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Crl.A Nos.421 & 447 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2024

Pronounced on : 03.01.2025

CORAM : JUSTICE N.SESHASAYEE

Criminal Appeal Nos.421 & 447 of 2018

- | | |
|-------------------|--|
| 1.G.Kannadasan | ... Appellant in Crl.A.421 of 2018 /A4 |
| 2.P.Nagarajan | ... 1 st Appellant in Crl.A.No.447 of 2018/A1 |
| 3.A.Syed Mohammed | ... 2 nd Appellant in Crl.A.No.447 of 2018/A2 |
| 4.Mallika Banu | ... 3 rd Appellant in Crl.A.No.447 of 2018/A7 |

Vs

The State, Represented by
Deputy Superintendent of Police
SPE, CBI, ACB, Chennai.
[R.C. MA1/2006/A/0042]

... Respondent / Complainant

COMMON PRAYER: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the judgment passed against the appellants/accused-4, by the learned XII Additional Special Judge / Special Judge for CBI cases, Chennai-104, vide judgment dated 13.07.2018 made in C.C.No.40 of 2017 and acquit them from all the charges.



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Crl.A Nos.421 & 447 of 2018

For Appellant : Mr.R.Raja Rathinam, Senior Counsel
(in Crl.A.No.421/2018) for Mr.K.Shankar

For Appellants : Mr.Arun Anbumani
(in Crl.A.No.447/2018) for Mr.B.Krishnamani Appukutti

For Respondent : Mr.N.Baskaran
Special Public Prosecutor (CBI)

COMMON JUDGMENT

The appellants herein are A1, A2, A4 and A7 in C.C.No.40 of 2017 on the file of XII Additional Special Court for CBI cases and they challenge their conviction and sentence for the following offences:

<i>Accused</i>	<i>Offences</i>	<i>Sentence imposed by the trial Court</i>
A1, A2, A7	Section 120B r/w.182, 420, 468, 471 r/w. 468 of IPC and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act.	Rigorous imprisonment for 6 months and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for one month.
	Section 420 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.
	Section 468 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.
	Section 471 r/w.468 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.
	Section 182 of IPC	Rigorous imprisonment for three months and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one month.



<i>Accused</i>	<i>Offences</i>	<i>Sentence imposed by the trial Court</i>
A4	Section 120B r/w.182, 420, 468, 471 r/w. 468 of IPC and Sections 13(2) r/w.13(1)(d) of the Prevention of Corruption Act.	Rigorous imprisonment for 6 months and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for one month.
	Section 420 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.
	Section 468 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.
	Section 471 r/w.468 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.
	Section 182 of IPC	Rigorous imprisonment for three months and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one month.
	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act r/w. Section 511 of IPC	Rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three months.

2. A certain Mohammed Farooq had died in a road accident, and his widow and parents, arrayed as A7 to A9, had preferred Ext. P51 claim before MACT (Principal Sub Court) Cuddalore in MCOP 282 of 2003. An award too had come to be passed vide Ext.P58, dated 22.09.2004. According to the prosecution this claim was founded on a false narrative of the way the accident had taken place. Accordingly, the prosecution case can be divided into two parts: (a) First part relates to what the claimants before the MACT



had alleged about the manner of happening of the accident; and (b) Second part relates to the fault-line which has fed a cause of action for criminal prosecution.

Accident the way A7 to A9 had claimed:

3.1 The narration of the accident as disclosed in Ext.P51 Claim petition is as below:

- a) It was around 1.50 p.m in the afternoon on 11.10.2002. A certain Mohammed Farooq was riding his scooter along the left side of the road. While so, P.W.8, Karnan, a driver of a goods-carrier parked his vehicle on the right side, and tried to cross the road. When Mohammed Farooq suddenly spotted P.W.8 on his line of motion, he instinctively applied the brakes to avoid an accident. But misfortune struck when an auto driven by A1 knocked the two wheeler of Mohammed Farooq from behind, as a result of which, Farooq lost his balance and hit the man whom he wanted to avoid, namely P.W.8, consequent to which both Farooq and P.W.8 suffered injuries.
- b) At around 2.30 p.m. Farooq was removed to Government Hospital, Neyveli Township, from where he was moved to M/s Apollo Hospital, Chennai. But on the way, he should have breathed his last breath,



since on his arrival at the Appollo Hosptial at 8.00 p.m. P.W.13, the doctor who attended on him, had declared that Farooq was brought dead, and recorded it in Ext.P32.

- c) In the meantime, at 8 p.m. on the same day, A2, one of the brothers of the deceased Farooq had preferred a complaint based on which A3, a head constable of Neyveli Township PS had registered Ext.P5 FIR in Crime No:375 of 2002, against the driver of auto-rickshaw (who was later identified as A1) for offences under Sec.279 and 337 IPC. This shows that at that point of time Farooq had not yet been declared dead.
- d) Following the registration of the FIR A3 had gone to the SOC and prepared the Observation Magazar and also the rough sketch (part of the Ext.P15 file). Since Farooq had died, on 12.10.2002, he filed Ext.P6 Alteration Report before the concerned Magistrate Court and included Sec.304A IPC. Eventually on 23.12.2002, Ext.P7 final report came to be filed by A4, the Inspector of Police, and it was taken on record by the Magistrate concerned in C.C.No.359 of 2002.
- e) Midway through the investigation, on 14.10.2002, A1 admitted to his guilt and on 27.12.2002 A1 pleaded guilty and was sentenced by the Court vide Ext.P9 judgement.



f) Be that as it may, on 05.11.2002, about three weeks from the date of the accident, A7 to A9 along with the minor children of Farooq had filed MCOP 282 of 2003. On 22.09.2004, vide Ext.P58 the MACT had passed its award.

g) P.W.36 was a private investigator of the insurance company which was mulcted with liability under Ext.P58 award of the MACT. He had produced Ext.P63 investigation report (which was not marked before the MACT during the trial of MCOP 282 of 2003). According to Ext.P63, the auto-rickshaw of A1 was not involved in the accident. On 28.08.2006, the Insurance Company preferred I.A.4683 of 2006 before the MACT to review Ext.P58 award. The MACT framed a solitary issue: Whether the review is maintainable, and vide Ext.P60 Order, dated 12.09.2006, it was allowed and Ext.P58 award was set aside.

3.2 Now over to the present case. On 10.04.2005, some seven months after the MACT had passed its award, the Insurance Company of the auto-rickshaw had preferred a complaint before the DCB, Cuddalore alleging that with the support of A1, the auto-rickshaw driver, a fraudulent claim was preferred, that his vehicle was not involved in the accident in which Farooq



was killed, and it led to the registration of Ext.P61 FIR in Crime No:14 of 2005. The foundation for this complaint was Ext.P63 investigation report of P.W.36 Kathiresan, the private investigator of the insurance company.

4.1 How did P.W.36 come to the conclusion that A-1's auto-rickshaw was not involved in the accident? He has placed reliance on Ext.P25, the certified copy of the MVI Report of the auto-rickshaw of A1. In Serial Number 12 it says that the front left mud-guard of the auto-rickshaw had suffered a damage, implying thereby it was this portion that had hit the scooter of Farooq from behind. However, in the carbon copy of the said report it is stated that the rear left side mudguard of the auto-rickshaw had suffered a dent. If the front portion of the auto had hit the scooter, then the dent should be in the front portion of the auto-rickshaw, and because there was only a dent on the rear side and not on the front, the accident had not happened the way it was portrayed, and hence the claim made by A7 to A9 was false, and they had acted in collusion with A1 and the police officials who investigated the case in Crime No:375 of 2002, along with A5, the advocate who filed the claim petition in MCOP 282 of 2003 before the MACT on behalf of A7 to A9.



4.2 During the investigation, the respondent had subjected the MVI Report of the auto-rickshaw (Ext.P25) to be examined by P.W.17, the forensic handwriting expert, who vide Ext. P 37 to Ext.P46 report had expressed his opinion that he could not arrive at a conclusive opinion as to who had made the correction in Ext.P25.

4.3 After collecting all the material evidence P.W.40, the I.O. had laid the final report in this case, which was taken on record by the trial court in C.C.40 of 2017. Of the 9 accused against who were charge sheeted A3, A6, A8 & A9 had died before framing charges. Case against A5 came to be separated and was tried in C.C.No.15 of 2007, and charges as against the rest (A1, A2, A4 & A7) were framed. And the trial Court proceeded to try the accused persons for the charges it had framed. Their roles are:

<i>Rank of the Accused</i>	<i>Name of the accused</i>	<i>Role played by the accused persons</i>
A1	P.Nagarajan	Driver of the auto rickshaw bearing Regn.No.TN-31-Y-2806 involved in the accident
A2	Syed Mohammed	Brother of deceased Mohammed Farooq
A3	Kalyanasundaram (Now deceased)	Head Constable in Neyveli Township Police Station who registered FIR in Crime No.375 of 2002
A4	Kannadasan	Inspector of Police in Crime No.375/2002 (as concerning the accident involving Mohammed Farooq)



<i>Rank of the Accused</i>	<i>Name of the accused</i>	<i>Role played by the accused persons</i>
A6	Paramasivam (Now deceased)	Retired Head Constable who is alleged to have drafted a false complaint in his own handwriting implicating the auto rickshaw driven by A1, in Crime No.375 of 2002
A7	Mallika Banu	Wife of deceased Mohammed Farooq

4.4 During trial, the prosecution examined P.W.1 to P.W.40, marked Ext.P1 to Ext.P112. On the side of the defence, Ext.D1 came to be marked through P.W.40. On appreciating the evidence before it, the trial Court found A1, A2, A4 and A7 guilty of the offences and sentenced them to undergo imprisonment as detailed in the opening paragraph of this judgment. Challenging the sentence and the conviction imposed on them, A1, A2, A4 and A7 are before this Court in the present appeals.

Arguments:

5.1 The submissions of the learned counsel for appellants 1 to 3 in Crl.A.No.447 of 2018 (A1, A2 & A7) are as below :

- a) According to the prosecution, all the accused persons have conspired to defraud the insurance company with a fake narration about an accident during the year 2001-2002 whereas the accident in the instant case had taken place only on 11.10.2002. The fact



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remained that Farooq was killed in the accident and P.W.8 suffered injuries, and it is not disputed, otherwise it would have been a conspiracy for murdering Farooq. To allege that the parents and wife of Farooq have conspired that a fake claim be made against the insurance company at least a year before the date of accident, is nothing short of pure blasphemy. Very fortunately the prosecution has not chosen to allege that the very accident in which Farooq was killed itself was a product of the conspiracy between the accused persons. That a premier investigating agency should invoke Sec.182, 420, 468, 471 r/w.468 IPC as well as Sec.13(2) r/w. 13(1)(d) against the accused persons and those who had died is plainly shocking and, it shows the investigating agency in very poor light.

- b) The offence under Sec.120B IPC is a substantive offence, and it requires convergence of minds for the commission of a crime, and it must be established beyond all reasonable doubt that the accused persons had conspired a year prior to the date of the accident to set up the auto-rickshaw of A1 as if they possessed certain supernatural power to anticipate an accident. The prosecution could not establish what it alleged, and with the kind



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relates to certain correction in Ext. P25, MVI report of auto-rickshaw. According to prosecution, at Serial Number 12 of Ext. P25, the rear mudguard of the auto was corrected as front mudguard. This document was formally proved through P.W.7 but he was not the author of Ext. P25. P.W.18 was the Motor Vehicle Inspector at the relevant time and it was his job to prepare MVI reports. However, he had deposed that he had outsourced it to a certain Manivannan, who was only the owner of a driving school at Vridhachalam, to fill up Ext. P25, and that he had only signed the document. Manivannan was examined as P.W.22. Now, unless the prosecution could establish that the correction in Ext. P25 was made by any one of the accused persons, it cannot establish the charges under Sec.468 or Sec.471. Here the evidence of P.W.17, a forensic handwriting expert is critical. To compare the alleged correction in Serial Number 12 of Ext. P25 he had taken handwriting samples of A3, A8, A6, one Sekar, A5, and A1 and filed his report, wherein he had indicated that he could not ascertain who had made the alleged correction in Ext. P25. In a scenario such as this, unless the prosecution is able to establish that any of the accused persons are responsible for the alleged



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correction in Ext. P25, it does not take the prosecution case anywhere. Very unfortunately, the Trial Court ignored this vital aspect.

- e) The next aspect is about the conviction of A2 on the ground that the very complaint which led to the registration of a case in Cr.No.375/2002 itself is false. Here the prosecution travels beyond the FIR and other attending circumstances, and strangely goes to certain General Diary generally maintained by the NLC Township, wherein it mentions about the happening of certain accidents. NLC is not an investigating agency nor is it authorised to collect evidence, and any hearsay statement that it has recorded in the General Diary cannot be a conclusive evidence of what it says. Very unfortunately, the trial Court believed it. And none of the authorities who might have been responsible for making these entries were examined by the prosecution.
- f) Now that the accident had taken place on 11.10.2002 at 1.50 p.m., was not in dispute. Therefore, before discrediting Ext.P4 complaint and Ext.P5 FIR in Cr.No.375/2002, the CBI should have done reasonable homework rather than rushing to make an irresponsible accusation.



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g) Yet another reason which the trial Court has unnecessarily relied

on is the address of the petitioners in MCOP No.282 of 2003. In the claim petition, the petitioners had mentioned their address as Vadalur and the trial Court raised its eyebrows. A reading of Ext.P51 claim petition, shows that the claim petitioners in MCOP.No.282 of 2003 indeed had disclosed that they were living in Neyveli and that have migrated to Vadalur. To prove that A7, the widow of Farooq did not live in Vadalur, prosecution had examined P.W.15, her landlord. P.W.15 asserts that A7 was never his tenant but it must be added that in his cross-examination, he has also deposed that he cannot state who his tenants were. At any rate, the issue is not where A7 was living but whether the accident involving Farooq had happened at Neyveli and in the manner as disclosed by Ext.P4 complaint.

h) So far as A1 is concerned, he has already suffered a sentence in C.C. No.359 of 2002 (Crime No.375/2002) and that judgment has not yet been set aside. This implied that A1's conviction and sentence stands, and unless it is set aside, he cannot be punished again.



5.2 Turning to A4, the appellant in Crl.A.421 of 2018, the learned counsel submitted that A4 was only an Inspector and it was A3 and A6 who did the preliminary investigation and A4 took over the investigation only thereafter. And when it was found that he was not instrumental in making any correction in Serial Number 12 in Ext. P25, he cannot be fastened with any criminal liability.

6. Per contra, the learned Prosecutor has submitted that the accident had taken place in what may be termed as predicate case for the present case, at 1.50 p.m., on 11.10.2002. The issue was whether Mohammed Farooq was negligent in driving the scooter and hit it against P.W.8, and also invited his own ultimate end, or whether A1, the driver of the auto has hit the scooter of Mohammed Farooq from behind and induced a chain of events leading to the accident. In other words, there are two accidents according to the appellants, the first, when A1 hit the scooter of Mohammed Farooq with his auto from behind, and the second one, when Mohammed Farooq lost his balance and fell before hitting P.W.8. Here the following facts are essential:

- a) P.W.8, Karnan was the one who had to take part of the blame for the accident is a fact admitted on both sides. Now whether P.W.8



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was hit due to the collision of the rear side of the scooter of Mohammed Farooq, is belied by the fact in the earliest statements recorded by P.W.37, the Assistant Surgeon attached to Government Hospital, Chidambaram in Ext.P96, A.R copy. In this, P.W.37 had recorded that P.W.8 had suffered an injury owing to a hit by a scooter. Very obviously, the scooter in question was driven by Mohammed Farooq. However, if only A1's auto was responsible for inducing the accident as contended by the appellants, then nothing prevented P.W.8 from referring to the role played by A1 for the occurrence. It needs to be underscored that P.W.8 was received at the hospital along with a requisition of the Sub Inspector of Police.

- b) P.W.11 is the Deputy General Superintendent, NLC General Hospital, Neyveli, and he had prepared Ext.P29 AR copy pertaining to Mohammed Farooq. In this document, it is recorded that Mohammed Farooq had suffered head injuries due to a fall from the scooter when someone jumped from a van in his line of motion. The reference to the person who jumped from the van obviously was P.W.8.
- c) When Mohammed Farooq suffered a major head injury at 1.50



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p.m., there was still a delay of close to six hours in registering the

FIR. The FIR indeed was registered by A3 who is now dead.

According to Ext.P32, death report issued by P.W.13, Senior

Consultant of Apollo Hospital, Chennai, Mohammed Farooq was

brought dead at 8.00 p.m., and that coincides with the registration

of FIR. In other words, the registration of FIR surprisingly

coincides with the time when Mohammed Farooq was declared

dead by P.W.13. This implies that FIR itself could have been a

product of manipulation and A1's auto had been introduced later.

All that A2 and the beneficiaries before MACT have helped

themselves with is six hours to meddle with the facts, and have

planted the auto of A1 that never was involved in the accident. If

only, A1 was not involved in the accident, then it could only be a

case of Mohammed Farooq falling from his two wheeler perhaps

owing to his own negligence, or owing to the negligence of P.W.8.

Either way the insurance company of A1 auto would not have to

bear the claim for compensation. Unless the minds unite to

conspire to create an accident that never was, the insurance

company would not have suffered the loss.

d) So far as the accusation under Section 120.B IPC, wherein the



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prosecution is said to have made an accusation that all the beneficiaries before MACT had conspired over a period of one year 2001-2002 is concerned, it is essentially an offshoot of certain other cases where fraudulent claims were made during that relevant time. So far as the present case is concerned, there indeed is a conspiracy, not between 2001-2002, but between 1.50 p.m., and 8.00 p.m., on 11.10.2002, which still falls within the range of 2001 and 2002.

7. In response, the learned counsel for the appellants submitted that:

- a) the statement recorded in Ext.P29 AR copy relating to Mohammed Farooq, and Ext.P96, AR copy pertaining to P.W.8 are concerned, both the statements are true. It is true that Mohammed Farooq fell from the scooter and P.W.8 was hit by Mohammed Farooq, and Mohammed Farooq was brought unconscious. And whoever had brought Mohammed Farooq to the hospital, was not even listed as witness.
- b) So far as P.W.8 is concerned, even if P.W.8 had given a statement that he was hit by a scooter, he cannot be faulted as he might have not even noticed the role played by A1's auto. After all, a small push from



behind the scooter is sufficient to destabilise a two wheeler with a low wheel-base.

- c) So far as the allegation that the timing of FIR was made to match the time of Ext.P32 is concerned, the FIR initially was registered under Secs.279 and 337 IPC whereas in Ext.P32, P.W.13 has recorded that Mohammed Farooq was brought at 8.00 p.m., and was declared dead at 8.10 p.m.

Discussion & Decision:

8.1 The core issue is whether A-1's auto-rickshaw was involved in the accident that took place on 11.10.2002 at 1.50 in the afternoon at Neyveli? The prosecution says it was not, and all the accused persons, both living and dead and the one acquitted (A5, advocate of A7 to A9) had conspired to bring in A1's Auto as the cause of accident. And what is the substantial piece of evidence? A correction in MVI report (Ext.P25). Indeed MVI report of A1's auto-rickshaw was supposed to be prepared by P.W.18, the MV Inspector but was prepared by P.W.22, an owner of a driving school. And who discovered the correction in M.V. Report? P.W.36, a private investigator of the insurance company of the auto-rickshaw. And who had made the correction? According to P.W.17, the forensic handwriting expert,



he could not give a definite opinion. Now, with no evidence to prove the fabrication of the information in MVI report, how to sustain the charge under Sec.468 and 471 IPC? And what other corroborative evidence is available to show that the correction in MVI report is not true?

8.2 It is an open secret that a section of the Bar, not very holy, who believe in ambulance-chasing and also actively engage in certain unhealthy practices that have come to infest and plague the MACT jurisdiction. Little said the better. And this is an aspect which cannot be brushed aside. And A5 has been acquitted and the prosecution has not preferred any appeal against it. In a scenario such as this, is there any material to suggest that A2, A4 and A7 had known about the correction in MVI report of the A1's auto-rickshaw? It is one thing to say that they had knowledge or that they had actively conspired to make this correction, and it is entirely another thing to state that the correction could not have happened without their knowledge. Penal law is concerned only with the actual knowledge and not about the possibility of having knowledge vis-a-vis the incriminating correction in the MVI report of the auto-rickshaw in question.

9. The prosecution cries eureka when it matches the time of registration of



the FIR with the time when Farooq was declared brought dead at the Appollo hospital. But Ext.P5 FIR was not registered under Sec.304A IPC, if only the attempt of the prosecution was to take it anywhere near its theory of conspiracy. And, this fact is remotely connected to the fact in issue and it does not constitute the fact in issue itself.

10. Turning to the role of A1 and involvement of his auto-rickshaw in the accident, it is terribly unfortunate that the prosecution should even rely on the Accident Register of P.W.8 and Farooq besides a General (information) Diary of Neyveli Township. How conclusive are these pieces of evidence in proving the charges? It appears to be something similar to five blind men trying to describe an elephant, and each makes their own statements, none of which need to contain the whole truth. It needs to be underscored that the dynamics of any road-accident could never be described, for none anticipates it. Here the evidence of P.W.29 and P.W.39 appear natural, as they depose that they arrived at the SOC after hearing the noise of the accident, but significantly they also have deposed that they saw A1's auto-rickshaw at the scene of the accident. How to negotiate it? Finally, who said that the carbon copy of the MVI report gives the correct information and not the corrected MVI report?



Crl.A Nos.421 & 447 of 2018

11. From whichever angle the evidence in this case is analysed, this Court could arrive at only one conclusion: that the prosecution is not able to establish the charges against the appellants beyond all reasonable doubts. Accordingly, both Crl.A.No.421 of 2018 and Crl.A.No.447 of 2018 are allowed, and the judgement of the trial court in C.C.No.40 of 2017, dated 13.07.2018 convicting and sentencing the appellants is set aside. The bail bonds executed by the appellants are discharged.

03.01.2025

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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To:

1.The XII Additional Special Judge /
Special Judge for CBI cases, Chennai-104.

2.The Public Prosecutor
High Court, Madras.



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Crl.A Nos.421 & 447 of 2018

N.SESHASAYEE, J.

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Pre-delivery Judgment in
Criminal Appeal Nos.421 & 447 of 2018

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