



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2019

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.666 of 2011

Sankara Pandi

... Petitioner/
Defacto Complainant

Vs

1.Vanamamalai @
Pandara Thevar

... 1st Respondent/ Accused

2.State Represented by,
Inspector of Police,
Vikramasingapuram,
Cr.No.2/2008,
Tirunelveli District.

... 2nd Respondent/ Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records from the lower Courts and to enhancing the sentence from three years to seven years for an offence under Section 307 IPC and to duly set aside the Judgment passed by the Additional Sessions Judge, Fast Track Court No.1, Tirunelveli District in his C.A.No.83/2010, dated 20.05.2011 and confirm the conviction and sentence of the Assistant Sessions Judge, Ambasamuthram, Tirunelveli District in S.C.No.268/2008 by allowing this revision.

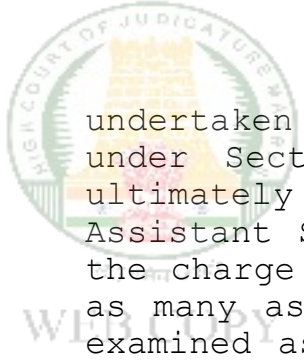
For Petitioner : Mr.K.Prabhu

For R1 : Mr.P.Subbaraj

For R2 : Mrs.S.Bharathi
Government Advocate (Crl.side)

ORDER

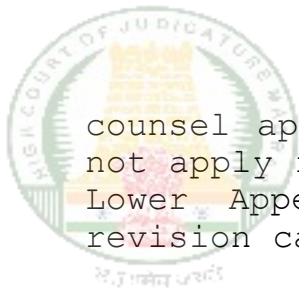
The petitioner is the defacto complainant in S.C.No.268 of 2008 on the file of the Assistant Sessions Judge, Ambasamuthram. The accused/R1 herein had attacked the petitioner herein on his wrist on 02.01.2008 at about 07.a.m. The motive for the occurrence appears to be that the petitioner herein was having some relationship with the aunt of the accused. As a result of the said attack, the petitioner's left wrist was amputated. Hence, Crime No.02 of 2008, was registered on the file of the Inspector of Police, Vikramasingapuram Police Station. Investigation was



undertaken and final report was filed and cognizance of the offences under Sections 341 and 307 of IPC was taken. The matter was ultimately committed to the Sessions Court and made over to the Assistant Session Judge in S.C.No.268 of 2008. The accused denied the charge and claimed to be tried. In support of the prosecution, as many as 17 witnesses were examined. The petitioner herein was examined as P.W.1. Ex.P1 to Ex.P13 were marked. Aruval used for committing the offence was marked as M.O.1. The accused did not enter the witness box. The learned trial Magistrate, by Judgment dated 29.04.2010 found the accused guilty of the offences, with which, he was charged and sentenced him to seven years rigorous imprisonment for the offence under Section 307 of IPC. He was also levied with fine of Rs.2,000/-. For the offence under Section 341 of IPC, one month simple imprisonment was imposed. Aggrieved by the same, the accused herein filed Criminal Appeal No.83 of 2010 before the Additional Sessions Judge, Fast Track Court No.1, Tirunelveli. By Judgment dated 20.05.2011, the Appellate Court confirmed the conviction imposed on the accused and the sentence of seven years rigorous imprisonment was reduced to three years rigorous imprisonment. Seeking enhancement of the imprisonment imposed on the accused, the defacto complainant has filed this criminal revision case.

2. When the matter was taken up for hearing, the learned counsel appearing for the first respondent submitted that the accused had already undergone the entire imprisonment of three years imposed on him. He pointed out that the occurrence had taken place some 11 years ago and that, further, it would not be fair to send the accused to prison at this point of time. This Court, however, is of the view that the offence committed by the accused is heinous in nature and that, therefore, he will have to be put on terms. The learned counsel appearing for the first respondent, on instructions, submitted that the first respondent would pay a sum of Rs.40,000/- as compensation. The first respondent is now aged about 66 years. He is not in a position to do any manual labour. Even if this Court orders nominal amount of compensation, the first respondent will have to collect the amount from his sons and pay the same.

3. Taking note of these mitigating circumstances and the fact that the convicted accused had already undergone the imprisonment for three years, this Court is of the view that the interest of justice will be served by directing the first respondent to deposit a sum of Rs.40,000/- to the credit of S.C.No.268 of 2008 on the file of the Assistant Sessions Judge, Ambasamudram, Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order, which can be withdrawn by the petitioner. In the event of the convicted accused/R1 herein failing to do so, he will have to undergo the default sentence of one year simple imprisonment. This Court is conscious of the fact that the accused cannot be levied with fine as well as compensation. Therefore, the sentence of fine imposed on the petitioner is set aside. But then, the learned



counsel appearing for the first respondent submitted that he would not apply for refund of the fine amount. The Judgment passed by the Lower Appellate Court is accordingly modified. This criminal revision case is partly allowed.

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Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

- 1.The Inspector of Police,
Vikramasingapuram,
Tirunelveli District.
- 2.The Additional Sessions Judge,
Fast Track Court No.1,
Tirunelveli District.
- 3.The Assistant Sessions Judge,
Ambasamuthram, Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-72696[F] dated 02/07/2019)

+1 CC to M/s.P.SUBBARAJ, Advocate (SR-72936[F] dated 03/07/2019)

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01.07.2019

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MS/03.09.2019/3P.7C