



CRL.A No. 763 of 2015  
C/W CRL.A No. 764 of 2015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF MARCH, 2022

PRESENT

THE HON'BLE MR JUSTICE B.VEEERAPPA

AND

THE HON'BLE MR JUSTICE S. RACHAIAH

**CRIMINAL APPEAL NO. 763 OF 2015**

**C/W**

**CRIMINAL APPEAL NO. 764 OF 2015**

**IN CRL.A. No.763/2015**

**BETWEEN:**

1. THE STATE OF KARNATAKA,  
BY KIRUGAVALU POLICE STATION,  
MALAVALLI TALUK-571430.

...APPELLANT

(BY SRI VIJAYAKUMAR MAJAGE, ADDITIONAL STATE PUBLIC  
PROSECUTOR)

**AND:**

1. MAHADEVAMMA,  
W/O BASAVIAIAH,  
AGED ABOUT 36 YEARS,  
RESIDING AT KIRUGAVALU TOWN,  
MALAVALLI TALUK,  
MANDYA DISTRICT 571430.,

...RESPONDENT

(BY SRI. C. N. RAJU, ADVOCATE)

.....





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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CODE OF CRIMINAL PROCEDURE PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 19.11.2014 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MANDYA, IN S.C.No.174/2013 BY ALLOWING CRIMINAL APPEAL; CONVICT AND SENTENCE THE REPENDENT/ACCUSED No.2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498-A, 323, 302 AND 504 READ WITH SECTION 34 OF IPC.

**IN CRL.A. No.764/2015**

**BETWEEN:**

1. THE STATE OF KARNATAKA,  
BY KIRUGAVALU POLICE STATION,  
MALAVALLI TALUK-571430.

...APPELLANT

(BY SRI VIJAYAKUMAR MAJAGE, ADDITIONAL STATE PUBLIC PROSECUTOR)

**AND:**

1. MADAMMA,  
W/O MADIAH,  
AGED ABOUT 62 YEARS,
2. MADESHA  
S/O MADIAH,  
AGED ABOUT 36 YEARS,

BOTH ARE RESIDING AT  
KIRUGAVALU TOWN,  
MALAVALLI TALUK-571430.

...RESPONDENTS

(BY SRI. C. N. RAJU, ADVOCATE FOR R1 AND R2)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CODE OF CRIMINAL PROCEDURE PRAYING



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TO SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED 19.11.2014, PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MANDYA, IN S.C.No.79/2013 BY ALLOWING CRIMINAL APPEAL; CONVICT AND SENTENCE THE RECONDENTS/ACCUSED Nos.1 AND 3 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498-A, 323, 302 AND 504 READ WITH SECTION 34 OF IPC IN THE INTEREST OF JUSTICE AND EQUITY.

THESE CRIMINAL APPEALS COMING ON FOR HEARING THIS DAY, **B.VEERAPPA J.**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

The State filed these Criminal Appeals against the judgment of acquittal dated 19.11.2014 made in S.C.Nos.174/2013 and 79/2013 on the file of the I Additional District and Sessions Judge, Mandya, acquitting accused Nos.1, 2 and 3 for the offences punishable under Sections 498A, 323, 302, 504 r/w 34 of the Indian Penal Code.

2. It is the case of the prosecution that accused No.1 is the mother-in-law, accused No.2 is the sister-in-law and accused No.3 is the husband of the victim/deceased Hemalatha. On the basis of the statement of victim as per Ex.P.4 recorded on 29.11.2012 which, after her death became dying declaration, the jurisdictional police registered a case in Crime No.121/2012



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for the offences punishable under Sections 498A and 302 r/w Section 34 of the Indian Penal Code.

3. It is the case of the prosecution that accused No.3 married deceased about six years prior to the incident and out of the wedlock, two female mentally retarded children were born. After the birth of the children, accused Nos.1 to 3 started teasing and torturing Hemalatha saying that she has given birth to female children and subjected her to mental and physical cruelty. On 28.11.2012 at about 7.00 pm, when accused No.3/husband of the victim-Hemalatha came home, she asked money for maintenance of the house. The accused No.3 picked up quarrel with Hemalatha, asked her to go for coolie work and earn money to maintain the home, assaulted her by kicking on her stomach and back, and went away from the house. After few minutes, accused Nos.1 and 2 came to the house, abused Hemalatha in filthy language saying that every day she quarrels with her husband and in order to kill Hemalatha, they brought kerosene can from the house, accused No.1 poured kerosene on Hemalath and accused No.2 set fire using match stick. Being unable to tolerate the flame, Hemalatha started



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screaming. At that time, accused No.3 came, poured water and tried to extinguish the fire. Thereafter, called the ambulance and shifted the victim to K.R.Hospital, Mysuru. Later, Hemalatha succumbed to burn injuries, in the hospital, on 03.12.2012. The jurisdictional police, after investigation, filed charge sheet against the accused persons.

4. After committal of the matter, the learned Sessions Judge secured the presence of the accused persons, framed the Charge, read over to the accused persons in the language known to them, who pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the accused, the prosecution, in all examined 17 witnesses as P.Ws.1 to 17 and marked the documents Exs.P.1 to 29 and marked M.Os.1 to 3. On behalf of the defence, Exs.D.1 to D.4 were marked. After completion of the evidence of prosecution witnesses, the statement of the accused persons was recorded as contemplated under Section 313 of the Code of Criminal Procedure explaining all the incriminating circumstances appearing against them in the evidence of prosecution witnesses. The accused persons denied all the incriminating circumstances made against them.



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6. Based on the aforesaid material on record, the learned Sessions Judge framed two points for consideration. Considering both oral and documentary evidence on record, the learned Sessions Judge recorded the finding that the prosecution failed to prove that on 28.11.2012 accused Nos.1 to 3 joined together and tortured the wife of accused No.3 on the pretext that she gave birth to mentally retarded female children and abused her, harassed her and accused No.3 kicked on her stomach and back when she asked money for maintenance of the house and voluntarily caused simple hurt and gave cruelty and thereby committed offences punishable under Sections 498A, 323, 504 r/w 34 of the Indian Penal Code. Further, the prosecution failed to prove that on the said date, accused Nos.1 and 2 entered the house and poured kerosene on Hemalath and accused No.2 set fire and burnt her and on 03.12.2012, Hemalatha died in the hospital and thereby committed homicidal death of Hemalatha and committed an offence punishable under Section 302 r/w 34 of the Indian Penal Code. Accordingly, by the impugned judgment of acquittal, acquitted accused Nos.1 to 3 for the offences punishable under Sections 498A, 323, 504 and 302 r/w 34 of



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the Indian Penal Code. Hence, the present Criminal Appeal is filed by the State.

7. We have heard the learned counsel for the parties.

8. Sri Vijayakumar Majage, learned Additional State Public Prosecutor contended with vehemence that the impugned judgment of acquittal passed by the learned Sessions Judge is erroneous, contrary to the material on record and cannot be sustained. He further contended that the jurisdictional police registered a case based on the statement of the victim-Ex.P.4, which after her death became the dying declaration, wherein the deceased has specifically stated before the Doctor in the presence of Tahsildar that accused Nos.1 to 3 are the cause for the burn injuries sustained by her. P.W.3-Dr.Prakash S.S. has certified that the patient is conscious, oriented and is in fit condition while recording the statement. ASI has endorsed that the statement of the victim was recorded in his presence between 8.05 pm to 8.40 pm, on 29.11.2012. He further contended that though the specific charge against accused Nos.1 to 3 is for the offences punishable under Sections 498A, 323, 504 r/w 34 of the Indian penal Code and accused Nos.1



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and 2 are charged with the offence punishable under Section 302 of the Indian Penal Code, the learned Sessions Judge ignoring both oral and documentary evidence on record, proceeded to acquit the accused persons and the same is without any basis and it has resulted in miscarriage of justice. He further contended that the learned Sessions Judge has not considered the evidence of P.Ws.1, 2, 3, 5, 6, 9 and 10 in proper perspective. The evidence of P.Ws.12 and 13-Doctors has not been properly considered. The material on record clearly depicts that there was constant harassment and cruelty meted out to the deceased by the accused persons on the ground that she gave birth to two female mentally retarded children. On the date of the incident, when the deceased asked money for maintenance of the house, accused No.3 being her husband started quarrel with her asked her to go for coolie work and earn the money, kicked on her stomach and back and went away. Thereafter, accused Nos.1 and 2 came to the house, abused the deceased, poured kerosene and set her on fire. In spite of the evidence on record, the learned Sessions Judge erred in acquitting the accused persons for the offences made out in the Charge.





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9. Learned Additional SPP further contended that in view of the specific evidence of the doctors that the deceased had sustained 85% burn injuries and the evidence of prosecution witnesses depicting constant harassment meted out to the deceased, the learned Sessions Judge is not justified in acquitting the accused persons and therefore, sought to allow the Criminal Appeals.

10. Per contra, Sri C.N.Raju, learned counsel for the respondents/accused persons in both the Criminal Appeals sought to justify the impugned judgment of acquittal passed by the learned Sessions Judge and contended that the learned Sessions Judge, considering both oral and documentary evidence on record, recorded a finding that the evidence of P.Ws.1 to 17 are not cogent and are not corroborative to show that on the date of the incident, when Accused No.3 came home, deceased asked money to maintain the home. At that time, the accused No.3 picked up quarrel with the deceased, asked her to go to coolie work and earn the money, kicked on her stomach and back and went away. So also it has come in the evidence that accused No.3 tried to extinguish the fire by



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pouring water and took the victim to the hospital. He further contended that in the absence of endorsement made by the PSI on Ex.P.7-statement of the victim recorded before her death, does not inspire confidence of the Court to believe that accused Nos.1 and 2 entered the house of accused No.3, poured kerosene and set her on fire. He further contended that P.W.13- Dr.V.Saikumar has admitted that it is a suicidal death. The case sheet also indicates suicidal burns. Therefore, the prosecution has not made out any case to interfere with the impugned judgment of acquittal passed by the learned Sessions Judge and therefore, sought to dismiss the Criminal Appeals.

11. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that would arise for our consideration are:

- (i) Whether the Trial Court is justified in acquitting the accused Nos.1, 2 and 3 for the offences punishable under Sections 498A, 323 and 504 r/w Section 34 of the Indian Penal Code?
- (ii) Whether prosecution has proved beyond reasonable doubt that the accused Nos.1 and 2 have



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committed an offence punishable under Section 302  
r/w Section 34 of the Indian Penal Code?

12. We have given our thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the entire material on record, including original records, carefully.

13. This Court being the Appellate Court, it is relevant to consider the evidence of the prosecution witnesses and the documents relied upon.

(i) P.W.1-Matiswamy, panch witness to the spot mahazar-Ex.P.1 identified M.Os.1 to 3 and turned hostile.

(ii) P.W.2-Kamamma, relative of the accused turned hostile.

(iii) P.W.3-Dr.Prakash S.S., Assistant Professor, K.R.Hospital, Mysuru, issued the endorsement Ex.P.3(b) to the effect that the victim is in fit state of mind to give statement. He deposed that



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statement of the victim was recorded between 8.05 pm to 8.40 pm on 29.11.2012, in the presence of ASI and supported the prosecution case.

- (iv) P.W.4-Manjula, Tahsildar, deposed that statement of the victim was recorded in her presence as per Ex.P.7, between 6.05 to 6.30 pm on 29.11.2012, and supported the prosecution case.
- (v) P.W.5-S.M.Mahadevaswamy, witness to the inquest mahazar, supported the prosecution case.
- (vi) P.W.6-Shivananjaiah, father of the deceased deposed that accused No.3 informed him about the incident over phone. He lodged the complaint as per Ex.P.10 and supported the prosecution case.
- (vii) P.W.7-Puttasiddamma, mother of the deceased, deposed on par with P.W.6 and supported the prosecution case.
- (viii) P.W.8-Siddaiah, panch witness to Ex.P.1-spot mahazar, supported the case of the prosecution.



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- (ix) P.W.9-Suresh S, brother of the deceased, deposed that the accused No.3 used to quarrel with the deceased on the ground that she gave birth to mentally retarded children, and supported the prosecution case.
- (x) P.W.10-Siddaraju, relative of the deceased deposed that he saw Hemalatha in the hospital, and she died four days after the incident and supported the prosecution case.
- (xi) P.W.11-Dr.T.N.Chandrashekar, Professor, Mysuru Medical College, deposed that he conducted the autopsy on the dead body of the deceased and issued post mortem report as per Ex.P.18 and supported the prosecution case.
- (xii) P.W.12-Dr.S.Chandrashekhar, R.M.O, K.R. Hospital, Mysuru, deposed that he has not treated the deceased. He forwarded the Case Sheet to the jurisdictional police as per Ex.P.5.



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(xiii) P.W.13-Dr.V.Saikumar, deposed that he is working as Medical Officer at K.R.Hospital, Mysuru. Hemalatha was admitted to the hospital on 28.11.2012 and he issued MLC marked as Ex.P.19 and supported the prosecution case.

(xiv) P.W.14-K.Siddegowda, ASI, Kirugavalu Police Station, deposed that the statement of the victim was recorded as per Ex.P.4, he apprehended accused Nos 1 to 3 and submitted the report as per Ex.P.20 and supported the prosecution case.

(xv) P.W.15-H.G.Chandrashekhar, ASI, deposed that after the death of the victim, he sent the requisition to incorporate Section 302 of IPC. He received the complaint-Ex.P.10 and partly conducted the investigation.

(xvi) P.W.16-N.Prathap Reddy, Police Inspector, deposed that he conducted the investigation, drawn the spot mahazar and filed the charge sheet, and supported the prosecution case.



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(xvii) P.W.17-A.C.Lokesh, Police Inspector, deposed that he partly conducted the investigation. He deposed about recording of the statement of the deceased by the Tahsildar, seizure of M.Os.1 to 3, drawing of sketch-Ex.P.28 and supported the prosecution case.

Based on the aforesaid pleadings, the learned Sessions Judge proceeded to acquit the accused persons.

14. It is undisputed fact that based on the statement made by the victim in the hospital dated 29.11.2012 between 6.05 to 6.30 pm, the jurisdictional police registered a case in Crime No.121/2012 against accused persons for the offences punishable under Sections 498A and 307 r/w Section 34 of the Indian Penal Code. There is no fitness certificate issued by the doctor while recording the statement of the victim by the Tahsildar as per Ex.P-7. Though learned Additional State Public Prosecutor contended that an endorsement is made on Ex.P.3-requisition to record the statement of the victim to the effect that the patient is conscious and oriented and is in fit condition to give statement, the original copy of the said document is not



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furnished before the Court. EX.P.5-case sheet discloses that cause for death is suicidal burns. The same was recorded from 8.00 pm to 8.40 pm on 28.11.2012, whereas, the endorsement issued by the Doctor on Ex.P.3 is dated 29.11.2012 at 5.05 pm.

15. Ex.P.4, another dying declaration was recorded on 29.11.2012 before the ASI between 8.05 pm to 8.40 pm. The fitness certificate issued on Exs.P.3, 4 and 7 clearly depicts that the timings of the certificate issued and statement recorded are entirely different and it creates doubt in the mind of the Court. The doctor-P.W.19 admitted in the cross-examination that it is a suicidal death. Though learned Additional State Public Prosecutor submits that the said evidence has to be discarded as the same is contrary to Ex.P.19-MLC report which clearly depicts the history of assault and burns, however, the fact remains that the evidence of prosecution witnesses is not sufficient to convict the accused persons. The dying declaration and voluntary statements are doubtful, in the absence of mentioning of specific timings of recording the statement of the victim by the Tahsildar or ASI in the presence of the doctor. In the cross-examination, P.Ws.3, 4 and 14,





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have deposed about the same. But the endorsement is contrary. Thereby, the learned Sessions Judge is justified in holding that Ex.P.7 does not inspire confidence of the court that accused Nos.1 and 2 entered into the house of accused No.3, poured kerosene and set the victim on fire.

16. Ex.P.1-spot mahazar clearly depicts that when deceased was set on fire, she has not raised hue and cry and she has not moved from the place. It indicates that there is no material placed by the prosecution to show that the deceased tried to escape from the fire. Therefore, it cannot be ruled out that the deceased might have attempted to commit suicide, due to poverty and birth of two female mentally retarded children. The same is supported by the evidence of P.Ws.6, 7, 9 and 10. Therefore, the case of the prosecution that the accused have committed the homicidal death of the deceased is doubtful.

17. Considering the entire material on record, it is an undisputed fact that accused No.3 and the deceased are the husband and wife and out of the wedlock, two female mentally retarded children were born. Therefore, accused Nos.1, 2 and 3 started to harass the deceased mentally and physically. If



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mentally retarded children are born, no mistake can be attributed to the deceased. It is the fate, for which the deceased cannot be blamed. It is clear from the records that accused Nos.1, 2 and 3 are charged for the offences punishable under Sections 498A, 504, and 323 r/w Section 34 of the Indian Penal Code and accused Nos.1 and 2 are also charged for the offence punishable under Section 302 of the Indian penal Code. There is no charge framed against the accused No.3 for the offence punishable under Section 302 of the Indian Penal Code. However, the evidence of the Doctor clearly depicts that it is a suicidal death. The postmortem report clearly depicts that that the injuries sustained by the deceased are ante mortem infected burns 85% and the cause for death is due to septicemic shock as a result of infection consequent to burns sustained.

18. Considering the evidence of prosecution witnesses and the statement made by the accused, though the statement of the victim cannot be considered to convict the accused Nos.1 and 2 for the offence punishable under Section 302 of the Indian Penal Code, the fact remains that the victim gave birth



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to two female mentally retarded children. It is the specific case of the prosecution that accused No.3/husband of the deceased, on the day of the incident, when he came to the house, the deceased asked him money to maintain the house. Accused No.3 picked up quarrel with the deceased, asked her to go for coolie and earn to maintain the house, assaulted on the stomach and back of the deceased. The said aspect is proved by the statement of the victim and other witnesses.

19. The evidence of P.Ws.6, 7 and 9 clearly depicts the constant harassment and cruelty by accused Nos.1 and 2 and the assault made by accused No.3. Thereby, the prosecution has proved beyond reasonable doubt that the accused Nos.1, 2 and 3 have committed an offence punishable under Section 498A of the Indian Penal Code. It is also deposed by the prosecution witnesses that accused Nos.1 and 2 used to harass the deceased mentally and physically saying that she has given birth to two female mentally retarded children and accused No.3 used to assault the deceased. Thereby, the prosecution has proved that accused Nos.1 and 2 have committed an offence punishable under Section 504 of the Indian Penal Code



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and accused No.3 has committed an offence punishable under Section 323 of the Indian Penal Code.

20. Considering the entire material on record, we are of the considered opinion that the prosecution has failed to prove the homicidal death of Hemalatha. As deposed by P.W.19-Doctor it is a suicidal death. Thereby, the prosecution has failed to prove the commission of offence punishable under Section 302 r/w Section 34 of the Indian Penal Code, by accused Nos.1 and 2.

21. On consideration of the entire material on record, it is clear from the evidence of P.Ws.6, 7, 9 that accused Nos.1 and 2 used to constantly harass and used to give mental and physical torture to the deceased on the ground that she gave birth to two mentally retarded female children. Unfortunately, the husband-accused No.3 who is duty bound to protect his wife has assaulted her by kicking on her stomach and back.

22. For the reasons stated above, the first point raised for consideration is answered in the negative holding that the Trial Court is not justified in acquitting accused Nos.1 to 3 for the offences punishable under Sections 498A, 323 and 504 r/w



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Section 34 of the Indian Penal Code. The second point is answered in the negative holding that the prosecution failed to prove that accused Nos.1 and 2 have committed an offence punishable under Section 302 r/w Section 34 of the Indian Penal Code.

23. It is clear from the material on record that accused Nos.1 and 3 were arrested on 30.11.2012 and accused No.2 was arrested on 06.10.2013 and accused Nos.1 to 3 have served imprisonment till 19.11.2014 from the date of their arrest.

24. Considering the old age of accused No.1 who is aged 70 years as on date and taking into consideration the fact that there is no Charge against accused No.3 for the offence under Section 302 of the Indian Penal Code and taking note of the mitigating circumstances that the accused No.3 is having two female children who are mentally unsound and they are residing with accused Nos.1 to 3, and since the prosecution has proved the charge for the offence punishable under Section 498A of the Indian Penal Code, we are of the considered opinion that the ends of justice would be met if the accused Nos.1 to 3 are sentenced to undergo imprisonment for a period



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of one year and to pay fine of Rs.20,000/- (Rupees twenty thousand only) each, for the offence punishable under Section 498A of the Indian Penal Code; Accused Nos.1 and 2 are convicted and sentenced to pay fine of Rs.1,000/- (Rupees one thousand only) each for the offence punishable under Section 504 of the Indian Penal Code and Accused No.3 is convicted and sentenced to pay fine of Rs.1,000/- (Rupees one thousand only) for the offence punishable under Section 323 of the Indian Penal Code.

25. In view of the above, we pass the following:

ORDER

- (i) The Criminal Appeals filed by the State are **allowed in part.**
- (ii) The judgment of acquittal dated 19.11.2014 made in S.C.Nos.79/2013 and 174/2013 on the file of the I Additional District and Sessions Judge, Mandya, acquitting accused Nos.1 and 2 for the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code is **confirmed.**



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- (iii) The accused Nos.1, 2 and 3 are **convicted** and sentenced to undergo imprisonment for a period of one year and to pay fine of ₹20,000/- (Rupees twenty thousand only) each, in default, to undergo imprisonment for a period of six months for the offences punishable under Section 498A of the Indian Penal Code.
- (iv) The accused Nos.1 and 2 are **convicted** and sentenced to pay fine of ₹1,000/- (Rupees one thousand only) each, for the offence punishable under Section 504 of the Indian Penal Code.
- (v) The accused No.3 is **convicted** and sentenced to pay fine of ₹1,000/- (Rupees one thousand only) for the offence punishable under Section 323 of the Indian Penal Code.
- (vi) The accused Nos.1 and 2 are **acquitted** for the offence punishable under Section 323 of the Indian Penal Code.



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- (vii) The accused No.3 is **acquitted** for the offence punishable under Section 504 of the Indian Penal Code.
- (viii) Since accused Nos.1 and 3 have already undergone the punishment of more than three years and accused No.2 has undergone imprisonment for one year, all the accused persons are entitled to be released on payment of fine amount.
- (ix) Accused Nos.1 to 3 are entitled to the benefit of set off under Section 428 Code of Criminal Procedure.
- (x) The bail bonds if any, shall stand cancelled.
- (xi) In view of Section 357(3) of the Code of Criminal Procedure, out of the fine amount of ₹63,000/- (Rupees sixty three thousand only), ₹33,000/- (Rupees thirty three thousand only) shall be deposited in fixed deposit for a period of five years in the names of two female children of accused No.3, in any Nationalized Bank, as compensation.





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The remaining ₹30,000/- (Rupees thirty thousand only) shall vest with the State Government towards defraying expenses.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

kcm