IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

CRL.REV.PET NO. 1087 OF 2012

AGAINST THE JUDGMENT DATED 29.03.2012 IN Crl.A NO.584 OF 2006 OF ADDITIONAL DISTRICT AND SESSIONS COURT, FAST TRACK-I, THIRUVANANTHAPURAM

ARISING OUT OF THE JUDGMENT DATED 09.06.2006 IN CC NO.112 OF 1995 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,VARKALA

REVISION PETITIONERS/APPELLANT/ACCUSED:

1 JUDE, S/O JERRANSE, KALLUVILA VEEDU,
MUDIYAKODE DESOM, CHERUNNIYOOR VILLAGE,
THIRUVANANTHAPURAM DIST.

2 BASIL, S/O. PATHROSE, THENGUVILA VEEDU,
MUDIYAKODE DESOM, CHERUNNIYOOR VILLAGE,
THIRUVANANTHAPURAM.

BY ADVS. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.V.S.THOSHIN

RESPONDENT/RESPONDENT/COMPLAINANT:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

SMT. SEETHA S., SR. PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11.04.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

O R D E R

Aggrieved by the concurrent findings of conviction and sentence of the petitioners for the commission of offence under Sections 326 & 324 read with Section 34 of Indian Penal Code, 1860*(in short, 'IPC')*, by the Judicial First Class Magistrate Court-I, Varkala, and the Additional Sessions Court (Fast Track)-I, Thiruvananthapuram, the petitioners have preferred this revision before this Court.

2. The prosecution case is that on 15.02.1994 at about 4:30 p.m., the petitioners, in furtherance of their common intention, inflicted voluntary hurt and grievous hurt upon the de facto complainant by assaulting with deadly weapons like chopper and knife. As a result of the above assault, the de facto complainant was said to have suffered fractures on his left and right shoulders, in addition to serious stab injuries.

3. After the evaluation of the evidence adduced by the prosecution through the examination of PW1 to PW9 and the marking of Exts P1 to P9, and after considering the defence evidence adduced through the testimonies of DW1 to DW3 and the document marked as Ext D1, the learned Magistrate found the petitioners guilty of

commission of the offence under Sections 326 & 324 read with Section 34 IPC. They were accordingly convicted and sentenced to rigorous imprisonment for one year and fine of Rs.3,000/- under Section 326 IPC, and rigorous imprisonment for three months and fine of Rs.1,000/- under section 324 IPC. Default clauses were also prescribed for non payment of fine. Though the petitioners challenged the above conviction and sentence before the Sessions Court, Thiruvananthapuram, the learned Additional Sessions Judge (Fast Track Court)-I, declined to interfere with the findings of the learned Magistrate, and dismissed the appeal. It is against the aforesaid judgment dated 29.03.2012 in Crl.A.No.584/2006 of the Additional Sessions Court (Fast Track)-I, Thiruvananthapuram, that the present revision has been preferred.

4. During the course of the revisional proceedings, the second petitioner died on 26.02.2022. A copy of the death certificate of the second petitioner is produced as Annexure-2. The legal representatives of the deceased second petitioner did not prefer to get impleaded in this proceedings. Thus, the revision stood abated as against the second petitioner due to his death.

5. Heard the learned counsel for the first petitioner and the learned Public Prosecutor representing the State of Kerala.

6. The learned counsel for the first petitioner submitted that the first petitioner did not attain the age of 18 years on 15.02.1994 when the offence involved in this case took place. In support of the above contention, the copy of the relevant page of the Secondary School Leaving Certificate of the first petitioner is produced as Annexure-1. It is seen from the said document that the date of birth of the first petitioner is 25.05.1976. If that be so, the age of the first petitioner on the date of crime was 17 years, 08 months and 21 days.

7. Now, the question to be looked into is whether the proper procedures as envisaged by law have been followed by the courts below in the trial conducted in this case, insofar as it relates to the first petitioner who was apparently a 'juvenile in conflict with law' as defined under Section 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

8. Since the offence involved in this case was committed on 15.02.1994, the law related to juvenile which prevailed during that time was the Juvenile Justice Act, 1986. As per Section 2(h) of Juvenile

Justice Act, 1986, a juvenile means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. Thus, the trial conducted by the learned Magistrate treating the first petitioner as an adult, is perfectly in order, since the first petitioner had crossed the age of 16 years at the time of commission of the crime. However, it is pertinent to note that, by the time when the learned Magistrate rendered the verdict in this case on 09.06.2006, the Juvenile Justice (Care and Protection of Children) Act, 2000, came into force. Thus, it is necessary to look into the question whether the procedures to be followed for dealing with those offenders who came under the definition of juvenile under Section 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, had been followed in the case on hand.

9. Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, provides for the procedure to be followed in respect of pending cases while the said Act came into force. For the sake of convenience and easy reference, the aforesaid Section is extracted hereunder:

> "**20. Special provision in respect of pending cases**

> Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:
>
> [Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.
>
> Explanation. In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.]"

10. It is clear from the aforesaid provision of law that the Trial Court was not empowered to award punishment in a pending case where the offender came under the definition of juvenile as per the Juvenile Justice (Care and Protection of Children) Act, 2000, who was not a juvenile as per the the Juvenile Justice Act, 1986, when the

offence took place. The proper course ought to have been followed under Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, was to record the finding that the juvenile has committed an offence and to forward him to the Juvenile Justice Board for passing appropriate orders in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. As the above procedure had not been followed by the Trial Court, and the anomaly in the above regard had not been noticed by the Appellate Court, it is highly necessary to set aside the sentence awarded upon the first petitioner in this case. Therefore, the case has to be forwarded to the Juvenile Justice Board, Thiruvananthapuram, for passing appropriate orders under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

In the result, the revision stands disposed of as follows:

(i) The proceedings against the second petitioner (accused No.2) stand closed as abated by his death.

(ii) The case is ordered to be forwarded to the Juvenile Justice Board, Thiruvananthapuram, for passing appropriate orders under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, in respect of the offence under Sections

324 & 326 IPC found to have been committed by the first petitioner/first accused.

(iii)The Juvenile Justice Board, Thiruvananthapuram, shall collect the case records from the Judicial First Class Magistrate Court, Varkala, if found necessary.

(iv) The Judicial First Class Magistrate Court, Varkala, shall take steps for the realisation of the fine amount from the assets of the deceased second petitioner (accused No.2).

Registry shall forward copies of this order to the Juvenile Justice Board, Thiruvananthapuram, and the Judicial First Class Magistrate Court, Varkala, immediately.

(Sd/-)
G. GIRISH, JUDGE

DST

APPENDIX OF CRL.REV.PET 1087/2012

PETITIONER ANNEXURES

ANNEXURE 1	**THE TRUE COPY OF THE RELEVANT PAGE OF THE SSLC CERTIFICATE SHOWING THE DOB AS 25.05.1976**
ANNEXURE 2	**THE TRUE COPY OF DEATH CERTIFICATE OF REVISION PETITIONER NO. 2 DATED ON 19/03/2022**