

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.R.C.No.1155 of 2011

Pandi @ Sellapandi

.. Petitioner

Vs

State rep. By
Sub-Inspector of Police,
Nagapattinam Police Station,
Nagapattinam District.
(Crime No.114 of 2005)

.. Respondent

Prayer:- Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the judgment passed by the learned Sessions Judge,
Nagapattinam in Criminal Appeal No.44 of 2008 dated 21.06.2011 in
modifying the judgment passed by the learned Judicial Magistrate
No.I, Nagapattinam in C.C.No.187 of 2005, dated 24.06.2008.

For Petitioner

: Mr.S.Sachin Priya Daniel
(Legal Aid Counsel)

For Respondent

: Ms.M.F.Shabana,
Government Advocate
(Criminal Side)

ORDER

A.2 in C.C.No.187 of 2005 on the file of the learned Judicial Magistrate No.I, Nagapattinam is the petitioner herein.

2.Totally, there are three accused in this case. A.1 stood charged for the offences under Sections 324 and 506(2) IPC (2 counts). A.2 and A.3 stood charged for the offences under Sections 341 and 506(2) IPC (2 counts). The trial Court, by judgment, dated 21.06.2011 convicted and sentenced the A1 to A3 as follows:

	<i>Offences</i>	<i>Sentence</i>
A1	341 IPC - P.W.1	One month S.I and to pay a fine of Rs.500/- in default to undergo, 2 weeks S.I.
A1	341 IPC - P.W.2	One month S.I and to pay a fine of Rs.500/- in default to undergo, 2 weeks S.I.
A3	341 IPC - P.W.1	One month S.I and to pay a fine of Rs.500/- in default to undergo, 2 weeks S.I.
A3	341 IPC - P.W.2	One month S.I and to pay a fine of Rs.500/- in default to undergo, 2 weeks S.I.
A2	324 IPC - P.W.1	One year S.I and to pay a fine of Rs.1,000/- in default to undergo, 3 months S.I.
A2	324 IPC - P.W.2	One year S.I and to pay a fine of Rs.1,000/- in default to undergo, 3 months S.I.

3. Challenging the above said conviction and sentence A3 filed an appeal in C.A.No.43 of 2008 and A1 and A2 filed another appeal in C.A.No.44 of 2008 on the file of the learned Sessions Judge, Nagapattinam. The appellate court, while confirming the conviction, modified the sentence imposed on A3 for the offence under Section 341 IPC, directed him to pay a fine of Rs.500/- alone in C.A.No.43 of 2008 and modified the sentence imposed on A1 for the offence under Section 341 IPC (2 counts) and directed him to pay a fine of Rs.500/- alone, and modified the sentence imposed on A.2 for the offence under Section 342 IPC (2 counts) directed him to undergo Simple Imprisonment for six months and to pay a fine of Rs.1000/-. Aggrieved by the same, the present revision has been filed by the revision petitioner/A.2.

4. The case of the prosecution, in brief, is as follows:-

P.W.1 and P.W.2 are the injured witnesses in this case. P.W.1, P.W.2 and P.W.3 are close friends. On the date of occurrence, there was a quarrel between the accused and P.W.3, as the accused teased the sister of P.W.3. When the accused tried to attack P.W.3, P.Ws.1 and 2, went there in support of P.W.3 and A.2 and A.3 caught hold of P.W.1 and P.W.2. A.1 took the shaving knife and cut the neck of P.W.1 and P.W.2., and they sustained injuries in the neck.

Then they were admitted in the hospital, where, the respondent police obtained statement of P.W.1 and based on that, a case has been registered in Cr.No.114 of 2005.

5. P.W.7, the Inspector of Police, after registering the complaint conducted investigation and prepared Observation Magazar and Rough Sketch and also recorded the statement of witnesses. After completing the investigation, he filed the charge sheet.

6. Based on the above materials, the trial court framed charges as mentioned in the first paragraph of the order against the accused and they denied the same. In order to prove the case, on the side of the prosecution, as many as 7 witnesses were examined and 6 documents were exhibited.

7. Out of the witnesses examined, P.W.1 and P.W.2 are the injured witnesses. According to P.W.1, P.W.1 and P.W.2 are friends of P.W.3, and they took P.W.1's brother, who was sick, to a hospital and admitted him as inpatient, while they were returning home, they saw a quarrel, where all the accused were trying to attack P.W.3, and they went there in support of P.W.3. At that time, A.1 and A.3 caught hold of P.W.1 and P.W.2 and A.2 cut their neck on the right side with a shaving knife and fled away.

8. P.W.2 is also a injured eye witness. He has also stated that there was a quarrel between the accused and P.W.3. In the said quarrel A.2 attacked him with knife and caused injury in the right side of his neck. P.W.3 is the eye witness to the occurrence and according to him, all the accused teased the sister of P.W.1 and when he questioned them, they picked up a quarrel and in that quarrel, A.1 and A.3 caught hold of P.W.1 and P.W.2 and A.2 attacked them with shaving knife and caused injury. P.W.4 has turned hostile. P.W.5 is the witness to the Observation Magazar Ex.P.6.

9. P.W.6, the Doctor, who treated P.W.1 and P.W.2 found a small cut injury in the neck and issued an Accident Register Ex.P.3 and found that the injuries are simple injuries.

10. P.W.7, the Inspector of Police conducted investigation and arrested the accused. After completing the investigation, he filed a charge sheet.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not choose to examine any witness, and mark any document on their side.

12. Having considered all the above materials, the trial Court convicted the accused as stated in the first paragraph of this order. Challenging the same, they preferred two appeals, namely C.A.Nos.43 and 44 of 2008 and the lower appellate court confirmed the conviction and modified the sentence as mentioned in the first paragraph of the order. Challenging the above said conviction and sentence, the petitioner/A2, is before this court, with this revision.

13. When the Criminal Revision was taken up for hearing on 23.12.2016, there was no representation for the petitioner. Hence, the matter was posted for dismissal on 10.01.2017. On that day also there was no representation for the petitioner. Hence, Mr.Sachin Priya Daniel, learned counsel was appointed as Legal Aid Counsel for the petitioner.

14. I have heard Mr.Sachin Priya Daniel, learned counsel appearing for the petitioner and Ms.M.F.Shabana, learned Government Advocate (Crl.side), appearing for the respondent.

15. There are three eye witnesses to the occurrence. P.W.1 and P.W.2 are the injured eye witnesses. P.W.3 is also the eye witness to the occurrence. While considering the evidence of the

three eye witnesses, it could be seen that there was a quarrel between the accused and P.W.3. P.W.1 and P.W.2, who are the friends of P.W.3, went there to support P.W.3. At that time, A.1 and A.3 caught hold of P.W.1 and P.W.2 and A.2 attacked him with shaving knife, and caused minor injuries. P.W.6 is the doctor. His evidence also corroborates the evidence of P.W.1, P.W.2 and P.W.3. Since the evidence of the witnesses is cogent, consistent and convincing, which is also supported by the medical evidence, I am of the opinion that therefore is no reason for disbelieve their evidence. The Courts below considering their evidence elaborately have rightly convicted the accused. I find no irregularity or, perversity in judgments of the Courts below.

16. So far as the quantum of sentence is concerned, the petitioner/A2, during a quarrel, out of sudden provocation, caused cut injury to P.W.1 and P.W.2, with shaving knife, and caused minor injuries. The occurrence took place in the year 2003 and the petitioner has already undergone punishment for a period of 22 days and he has no bad antecedents. Taking into consideration the above mitigating circumstances, the sentence imposed on A.2 by the Courts below is modified to the period already undergone by him for both Courts.

17. In the result, the Criminal Revision is partly allowed. The conviction imposed on A2 under section 324 (two counts) IPC is confirmed and the sentence is modified to the period already undergone by him and pay a fine of Rs.1,000/- for each count in default, to undergo four weeks simple imprisonment.

18. While parting with the case, I appreciate the services rendered by Mr.Sachin Priya Daniel, learned counsel, who appeared on behalf of the petitioner /accused as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

20.02.2017

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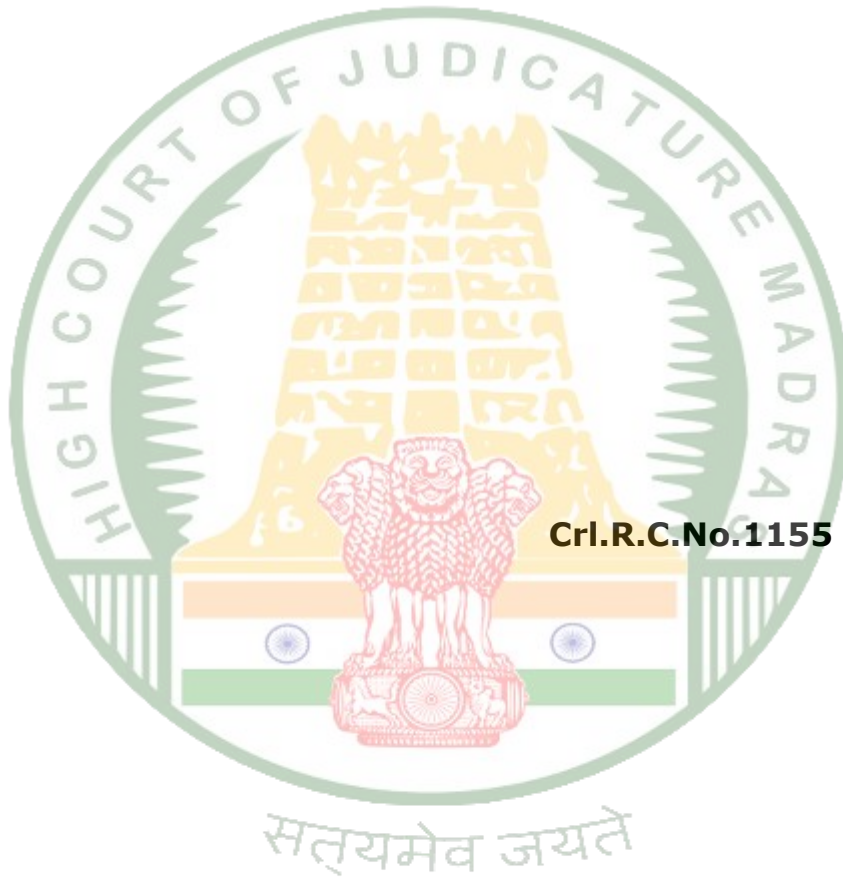
Index:Yes/No

To

1. The Sessions Judge,
Nagapattinam.
2. The Judicial Magistrate No.I,
Nagapattinam.
- 3.The Public Prosecutor,
High Court, Madras.

V.BHARATHIDASAN, J.

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