

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1318 of 2014

AGAINST THE JUDGMENT IN CRL.APPEAL NO.364/2013 OF SESSIONS
COURT, NORTH PARAVUR

AGAINST THE JUDGMENT IN CC 772/2007 of J.M.F.C.-I, ALUVA

REVISION PETITIONER(S)/APPELLANTS/ACCUSED :-

1. VALSA, AGED 56 YEARS,
W/O.POULOSE, PARAYIL VEETIL,
NEDUMBASSERY, ERNAKULAM - 683 589.
2. POULOSE, AGED 66 YEARS,
S/O.CHAKKAPPAN, PARAYIL VEETIL,
NEDUMBASSERY, ERNAKULAM - 683 589.

BY ADVS.SRI.ABRAHAM VAKKANAL (SR.)
SRI.PAUL ABRAHAM VAKKANAL
SRI.PRASUN.S
SRI.DIJO SEBASTIAN
SMT.VINEETHA SUSAN THOMAS

RESPONDENT(S)/COMPLAINANT/STATE :-

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682 031.

R BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 17-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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P.UBAID, J.

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Crl.R.P.No.1318 of 2014
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Dated this the 17th day of December, 2015

ORDER

The petitioners herein are the two accused in C.C.No. 772 of 2007 of the Judicial First Class Magistrate Court-I, Aluva. The victim of offence therein is a juvenile. The prosecution brought final report in the said case under Section 324 IPC and under Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000, on the allegation that the juvenile victim was mentally and physically harassed and assaulted by the two accused while residing in their house as a domestic servant. The two revision petitioners faced trial before the learned Magistrate on a plea of not guilty. The prosecution examined eight witnesses including the victim, and proved Exts.P1 to P6 documents. The accused did not adduce any evidence in defence. On an appreciation of the evidence, the

learned Magistrate found the first accused guilty under Section 324 IPC, and both the accused guilty under Section 23 of the Juvenile Justice Act. As regards the allegation under Section 326 IPC, the learned Magistrate found that necessary materials and ingredients are not there to attract such a section. On conviction under Section 324 IPC the first accused was sentenced to undergo imprisonment till the rising of the Court, and to pay fine of ₹,5,000/-. Both the accused were sentenced to undergo imprisonment till the rising of the Court, and to pay fine of ₹5,000/- each under Section 23 of the Juvenile Justice Act. Aggrieved by the said judgment of conviction dated 30.05.2013, the two accused approached the Court of Session, Ernakulam with Crl.Appeal No.364 of 2013. In appeal, the learned Additional Session Judge, North Paravur confirmed the conviction under Section 23 of the JJ Act, but altered the conviction under Section 324 IPC to one under Section 323 IPC as against the first accused. Aggrieved by the said judgment in Appeal dated 25.06.2014, the two accused are before this Court in revision.

2. On hearing both sides, and on a perusal of the materials, I find that the conviction in this case under Section

23 of the Juvenile Justice Act cannot be sustained. The defence is mainly on the age of the victim. The prosecution has not adduced any evidence to show that the victim was a juvenile as on the date of the alleged incident. The age of the victim shown at the time of examination was 18 years. What is alleged under Section 23 of the JJ Act is that the victim had been subjected to mental and physical harassment by the two accused as the persons in charge of the juvenile. Ofcourse for the said prosecution it must be proved that the accused had charge, or control over the juvenile at the time of the incident. What the prosecution must prominently prove is the age of the juvenile, that the juvenile was aged below 18 years. In this case, the prosecution has not adduced any evidence, or produced any material to prove the age of the victim. In the absence of any evidence to prove the age of the victim, the conviction made by the courts below under Section 23 of the JJ Act cannot be sustained.

3. Now let me come to the conviction under Section 323 IPC. The said conviction is only against the first accused. The learned Magistrate found the first accused guilty under Section 324 IPC on the basis of the convincing evidence given

by the victim of offence. However, in appeal, the learned appellate Judge converted it to one under Section 323 IPC on the ground that the prosecution has not produced any weapon of offence. Anyway, the learned appellate Judge also relied on the evidence of the victim of offence. The learned counsel for the revision petitioner submitted that the evidence of the victim is not believable without independent corroboration. On a perusal of the deposition given by the victim, I find that she has narrated the incident alleged by the prosecution, that she was physically assaulted by the first accused. She has explained the different instances where she was assaulted by the first accused. As against the second accused, the Juvenile has no complaint. I find that the evidence given by victim is quite satisfactory and convincing as against the first accused, that the first accused had physically harassed or assaulted the juvenile. I find no reason for interference in the conviction made by the courts below against the first accused under Section 323 IPC.

In the result, this Revision Petition is allowed in part. The conviction and sentence against the revision petitioners under Section 23 of the Juvenile Justice Act is set aside on the finding

that they are not guilty of the said offence. Accordingly, they are acquitted of the said offence in revision. The conviction and sentence against the first accused (first revision petitioner) under Section 323 IPC will stand confirmed. If the first revision petitioner has already undergone the sentence till rising of the court, and if she has already remitted the fine, enforcement of the sentence can be recorded in the trial court.

Sd/-
P.UBAID
JUDGE

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P.A. TO JUDGE