

(2015) 09 KAR CK 0295
In the Karnataka High Court
Case No : Criminal Appeal No. 3678 of 2012

Sabanna	Vs	APPELLANT
The State		RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(2), 313, 374, 428
Evidence Act, 1872 — Section 118, 27
Penal Code, 1860 (IPC) — Section 299, 299(c), 300, 302, 304

Citation : (2015) 09 KAR CK 0295

Hon'ble Judges : A.V. Chandrashekara, J

Bench : Single Bench

Advocate : Ayyangouda S. Patil, for the Appellant; P.S. Patil, HCGP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.V. Chandrashekara, J—Present appeal filed under Section 374 of Cr.P.C. is directed against the judgment of conviction and sentence passed on 12.9.2012 in Sessions Case No. 2/2012 which was pending on the file of the Court of the Sessions Judge, Yadgir.

2. The appellant had been charged for the offence punishable under Section 302 of IPC on the ground that he murdered a person by name Mallappa, husband of the complainant at about 7.00 p.m. in the house of one lady Smt. Basalingamma wife of Late Thayappa at Kanekal village of Yadgir. It is alleged that the lady by name Basalingamma wife of Thayappa had illicit relationship with deceased Mallappa and this was not to the liking of the accused, who is the maternal cousin brother of PW-13 Smt. Basalingamma w/o Thayappa. It is alleged that he was upset with the news of the illicit relationship of Basalingamma with Mallappa and therefore he came to the house of the Basalingamma on 24.09.2011 and assaulted Mallappa with the wooden handle of an axe and caused severe injuries and dragged him out of the house and threw him near the house of Ameena. It is

further alleged that later on he threw a big stone on the chest of Mallappa and caused his death. The accused is in judicial custody since 25.9.2011. The accused had pleaded not guilty and claimed to be tried as regards the charges levelled against him by the Sessions Court.

3. In order to bring home the guilt of the accused, prosecution has examined 17 witnesses and has got marked 15 exhibits and 9 material objects. Accused has been examined under Section 313, Cr.P.C. in regard to incriminating materials emanating from the prosecution case. His defence is one of total denial of the allegations made against him. No evidence is adduced on behalf of the accused.

4. Admittedly, learned Sessions Judge has convicted the accused for the offence punishable under Section 304 Part-I of IPC and has sentenced to undergo rigorous imprisonment for a period of 10 years and shall pay a fine of Rs. 2,000/- vide considered judgment of conviction and sentence dated 12.9.2012. It is this judgment which is called in question on various grounds as set out in the appeal memo.

5. The learned counsel for the accused has vehemently argued that prosecution is not able to prove that it was accused, who caused the death of Mallappa and that it was done with a clear intention to murder him and it is not an offence punishable under Section 304 Part-I of IPC. It is argued that the learned judge has not appreciated the oral and documentary evidence placed on record in right perspective and has not assessed the evidence on the touch stone of intrinsic probabilities.

6. Per contra, the learned Government Pleader has argued that inspite of the fact that the offence is punishable under Section 302 of IPC, the learned Judge has taken a lenient view to hold that the offence committed by the accused is punishable under Section 304 Part-I of IPC. According to him overwhelming evidence in regard to the offences in question is placed on record. It is argued that PW-1 wife, PW-2, brother, PW-3 brother-in-law and PW-8 minor son of the deceased have given clear account about the death of the deceased caused by the accused and it is further argued that they are the best persons as they witnessed the incident in question. It is argued that their version is corroborated by the medical evidence of PW-7, Dr. Naganna, Medical Officer, PHC Malhar. He has argued that the learned Judge has rightly held that the accused has committed the offence punishable under Section 304 Part-I of IPC and that the accused does not deserve any leniency insofar as the punishment is concerned. He has requested the court to dismiss the appeal.

7. After going through the records and hearing arguments of the learned counsel for the appellant and learned HCGP, the following points arise for consideration:

"1) Whether the trial court is justified in convicting the accused for the offence punishable under Section 304 Part-I of IPC on the ground that accused had clear intention of causing the death of the deceased or causing such bodily injuries or likely to be caused and holding that the accused has committed the offence

punishable under Section 304 Part I of IPC?

2) Whether any leniency is required insofar as it relates to the sentence of imprisonment and if so, to what extent ?"

REASONS

8. Point No. 1: The case of the prosecution is that the deceased Mallappa, husband of Basalingamma was aged about 60 years and he had illicit relationship with Basalingamma wife of Thayappa, who is examined as PW-13. The fact that PW-13 had lost her husband before 10 years prior the incident in question is not disputed. The fact that PW-13 is the sister of the senior maternal aunt of the accused is not in dispute. The fact that accused was working as coolie in Bangalore and he had returned to village is not in dispute. The case of the prosecution is that accused came to know of the illicit relationship that his cousin sister had with Mallappa aged about 60 years and therefore he was angry. It is the case of the prosecution that on the evening of 24.9.2011 he came to Kanekal village and straightaway went to the house of PW-13 and assaulted Mallappa with the wooden handle of the axe and caused severe injuries and later on dragged him out of the house and threw him near the house of Ameena. Further, the case of the prosecution is that the assault so made by the accused was witnessed by PW-1, Basalingamma wife of the deceased, PW-2 brother of the deceased, PW-3 brother in law and PW-8 minor son of the deceased and P.W.13-Basalingamma. Prosecution has relied upon the evidence of PW-7, Naganna Medical Officer.

9. PW-13 Basalingamma is the wife of Late Thayappa and incident is stated to have taken place in her house. She has not supported the case of the prosecution in her examination-in-chief. When she was cross examined with the permission of the court, she has admitted to the suggestions put to her by the prosecution insofar as it relates to presence of Mallappa in her house and accused entering her house and assaulting the deceased and causing severe injuries and later on dragging him out of her house and throwing a big stone on his chest.

10. What is argued before this Court by the learned counsel for the appellant is that the evidence of PW-13 is not of much importance. She has admitted many vital suggestions put to her by the prosecution and therefore, answers elucidated from her mouth during cross examination cannot be ignored. In her cross examination, she has admitted about the illegal illicit relationship she had with Mallappa and accused having become angry because of this.

11. PW-13 has admitted that on the evening of 24.9.2011 Mallappa had come to her house and at that time she was preparing tea and that same time, accused-Subbanna came to her house and when asked by her as to why he had brought axe, he is stated to have told that Mallappa's act was too much. It is her case that accused assaulted Mallappa on the head of Mallappa with the axe and later on dragged him out of the house and threw a big stone on his chest. It is her case that she did not make any attempt to rescue Mallappa from the clutches of

the accused since he had held axe in his hand and she was afraid of being assaulted. After the incident in question, she went to Bangalore for earning and after two months she came back to Chigunta village in order to take care of the child of her brother, whose wife had expired. On seeing MO-2 axe, PW-13 has identified the axe, the one which was used for assaulting the deceased by the accused. She has admitted that MO-1 is the stone used by the accused to throw it on the chest of the deceased.

12. In her cross-examination done by the learned counsel for the accused, she has deposed that she had to give answers to the suggestions put by the prosecution on the say of the police. To a specific suggestion put by the learned counsel for the prosecution, she has deposed that she did not see the accused assaulting Mallappa. The evidence of witness will have to be considered as a whole. Though, she did not support the case of the prosecution in the examination-in-chief, she has admitted important suggestions put to her.

13. Other witnesses who were stated to be present at the time of incident have spoken about the presence of Mallappa in the house of PW-13 and deceased being dragged out and deceased having already sustained injuries before being dragged out of the her house. On a conjoint reading of the evidence of other witnesses i.e., PWs-1, 2 and 3, presence of Mallappa in the house of PW-13 house at the relevant point of time is not in dispute. There is no reason to disbelieve the answers given by her to the suggestions put by learned public prosecutor relating to the material aspects.

14. PW-1 is the wife of the deceased Mallappa. She has spoken about alleged illicit relationship that her husband had with Basalingamma. She heard some noise and went near the house of PW-13 and that time, accused was assaulting the deceased with an axe and hit on the head and later her husband was dragged out of the house of PW-13 and was stripped of his clothes and a big stone was thrown on his chest. Whether she had really witnessed the assault stated to have been made on the head of deceased in the house of PW-13 is the question.

15. The evidence includes cross-examination. PW-1 is the first informant and she has reiterated the contents of the first information in her examination. During the cross examination, she has admitted that she saw her husband being dragged out from the house of PW-13 and several neighbors had also come there. From the evidence of PW-1, it is evident that her husband had illicit contact with PW-13. House of PW-1 and PW-13 were on the same line with a distance of about 80 feet. Therefore, she was able to hear the screaming sound of her husband and went there. She was able to see her husband being dragged out of the house of PW-13 and blood was found on the road. She has specifically admitted in the cross-examination that she went to the house of her brother when Sabanna was still in the scene of occurrence. In her further cross-examination, she has admitted that she saw her husband being dragged out from the house of Basalingamma when she went there. The case of the prosecution is

that accused assaulted Mallappa in the house of Basalingamma with wooden handle of the axe and caused severe injuries. Therefore, the evidence of PW-1 can be taken only to the limited extent of deceased being dragged out from the house and stone being thrown on his chest.

16. After carefully analyzing the evidence of P.W.1, it is clear that she was not able to witness the assault made by the accused on the deceased in the house of PW-13 and her evidence can only be taken to the limited extent that deceased had already sustained injuries when he was dragged out of the house of PW-13. Whether accused had really thrown big stone on the chest of the deceased after dragging from the house of PW-13 is the question to be considered.

17. The evidence of PW-1 is that after dragging her husband from the house of the PW-13 and accused threw a big stone on his chest. Similar is the evidence of PW-2 Narasappa, younger brother of the deceased. It is his case that he heard some noise from the house of PW-13 at about 6.30 p.m. and went near her house and saw accused assaulting his brother with wooden handle of the axe and dragging him from the house and stripping of his clothes and he died there. It is his case that the accused was brandishing his axe and therefore he did not go near the scene of occurrence. He has identified the MO-2 axe as the weapon with which he was assaulted and MO-1-stone, which was thrown on the chest of the deceased. During his cross examination, he has specifically admitted that he did not see his brother being assaulted in the house of PW-13 and he only saw deceased being dragged out of the house of PW-13 and later on assaulting him. It is his case that he had stood at a distance from the house of Basalingamma and saw the incident. It is his specific case that when he witnessed the incident in question, nobody came near the scene of occurrence. PW-2 has not spoken about the accused throwing big stone on the chest of the deceased except stating that he was dragged out of the house and stripping of his clothes.

18. PW-3 is Ningappa and he is the elder brother of Basalingamm, who is also resident of Kanekal Village. After coming to know of accused assaulting Mallappa in the house of PW-13, he went there and saw accused dragging out Mallappa from the house and throwing stone on his chest. It is his case that Mallappa was dragged upto the house of Ameena. G. It is his specific case that accused assaulted Mallappa in the house. During the cross examination, he has specifically admitted that he saw the accused assaulting Mallappa having stood outside his house and he did not see accused assaulting Mallappa inside the house and that he saw Mallappa being assaulted outside the house. Therefore, his evidence can only taken to limited extent of witnessing Mallapa being dragged out of the house and Mallappa having sustained severe injuries on his head.

19. Then we have evidence of PW-8 son of the deceased. He was aged about 13 years when his evidence was recorded by the learned Session Judge. After ascertaining that PW-8 could understand the questions put to him and capable of answering the questions, his evidence was recorded. Admittedly, when PW-8 had

gone to answer the nature call, he heard the noise and came near the house of PW-13. He has deposed that his father was dragged out of the house of PW-13 and he has identified the axe as well as the stone. Under Section 118 of Evidence Act, the evidence of child is admissible in law. Only caution that the court has to keep in mind is that while evaluating the evidence, court has to rule out the possibilities of tutoring of and child has not given any answers out of imagination. During the course of cross-examination, he has admitted that when he went to answer nature call at a distance of 100 feet from the house of PW-13, he saw his father was sitting on the porch of the house of Basalingamma. If PW-8 was really present at the time when the incident took place, PW-1, PW-2, PW-3 would have spoken to that effect. Therefore, the evidence of PW-8 can be taken only for the limited extent that his father was lying injured out of the house and PW-8 has not spoken anything about the accused throwing stone on the chest of his father.

20. PW-7 is Dr. Naganna, Medical Officer, PHC, Malhar who conducted post mortem of the dead body of Mallappa on 25.9.2011 between 11.55 am to 1.25 p.m. According to him, the deceased was aged about 60 years and well built. He examined the dead body and he noticed external injuries:

"a) Cut lacerated wound present over the right parietal obliquely 3x2x1/2 inches, bone deep injury.

b) Contusion over the left temporal region measuring 3x2 inches

c) Contusion present over right memory region measuring about 6x5 inches

d) Abrasion present over the scapular region, right side 8x6 inches red in colour

e) Contusion present over left thigh middle part 5x4 inches red in colour."

He has further deposed that on dissection, he noted that extradural hemorrhage was present in the scalp. Heart was intact, right and left chamber were empty, abdomen was intact and empty, small intestine was intact and contained fluid and gas. Large intestine was also intact. Genito urinary organs were intact, bladder was intact and other organs were intact. PM report is marked as Ex. P-4. He has opined that the death was due to head injury, shock and hemorrhage. If really big stone was thrown on the chest of the deceased, definitely some abrasion or injury or at least contusion would have been noticed on the chest portion of the deceased. It is relevant to look to the evidence of cross-examination of this doctor.

21. In his cross examination, PW-7 has admitted that if a person is assaulted by a stone on the bony portion of the body like MO-1, there may be chance of fracture injuries. The evidence of a doctor has to be assessed as that of any other evidence and there is no presumption to the effect that the evidence of a doctor is a gospel truth. If a person is assaulted with a big stone that too with force, that portion of the body which comes into contact with the stone will sustain severe abrasion or injuries. Neither contusion nor injuries were found on the

chest portion. Therefore, in the light of material witnesses PW-2, 3 and 8 have not spoken anything about the accused assaulting the deceased with big stone on chest, the allegation that accused assaulted him with stone is not proved beyond reasonable doubt.

22. MO-2 axe was confronted to PW-7. During the cross examination, he has admitted that sharp edge blade of the axe measures less than 3 inches in length. He has not mentioned as to whether injury No. 1 was vertical or horizontal. He has further admitted that if a person is assaulted with sharp edged axe like MO-2 on the back portion of the head then there is possibilities of injuries being more deep and wide. Admittedly, injuries Nos. 2 to 4 as mentioned in the post mortem report, were not fracture injuries and were only contusions and abrasions injuries which are simple in nature. The case of the prosecution is also that accused assaulted the deceased on the head with wooden handle of the axe. If the deceased was assaulted with the blade portion of the axe, the injury would be more wider and deeper. Anyhow, the opinion of the doctor could be considered as very relevant in regard to the cause of death only.

23. Mallappa died because of severe lacerated injuries on his head i.e., on the right parietal region of the head measuring about 3 x 2 x 1/2 inches, bone deep injury obliquely. Therefore, the evidence of the doctor in regard to cause of death is corroborated by the evidence of PW-13. Evidence of PW-13 is corroborated by the evidence of PW-7 Naganna. The recovery of MO-2 axe is stated to be made at the instance of the accused giving information while he was in police custody. If the accused gives any information while in police custody distinctly relating to discovery of an object, it would be admissible under Section 27 of Evidence Act.

24. Ex. P-15 is stated to be the voluntary statement given by the accused on 29.5.2011. The translated portion of Ex. P-15 is as follows "if one were to come with him, he would show the place of concealment of axe and produce the same".

25. PW-17, Shankaragowda, who was the CPI of Yadgir Circle conducted major portion of the investigation. Accused was apprehended and produced before him and he was subjected to custodial interrogation. He has deposed that PW-5 and 6 namely Akbar and Sheikh Hussain were taken to the place shown by the accused and MO-2 was recovered at the instance of the accused. PW-5 and 6 who were attestors to Ex. P-2 and 3 have not supported the case of the prosecution. Ex. P-2 is the Panchanama drawn at the time of seizure of MO-2. PW-17 has asserted in the cross examination that at the instance of accused, MO-2 was recovered. He has denied all the suggestions put to him that accused did not accompany him and did not show the place of concealment and did not take out axe. Except that nothing has been elicited from his mouth.

26. Court should not start evaluating the evidence of a police official with distrust. If the evidence of a police official does not inspire any confidence, then, it could be ignored. In the present case, nothing is placed on record to disbelieve the evidence of the CPI in regard to the recording of voluntary statement of the

accused vide Ex. P-15 and consequential recovery of MO-2. It is not the case of the accused that no such injury could be caused if a man is hit with a wooden handle of the axe. Thus, the learned Judge has come to the conclusion that the death of Mallappa took place due to assault made by the accused with wooden handle of the axe, which is marked as MO-2. It is also disclosed that wooden handle was stained with blood and blade portion of the axe had no blood stains. Anyhow the question whether the accused had any intention to cause such bodily injury to the deceased, which is likely to cause his death is to be looked into.

27. The word used in Part-I of Section 304 of IPC is "intention" and the word used in Part-II of Section 304 is "knowledge". Section 304 of IPC is extracted hereinbelow:

"304. Punishment for culpable homicide not amounting to murder.--Whoever commits culpable homicide not amounting to murder shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

28. Keeping the legal principles in view, the factual position is to be examined. It cannot be said that as a rule of universal application, whenever one blow is given Section 302 of IPC is ruled out. It would depend upon the facts of each case. The weapon used, size of the weapon, place where the assault took place, background facts leading to assault, part of the body where the blow was given are some of the facts to be considered as held by Hon''ble Apex Court in the case of Bhagwan Bahadure Vs. State of Maharashtra, (2007) 11 JT 417 : (2007) 11 SCALE 519 : (2007) 10 SCR 397 .

29. In the case of State of U.P. Vs. Hari Om, (1998) 7 JT 265 : (1998) 9 SCC 63 , the Hon''ble Apex Court has held that where a fatal injury is inflicted by the accused on a vital portion of the victim with a deadly weapon in the course of a sudden and unexpected quarrel, a conviction under Section 304, Part II will be justified.

30. In the case for offence punishable under Section 304 Part I of IPC, prosecution is expected to prove that death was of human being and that it was caused by the accused by doing an act with an intention of causing death, when the case does not fall under any of the clauses of Sec. 300 of IPC or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death.

31. In the present case, evidence of PWs-1, 2, 3 and 8 cannot be given much credence insofar it relates to these witnesses witnessing the alleged assault

made by accused on the head of the deceased with wooden handle of the axe. The evidence of PW-13 can be relied to that extent. If really accused had an intention to cause death of Mallappa, nothing would have come in his way to assault the deceased with blade portion of the axe. There is no clear and cogent evidence as to the number of assault made on the head of the deceased. There is no clinching evidence of the alleged assault made by the accused on the deceased with big stone on his chest after dragging his body him from the house of PW-13. The evidence of the minor in regard to the alleged assault stated to have made by accused on the chest with big stone is not proved beyond reasonable doubt. If really, accused had assaulted with the wooden handle of the axe 4-5 times as projected by the material witness before the Court, he would have sustained more severe injuries on his head. If the prosecution had been able to prove beyond reasonable doubt that the accused assaulted the deceased even after dragging him out of the house, it would definitely come within the purview of Section 304 Part I of IPC.

32. The background of the case should also be kept in mid. The deceased was aged about 60 years and had illicit contact with the cousin sister of the accused and she was hardly aged about 31 years as on the date of incident. It is natural that the accused had become wild because of the unwholly alliance. Section 299(c) of IPC speaks about the knowledge.

33. Sub Section 4 of Section 300 of IPC states that subject to certain exceptions, culpable homicide is murder if the act by which the death is caused is done with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury.

34. Clause B of Section 299 corresponds with clauses 2 and 3 of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not be in the ordinary way of nature be sufficient to cause death of a person in normal health or condition.

35. Taking into consideration the background of the case and blade portion of the axe being not used in assaulting the deceased, it can be stated that accused did not have any intention to cause the death or causing such bodily injury as was likely to cause the death. But he had the knowledge that he would likely to cause death since he assaulted the deceased with the wooden handle of the axe on his head. The said bodily injury was likely to cause death. The learned Judge has not properly analyzed the material evidence placed on record in the light of subtle distinction found in part I and II of Section 304 of IPC.

36. The learned Judge has himself observed in paragraph 41 of the judgment

that PW-13 is his sister and deceased had illicit relationship with PW-13 and after returning from Bangalore, he went to the house of PW-13 at about 6.30 p.m. and saw the deceased in the house of PW-13. The learned Judge has further observed as follows "therefore, he might have got annoyed about the presence of deceased in the house of PW-13 and lost control of his power of his self control, amounting to sudden provocation and picked up an axe and assaulted on the head of the deceased thereby caused death of the deceased".

37. Though the learned Judge of the Sessions Court has made specific discussion, the learned judge has not taken into consideration the background of the case and niceties found in regard to the words "intention" and "knowledge" as found in Section 304 Part I and II of IPC. The learned Judge has specifically held that the when the accused went to the house of PW-13 he saw the deceased and upon seeing him, the accused suddenly assaulted the deceased with the handle of the accused axe. The learned Judge has further held that it is not the case of the prosecution that the accused went to the house with axe in his hand. In the light of specific observations made by the learned Sessions Judge in paragraphs 41 and 42 of the judgment, the learned Judge could not have convicted the accused for the offence punishable under Section 304 Part I of IPC. From the discussion made by the learned Judge in paragraphs 41 and 42 it is clear that the offence committed by the accused falls within Section 304 Part II of IPC. In this view of the matter, the learned Judge is not justified in convicting the accused for the offence punishable under Section 304 Part I of IPC. On the other hand evidence placed on record makes out a case for the offence punishable under Section 304 Part II of IPC. Hence, point No. 1 is answered in the negative. It is made clear that the offence is punishable under Section 304 Part II of IPC.

Point No. 2:

38. The learned Judge of the Sessions Court has imposed maximum punishment. The accused is sentenced to undergo RI for 10 years and shall pay a fine of Rs. 2,000/- as contemplated under Section 304 Part II of IPC and the period of detention may be taken into consideration and the accused may be released.

39. The learned counsel for the accused has vehemently argued that the appellant/accused does not have criminal background. He is a coolie, who had migrated from his village to Bangalore and he is neither an influential man nor an affluent man. He has argued that accused is a poor coolie and he is a married man having one minor child. Hence, he has requested the court to show maximum leniency insofar as it relates to sentencing of imprisonment.

40. Section 235(2) of Cr.P.C. mandates about the court hearing the accused on sentence. The said procedure is not properly adopted and accused must be enquired to that effect. Trial court has made some observation about the background of the accused in paragraph 42 of the impugned judgment while imposing the quantum of punishment. But the court has come to the conclusion

that awarding maximum punishment as contemplated under Section 304 Part I of IPC would meet ends of justice. The court has not taken into consideration that the accused was already a married man and had a child and he has no definite source of income. He did not evade the arrest and he was arrested on the very next date of incident. His family is dependent upon him for their survival and he is in judicial custody since 25.9.2011 have already passed.

41. Considering the financial background of the accused and members in his family who are dependent on him and there being no criminal background, sentencing the accused to undergo five (5) years of rigorous imprisonment would meet the ends of justice and to this extent leniency can be shown to him.

42. In the result following order is passed:

"ORDER

The appeal filed under Section 374 of Cr.P.C. challenging the judgment of conviction and sentence dated 12.9.2012 passed by the Court of Sessions Judge, Yadgir in Sessions Case No. 2/2012 is allowed in part.

It is held that accused has committed the offence punishable under Section 304 Part II of IPC and he is sentenced to undergo rigorous imprisonment for 5 years instead of 10 years as imposed by the Sessions Court. Sentence of fine of Rs. 2,000/- shall remain unaltered. Period of detention already undergone by the accused has to be given set off as per Section 428 of Cr.P.C.

Registry to send a copy of this judgment to the accused free of cost."