of a common judgment, these appeals are disposed of jointly.

4. The case in brief is that owing to a wordy quarrel touching upon the non-payment of a loan amount of Rs.15,000/- by the deceased Srinivasan, Kuppuraj/A1, Dasthagir/A2 and Umaiyan @ Sakhinsa/A3 had brutally attacked Srinivasan with deadly weapons leading to his death.

5.1. The prosecution's case before the Trial Court was that the deceased Srinivasan had borrowed Rs.15,000/- from Kuppuraj/A1 about 6 months back, owing to which, there was enmity among them, which led to the incident.

5.2. On 30.05.2017, at about 1.00 P.M., when P.W.1 and P.W.2 were consuming liquor behind Moongappadi Girls' Higher Secondary



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School, the deceased had also come there with one quarter liquor bottle.

At about 2 P.M., A1 to A3 also came there with liquor bottles. At that time, A1 asked the deceased to return his Rs.15,000/-, due to which, a wordy quarrel arose between them, resulting in exchange of bad and filthy words.

5.3. Enraged over this, A1 assaulted the deceased Srinivasan with a machete (aruval) on the right side of his neck. He then asked A2 to finish him off and A2 took his knife and assaulted the deceased on the back of his head. When A1 again assaulted the deceased, his knife had accidentally cut the right thumb of A2. When the deceased started to run from the scene, A3 had attacked on the back of his head with an iron rod. When P.W.1 and P.W.2 went to stop the accused, A1 had caused a death threat with his weapon to them.

5.4. While running, the deceased fell down under a peepal tree near Kalamman Temple. When P.W.1 and P.W.2 followed Srinivasan, they found him dead in a pool of blood.



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5.5. P.W.1 had then called Murali – P.W.4 and informed him about the incident. Thereafter, when P.W.1 lifted the deceased, the blood stuck on P.W.1's lungi. Thereafter, P.W.1 and P.W.2 went to Shevapet Police Station and gave a written complaint, based on which, an F.I.R. came to be registered against all the accused for the offences under Sections 294(b), 302 and 506(ii) of IPC.

5.6. The Investigating Officer – P.W.19 had then conducted the investigation and filed a final report against all the three accused for the same offences. All the accused were produced before the learned Judicial Magistrate No.3 and the copies of the final report and other documents were served on them under Section 207 Cr.P.C. The case was then committed to the Sessions Court, which was taken on file as S.C.No.303 of 2017. The Sessions Court had framed the charges against A1 for the offences under Sections 294(b), 302 & 506(ii) of IPC and the charges for the offences under Section 302 r/w. 34 and 506(ii) of IPC against A2 and A3. When the incriminating portions of the charges were read over and explained to all the accused, they denied the same as false and pleaded that they were 'not guilty'.



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6. To prove the charges against the accused, the prosecution had examined 19 witnesses namely P.W.1 to P.W.19 and marked Exs.P.1 to P.37, apart from the material objects M.O.1 to M.O.19 before the Trial Court. On the side of the defence, no oral or documentary evidences were let in.

7.1. P.W.1 – Ranjithkumar and P.W.2 – Salaam are cousins of the deceased and they were examined as eyewitnesses to the incident. According to them, on 30.05.2017 at about 2.00 P.M., when both of them were consuming liquor along with the deceased, behind Moongappadi Girls' Higher Secondary School, A1 to A3 had also come there with their liquor bottles. When A1 demanded the deceased to refund his Rs.15,000/-, a wordy quarrel using bad language was exchanged between them and consequently A1 to A3 attacked the deceased with deadly weapons. The deceased while running from the scene of occurrence fell down under the peepal tree near Kalamman Temple and died on the spot. P.W.1 had then given a complaint (Ex.P1) with the help of P.W.2 before the Shevapat Police Station. Both their statements on the incident are



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cogent and corroborates with each other.

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7.2. P.W.19 is the Investigating Officer, who went to the scene of occurrence and recorded the statements of P.W.1 and P.W.2. He then seized P.W.1's blood stained lungi (M.O.1); machete (M.O.2) used by A1; knife (M.O.3) used by A2; iron knife (M.O.4) used by A3.

7.3. P.W.3 is the wife of the deceased, who speaks about the enmity between the deceased and A1 with regard to non-payment of the loan amount of Rs.15,000/- by the deceased and that she had gone to the scene of occurrence, after she received a message from the deceased's uncle's son Murali – P.W.4.

7.4. P.W.5 is the shop owner near Kaliamman temple, who saw the deceased coming from the scene of occurrence and falling down under the peepal tree.

7.5. P.W.6 – Varadaraj is the Village Administrative Officer, who had gone to the scene of occurrence at 4.00 P.M. at the request of the



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Police. Therein, he had witnessed the Investigating Officer preparing the observation mahazar (Ex.P2) at the place where the body of the deceased was found. From there, the Investigating Officer had seized 2 copper brandy bottles (M.O.5); 3 plastic tumblers (M.O.6); a piece of blood stained cement floor (M.O.7); a piece of cement floor without blood (M.O.8) under a seizure mahazar (Ex.P4).

7.6. Likewise, from the place where the body was found, he had seized 2 pieces of cement floor with blood stain (M.O.9) and without blood stain (M.O.10) under seizure mahazar. The blood stained lungi (M.O.1) was seized under seizure mahazar (Ex.P6)

7.7. The Investigating Officer at the time of arresting A1 to A3 on 31.05.2017 at 2.10 P.M., had recorded the confession statement of A1, the admitted portion of which was marked as Ex.P7. Likewise, the admitted portion of confession statement of A2 was marked as Ex.P8. Based on these confessions, he had seized a blood stained sandal colour shirt (M.O.11) and blood stained blue jeans (M.O.12) of A1 and A2 respectively under Ex.P9. The knife used by A1 was already marked as



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M.O.3 and was seized under seizure mahazar (Ex.P10) and M.O.3 was seized under Ex.P13.

7.8. P.W.8 – Kannan is the sign language interpreter who had recorded the confession of A3, whose hearing and speech were impaired.

7.9. The body sent to the hospital for postmortem, was accompanied by P.W.9 – Gunaseelan, who is the Head Constable and the special report was marked as Ex.P11.

7.10. P.W.10 is the forensic science expert, who had issued the viscera report (Ex.P12).

7.11. P.W.11 is also a forensic science expert, who had given the medical analysis report (Ex.P13) and (Ex.P14) and as per the report, blood was detected on items 1, 3 and 5 to 14 but not on items 2 and 4.

7.12. P.W.12 is the Doctor, who had recorded Accident Register (Ex.P15) of A2.



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7.13. P.W.13 is the Doctor, who had conducted the postmortem and requisition letters for conducting postmortem were marked as Ex.P16 and the postmortem certificate as Ex.P17. As per Ex.P17, the following antemortem injuries were found on the body of the deceased:-

“INJURIES:

- 1. CUT INJURY OVER RIGHT OF THE NECK M-8X3X1 CMS IN THE MIDDLE ASPECT O/D CAROTID ARTERY ON THE RIGHT SIDE SEVERED CUT FRACTURE OF UNDERLYING CERVICAL VERTEBRA WITH EXTRAVASATION OF BLOOD, HYOID BONE-INTACT.*
- 2. CUT INJURY OVER RIGHT SIDE TEMPORAL REGION OF THE SCALP M-3X1X1 CMS*

O/D HEAD :- SCALP- CONTUSION OVER THE OCCIPITAL REGION OF THE SCALP M-3X2X0.5 CMS, VAULT-INTACT, BRAIN-NORMAL, C/S NORMAL, BASE OF SKULL- INTACT

O/D THORAX – RIBS - INTACT, HEART - NORMAL IN SIZE, C/S CHAMBERS – EMPTY, VALVES AND CORONARIES – NORMAL, LUNGS - NORMAL IN SIZE, C/S PALE.

O/D ABDOMEN :- STOMACH: CONTAINED 300 GMS OF PARTIALLY DIGESTED FOOD PARTICLES WITH FRUITY ODOUR, MUCOSA - C/S PALE, LIVER, SPLEEN,



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*KIDNEYS - NORMAL IN SIZE, C/S PALE, BLADDER –
EMPTY, PELVIS-INTACT.”*

7.14. As per final opinion (Ex.P18), the cause of death of the deceased was as follows:-

“The deceased would appear to have died of cut injury over the neck with evidence of consumption of Ethyl Alcohol.”

7.15. P.W.14 is the Head Constable who speaks about the information received from the Doctor of the Government Hospital where A2 was admitted as a medico legal case.

7.16. P.W.15 is the Sub Inspector of Police, who states that when he went to inquire A2 at the hospital, he was informed that A2 had discharged himself.

7.17. The complaint (Ex.P1) was registered by the Sub Inspector of Police, Shevapet Police Station as an First Information Report – P.W.16, in Crime No.194/2017 dated 30.05.2017.



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7.18. The statements of P.W.1 and P.W.2 under Section 164 Cr.P.C. were recorded by the learned Judicial Magistrate – V, Salem – P.W.17. The request given in this regard by the Investigating Officer was marked as Ex.P20, the orders passed therein as Ex.P21 and the recording of the voluntary confession statements as Ex.P22.

7.19. P.W.18 is the Doctor, who had registered the body at the mortuary and issued Accident Register (Ex.P23).

7.20. P.W.19 is the Investigating Officer. During the course of the investigation, the Investigating Officer on registration of the complaint, had gone to the scene of occurrence and prepared observation mahazars both at the scene of occurrence and at the place where the body of the deceased was found, which were marked as Ex.P24 and Ex.P25 respectively. He had then conducted an inquest over the body of the deceased and submitted the inquest report (Ex.P26). Thereafter, he had sent the body for postmortem through P.W.9 under Form – 91 (Ex.P27). The Deputy Superintendent of Police (FP), SDFP Bureau, Salem District, had visited the occurrence place and recorded the crime scene visiting



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report (Ex.P28). Under Ex.P29 and Ex.P30, he had sent the material objects seized from both the accused to the Court. The return of the material objects and the redepositing of the same before the Judicial Magistrate – III under Form-95 were marked as Exs.P31, P32 and P33. Through a requisition letter (Ex.P34) of the Judicial Magistrate – III, the seized articles were sent for medical analysis. The letter issued by the finger print expert to the Investigating Officer, confirming the matching of the chance print with the sample prints of A1, was marked as Ex.P35. Ex.P36 is the report of the Medical Analyst, who confirmed that the cement floor pieces with and without blood stains were similar to each other. In the report of the Forensic Department (Ex.P37), some of the material objects seized from P.W.1 and the accused, as well as the knife, confirmed the blood therein as 'human'. However, the result of the grouping test was declared as 'inconclusive'.

8. On an appreciation of oral and documentary evidences, as well as the material objects produced before the Trial Court, both the first and second accused were found guilty of the charges and were sentenced to their respective imprisonments as already mentioned above.



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9. The learned counsels for the appellants submitted that the motive for the occurrence has not been properly established by the prosecution. It is further submitted that though the F.I.R. was registered on 30.05.2017 at 3.15 P.M., the same was sent to the Court of the Judicial Magistrate on 31.05.2017 at 5.30 A.M. only and hence, there is an unexplained delay. It was also submitted that from the evidences let-in by P.W.1 and P.W.2 with regard to the manner in which A1 and A2 had inflicted the injuries, there is no corresponding injury as seen from the medical evidence. In view of all these serious infirmities, they sought for acquittal of both the accused.

10. Per contra, the learned Additional Public Prosecutor submitted that this is a case which was directly witnessed by P.W.1 and P.W.2 and therefore, when the accused had not discredited the statements of these 2 eyewitnesses, all other minor contradictions in the other evidences would be immaterial. He further submitted that P.W.3 being the wife of the deceased, had clearly spoken about the motive, touching upon the non-payment of the loan amount and the enmity between A1 and the deceased



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for the past 6 months, which was also corroborated by P.W.1 and P.W.2.

In view of the same, it is incorrect on the part of the learned counsels for the accused, to claim that the motive was not established in this case.

11. We have given our careful consideration to the submissions made by the respective counsels and have perused the original records relating to the case in hand.

12. This is a case where the occurrence was directly witnessed by P.W.1 and P.W.2, who are the nephews of the deceased. According to their oral testimonies, both of them had purchased liquor bottles on 30.05.2017 and started drinking at about 1.00 P.M., behind Moongappadi Girls' Higher Secondary School. They further stated that at about 2.00 P.M., all the three accused had come there carrying liquor bottles and started to drink. At that time, A1 started demanding the loan amount of Rs.15,000/- from the deceased, which resulted in a wordy quarrel with exchange of bad words. Both P.W.1 and P.W.2 have stated that A1 had first attacked the deceased with a machete on the right side of his neck and A2 attacked with a knife on the backside of the head. They also



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speak about the injury caused on the right thumb of A2, while A1 attacked the deceased. After the attack, the deceased started running by covering his wound on the neck with his hand and thereafter, fell down under a peepal tree near Kaliamman temple and this fact was also cogently spoken to by both P.W.1 and P.W.2. The fact that P.W.1 had called P.W.4 and informed him about the incident was also narrated by them. When they found the deceased to have died, both P.W.1 and P.W.2 together had gone to the Police Station and the statement of P.W.1 was reduced to writing by P.W.2 in the complaint (Ex.P1) and given to the Police. This fact also stands corroborated in their statements.

13. Thus, the presence of both P.W.1 and P.W.2 in the scene of occurrence and their witnesses to the attack caused by A1 and A2 has been cogently narrated by them, which according to us, are convincing and inspires confidence in their testimonies. When the fact of the presence of P.W.1 and P.W.2 and their witness to the occurrence has been established through their oral testimonies, the defence has failed to elucidate any contra statements from them to disprove or discredit their version, so as to reject their testimonies. Thus, we are of the affirmed



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view that the evidences of P.W.1 and P.W.2, who are the eyewitnesses inspires confidence and is impeachable, insofar as it relates to the overt acts attributed to both the accused. We find no reason to disbelieve their testimonies.

14. The learned counsels for the appellants attempted to discredit the testimonies of P.W.1 and P.W.2 by stating that there are no corresponding injuries on the body of the deceased as per their evidences.

15. From the evidence of P.W.13 – Postmortem Doctor read with postmortem report (Ex.P17), it could be seen that 2 cut injuries, one over the right side of neck measuring 8x3x1 cms and a cut fracture of underlying cervical vertebra was found on the body of the deceased. Another cut injury over right side temporal region of the scalp measuring 3x1x1 cms, was also spoken by him. Both P.W.1 and P.W.2 in their oral testimonies speak about the cut injuries inflicted by A1 on the right side of the neck and by A2 on the backside of the head of the deceased. These injuries, in our view, corresponds to the overt acts attributed by P.W.1 and P.W.2 on the manner in which A1 and A2 had inflicted the injuries. In



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view of the same, we are unable to accept the ground raised by the learned counsels for the appellants in this regard.

16. The learned counsels for the appellants further submitted that there was an unexplained delay in transmitting the F.I.R. to the Judicial Magistrate's Court.

17. A perusal of the F.I.R. (Ex.P19) evidences that P.W.1's complaint was registered on 30.05.2017 at 3.15 P.M. after the incident had occurred at 2.00 P.M. on the same day. The F.I.R. seems to have been received by the learned Judicial Magistrate at 5.30 A.M. of 31.05.2017. P.W.16 is the Sub Inspector of Police, who had registered the F.I.R. (Ex.P19). As per his statement, the F.I.R. was registered at 3.15 P.M. and that at about 4.00 P.M., the Investigating Officer had come to the Police, to whom he had handed over the F.I.R. Thereafter, he had sent the express F.I.R. to the learned Judicial Magistrate. The learned Judicial Magistrate appears to have received the same on the early hours of the next day at 5.30 A.M. itself. Most of the delay in between, are during the night hours. The manner in which the crime was reported before the



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Police immediately and the express F.I.R. also is claimed to have been dispatched in the evening after 4.00 P.M., appears to be a reasonable explanation and the delay in between, cannot be said as an inordinate delay. Even otherwise, there are 2 eyewitnesses to the incident, whose evidences stand unimpeachable. Even if there is a delay in sending the F.I.R. to the learned Judicial Magistrate, it may not be of much significance when the incident itself stands established.

18. In the case of '*Bhajan Singh & others Vs. State of Haryana*' reported in '*(2011) 7 SCC 421*', the Hon'ble Supreme Court had held that not every delay in sending the report to the Magistrate would necessarily lead to the inference that the F.I.R. has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright and that every such delay is not fatal unless prejudice to the accused is shown.

19. Thus, the ground of delay raised by the learned counsels for the appellants does not deserve consideration.



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20. It is also the submissions of the learned counsel for the appellants that the motive to the incident has not been fully established by the prosecution.

21. It is the case of the prosecution that a wordy quarrel took place between A1 and the deceased when A1 had demanded return of Rs.15,000/- from the deceased. P.W.1, as well as P.W.2 affirms about this fact in their oral testimonies. P.W.3 is the wife of the deceased and according to her, when both the family of the deceased and A1 were in a cordial relationship, A1 had lent Rs.15,000/- to the deceased. She further states that when the deceased did not return the money, there arose enmity between both the families and they were not in talking terms for the past 6 months. The defence could not elucidate any contra statements touching upon the relationships between the families of A1 and the deceased or discredit the statements of P.W.3, as well as that of P.W.1 and P.W.2. In the absence of any contrary statements made with regard to the non-payment of the loan amount of Rs.15,000/- by the deceased to A1, as well as the estranged relationship between both the families, the only conclusion this Court is arrived at from the oral testimonies of these 3



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witnesses, that the incident did occur owing to the previous enmity between A1 and the deceased, owing to which, a quarrel arose in the scene of occurrence. It is also the case of the prosecution that, as seen from the evidence of P.W.1 and P.W.2, after the wordy quarrel, A1 had asked to finish off the deceased and accordingly, A2 had also inflicted the knife injuries on him. Even in the complaint (Ex.P1) given by P.W.1, he has spoken about the wordy quarrel between A1 and the deceased. Though, motive may not be a vital aspect to disprove the case of the prosecution when there are 2 eyewitnesses to the incident and whose testimonies are unimpeachable, the prosecution has established and attributed the aspect of motive also on the accused for the incident. In view of the same, this ground raised by the learned counsels for the appellants also does not deserve consideration and the Trial Court had rightly convicted the appellants for the offence under Section 302 IPC.

22. The Trial Court had convicted both the accused for the offences under Sections 294(b) and 506(ii) of IPC. From the evidences of P.W.1 and P.W.2, it is seen that when both the accused came to the scene of occurrence for consuming liquor, A1 had abused the deceased with dirty



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words while demanding return of his money. Likewise, after inflicting the knife injuries on the deceased, when P.W.1 and P.W.2 had attempted to reach out to the deceased, both A1 and A2 had threatened them with their knives, stating that they would kill them also, if they make any noise.

23. As already stated, the oral testimonies of both P.W.1 and P.W.2 inspires confidence. Thus, when the eyewitnesses have clearly narrated the incident and spoken about the dirty words used by A1, the conviction against him for the offence under Section 294(b) of IPC, stands substantiated. Likewise, since both A1 and A2 had caused death threat to P.W.1 and P.W.2, it can be said that the prosecution has established the offence under Section 506(ii) of IPC also against both these accused. Hence, the findings of the Trial Court with regard to the guilt of the accused for these two offences, does not require interference.

24. In the result, we do not find any merits in the grounds raised by both the learned counsels for the appellants and hence, both the Criminal Appeals stand dismissed.



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[M.S.R.,J.] [S.M.,J.]
02.08.2024

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

Sni



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1.The III Additional District and Sessions Judge,
Salem.

2.The Inspector of Police,
R7, K.K.Nagar Police Station,
Chennai – 600 078.

3.The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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common judgment
made in Crl.A.Nos.383 & 892 of 2019

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