

Crl.Rev.Pet.No. 1520 of 2006

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 27TH DAY OF JUNE 2025 / 6TH ASHADHA, 1947

CRL.REV.PET NO. 1520 OF 2006

AGAINST THE JUDGMENT DATED 27.02.2006 IN Cr1.A NO.235 OF 2004
OF ADDITIONAL SESSIONS COURT -III, KOZHIKODE ARISING OUT OF
THE JUDGMENT DATED 23.03.2004 IN CC NO.787 OF 1999 OF
JUDICIAL MAGISTRATE OF FIRST CLASS, KOYILANDY

REVISION PETITIONER/APPELLANT/ACCUSED:

KUMARAN, S/O.VELLAN,
KOTTOTHUMAL COLONY,
EDAKKARA AMSOM DESOM,
KOZHIKODE TALUK.

BY ADVS.
SHRI.P.V.ANOOP
SRI.PHIJO PRADEESH PHILIP
SMT.THUSHARA K - AMICUS CURIAE

RESPONDENT/RESPONDENT/
COMPLAINANT & STATE:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

SRI.SANGEETHA RAJ.N.R-PP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 27.06.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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"C.R."

ORDER

This Criminal Revision Petition is directed against the judgment dated 27.02.2006 in Crl. Appeal No.235 of 2004 on the files of the Additional Sessions Court-III, Kozhikode (for short, 'the appellate court') confirming the judgment dated 23.03.2004 in C.C. No.787 of 1999 on the files of the Judicial First-Class Magistrate Court, Koyilandy (for short, 'the trial court').

2. The revision petitioner is the accused in C.C. No.787 of 1999. The offence alleged is under Section 326 of the IPC.

3. The prosecution case in short is that on 01.07.1999 at about 03:00 p.m., in Edakkara amsom, Thalakulathur Panchayat, Ward No.8, the revision petitioner intentionally pushed down the defacto complainant on the floor, caught hold of his neck, and hit on his face with a stone, causing

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fracture of the bone.

4. On the side of the prosecution, PWs 1 to 10 were examined and Exts.P1 to P5 were marked. MOI and MOII were identified. No defence evidence was adduced. After trial, the trial court found the revision petitioner guilty under Section 326 of IPC and he was convicted for the said offence. He was sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for another one month. Out of the fine amount, if realised, Rs.1,000/- was ordered to be paid to the defacto complainant as compensation. The revision petitioner challenged the conviction and sentence of the trial court before the appellate court. The appellate court dismissed the appeal, confirming the conviction and sentence of the trial court. Challenging the judgments of the trial court as well as the appellate court, the revision petitioner preferred this criminal revision petition.

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5. When the revision petition came up for hearing, there was no representation for the revision petitioner. Therefore, notice was issued to the revision petitioner, and it was served on him. Still, there was no representation. Since the revision petitioner was not represented, this Court appointed Smt.Thushara K. as Amicus Curiae. However, when the revision petition came up for hearing today, Sri.P.V.Anoop, the counsel for the revision petitioner appeared.

6. I have heard Sri.P.V.Anoop, the learned counsel for the revision petitioner, Smt.Thushara K., the learned Amicus Curiae and Sri.Sangeetha Raj N.R., the learned Public Prosecutor.

7. The learned counsel appearing for the revision petitioner impeached the findings of the trial court as well as the appellate court on the appreciation of evidence and resultant finding as to the guilt. The learned Amicus Curiae

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submitted that there is no evidence on record to show the size and nature of the stone used for the commission of the offence, and hence the offence under Section 326 of IPC will not be attracted. The learned Amicus Curiae further submitted that there is no evidence to show that the de facto complainant sustained any of the injuries mentioned in Section 326 of IPC and hence, at best, the offence under Section 323 alone would be attracted. Reliance was placed on the decision of the Division Bench of this Court in **Joy v. State of Kerala** (2014 (1) KLT 588). On the other hand, the learned Public Prosecutor supported the findings and verdict handed down by the trial court as well as the appellate court and argued that the necessary ingredients of Section 326 of IPC had been established and the prosecution had succeeded in proving the case beyond a reasonable doubt.

8. The prosecution mainly relied on the evidence of PWs 1 to 4 and PW6 to prove the incident and to fix the

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culpability on the revision petitioner. PW1 is the de facto complainant/injured. PWs 2 to 4 are occurrence witnesses. PW6 is the doctor who treated PW1 and issued Ext.P4 wound certificate. PW1 deposed that on 01.07.1999 at about 03.00 – 03.30 p.m., he was assaulted by the revision petitioner with MOI stone at his paramba after pushing him down. He also spoke about the motive. Ext. P1 F.I statement was marked through him. He identified the revision petitioner as well as MOI stone. PWs 3 and 4 gave evidence in tune with the evidence given by PW1. Even though PWs 1, 3 and 4 were cross-examined in length, nothing tangible could be extracted to discredit their testimony. PW1 gave a consistent version of the crime. He narrated how the incident took place and part of his body where the revision petitioner inflicted injury. PW3 and PW4 corroborated the evidence given by PW1. There is indeed some discrepancy in the evidence of PWs 1 and 3 about the part of the body of PW1 where the injury was

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inflicted by the revision petitioner with MOI. PW1 stated that the revision petitioner hit him with MOI on his cheek, whereas PW3 stated that he hit PW1 on his forehead. It is a minor discrepancy which does not affect the fabric of the prosecution case. PW2, another occurrence witness, turned hostile to the prosecution. However, he admitted that he reached the spot immediately after the incident, where he saw PW1 with bleeding from his mouth. He also admitted that he, along with PWs 2 and 4, took PW1 to the hospital. The evidence of the injured witness, as well as the eyewitnesses, gets corroboration from the medical evidence. PW6 is the doctor who examined PW1 immediately after the incident. Ext.P4 wound certificate was issued by him. The evidence of PW6, coupled with Ext.P4, would show that PW1 sustained injury to his head in the incident.

9. The trial court, as well as the appellate court on appreciation of evidence found that the prosecution evidence

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described above is sufficient to establish that the revision petitioner assaulted PW1 with MOI. It is settled that the jurisdiction of the High Court in revision is severely restricted, and it cannot embark upon reappreciation of evidence. I see no reason to interfere with the finding of the trial court as well as the appellate court, that the prosecution has succeeded in proving beyond reasonable doubt that the revision petitioner had assaulted PW1 with a stone.

10. The learned Amicus Curiae with the approval of the learned counsel for the revision petitioner, made the following two submissions to canvass the plea that the offence under Section 326 is not attracted: (i) There is no evidence to show that MOI stone is an instrument which is likely to cause death (ii) There is no evidence that PW1 sustained any of the eight types of injuries outlined in Section 320 of IPC.

11. It is apposite to reproduce Section 326 of IPC. It reads thus:

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"326. Voluntarily causing grievous hurt by dangerous weapons or means.-- Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The section covers instances where an individual intentionally inflicts grievous hurt on another person. The provision lists various instruments through which grievous hurt can be inflicted, including instruments for shooting, stabbing or cutting, or using any weapon likely to cause death. It also encompasses causing hurt through fire, any heated substances, poison, any corrosive substances, explosive substances, deleterious substances, or animals. The

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punishment prescribed under Section 326 of IPC includes imprisonment, which may extend to ten years, and a fine. Section 335 of the IPC provides exceptions to Section 326. It deals with cases where harm is caused in good faith for the benefit of the person harmed or with his consent.

12. Though Section 326 of IPC addresses the offence of voluntarily causing hurt by dangerous weapons or means, the term “dangerous weapon” is not expressly defined in IPC. However, Section 326 specifies various instruments or means through which hurt could be inflicted. To attract the provision, the accused must have intentionally caused hurt to another person, and the said hurt must be inflicted by one of the specified categories of instruments or means outlined in the Section. The instrument specified in the section consists of two categories. The first category mentions instruments for shooting, stabbing or cutting. The second category mentions any instrument that, when used as a weapon of offence, is

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likely to cause death. The qualification 'which, used as a weapon of offence, is likely to cause death' is provided only for the second category, i.e., 'any instrument'. So if the instrument used to cause grievous hurt is an instrument for shooting, stabbing or cutting (such as a gun, knife, sword, etc.), it is not necessary to prove that such an instrument is likely to cause death. The prosecution needs to establish that the weapon used for causing grievous hurt is likely to cause death only in a case of 'any instrument' which falls under the second category.

13. Here, the instrument is a stone which was identified as MO1. In every case, stone need not constitute a dangerous weapon. It would depend on the facts of each case. A stone can be an instrument for cutting, depending on its nature, size, sharpness, etc. Several types of stones are used as cutting tools, with flint, obsidian, and various hard, brittle, silica-rich stones like quartzite, chert, and silcrete being

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common choices. If the stone used for causing grievous hurt qualifies the expression 'an instrument of cutting', the prosecution need not further establish that such a stone is likely to cause death. Even if a stone is not designed for cutting, it may still fall under Section 326 of IPC if it is of such a nature as to be likely to cause the death of a person when used as a weapon of offence. In such a case, the stone used for the commission of the offence by its very nature should be such that one could reasonably predict that by its use as a weapon of offence, death would be probable. The expression "any instrument, which used as weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use [**Anwarul Haq v. State of U.P.**, (2005) 10 SCC 581]. Thus, a stone may qualify as a dangerous weapon depending on its nature, size, sharpness or its potential to cause the death of a person. As rightly argued by the learned Amicus Curiae, there

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is no evidence to prove the nature, size and sharpness of the MO1 stone. There is also no evidence to show that MO1 stone has the potential to cause the death of a person. No witness spoke about it. In short, the prosecution failed to adduce evidence to prove that MO1 stone either qualifies the expression 'an instrument of cutting', or the expression 'any instrument which, used as a weapon of offence, is likely to cause death' found in Section 326 of IPC.

14. To attract Section 326 of IPC, the prosecution must also establish that the injured has sustained one of the kinds of injuries enumerated in Section 320 of IPC. The following kinds of hurt only are designated as "grievous" under Section 320:

"First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

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Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

15. Before a conviction under Section 326 of IPC can be passed, one of the injuries in Section 320 of IPC must be strictly proved. The eighth clause is no exception to the general rule that a penal statute must be construed strictly [***Mathai v. State of Kerala*** (2005) 3 SCC 260]. If the hurt that has been caused falls outside any of the categories mentioned in Section 320 of IPC, it can only be a simple hurt as defined in Section 319 of IPC, punishable under Section 323.

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16. The medical evidence consists of the testimony of the doctor who was examined as PW6, and Ext.P4 wound certificate. Ext.P4 wound certificate, coupled with the evidence of PW6, shows that PW1 has sustained the following injuries: (i) circular contusion about 4 c.m. diameter on (L) cheek (ii) contusion of left surrendered by bleeding pain and swelling over the (R) check (iii) bleeding from the mouth. None of these injuries fall under the categories of grievous hurt as described under Section 320 of IPC. Even though the prosecution claimed that PW1 sustained a fracture on his face, it has not been established in evidence. Hence, the hurt inflicted by the revision petitioner on PW1 using the MOI weapon falls under Section 319 of the IPC. Therefore, the conviction under Section 326 of IPC cannot be sustained and it is liable to be set aside. Instead, the revision petitioner is liable to be convicted under Section 323 of IPC. Section 222(2) of Cr.P.C allows for conviction of an accused for a

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minor offence even if there is no specific charge for it, as long as the evidence supports it. Section 323 of IPC is a minor offence compared to Section 326. Hence, an accused charged under Section 326 of IPC can be convicted under Section 323 of IPC, even if there is no specific charge for the latter, provided the evidence supports the lesser offence.

17. What remains is the sentence. The learned counsel for the revision petitioner submitted that the revision petitioner is aged 73 years and is bedridden. The learned counsel further submitted that now the revision petitioner and PW1 are on cordial terms. In these circumstances, the substantive sentence may be reduced till the rising of the court, submitted the learned counsel. The revision petitioner had undergone three days of imprisonment during the investigation stage. Considering the age and illness of the revision petitioner and also the fact that the injuries sustained by PW1 are not serious, I am of the view that the

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substantive sentence can be confined to three days' imprisonment he had already undergone. That apart, the revision petitioner has been undergoing the ordeal of prosecution for the last almost 19 years.

18. In the light of the above discussion, the conviction of the revision petitioner under Section 326 of the IPC by the trial court as well as the appellate court is hereby set aside. The revision petitioner is convicted for the offence under Section 323 of IPC. He is sentenced to undergo simple imprisonment for three days and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for one month for the offence under Section 323 of IPC. As the revision petitioner had already undergone the substantive sentence of three days, he is directed to deposit the fine amount of Rs.2,000/- (Rupees Two thousand only) before the trial court within a period of one month from today.

19. This Criminal Revision Petition is allowed in part as

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above.

I place on record my appreciation for the able assistance rendered by the learned Amicus Curiae Smt.K.Thushara.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

APA/AS