(2010) 11 MAD CK 0297

Madras High Court

Case No: Criminal A (MD) No. 98 of 2003

Manickam and Others		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: Nov. 10, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 357(3), 428
- Evidence Act, 1872 - Section 24, 25, 26, 27
- Penal Code, 1860 (IPC) - Section 302, 323, 324, 325, 34

Citation: (2011) 3 Crimes 509

Hon'ble Judges: Tmt Aruna Jagadeesan, J; K.N. Basha, J

Bench: Division Bench

Advocate: P. Andiraj and Mr. T. Senthikumar /A2/ A3 for the Appellants 2 and 3, for the Appellant; Issac Manuel Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

1. The appellants who have been arrayed as A 1 to A3 have come forward with this appeal challenging their conviction and sentence imposed by the learned Additional Sessions Judge, Tirunelveli, by the judgment dated 27.12.2002 made in S.C. No. 45 of 2001 convicting A1 for the offence u/s 302 IPC and sentencing him for life imprisonment with a fine of Rs. 1,000/- in default, to undergo one year rigorous imprisonment and convicting A2 and A3 for the offence u/s 302 r/w 34 IPC and sentencing them for life imprisonment with a fine of Rs. 1,000/-, in default, to undergo one year rigorous imprisonment and also convicting Al to A3 for the offence u/s 341 IPC and sentencing each of them to one simple imprisonment with a Rs. 500/-, in default, to undergo simple imprisonment for one week.

2. The prosecution version in a nut shall is as hereunder:

(a) P.W. 1 is the brother of the deceased. PW. 3 is the sister of PW. 1 Al to A3 are brothers P.W. 2 is a friend of PW. 1. P.W. 1 was owning a car and using the same as Taxi. The deceased/Murugan was living along with his parents at Ilanji village. He got married two years prior to the occurrence with one Shanthi, Al is a neighbour of the deceased. He is residing along with his wife Lakshmi. The deceased developed illicit intimacy with the wife of Al. P.W. 1 brother of the deceased also warned the deceased. A1 shouted his wife Lakshmi and sent her to her parental house. Three days prior to the occurrence, the deceased met Lakshmi, wife of Al, accidentally and spoken with her. Al came to know about the meeting of the deceased with his wife and a day prior to the occurrence, warned the deceased and the deceased has not given any reply.

(b) On the fateful day of occurrence, i.e., on 24.07.1998 at 9.00 a.m., P.Ws. 1 and 2 left for Ilanji village in a bus. P.W. 2 sought for a loan of Rs. 5,000/- in order to get the said amount of Rs. 5,000/- from the deceased. P.Ws. 1 has taken P.W. 2 to Ilanji to meet his brother/the deceased. P.Ws 1 and 2 asked the mother of the deceased about the where about of the deceased. The mother of the deceased informed that the deceased left for collecting money near the Chittararu Veethiamman Temple. Therefore, P.Ws. 1 and 2 left to the said temple to meet the deceased. They were followed by P.W. 3/sister of P.W. 1. At that time, Al armed with an aruval A2 armed with a knife and A3 armed with a stick came towards East from West. A2 and A3 caught hold of the deceased and tied him with a coir. Al, with an aruval, cut the deceased on his head saying as to how he can talk to his wife. The deceased sustained bleeding injury on the head. A2 stabbed the deceased with a knife and the said stab fell on the right hand of the deceased. A3 beat the deceased with a stick repeatedly on his left forehand and on his left leg. Al also threatened PWs. 1 to 3 with dire consequences. Thereafter, all the accused ran away from the scene with their respective weapons. The deceased fell down and he was crying at that time. P.W.1 gave his car key to P.W. 2 to bring his car and P.W.2 came to the scene at 10.30 a.m. with the car. Thereafter they took the injured to the Government Hospital, Tenkasi.

(c) The Doctor, P.W.4, attached to the Government Hospital, Tenkashi, examined the deceased on 24.07.1999. the deceased informed P.W. 4 that he was assaulted by three known persons with stick, aruval and knife. He found six injuries, namely, (1) contusion and abrasion on the left hand; (2) a cut injury on the right side head; (3) an abrasion on the left leg; (4) a stab injury on the right hand; (5) an abrasion on left forehand; and (6) a contusion on the right toe. Ex. P.2 is the Accident Register. In the X-ray taken, a fracture was found on the right leg toe. He sent the intimation to the police.

(d) The Doctor, P.W. 5, attached to the Tirunelveli Medical College Hospital, gave further treatment to the deceased on 24.07.1999 at 3.30 p.m. and found that the deceased partially conscious. He issued the Accident Registered Ex. P.3.

(e) P.W. 12, Sub Inspector of Police, received the message over the phone from the Government Hospital, Tenkasi, on 24.07.1999 at 12.00 noon. And went to the hospital and recorded a statement Ex. P. 1 from the deceased at 12.30 noon. He came back to the police station at 1.30 p.m. and registered the case in Crime No. 413 of 1999 for the offence under Sections 341, 323, 324 and 506 (ii) IPC. Ex P. 18 is the First Information Report. He sent the First Information Report to the Magistrate Court and to the higher police officials.

(f) P.W. 12 took up investigation and went to the scene of occurrence at 4.15 p.m. He prepared the observation mahazar, EX P. 19 and the rough sketch, Ex. P.20 in the presence of witnesses. He has recovered M. Os. 6 and 7, bloodstained earth and sample earth from the scene under Ex. P.21 in the presence of witnesses. He examined P.Ws. 2, 3 and others. He arrested A1 and A3 on the same day at 5.00 p.m. in the presence of witnesses. In pursuance of the admissible portion of confession under Exs. P.6 and P.8 from Al and A3, he recovered arucal, M.O. 2 and stick, M.O. 3 under Ex P.9 He produced the accused before the Court for remand. He went to Tirunelveli Medical College Hospital and examined P.W. 1 and others. He recorded a statement from the deceased under Ex P. 22. At that time, he recovered bloodstained banian and shirt, M. Os. 8 and 9 under Form 95 from the deceased. On 26.07.1999, P.W. 12 received the death intimation from the hospital stating that the deceased died at 12.35 noon on that day. He altered the offence to under Sections 341, 324, 323, 506(ii) and 302 IPC. Ex P.24 is the altered First Information Report. He sent the same to the Court and to the higher police officials.

(g) PW. 13, Inspector of Police took up (sic) ther investigation. He examined the Doctors, P.Ws. 4 and 5 and others on 27.07.1999 at 9.00 am. At Tirunelveli Medical College Hospital. He held inquest on the dead body from 9.00 a.m. to 11.30 a.m. Ex.P. 25 is the Inquest report. He examined P.Ws. 1 to 3 and others. He sent the body for post-mortem.

(h) The Doctor, P.W. 14, attached to Tirunelveli Medical College Hospital, conducted post-mortem on the dead body of the deceased on 27.07.1999 at 1.00 p.m. as per requisition, Ex. P. 26.

The following ante-mortem injures are noted on the body:

1) Abrasions: Multiple abrasions of varying sizes over an area of 7 x 3 cm left side of forehead, 2 x 1 cm outer corner of left eyebrow: 10 x 3 cm outer aspect of lower third of left arm; 14 x 6 cm back of left forearm; 6 x 2 cm back of left hand; 3 x 2 cm left knee; 2x 1 cm inner aspect of right ancle; 2 x 1 cm right forearm.

2) Sutured lacerated wound 3 cm long back of left elbow; on dissection: it is muscle deep

3) Sutured lacerated wound 4 cm long front of upper third of left thigh; on dissection it is muscle deep;

4) Sutured lacerated wound 3 cm long back of upper third of right forearm.

5) Sutured cut injury (horizontally oblique) 6 cm long on the back of right parietal region; on dissection, it is bone deep.

On dissection of Scale, Skull and Dura: Sub-scalpal bruising 6 x 4 cm right parietal region. Right temporal is bruised. Marked subdural and subarachnoid hemorrhage seen over right cerebral hemisphere.

On dissection of Neck: Bruising of thyroid cartilage noted.

Heart: normal. All chambers contained a few CC of fluid blood.

Lungs; C/S : Congested with basal consolidation of both lungs noted.

Hyoid bone: Intact. Stomach: Contained 30 ML of occult blood. Nil specific smell. Mucosa: Normal. Liver, Spleen and kidneys : C/S. congested.

Urinary Bladder: Empty.EX. P.27 is the Post-mortem certificate. The doctor is of the opinion that the deceased would appear to have died of craniocerebral injuries.

(i) PW. 16, Inspector of Police, took up further investigation on 30.07.1999. He arrested A2 on the same day. In pursuance of the admissible portion of his confession under EX. P. 10, P.W. 16 recovered M.O. 4, Knife and M.O. 10, bloodstained coir under Ex. P. 11. He produced A2 before the court for remand. He examined the Doctor, P.W. 14, who has conducted post-mortem and received the postmortem certificate, Ex. P.27. He received the chemical examination report, Ex. P. 14 and serologists report, Ex. P. 15. On completion of investigation, he laid the charge sheet against the accused on 11.11.1999.

3. The prosecution, in order to substantiate its case, examined P.Ws.1 to 16, filed Exs. P. 1 to P.28 and marked M.Os. 1 to 10.

4. When the accused were questioned u/s 313 Cr.P.C. in respect of the incriminating materials appearing against them, all the accused have come forward with the version of total denial. They have not examined any witness or marked any documents on their side.

5. Mr. P. Andiraj learned counsel for the appellant/A1 and Mr. Senthilkumar, learned counsel for the appellants/A2 and A3 vehemently contended that all the eye-witnesses, P.Ws. 1 to 3 are interested witnesses as P.W. 1 is the brother of the deceased, P.W. 3 is the sister of P.W. 1 and P.W. 2 is a friend of P.W. 1. The prosecution has not chosen to examine any independent witness. It is further contended that there are contradictions in material particulars between the evidence of eyewitnesses, P.Ws. 1 to 3. The learned counsel for the appellants would submit that there is also delay in giving report to the police as the occurrence is said to have taken place at 8.00 a.m., whereas the report was recorded from the deceased at hospital only at 12.30 noon and the same was registered at 1.30 p.m. and there is no explanation for the delay. It is contended that none of the eyewitnesses, P.Ws. 1 to 3 has taken any steps to give the report. Though the deceased

was initially taken to the Government Hospital, Tenkasi, and thereafter, shifted to Tirunelveli Medical College Hospital, nothing prevented anyone of the three eyewitnesses to go to the police station to give the report. It is further contended that P.Ws. 1 and 2 are not residing in the scene village and they have come from the different village as that of the accused and they are only chance witnesses and as such, their version is unbelievable and unreliable. It is contended that there is no reason for P.W.3 to follow P.Ws. 1 and 2 as such, the evidence of P.W. 3 is also doubtful.

6. Mr. Senthil Kumar, learned counsel for A2 and A3, would further submit that as far as A2 and A3 are concerned, they said to have caused only simple injuries as per the opinion of the Doctor, P.W. 4. It is contended that the Doctor, P.W. 4, who has examined the deceased at the earliest point of time, stated in his opinion that out of six injuries sustained by the deceased except injury No. 6, viz., an abrasion found on the toe on the right leg of the deceased, all the other injuries are simple in nature. Therefore, it is contended that A2 and A3 would be held to be liable for the lesser offence under Sections 325 and 324 IPC.

7. Without prejudice to their earlier contentions, learned counsel for the appellants would submit that even assuming that A1 to A3 attacked the deceased and caused his death, their act would not attract the offence of murder. It is pointed out that even as per the admitted case of the prosecution, the deceased was having illicit intimacy with the wife of Al and even three days prior to the occurrence, the deceased was found to be talking with the wife of Al. The learned counsel for the appellants would submit that the earliest document, Ex. P. 1, the statement recorded from the deceased clearly shows that Al was nurturing sustained provocation against the deceased as the deceased was having illicit intimacy with his wife and due to the conduct of the deceased, they decided to break the hand and leg of the deceased. Therefore, it is submitted that the entire occurrence took place only due to the provocation caused by the deceased and Al to A3 could not have been imputed with the intention of causing the death of the deceased. It is contended that in view such materials available on record, the appellants would be liable to be convicted only for lesser offences.

8. Per contra, learned Additional Public Prosecutor, would submit that the prosecution has proved its case by adducing clear evidence through the eyewitnesses, P.Ws. 1 to 3. It is contended that though P.Ws. 1 and 3 are related to the deceased and P.W. 2 is a friend of P.W.I, their evidence cannot be discarded on that ground alone. It is pointed out that there is no serious infirmity found in the evidence of the eyewitnesses. The learned Additional Public Prosecutor would contend that the evidence of eyewitnesses, P.Ws. 1 to 3, is also corroborated by the medical evidence through the Doctors, P.Ws. 4, 5 and 14 as they have found corresponding injuries on the deceased as per the overt acts alleged against each of the accused. It is also contended by the learned Additional public Prosecutor that there is no delay in giving report to the police as it was explained by P.W. 1 that while they have taken the injured/ deceased, on the way car tire was punctured which resulted in delay and as such, it cannot be stated that there is any delay in giving

report to the police. Therefore, it is submitted that the prosecution has proved its case in all aspect.

9. We have given our careful and thoughtful consideration to the rival contentions put forward by either side and also thoroughly perused the entire evidence available on record and perused the impugned judgment of conviction.

10. The prosecution heavily placed reliance on the evidence of eyewitnesses, P.Ws. 1 to 3. It is seen that P.W. 1 is the brother of the deceased, P.W. 3 is the sister of P.W. 1 and P.W. 2 is the friend of P.W. 1 and all the three witnesses are interested witnesses and as such, we have to scrutinize their evidence with great care and caution. A perusal of the evidence of P.Ws. 1 to 3 reveals that there is no serious infirmity or inconsistency in their evidence as they have come forward with the clear and cogent version and their version is quite natural. The evidence of the eyewitnesses/ P.Ws. 1 to 3 is also corroborated by the medical evidence as the Doctor, P.W.4, and P.W. 14, the Doctor, who has conducted post-mortem have found corresponding injuries on the deceased in respect of the overt acts alleged against each of the accused. It is pertinent to note that the Doctor, P.W. 14, has clearly given his opinion in the post-mortem certificate, Ex. P. 27, to the effect that the deceased died due to craniocerebral injuries. Therefore, it is crystal clear that the deceased died due to homicidal violence.

11. Though it is contended by the learned counsel for the appellants that there was a delay in giving the report, we cannot brush aside the fact that all the three witnesses are anxious to take the injured to the hospital to give treatment and to save his life. It is seen that P.W. 1 has stated that as the car tire was punctured, there was a delay in taking the injured to the hospital and thereafter, the injured was referred to the Tirunelveli Medical College Hospital and as such, there was delay in sending the intimation to the police and recording the report from the deceased. Therefore, we have no hesitation to hold that the prosecution has explained the delay in registering the First Information Report as the occurrence is said to have taken place at 8.00 a.m. and the First Information Report was registered at 1.30 p.m.

12. Now we have been left with the crucial question as to the nature of the offence said to have been committed by each of the accused. At the outset, it is to be stated that as per the opinion of the Doctor, P.W. 4, the deceased sustained six injuries. It is pertinent to note that P.W. 4, the Doctor, who has given initial treatment to the deceased, has categorically stated in the chief examination that the head injury is necessarily fatal. It also seen that all the three eye-witnesses, P.Ws.1 to 3, have come forward with the categorical version to the effect that only A1 caused the said injury and the defence is not able to shatter their evidence during the course of cross-examination.

13. With the above said background let us now assess and analyze as to the nature of the offence said to have been committed by A1. The fact remains that even as per the admitted case of the prosecution, the deceased was having illicit intimacy with one

Lakshmi, who is the wife of Al, as admitted by PW. 1, brother of the deceased. Apart from the evidence of PW. 1, it is also seen that in the statement recorded under Ex. P1, from the deceased it is stated by the deceased that he was having illicit intimacy with the wife of Al. It is further stated by the deceased that even three days prior to the occurrence, he has met the wife of Al and he was talking with her and Al came to know about the said incident. It is needless to state that due to the conduct of the deceased having illicit intimacy with his wife, Al was nurturing sustained provocation. The further conduct of the deceased talking with A 1''s wife even three days prior to the occurrence could have very well added fuel into the fire and aggravated the provocation. At this juncture, it is also relevant to peruse the confession recorded from Al u/s 27 of the Indian Evidence Act. It is well-settled that any portion in the confession which is in favour of the accused can be relied for the purpose of ascertaining the nature of offence committed by the accused.

14. It is pertinent to note that the confession recorded u/s 25 of the Indian Evidence Act cannot be used against the accused, but there is no bar for using the same for the purpose of deciding the nature of the offence said to have been committed by the accused.

15. At this juncture, it is relevant to refer the following decisions of the Hon''ble Apex Court and this Court:

(i) This Court in Ganesan, In re, reported in 1972 L.W. (Crl.) 42 has held as hereunder:

3 The evidence shows that the appellant went straight to the police station 15-9-15 a.m. and made a statement. In fact, that is the first information report in the case. In contains the confession that the appellant inflicted cuts on his wife. The learned Sessions Judge has excluded this portion and marked the rest of the statement, as Ex P.6. This, however, is not correct. In Aghnoo Nagesia Vs. State of Bihar, it has been observed:

Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapons and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact, i.e., some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of the being part of a confessional statement, partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

...Little substance and content would be left in Sections 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted.

Some of the decided cases took the view that if a part of the report is properly severable from the strict confessional part, then the severable part, could be tendered in evidence. We think that the separability test is misleading, and the entire confessional statement is hit by Section 25 and save and except as provided by Section 27, and save and except the formal part identifying the accused as the maker of the report, no part of it could be tendered in evidence.

(ii) a similar view was taken by the Hon''ble Apex Court by following its decision in Aghnoo Nagesia''s case (cited supra) in the decision in Khatri Hemraj Amulkah v. State of Gujarat AIR 1972 SC 929 to the effect that the only portion of the statement, which could be admitted is the initial portion that he was making the statement, which would not be of any use to the prosecution. But there is no bar to the appellant using the statement in his favour.

(iii) This court in Chandran, in re reported in 1988 L.W. (Crl.) 113 has held that, "the accused stated in his judicial confession that he had sustained provocation in his mind as against the deceased since the deceased in whom he had reposed confidence had betrayed him and also developed intimacy with his wife. A Division bench of this court had no reservation in accepting the case of the accused that he cut the deceased on account of the sudden and grave provocation caused by the deceased and also on account of sustained provocation the accused had been nurturing for a long period because of the conduct of the deceased in having illicit intimacy with his wife."

(iv) A similar view was taken by this court in Muthusamy v. State by Inspector of Police 1994 (1) L.W. (Cri.) 44 and Vairamuthu v. State 1996 (1) L.W. (Cri.) 9.

(v) The principles laid down by the Hon''ble Apex Court as well as this court in the decisions cited supra are squarely applicable to the facts of the instant case as in the case on hand, a perusal of Ex.P. 6 confession given by A1 to the police reveals that the deceased was having illicit intimacy with the wife of A 1 for a long time. Both, the family of the accused and the family of the deceased, warned them. Al scolded his wife and sent her to Sundarapandiapuram. Thereafter, Al called his wife to come back to the matrimonial house, but she refused. Three days prior to the occurrence, the deceased met A1''s wife and talked with her and the said incident came to the knowledge of A1. A1, in tum, questioned the conduct of the deceased. But the deceased has not bothered about the same and he has not given any reply to A1 which aggravated the provocation of A1. Due to the said grave provocation Al thought of cutting the hand and leg of the deceased. A2 and A3, the brothers of Al, also became angry and they have also stated that the hand and leg of the deceased have to be broken. The above said contents of the confession of Al make it crystal clear that Al was nurturing sustained provocation and the said provocation was also shared by his brothers/ A2 and A3.

16. Yet another important factor to be borne in mind by this court is that even in the earliest document, Ex. P.1, the statement recorded from the deceased, it is stated that

three days prior to the occurrence, the deceased met A1''s wife and both of them were chatting and the same was known to Al and Al, in turn, scolded the deceased in anger. Therefore, the statement of the deceased also strengthens the defence version, as stated above.

17. All these factors clearly establish that Al was nurturing sustained provocation in view of the earlier conduct of the deceased in having illicit intimacy with the wife of Al and the said sustained provocation aggravated due to the subsequent behavior of the deceased, as stated above, in the confession of Al.

18. The Hon''ble Apex Court in landmark decision in K.M. Nanavati Vs. State of Maharashtra, has held that the previous conduct of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The Hon''ble Apex Court in the said decision held as hereunder:

85...(1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in situation in which the accused was placed would be so provoked as to lose his self-control.

(2). In India, words and gestures may also, under certain circumstances, cause gave and sudden provocation to an accused so as to bring his act within the first exception to Section 300 of the Indian Penal Code.

(3). The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

(4). The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

In view of the sequences of events, as stated, above and as per Ex. P. 1, statement of the deceased and Ex. P. 6, confession of A1 given to the police coupled with the admitted case of the prosecution and the principles laid down in the decision cited supra, we have no hesitation to hold that the act of Al would come well within the exception 1 to Section 300 IPC and accordingly, Al could be held liable to be punished only for the offence u/s 304(1) IPC.

19. As far as A2 and A3 are concerned it can-not be stated that they have shared the common intention of causing the death of the deceased. We have already held that the act of Al would come within the Exception 1 to Section 300 IPC. It is pertinent to note that Al is said to have caused an injury on the head of the deceased. By no stretch of imagination it could be held that A2 and A3 expected that Al would attack the deceased on his head and as such, A2 and A3 would be held liable only for their individual acts. As

already pointed out, even as per Ex. P.6, confession given Al, A2 and A3 stated that they have to break the leg and hand of the deceased in view of the provocation caused by the deceased by having illicit intimacy with the wife of Al and further continued to have such illicit intimacy by chatting with A1''s wife even three days prior to the occurrence. At this juncture, it is pertinent to note that A2 stabbed the deceased with a knife and the said stab fell on the right hand of the deceased. A3 beat the deceased with a stick on his left forehand and on his left leg. Therefore, it is crystal clear that both of them have not caused any injury on the vital parts of the body of the deceased. The medical opinion of the doctor, P.W. 14, who has conducted post-mortem as well as the opinion of the doctor, P.W. 4, who has initially treated the deceased, make it crystal clear that the deceased died due to the head injury. It is pertinent to note that as fracture was found on the right leg toe and the said injury was attributed to A3. Therefore, we are of the considered view that A3 would be held liable for the offence u/s 325 IPC.

20. as far as A2 is concerned, it is seen that he has caused only simple injuries on the right forearm and P.W. 4, doctor, also opined that the said injuries are simple in nature and as such we are of the view that he would be held liable for the offence u/s 324 IPC,

21. Accordingly, this appeal is partly allowed, the conviction and sentence imposed on Al by the learned II Additional Sessions Judge, Triunelveli, in S.C. No. 45 of 2001 dated 27.12.2002 for the offence u/s 302 IPC are set aside and instead, he has been convicted u/s 304(1) IPC and sentenced to seven years rigorous imprisonment. The conviction and sentence imposed on A2 and A3 by the trial judge for the offence under Sections 302 r/w 34 IPC are hereby set aside and instead, A2 has been convicted u/s 324 IPC and A3 has been convicted u/s 325 IPC. The conviction and sentence imposed on the appellants for the offence u/s 341 IPC are hereby confirmed. The sentence are ordered to run concurrently.

22. Now coming to the question of sentence in respect of A2 and A3, it is seen that the entire family has been implicated as A1 to A3 are brothers. It is brought to the notice of this court that A2 has already undergone a period of four months imprisonment. In view of all these factors, we are of the view that imposing the sentence of the period already undergone by A2 with a fine of Rs. 5,000/- would met the ends of justice.

23. As far as A3 is concerned, it is brought to the notice of this court that he is the main earning member of the family. It is stated before this court that he has already got married and blessed with two children and apart from that he has to take care of his aged parents. Considering all these factors, we are of the view that imposing a sentence of six months imprisonment for the offence u/s 325 IPC with a direction to pay a sum of Rs. 50,000/- (Rupees fifty thousand only) as compensation u/s 357(3) of the code of Criminal Procedure to the mother of the deceased would meet the ends of justice.

24. Accordingly, A2 has been convicted u/s 324 IPC and sentenced to one of the period already undergone and also directed to pay a fine of Rs. 5,000/-, in addition to the fine of

Rs. 1,000/- already imposed by the trial court, in default, to undergo two months rigorous imprisonment and A3 has been convicted u/s 325 IPC and sentence to undergo six months imprisonment with a direction to pay a sum of Rs. 50,000/- (rupees fifty thousand only) as compensation u/s 357(3) of the Code of Criminal Procedure to the mother of the deceased, in default, to undergo three months rigorous imprisonment. The period of imprisonment already undergone by the accused is directed to be set-off u/s 428 Cr. P.C.

25. Post this appeal on 22.11.2010 ''for reporting compliance".

Sd/-
10.11.2010

26. This appeal is posted today "for reporting compliance".

27. We have already directed the third appellant/A3 by the judgment dated 10.11.2010 to pay an amount of Rs. 50,000/- (Rupees fifty thousand only) as compensation to the mother of the deceased, viz., Krishnammal u/s 357(3) of the Code of Criminal Procedure. Accordingly, learned counsel for the appellants today produced a Demand Draft for an amount of Rs. 50,000/- bearing No. 777567 dated 18.11.2010 drawn from the Indian Bank, Tenkasi Branch, in favour of the mother of the deceased, viz., Krishnammal.

28. P.W. 1, brother of the deceased and P.W. 3, sister of the deceased, appeared before this court today. P.W.I, brother of the deceased, received and acknowledged the said Demand Draft for an amount of Rs. 50,000/- bearing No. 777567 dated 18.11.2010 drawn from the Indian Bank, Tenkasi Branch, by the third appellant/A3 in favour of the mother of the deceased, viz., Krishnammal.

29. Recording the above said compliance, the appeal is closed.

30. The trial Court is directed to secure the presence of the appellants/accused in order to undergo the remaining period of sentence as imposed by this court.