

Kumar and Others Vs. State Rep. by the Inspector of Police, E. Pudur Police Station, Tiruchirapalli

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Court : Chennai Madurai

Decided On : Oct-20-2016

Judge : S. Nagamuthu & M.V. Muralidaran

Appeal No. : CrI.A.[MD].Nos. 217 & 294 of 2015

Appellant : Kumar and Others

Respondent : State Rep. by the Inspector of Police, E. Pudur Police Station, Tiruchirapalli

Judgement :

(Prayer: Criminal Appeals filed under Section 374(2) of Cr.P.C. against the judgment, dated 13.08.2014, made in S.C.No.195 of 2013, by the learned Principal Sessions Judge, Tiruchirapalli Division, Tiruchirapalli District.)

1. The appellants are the accused 1 to 4 in S.C.No.195 of 2013 on the file of the learned Principal Sessions Judge, Tiruchirapalli Division. Including these appellants, there were a total number of ten accused. The trial Court framed as many as five charges against them as detailed below:

Charge No	Against	Offence U/s.
1	A1 to A5	147 and 148 IPC

2	A1 to A9	341 IPC
3	A1 to A9	302 IPC
4	A1 to A2	307 IPC
5	A10	302 r/w 114 IPC

2. By judgment dated 13.08.2014, the trial Court acquitted the accused 5 to 10 from all the charges, however, convicted the appellants/A1 to A4 alone under Sections 341 and 302 IPC and acquitted them from the other charges. The trial Court sentenced these appellants/A1 to A4 to undergo imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC and to undergo simple imprisonment for a period of one month for the offence under Section 341 IPC. The trial Court directed these sentences to run concurrently. Challenging the said conviction and sentence, A1 has come up with CrI.A.(MD).No.294 of 2015 and A2 to A4 have come up with CrI.A.(MD).No.217 of 2015.

3. Since these appeals have arisen out of one and the same judgment, they were heard together and disposed of by way of this common judgment.

4. The case of the prosecution in brief is as follows;

(a) The deceased in this case was one Mr.Mariyappan. PWs.3 and 4 are the mother and father respectively of the deceased. PWs.1 and 2 are his brothers. PW5 is the brother in law of the deceased. PW6 is the sister of the deceased and the wife of PW5. PW7 is yet another sister of the deceased. PWs.1 to 4 and 7 were residing at Prattiur Village in Trichy District. PWs.5 and 6 were residing in Melapaganoor Village in the same District. The deceased was residing with PWs.1 to 4 in Prattiur Village in a joint family.

(b) In this case the accused 1 to 4 hail from Prattiur Village. The accused 3 and 4 are the sons of the second accused. There was a long standing enmity between the family of the deceased and that the accused 1 to 4. In fact, there were complaints and counter complaints against the accused 1 to 4 and the deceased and his family members to the Police on few occasions. In one such case, on the complaint made by the wife of the second accused, PWs.1 and 2 and the deceased were arrested by the Police. PW2 was studying an Engineering College.

Because of the criminal cases, he discontinued his education and joined PWs.1 and 2 to do centring work. Thus, PWs.1 and 2 and the deceased were all engaged in centring work in Prattiur Village and in the nearby places.

(c) It is alleged that on 19.06.2011 around 6.00 a.m. PWs.1 and 2 and the deceased were proceeding to the work spot. On their way, they were drinking tea in a nearby tea shop. At that time, the accused 1 to 3 and 5 came there and developed quarrel with them. They shouted at PWs.1 and 2 and the deceased that because of the attack made by them on the earlier occasion on the wife of the second accused, they had spent Rs.50,000/- for treatment. The Villagers intervened and pacified the accused and accordingly, they left the place. Immediately thereafter, PWs.1, 2 and also the deceased had gone to Edamalaipatti Pudur Police Station and made a complaint about the said occurrence. Thereafter, they went to the work spot. On 20.06.2012 PWs.1 to 3 again had gone to the work spot to do the centring work. For having lunch, they returned to their house in a motorcycle from the work spot at Prattiur Village.

(d) Around 2.30 p.m., after having lunch at their house, they were again returning to the work spot to continue the centring work. The motorcycle was driven by PW1. PW2 was sitting behind PW1 and the deceased was sitting behind PW2 in the same motorcycle as pillion riders. When they were nearing the Catholic Church on the Dindigul Main Road, it is alleged that all the ten accused suddenly emerged there. All the ten accused were armed with aruval. The accused 1 to 3 intercepted the motorcycle. Then, the accused 1 to 9 cut the deceased on his backside with aruvals indiscriminately. The deceased fell down. When A1 and A2 attempted to cut PW2, who was sitting behind PW1, in the motorcycle, PW2 bent his body in order to avoid the cut being fallen on him. But, the said cut fell on PW1. He sustained injury on his back. Then, all the accused 1 to 9 cut the deceased indiscriminately. PWs.1 and 2 cried for help. The occurrence was witnessed by PWs.3 to 7 also. The accused No.10 was very much present at the place of occurrence. Then, all the ten accused ran away from the scene of occurrence with aruvals.

(e) PW1, who got injury in the said occurrence and the deceased were immediately taken to the hospital. PW9 - Dr.Uma Kalyani, who was on duty at Mahathma Gandhi Memorial Government Hospital, Trichy, examined PW1 at 3.00 p.m. He was brought by PW2. PW1 was then conscious. He told PW9 that he was attacked by four known persons with aruvals. On examination, he found a cut injury measuring 3 x 2 c.m. on the backside of the chest. There were fractures of 5th and 6th ribs. There were no other injuries. Ex.P11 is the Wound Certificate. On the same day, at 3.30 p.m., he examined the deceased. The deceased was unconscious. One Amutha, a close relative of the deceased, had brought him for treatment. On examination, she found the following injuries on him:

- (i) The left forearm near left wrist was cut and the cut end of the hand was hanging.
- (ii) Another cut injury measuring 6 x 3 cm exposing bone on the left forearm.
- (iii) A cut injury measuring 7x 5 cm on the right forearm. The bone was found fractured.
- (iv) There were avulsion of skin on the head exposing skull bone involving in the occipital lobe.
- (v) A lacerated injury measuring 10 x 2x 2 cm on the frontal scalp.

Ex.P12 is the Accident Register. PW9 admitted the deceased as well as the accused as inpatients. But, the deceased shortly thereafter died. She gave intimation to the Police about the same.

(f) PW21, the then Sub Inspector of Police, on receiving the said intimation, rushed to the hospital and recorded the statement of PW1 and on returning to the Police Station, she registered a case in Crime No.189 of 2012 under Sections 147, 148, 341, 302 and 307 IPC. The statement was recorded at 5.15 p.m. and the case was registered at 6.00 p.m. Ex.P1 is the complaint and Ex.P37 is the FIR.

(g) PW23, the Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of PW15 and another witness. He recovered bloodstained earth and

sample earth from the place of occurrence and a plastic bag found at the place of occurrence. Then, on going over to the hospital, he examined PW1 and other witnesses. He also recovered bloodstained clothes worn by PW1 and the deceased. PW23 conducted inquest on the body of the deceased between 7.00 a.m. and 10.00 a.m. on 21.06.2012 in the hospital. Then, he forwarded the body for postmortem.

(h) PW8 Dr.A.Ravikumar conducted autopsy on the body of the deceased on 21.06.2012 at 12.00 noon. He found the following injuries:

1. A transverse cut wound, on the lower part of left side of occipital region of scalp, 7 cm x 4 cm x bone deep.
2. A transverse cut wound, on the right occipital region of scalp, 4 cm x 1.5 cm x bone deep.
3. An oblique cut wound, on the right occipital region, 4 cm x 2 cm x bone deep.
4. A transverse cut wound, on the centre of occipital region of scalp, 10 cm x 5 cm x bone deep. O/E cut fracture of occipital bone present.
5. An oblique cut wound, on the vertex x 6 cm x 1 cm x bone deep.
6. A transverse cut wound, on the right parietal region of scalp, 5 cm x 1 cm x bone deep.
7. A transverse cut wound, on the frontal region of scalp, 10 cm x 2 cm x bone deep.
8. Four cut wounds of varying dimensions and muscle deep on the back of left side of chest.
9. Two cut wounds of varying dimensions on the back of centre of chest.
10. A cut wound, on the back of right shoulder 3 cm x 1 cm x muscle deep.
11. A cut wound, on the top of right shoulder 5 cm x 2 cm x muscle deep.

12. A cut wound on the right side of chin 6 cm x 2 cm x bone deep. O/E. Cut fracture of right side lower jaw bone.
13. A cut wound, on the inner aspect of right elbow 4 cm x 1 cm x muscle deep.
14. Two cut wounds, on the back of right forearm each of 5 cm x 2 cm x bone deep.
15. A cut wound on the back of wrist 8 cm x 4 cm x bone deep. O/E. cut fracture of both bones of right forearm bone.
16. A cut wound on the inner aspect of right ankle, 5 cm x 1 cm x muscle deep.
17. A cut wound on the back of left forearm 10 cm x 9 cm x bone deep.
18. An oblique cut wound on the back of left wrist 5cm x 2 cm x bone deep.
19. Cut fracture at the level of left wrists. O/E. the left hand is hanging with skins intact and lower end of both bone of left forearm was found cut.
20. A cut wound on the back of left hand 4 cm x 2 cm x tendon deep.
21. Dark brown colour abrasion on the left side of neck 5 cm x 0. cm x 3cm x 0.5 cm.
22. Bruising of occipital and frontal region of scalp dark red.
23. Cut fracture present on the occipital bone.
24. Sub dural and sub arachnoid haemorrhage on both cerebral and cerebellar hemispheres.
25. Fracture base of skull-posterior cranial fossae present.

He opined that the said injuries could have been caused by a weapon like aruval. He further opined that the death of the deceased was due to shock and haemorrhage due to the said multiple injuries. Ex.P8 is the Postmortem Certificate.

(i) During the course of investigation, on 23.06.2012, PW23 arrested the accused A2 to A6 and P10 near old Railway Colony at Edamalaipatti Pudur in the presence of the witnesses. While in custody, the third accused gave a voluntary confession followed by the fourth accused. Similarly the 5th accused also gave a voluntary confession. In their confessions, they disclosed the place where they had hidden their weapons. In pursuance of the same, they took the Police and witnesses to the place of hide out and produced the aruvals and one knife (MO.1 series). From out of the disclosure statements made by A2 and A6, two motorcycles bearing Registration Nos.TN-48-D-6253 and TN-47-W-3921 were recovered. Then, he forwarded all the accused to the Court for judicial remand and handed over the material objects also to the Court. While so, the first accused surrendered before the Court. PW23 took the first accused in the Police custody on the orders of the learned Magistrate. While in custody, on 06.07.2012 at 7.00 p.m. he gave a voluntary confession, in which he disclosed the place where he had hidden an aruval. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the same. That was recovered by PW23 under a mahazar.

(j) On 02.08.2012, PW23 arrested the 7th accused. On such arrest, he disclosed the place where he had hidden an aruval. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced an aruval. PW23 recovered the same under a mahazar. The accused Nos.8 and 9 surrendered before the Court. PW23 took Police custody of these accused on 31.08.2012. While in custody, they gave independent voluntary confessions. In pursuance of the disclosure statement made by A8, he produced yet another aruval from the place of hide out. Similarly, the accused No.9 also produced an aruval in pursuance of his disclosure statement. PW23 recovered the same under a mahazar. Then, he forwarded all the accused to the Court and handed over all the material objects also to the Court. On his request, PW11 recorded the statement of PWs.1 and 2 under Sections 164 Cr.P.C. At his request, the material objects were sent for chemical examinations. The report revealed that there were bloodstains on the material objects, including the aruval recovered from the accused. On completing the investigation, he laid charge sheet against the accused.

(k) Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 23 witnesses were examined and 51 documents and 15 material objects were marked.

(l) Out of the said witnesses, PWs.1 to 7 have been examined as eyewitnesses. They have spoken about the occurrence. PW1 is the injured eyewitness. PW1 has further stated about the complaint made by him to the Police. PW8 - Dr.Ravikumar has spoken about the postmortem conducted on the dead body of the deceased and his final opinion regarding the cause of the death. PW9 has spoken about the treatment given to PW1 and the deceased at the Government Mahathma Gandhi Memorial Hospital at Tiruchirapalli. PW10 has spoken about the chemical examination conducted on the material objects. She has further stated that there were human bloodstains on all the material objects, including on the billhooks of the weapons recovered from the accused. PW11, the then Judicial Magistrate, has spoken about the statement recorded by him under Section 164 Cr.P.C.. PWs.12 to 14 have turned hostile and they have not supported the case of the prosecution in any manner.

(m) PW15 has spoken about the preparation of observation mahazar and rough sketch and recovery of the material objects from the place of occurrence. PW16 has spoken about the recovery of the bloodstained clothes from the body of the deceased. PW17 has spoken about the disclosure statement made by A2 to A6 and A10 and the consequential recovery of the material objects viz., the weapons, out of their disclosure statements. PW18 has spoken about the disclosure statement made by the 7th accused and the consequential recovery of an aruval. PW19 has spoken about the fact that he handed over the FIR to the Court at 11.00 p.m. on 20.06.2012. PW20 is yet another constable. He has stated that he handed over the material objects to the Forensic Lab for chemical examination, as directed by the learned Magistrate. PW21 has spoken about the registration of the case on the complaint of PW1. PW22 has spoken about the earlier case registered against PWs.1, 2 and the deceased in Crime No.88 of 2012 under Sections 294(b), 394 and 307 IPC on the complaint of the wife of the second accused. PW23 has

spoken about the investigation done and the final report filed.

(n) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. On their side, they examined as many as 7 witnesses as DWs.1 to 7 and marked 4 documents. DW1 is a nodal officer from BSNL at Tiruchirapalli. He was examined to speak about the call details of the Cell Phone No.9443026868. But, he could not produce the call details, because they were destroyed after one year. DW2 is a nodal officer of Wodaphone Cellular Service Provider company. He was summoned to speak about the call details of the Cell Phone No.9626158040 for the period between 20.06.2012 and 21.06.2012. He was also not able to produce the call details, because the same was destroyed after one year. DW3 has stated that the second accused Mr.Manivel gave a jewel to him for pledging and accordingly, he pledged the same in Karur Vysya Bank, Jeeyarpuram Branch, in his name. DW4 has stated that he was running a Pawn Broker Shop at Kulumani under the name and style of Bhakiyalakshmi Finance. He has further stated that one Mr.Manivel had pledged jewels in his shop on 15.04.2012 and returned the same on 20.06.2012.

(o) DW5 has stated that he was residing at Naithaloor Colony, Kulithalai Taluk, Karur District and that on 21.06.2012 there was ear boring ceremony of his son and daughter and that on 20.06.2012, when he went to invite mother-in-law of the second accused at Nachikurichi, the accused 2 to 4 were in that house and he invited them. The second accused participated in the said function on 21.06.2012. DW6 is the Manager of the Karur Vysya Bank, Jeeyarpuram Branch. He has also spoken about the pledging of jewels by Mr.Kannan - DW3. DW7, a nodal officer from Aircel Cellphone Service Provider, was examined to speak about the call details of Cell Phone No.9715625514 and two more cell phone numbers. But, he was not able to produce the same, because of the destruction of the same. The defence of the accused was total denial. Having considered all the above, the trial Court convicted the appellants/A1 to A4, as detailed in the second paragraph of this judgment. Thus, the appellants/A1 to A4 are before this Court with these appeals.

5. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent and we have also perused the records carefully.

6. There is no denial of the fact that there was long standing enmity between the family of the accused 1 to 4 and that of the deceased. As a matter of fact, according to PW22, on 02.04.2012, PWs.1 and 2 and the deceased had attacked the wife of the second accused with aruval and caused extensive injuries and on the complaint made by the wife of the second accused, a criminal case was registered on the file of Edamalaipatti Pudur Police Station in Crime No.88 of 2012 under Sections 294-B, 394 and 307 IPC and under Section 4 of the Prohibition of Harassment of Women Act. Then, PWs.1 and 2 and the deceased were arrested and lodged in prison for some time and later on, released on bail. This is stated to be the immediate motive for the occurrence. There is no denial of these facts. Thus, the prosecution has clearly established that there was long standing enmity between the families.

7. To speak about the present occurrence which had taken place on 20.06.2012, the prosecution has relied on the evidences of PWs.1 to 7, who claimed to have witnessed the occurrence. The alleged occurrence was at 2.30 p.m. on Trichy - Dindigul Main Road near Catholic Church. PW1 and the deceased were immediately taken to the hospital. It is the case of the prosecution that all the ten accused surrounded the motorcycle and the accused 1 to 9 cut the deceased with aruvals. The deceased fell down from the motorcycle. It is the further case that A1 to A9 again cut the deceased indiscriminately with aruvals. Thus, it is the evidence of PWs.1 and 2 that the deceased was done to death by the accused 1 to 9 by indiscriminately cutting him with aruvals. According to them, PW10 also participated in the occurrence by physically being present and he instigated them to cut the deceased. But, when PW1 was examined by PW9 Dr.Uma Kalyani in the Government Hospital, he told her that he was attacked only by four known persons with aruvals. PW1 had been duly contradicted with this statement by the defence. There was no explanation offered as to why he, at the earliest point of time, had stated that he was attacked only by four known persons and not by ten persons.

8. When PW1 was in the hospital, on the intimation of PW9, PW21, the then Sub Inspector of Police, went to the Hospital and recorded the statement of PW1 at 05.15 p.m. She returned to the Police Station and registered a case at 6.00 p.m. on 20.06.2012. In the said statement (EX.P1), PW1 had mentioned the names of only A1 to A4. He has stated that few more persons also participated in the occurrence. He has not mentioned the names of the accused viz., A5 to A10. It is not as though the accused A5 to A10 were not previously known to him. During cross examination, both PWs.1 and 2 have stated that these accused were known to them previously. If that be so, it is not explained to the Court as to why PW1 had not mentioned about the names of A5 to A10 in Ex.P1. If we proceed on the assumption that the accused 5 to 10 were not previously known to PWs.1 and 2, it is not explained to the Court as to why there was no test identification parade conducted in respect of them. It needs to be emphasised that it is not at all the case of the prosecution that the accused 5 to 10 were not previously known to PWs.1 and 2. This would only go to show that after registration of FIR, every attempt had been made to implicate as many persons as accused as possible, who were the enemies of the prosecution party. If that be so, it has become doubtful whether to believe PWs.1 and 2 in respect of the participation of these appellants/A1 to A4 also in the occurrence.

9. This doubt is further fortified by the other evidences also. PW3, the mother of the deceased, has stated that she also witnessed the occurrence. She has further stated that A1 to A3 cut the deceased and few more persons, who were wearing mask, also attacked the deceased. It is not at all the case of the prosecution that any of the assailants was wearing any mask covering their face. Had it been true that A4 was present and he also attacked the deceased, PW3 would have mentioned the same in her evidence. But, she has categorically stated that she found only A1 to A3 and few other persons, who were wearing mask. She has stated even in her cross examination that she knew the names of the some of the assailants and did not know the names of the other assailants. If it is true that PW3 had witnessed the occurrence, she would have certainly mentioned about the presence and participation of A4 and others, who were known to her. If it is true that some of the accused were under the cover of a mask, that would not have missed the eyes of by PWs.1 and 2. But, PWs.1 and 2 have not stated so. This

creates further doubt in the case of the prosecution.

10. Then comes the evidence of PW4, the father of the deceased. He has stated that he did not witness the occurrence. He has further stated that he along with his wife was proceeding to the place of the occurrence. When he reached the place of occurrence, they found a huge crowd of people there and he found the deceased with injuries. He has categorically stated in the chief examination that he did not find the assailants anywhere near the place of occurrence. As we have already pointed out, it is his evidence that he went to the place of occurrence along with PW3, his wife. Had it been true that he went along with PW3, he would have seen the entire occurrence. But, he has stated that he did not see the occurrence at all. Had it been true that PW4 did not see the occurrence, then PW3 would not have seen the occurrence. But, PW3 says as though she witnessed the entire occurrence. This is also not explained by the prosecution.

11. Then comes the evidence of PW5, the brother-in-law of the deceased. He is not a native of Prattiya village. He was residing at Melapaganoor Village. He has stated that he was also proceeding towards the place of occurrence, along with PWs.3 and 4. He has further stated that when they were nearing the place of occurrence, a huge crowd of people came, intercepted the deceased and cut the deceased. He was treated as hostile, because he has not identified any of the accused as assailants.

12. PW6 is the wife of PW5 and sister of the deceased. She has stated that she also accompanied her parents to the place of occurrence. She has stated that when they were nearing the place of occurrence, there was huge crowd of people. She found PW1 driving the motorcycle and PW2 and the deceased sitting in the motorcycle as pillion riders. She has further stated that A1 alone cut the deceased. She has not stated anything about A2 to A4 or the other accused. She has stated in her chief examination itself that the accused 1 to 7 were previously known to her and the accused 8 to 10 alone were not known to her. Had it been true that 10 accused participated in the occurrence, she would have mentioned in her evidence about the participation of all the ten accused. But, instead she has stated that only the first accused cut the deceased. Absolutely, there is no explanation as

to why she has omitted to mention about the presence and participation of the accused 2 to 10. It needs to be remembered that according to PW6, she accompanied PW3 and PW4 to the place of occurrence. PW4 has stated that when he reached the place of occurrence, he found a crowd of people in which the deceased was found with injuries. He did not witness the occurrence at all. The assailants were not even seen there. If really, PW6 had accompanied PW4, she also would not have seen the occurrence. On the other hand, even if we come to the conclusion that PW6 witnessed the occurrence, she has mentioned only about A1. This major contradiction also has not been explained away by the prosecution.

13. PW7 is yet another sister of the deceased. She has stated that she accompanied PW6 to the place of occurrence. She has further stated that she found the accused 1 to 6 alone in the crowd and they only attacked the deceased. She has not stated about the other accused. She has not even mentioned about the presence of the other accused. When PW6 has stated that she found only the first accused as an assailant, it is not explained as to how PW6 could say about the presence and participation of the accused 1 to 6. Here again, her evidence is duly contradicted by PW4.

14. Above all, it is highly artificial that these family members viz., PWs.1 to 7 would have gone to the place of occurrence together. It is stated that PWs.1 and 2 along with the deceased had gone in a motorcycle. When that be so, how PWs.3 to 7 would have gone together, reached the place of occurrence by walk and witnessed the occurrence. This is also not explained by the prosecution. Above all, the FIR in this case had reached the hands of the learned Magistrate only at 11.10 p.m. There is no explanation for that delay also.

15. Going by the strong motive between the two families and having regard to the fact that PWs.1 to 7 are inimical witnesses and highly interested in the case of the prosecution and their presence is highly doubtful besides the contradictions about which we have discussed elaborately, we find it difficult to place reliance on the evidences of PWs.1 to 7 to sustain the conviction. It should be kept in mind that the trial Court itself has disbelieved the evidences of these eyewitnesses as against the accused 5 to 10. Thus, these witnesses have rendered themselves

even before the trial Court only as partly believable. In our considered view, these witnesses ought to have been disbelieved in toto because of the above inconsistencies and improbabilities which we have discussed elaborately. There is no independent witness examined to speak about the occurrence. It may be true that one or more of the accused would have participated in the occurrence. But, we are unable to separate the grain from the chaff. In our considered view, the true version is not before us. The evidence of PW3 stating that the assailants were under mask would go to show that some identifiable people covering their faces had come to the place of occurrence and attacked PW1 and the deceased, and caused the death of the deceased. This alternative theory cannot be ruled out.

16. If once the evidences of PWs.1 to 7 are rejected, we find no other evidence except the recovery of the material objects. Out of recovery of the weapons alone, we cannot sustain the conviction. Thus, we find that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants are entitled for acquittal.

17. In the result, these Criminal Appeals are allowed and the conviction and sentence imposed by the trial Court in S.C.No.195 of 2013 on the appellants/A1 to A4 are set aside and they are acquitted from all the charges. The bail bond, if any, executed by them shall stand terminated. The fine amount, if any, already paid by the appellants shall be refunded.

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