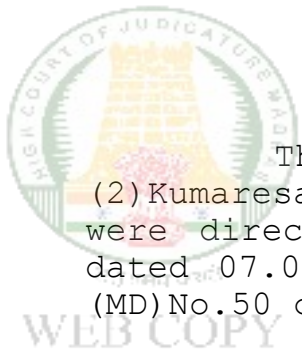




BAIL SLIP

The Appellants/Accused (1)Selvam S/o.Pichaimuthu, Male, (2)Kumaresan S/o.Kuppan, male and (3)Vadivel S/o.Pichaimuthu, Male, were directed to be released on bail, vide order of this court, dated 07.02.2017 and made in Crl.MP(MD)No.526 of 2017, in Crl.R.C (MD)No.50 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C (MD)No.50 of 2017

1.Selvam
2.Kumaresan
3.Vadivel : Petitioners
.Vs.

The State
By the Inspector of Police,
Natham Police Station,
Dindigul Distirct. : Respondent

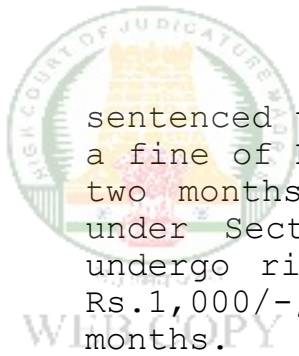
PRAYER: The Criminal Revision case is filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the judgment made in C.A.No.58 of 2012 by the Additional District & Sessions Judge, Dindigul, dated 10.01.2017 modifying the judgment made in S.C.No.48 of 2006 by the Principal Assistant Sessions Court, Dindigul, dated 06.08.2012.

For Petitioners : Mr.D.Venkatesh
For Respondent : Mr.M.Muthumanikkam
Counsel for Government of
Tamil Nadu (crl.side)

ORDER

This Criminal Revision Case has been filed to check the correctness of the judgment dated 10.01.2017 made in C.A.No.58 of 2012 on the file of the learned Additional District and Sessions Judge, Dindigul, confirming the conviction and sentence made in S.C.No.48 of 2006 on the file of the Principal Assistant Sessions Judge, Dindigul, dated 06.08.2012.

2.The revision petitioners are arrayed as accused Nos.1 to 3 in S.C.No.48 of 2006 on the file of the Principal Assistant Sessions Court, Dindigul. Before the trial Court, the revision petitioners along with other six accused stood charged for the offence punishable under Sections 147, 148, 323, 324 and 307 r/w 149 of I.P.C. After full fledged trial, the learned Principal Assistant Sessions Judge, Dindigul, came to the conclusion that the accused Nos.1 to 3 were found guilty under Section 307 of I.P.C and accordingly, each of the revision petitioners were convicted and



sentenced to undergo rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months. Further, the accused Nos.1 and 2 were found guilty under Section 324 of I.P.C and each of them were sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months.

3.Challenging the said conviction and sentence, the revision petitioners/accused Nos.1 to 3 herein preferred an appeal in C.A.No.58 of 2012 on the file of the Additional District and Sessions Judge, Dindigul. By judgment dated 10.01.2017, the learned Additional District and Sessions Judge, Dindigul, partly allowed the appeal and came to the conclusion that the accused Nos.1 and 2 were found guilty under Section 324 of I.P.C (2 counts) and the accused No.3 was found guilty under Section 324 of I.P.C. In view of the above, all the accused were sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 2 months for each counts. The sentences were directed to run concurrently. Aggrieved over the said findings, the petitioners are before this Court with this criminal revision.

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

(i) On 30.01.1999 around 5.30 pm due to the result of wordy altercation, the accused Nos.1 to 3 herein along with other accused came to the village of PW1-Karuppaiah and during the time of occurrence, the first accused Selvam attacked PW1-Karuppaiah on his head. Further, when at the time the second accused Kumaresan attempted to attack PW1, the aruval cut the left elbow of P.W1. Further, in the course of same transaction, the third accused Vadivel attack PW1 and caused injury on his right finger. When at the time, PW2 attempted to resolve the issue, both A1 and A2 attacked him and thereby, PW2 also sustained injury. Immediately, after the occurrence, they rushed into the police station, wherein PW1 gave a statement before PW9-Balasubramanian, the then Inspector of Police, Natham. On receipt of the said statement, PW9 registered the case against the accused under Sections 147, 148, 323, 324, 307 of I.P.C. The statement given by PW1 and FIR prepared by PW9 were marked as Ex.P1 and Ex.P5 respectively.

(ii) In the meantime, after giving statement before PW9, both of them went to the hospital, wherein PW6-Dr.Maru.Nagammal around 7.30 pm examined PW2 and found the following injuries:-

1. A cut injury in the size of 3cmx1.5cmx1cm found on the scalp 3 cm behind the right ear.

2. A cut injury in the size of 3cmx1cmx1.25cm on the right sholulder. Around the said injury, there was contusion in the size of 5cmx4cm.



3. There was a multiple abrasion on his back side in the size of 5cm x .25 cm, 6cm x .25cm, 3x .25cm

4. Loss of right scapula

5. There was an abrasion in the size of 1cm x 1cm in the right knee.

According to her, the injuries sustained by PW2 is grievous in nature. Similarly, on the same day, PW6 examined PW1 and found the following injury:-

1. A cut injury in the size of 8cm x 1.5cm x 1cm on the scalp region

2. A cut injury in the size of 5cm x 1cm x 1cm on the left forehead

3. A cut injury on the left upper hand in the size of 5cm x 3cm x 1cm

4. A cut injury on the right upper hand 7cm x 1cm x .25cm

5. A cut injury on the right back side in the size of 2cm x 1cm x .25cm

6. There was a contusion on the left back side in the size of 6cm x 3cm

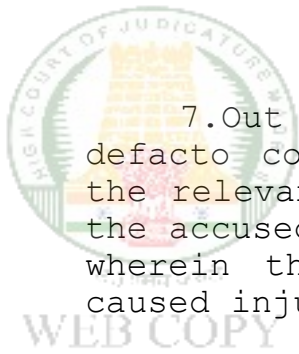
7. There was an abrasion in the left upper hand in the size of 2cm x 1cm around the said injury there was a contusion in the size of 5 cm x 5 cm.

The above said injuries sustained by PW1 are simple in nature. In this regard, PW6 issued Accident Register Copies under Ex.P2 and Ex.P3 respectively.

(iii) After registration of FIR, PW9 took up the same for investigation, visited the scene of occurrence and prepared the observation mahazar under Ex.P4. He has drawn the rough sketch and the same has been marked as Ex.P6. He examined the witnesses and recorded their statements. After concluding the investigation, he came to the positive conclusion that all the accused are liable to be convicted under Sections 147, 148, 323, 324 and 307 of IPC. He filed the final report accordingly.

5. From the above materials, the learned trial Judge framed the charges against the accused under Sections 147, 148, 323, 324, 307 r/w Section 149 of I.P.C. All the accused denied the charge and opted for trial. Therefore, the accused was put on trial.

6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, as many as 9 witnesses were examined as PW1 to PW9 and 6 documents were exhibited as Ex.P1 to Ex.P6.



7.Out of the above said witnesses, PW1-Karupaiah, who is the defacto complainant/injured speaks about the occurrence as during the relevant point of time, due to the result of wordy altercation, the accused Nos.1 to 3 came to his village along with other accused, wherein the first accused by using the aruval attacked him and caused injury on his head, left and right hands.

(ii) PW2-Ranjthkumar, an another injured, spoken about the occurrence as during the relevant point of time accused Nos.1 to 3 along with other accused came to the occurrence place, wherein the accused Nos.1 and 2 by using aruval attacked him on his head and right shoulder.

(iii) PW3-Thangam deposes that during the time of occurrence, the accused Nos.1 to 3 attacked PW1 and PW2 and caused injury. PW4-Palanisamy and PW5-Sivakumar claims that on the date of occurrence, when at the time they were returned to their house, they saw the injured i.e., PW1 and PW2, brought them to the hospital wherein they were admitted as in-patients.

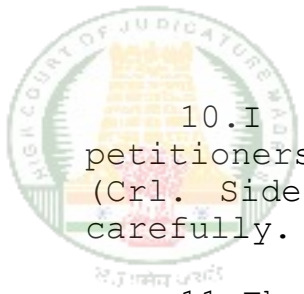
(iv) PW6-Dr.Nagammal attached with Government Hospital, Natham, gave evidence as after the occurrence on 30.01.1999 around 7.30 pm, she examined the injured and after giving treatment, she issued Accident Register copy stating that PW1 sustained simple injury and PW2 sustained grievous injury. PW7-Selvam, who was working as a car driver claims that during the relevant point of time, in view of the request made by PW4 and PW5, through his car he brought the injured to Natham Police station.

(v) PW-8-Natarajan alleged witness signed in the observation mahazar has not supported the case of the prosecution. Hence, he was treated as hostile witness. PW-9 the then Inspector of Police, Natham Police station, gave evidence in respect to the statement given by PW1, registration of the case, examination of witnesses and about filing of final report.

8.When the above incriminating materials were put to the accused under Section 313 Cr.P.C. All the accused denied the same as false. However, they did not choose to examine any witness nor mark any document on their side.

9.Having considered all the above materials, the learned Principal Assistant Sessions Judge, Dindigul, came to conclusion that the accused Nos.1 to 3 were found guilty under Section 307 of IPC and the accused Nos.1 and 2 were also found guilty under Section 324 of IPC and sentenced as stated in paragraph No.2 of this judgment. In the appeal preferred by the accused, the learned Additional District & Sessions Judge, Dindigul, partly allowed the appeal and convicted the appellants under Section 324 of IPC alone. Challenging the said conviction and sentence, the revision

<https://hcservices.courts.gov.in/hcservices> before this Court with this revision case.



10.I have heard Mr.D.Venkatesh, learned counsel for the petitioners and Mr.M.Muthumanikkam, learned Government Advocate (Crl. Side) appearing for the state and also perused the records carefully.

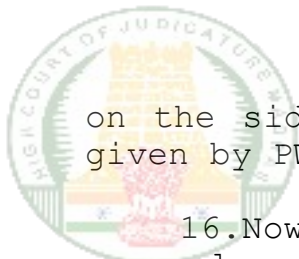
11.The learned counsel for the revision petitioners would contend that the evidence given by prosecution witnesses are having lot of contradictions. In respect to the injuries sustained by PW1 and PW2, the Doctor, who treated them, gave contradictory evidence. Further, the alleged weapon used by the accused is not recovered and produced before the Court. Therefore, the said lapses found in the case of the prosecution shows that the accused are not guilty for the charge under Section 324 of IPC.

12.Per contra, the learned Government Advocate (crl.side) appearing for the State would contend that after twelve years from the date of occurrence, PW1 and PW2 gave evidence before the trial Court and therefore, it is natural on their part to give evidence with minor contradictions. In otherwise, in respect to the injury sustained, the evidence given by the Medical Officer is in support of the case of the prosecution. Therefore, it cannot be said that there was material contradiction available in the case of the prosecution and therefore, interference of this Court in the findings arrived at by the trial Court does not require.

13.I have considered the rival submissions made by the learned counsel appearing on either side.

14.The case of the prosecution is that during the relevant point of time, the revision petitioners/accused Nos.1 to 3 by using aruval attacked PW1 and caused injury on his head and left and right hands and in his back side. In this regard, PW1, who is one of the injured, gave evidence as during the relevant point of time, all the accused in this case came to his village wherein accused Nos.1 to 3 by using aruval cut him on his head, left and right hands. In the wound certificate pertains to PW1 as well as the evidence given by the Doctor, who treated PW1, is in correspondence with the evidence given by PW1 as there was injury found on the head, right and left hands of PW1. Similarly, PW2 gave evidence as during the time of occurrence, the accused Nos.1 and 2 came along with other accused wherein the first and second accused by using aruval attacked him on his head and right shoulder. The said evidence is also in support of the evidence given by the Doctor, who treated him. In the said circumstances, the evidence given by Doctor would reflect that the injury sustained by PW2 is grievous in nature.

15.On the other hand, being the reason that the weapon alleged to be used at the time of occurrence has not been recovered by the police officer and in view of the above, the First Appellate Court came to the conclusion that the accused Nos.1 to 3 were guilty under Section 302 of IPC and not 307 of IPC. The other witnesses examined



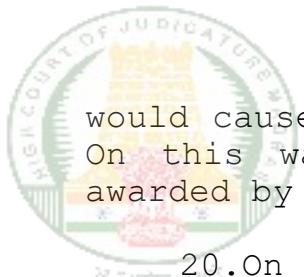
on the side of the prosecution is also in support of the evidence given by PW1.

16.Now, on considering the submissions made by the learned counsel appearing for the revision petitioners, it is true in respect to the attack made by the accused, some discrepancy is there. The evidence given by them is having some discrepancy in respect to the place on which the accused assaulted. Therefore, it would necessary to decide whether the said discrepancy are sufficient to hold that the case of the prosecution is false one.

17.In this regard, on going through the other circumstances, during the time of occurrence along with accused number of persons were assembled together and committed the offence. Further, the prosecution witnesses gave evidence before the trial Court after 12 years. Therefore, it is possible to give evidence with minor discrepancy. In general Rule, on minor discrepancy, overmuch importance cannot be attached. Even in criminal trial where the prosecution is to prove its case beyond reasonable doubt, omissions and contradiction in the evidence of witnesses is not fatal to the prosecution case when they are on minor facts, which do not go to the root of the matter. Minor discrepancy guarantees that the witnesses are not tutored. The very fact that there are some discrepancies instead of diminishing the worth of evidence gives it a stamp of genuineness. Merely because the witnesses have deposed with consistency, it cannot be said that they deposed like parrots and their evidence is devoid of naturalness.

18.Here it is the case, in respect to the person, who attacked them, the evidences of PW1 and PW2, is found that there is no contradictions. Further, the said evidence given by PW1 and PW2 found reliable and inspired the confidence of this Court and also the evidence given by PW1 and PW2 is corroborated through the evidence given by the Medical Officer. In the said circumstances, immediately after the occurrence, both injured went to the police station and give statement as during the relevant point of time the accused herein along with others attacked them. In the statement itself the name of the accused is mentioned. Therefore, the reason submitted by the learned counsel appearing for the revision petitioners is not at all having any merits to disbelieve the case of the prosecution. The First Appellate Court only after considering the motive and other circumstances, convicted the accused under Section 324 of IPC. Therefore, I am of the opinion that there is no perversity or gross-justice found in the judgment rendered by the trial Court.

19.In this occasion, the learned counsel appearing for the revision petitioners would submit that while at the time, the alleged occurrence had happened all the accused are having the age around 20 years. Now, they are attained 42 years and had minor
<https://hccservices.mca.gov.in/HCCServices> Therefore, convicting them for the period of two years,



would cause much prejudice in their family life and in the Society. On this way, he prays to show some leniency in the conviction awarded by the First Appellate Court.

20.On considering the said submission with relevant records, it is true the alleged occurrence had happened on 31.01.1999. Thereafter, the trial Court had disposed the Sessions Case on 06.08.2012 and the First Appellate Court disposed the appeal on 10.01.2017. Therefore, for the past 18 years the accused herein are facing this case. Considering these circumstances, this Court came to the conclusion that it is appropriate to modify the sentence as follows:-

In respect to the offence under Section 324 of IPC (two counts), each of the accused Nos.1 and 2 are sentenced to undergo two months rigorous imprisonment and to pay a fine of Rs.10,000/- for each count, in default, to undergo simple imprisonment for two weeks and as far as the third accused, he has been convicted under Section 324 of IPC, sentenced to undergo two months rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for two weeks. The sentences are directed to run concurrently. The total fine amount of Rs.50,000/- should be paid to the victims as compensation in terms of Section 357 of Cr.PC. It is further ordered that the trial Court is disbursed a sum of Rs.20,000/- to P.W1 and a sum of Rs.30,000/- to PW2 as compensation. The period of imprisonment already undergone by the revision petitioner shall be set off under Section 428 of Cr.P.C.

21.In view of the above modifications, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

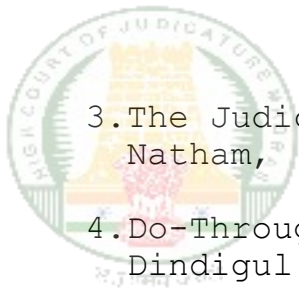
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To:-

1.The Additional District & Sessions Judge,
Dindigul.

2.The Principal Assistant Sessions Judge,
Dindigul.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Judicial Magistrate,
Natham,

4.Do-Through The Chief Judicial Magistrate,
Dindigul

5.The Inspector of Police,
Natham Police Station,
Dindigul Distirct.

6.The Superintendent
Central Prison, Madurai.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:-

The Section Officer,
Criminal Section records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.D.VENKATESH, Advocate (SR-28889[F] dated 13/09/2021)

Crl.RC (MD)No.50 of 2017
08.09.2021

GC(04.10.2021) 8P 11C