

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1160 of 2010

R.Kalyanasundaram
S/o.Ramasamy

.. Petitioner

vs.

State represented by
Inspector of Police,
Vedaranyam Police Station,
Nagapattinam District.
Crime No.541 of 2004

.. Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Sessions Judge, Nagapattinam, passed in C.A.No.117 of 2006 on 27.09.2010 modifying the judgment of learned Chief Judicial Magistrate, Nagapattinam, passed in S.C.No.41 of 2006 on 09.09.2006.

For Petitioner : Mr.K.M.Subrahmaniam

For Respondent : Mr.V.Arul

Additional Public Prosecutor

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ORDER

This revision arises against the judgment of learned Sessions Judge, Nagapattinam, passed in C.A.No.117 of 2006 on 27.09.2010 modifying the

judgment of learned Chief Judicial Magistrate, Nagapattinam, passed in S.C.No.41 of 2006 on 09.09.2006.

2. Prosecution case is that PW-1, who is an agricultural coolie, used to work with the accused. On 19.06.2004 at about 08.00 a.m., while PW-1 was working in the field, accused instructed her to come inside the house and tried to molest her. When the same was resisted by PW-1, accused threatened her and assaulted her and using a knife, caused injuries. PW-1 escaped with the help of PW-2 and PW-4. Thereafter, she went to hospital along with her husband. While she was at hospital, police recorded her statement Ex.P1 and registered a case in Crime No.541 of 2004 for offence u/s.307 IPC. On completion of investigation and filing of charge sheet informing commission of offences u/s.342 and 307 IPC, the case was tried in S.C.No.41 of 2006 on the file of learned Chief Judicial Magistrate, Nagapattinam.

3. Before the trial Court, the prosecution examined nine witnesses and marked six exhibits and three material objects. Four witnesses were examined on the side of defence and six exhibits were marked. When question u/s.313 Cr.P.C., the accused denied charges.

4. On appreciation of materials before it, trial Court under judgment dated 09.09.2006, convicted the accused for offences u/s.342 and 324 IPC and

sentenced him to 6 months R.I. and fine of Rs.500/- i/d 1 month S.I. for offence u/s.342 IPC and 2 years R.I. and fine of Rs.1,500/- i/d 3 months R.I. for offence u/s.324 IPC. Against such finding, petitioner/accused preferred an appeal in C.A.No.117 of 2006 on the file of learned Sessions Judge, Nagapattinam. Appellate Court, under judgment dated 27.09.2010, while confirming the finding of conviction and sentence for offence u/s.342 IPC, modified the sentence for offence u/s.324 IPC to one of 6 months R.I. Fine imposed by trial Court was confirmed in respect of both offences. Appellate Court directed that sentences run concurrently. There against, the present revision has been filed.

5. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

6. Although PW-1 is said to have incurred injuries at the hands of the appellant, he having used a knife, all the injuries suffered by PW-1 are found to be minor in nature. Most of them may be stated to be superficial since it is the evidence of PW-3, Doctor, that she was not bleeding therefrom. It is also the evidence of PW-3, Doctor, that the injuries could not have been caused by using a knife and the same were more likely to have been caused through use of a blade. Importantly, a perusal of Ex.P2, Accident Register of PW-1 marked

through PW-3, Doctor, informs a conspicuous change in the timing to 11.30 a.m. (such Accident Register informing of PW-1, injured, stating that she was assaulted by a known person at around 10.00 a.m.) and on a closer perusal, it is seen to be an overwriting for what originally was entered as 06.00 p.m. Admittedly, prosecution has not examined other witnesses, who were allegedly eye witnesses. Ex.P5, First Information Report, informs the time of registration thereof as 12.30 p.m. The same is suspect if the position that the original Accident Register, Ex.P2, reveals the actual time as 06.00 p.m. Express First Information Report has reached the Magistrate only at 07.15 p.m. The evidence of the defence witness that at the alleged time of occurrence, the appellant was elsewhere is to be considered. It would be a rare case where an injured witness deposes falsely regards the injury suffered, if really aware of the assailant. In the instant case, the defence case of PW-1 having suffered injury at the hands of an unknown person/persons and falsely implicating appellant calls for appreciation. It is the defence case that PW-1 was inimically disposed towards appellant since he had required her not to entice his son, a boy aged 17 years. The actual time entered in the Accident Register is 06.00 p.m. and the Express First Information Report has reached the Magistrate only thereafter at 07.15 p.m. Registration of the First Information Report at 12.30 p.m. is suspect. In such circumstances, the non-examination of alleged eye witnesses is fatal to the prosecution case.

The Criminal Revision Case is allowed. The judgment of learned Sessions Judge, Nagapattinam, passed in C.A.No.117 of 2006 on 27.09.2010 modifying the judgment of learned Chief Judicial Magistrate, Nagapattinam, passed in S.C.No.41 of 2006 on 09.09.2006, is set aside. Petitioner/accused is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

31.07.2017

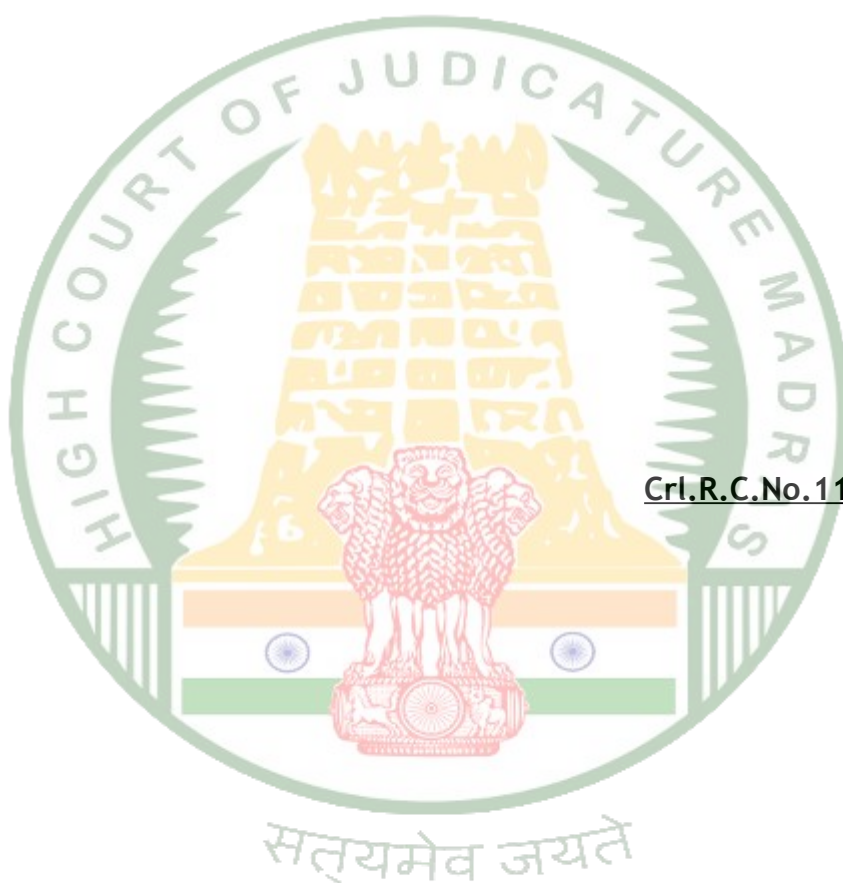
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To

- 1.The Sessions Judge,
Nagapattinam.
- 2.The Chief Judicial Magistrate,
Nagapattinam.
- 3.The Inspector of Police,
Vedaranyam Police Station,
Nagapattinam District.
- 4.The Public Prosecutor,
High Court, Madras.

C.T. SELVAM, J

gm



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