IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 31ST DAY OF JANUARY 2022 / 11TH MAGHA, 1943

CRL.A NO. 216 OF 2017

AGAINST THE JUDGMENT IN SC 275/2007 OF DISTRICT COURT& SESSIONS COURT, PATHANAMTHITTA

CP 218/2006 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,THIRUVALLA

APPELLANTS:

DEVARAJAN @ SUNIL, S/O. GOPALA PILLAI
PADMALAYAM HOUSE, ERMALLIKKARA MURI, THIRUVANVANDOOR VILLAGE, NOW RESIDING AT THIRUVANANTHAPURAM CENTRAL JAIL, THIRUVANANTHAPURAM.

BY ADVS.
SRI.GRASHIOUS KURIAKOSE (SR.)
SRI.GEORGE MATHEWS
PRANOY K.KOTTARAM

RESPONDENT:

STATE OF KERALA
STATION HOUSE OFFICER, PULIKEEZHU POLICE STATION,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

OTHER PRESENT:

SRI.V.S.SREEJITH, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ. *CR*

Crl.Appeal No.216 of 2017

Dated, this 31st January, 2022

JUDGMENT

Vinod Chandran, J.

A party to celebrate the marriage eve, turned disastrous to one of the invitees. The prosecution case is that on the evening of 28.01.2006, while the party was going on, there ensued two scuffles between the accused and the deceased; which, later led to the accused beating the asleep deceased, with a wooden stick, grievously injuring him resulting in his death after four days.

2. The incident is said to have occurred on the night of 28.01.2006, after which the victim was taken to various hospitals and eventually admitted in the Medical College Hospital, Kottayam. The victim succumbed to his injuries on 01.02.2006 at about 8 p.m. The accused was charged with the murder of the deceased and stood trial. The trial court convicted the accused and sentenced him to life imprisonment under Section 302 I.P.C which was specified to be not less than 14 years. The accused was also directed to pay Rs.1,00,000/- as compensation, and

in default to undergo simple imprisonment for five years; which compensation was directed to be paid forthwith, failing which the default sentence would run first before the commencement of the substantive sentence. The prosecution examined 14 witnesses, marked two material objects and Exts.P1 to P11 documents.

3. Shri Pranoy K.Kottaram appeared for the accused and meticulously took us through the depositions and referred to the documents wherever appropriate. The learned counsel argued that the circumstances brought out by the prosecution clearly indicate a delay in registration of the F.I.S. It was registered by a person who was not at all involved in the incidents alleged and the statements recorded were all hearsay. PW1 who gave the FIS, did not speak of any of the details regarding the information received by him in his testimony. PWs6 to 8 and 10, who are the material witnesses contradict each other, with respect to the scuffles, which is alleged to be the motive of the crime. Even if believed, they are guilty of suppression of information regarding a crime, till the death of the victim occurred; which suppression assumes ominous proportions by reason of the

circumstances of the crime. In fact it is the clear deposition of the Investigating Officer (I.O) that the said witnesses were suspects who were also placed in custody. It is based on the unreliable evidence of the suspects, who are also guilty of gross suppression, that the trial court convicted the accused.

4. It is pointed out that PW6 spoke of having informed a Police Constable, one Vijayan and the father of the deceased is said to have raised a complaint regarding the death of his son. The son of PW10, also accompanied the injured to the Hospital. None of these material witnesses were examined; cutting at the root of the prosecution case as has been held by the Hon'ble Supreme Court in *Machindra V. Sajjan Galpha (2017) 13 SCC 491).* It is argued that admittedly a friend of the son of PW10, one Ratheesh, who too attended the party was missing after the incident. No investigation has been carried out regarding the said person. PW6 allegedly slept with the victim and woke up on hearing a sound, to see the accused beating the victim with a stick. PW6, however, does not accompany the victim to the Hospital nor does he make a statement before the Police Station;

which is quite near to the scene of occurrence. PW8 who also speaks of having seen the accused standing besides the injured, with the weapon of offence, did not disclose the alleged involvement of the accused. PW10, who came to the scene of occurrence immediately thereafter and who accompanied the injured to the hospital, gave a different version at the Hospitals. The information given to the hospital was the injury having been caused by a fall from a height. The subsequent conduct of eye witnesses is very relevant in considering their reliability, as has been held in *Jarnail Singh V State of Punjab ((2009) 9 SCC 719)*.

5. The Hospitals did not intimate the police, obviously since the injuries were consistent with the description of the cause and there was no suspicion raised at any point of the patient being a medico-legal case. The Doctor who conducted the postmortem examination categorically stated that the injuries could have been caused by a fall from a height and contact with a hard object. An accidental death hence cannot be ruled out and when two views are possible, the one beneficial to the accused should be adopted, as has been held in

Govindaraju @ Govinda V. State((2012) 4 SCC 722). **The I.O is said to have arrested the accused on 03.02.2006, which memo has not been produced. But, for the testimony of the interested witnesses, there was nothing to show that the accused was absconding after the incident and he was arrested from the locality itself. The description of the weapon of occurrence, which is only 89 cms long varies from witness to witness, some describing it as a stick, others as a wooden piece, and some others as a plank. The recovery of the weapon is suspect and there is no blood detected or finger print revealed from the weapon, connecting the accused to the crime. The eye witnesses are not trustworthy and the prosecution case has not been established beyond reasonable doubt. It is argued that the accused has to be acquitted and released from custody. The learned counsel also pointed out that there is no authority on the Sessions Court to decide specifically the period of imprisonment; when life imprisonment is awarded, as held by the Honourable Supreme court in *Union of India v. Sriharan [(2016) 7 SCC 1]*. It is also pointed out that the direction to suffer the default sentence before the substantive sentence is**

unusual and irregular.

6. Sri Sreejith.V.S, learned Public Prosecutor seeks to sustain the conviction and sentence of the trial court. It is submitted that there is clear direct evidence of the attack made by the accused on the deceased, as spoken of by PW6. PW10 who immediately came to the spot, speaks of having seen the accused with the weapon of offence. There was sufficient light in the scene of occurrence, by reason of the wedding on the next day and there is nothing brought out in cross examination to disbelieve the testimony of PW6, PW8 and PW10. There is no enmity between the said witnesses and the deceased. But the scuffle that ensued in the evening and the night clearly indicates the motive, the accused had, to attack the deceased. It is pointed out that the Doctor's evidence is also to the effect that injury No.1 and 2 could be caused in a single strike with MO1 weapon. The wedding scheduled on the next day explains the silence of the witnesses till the death occurred. Merely for the reason that witnesses were suspects, the prosecution case cannot be disbelieved. The learned Public Prosecutor asserts that the conviction and sentence is perfectly

proper.

7. PW1 who was not directly aware of the incident gave the FIS, Ext.P1. He came to know about the injury suffered by the deceased on 29.01.2006 at 10 a.m. PW1 went to the Medical College Hospital where he was informed that the deceased had a deep injury on the head. He was aware that the deceased had gone to the house of PW8 in connection with his marriage. PW8's brother PW10 was at the Hospital who had accompanied the accused. According to PW1, PW10 informed him that in the early morning when PW10 was in the kitchen of PW8's house, he heard a sound from the petty shop on the northern side, and on enquiry, found the deceased lying on the floor who was taken to the Hospital. PW1 said that on enquiries made by him, it was informed by the very same PW10 that there was a scuffle in PW8's house on the previous day evening which led to an attack by the accused and his friends on the deceased. After the scuffle, the accused slept in the house of PW8, while the deceased slept in the petty shop on the raised platform. PW1 also said that according to PW10, after the deceased was taken to the Hospital, the accused was not seen anywhere. The accused

and his friends attacked the deceased, who succumbed to the injuries caused in the said attack was the FIS. PW1 before Court did not say anything about what he was told by PW10. He merely stated having gone to the MCH, Kottayam, where the victim was in the ventilator with injuries caused to the brain. He saw PW10 at the Hospital, who informed him that the accused had fallen from a height while sleeping on the raised platform at the petty shop, quiet contrary to his earlier version.

8. PW3 is the witness to Ext.P2 inquest report. PW4 witnessed Ext.P3 mahazar by which a wooden plank and a pair of slippers were recovered from the scene of occurrence. PW5 is the Village Officer, who prepared the scene plan, Ext.P4. PW6 to PW8 and PW10 are the star witnesses of the prosecution; whose testimonies will be dealt with a little later. PW11 admitted the victim to the MCH, Kottayam at 9.10 am on 29.01.2006. He marked Ext.P7 case sheet and spoke of the history given by the by-standers as 'fall from height'. He deposed that the patient was unconscious throughout the treatment period and was in the Ventilator. It was also his opinion that MO1 wooden plank could cause the injuries sustained by

the deceased. PW12 is the R.M.O at Pushpagiri Medical College, where the patient was brought at 5.45 am on 29.01.2006. PW12 spoke of the history given by the bystanders as fall from a height, which is revealed in the case sheet marked as Ext.P8. PW13 is the Sub Inspector who recorded the FIS and registered Ext.P1(a) F.I.R. PW14 is the Investigating Officer.

9. PW9 is the Doctor who conducted postmortem examination, which report was marked as Ext.P5. There were four injuries pointed out from postmortem report, of which the abrasions were healing and the contusions and hemorrhages were dark red in colour. The opinion was that death was due to the blunt injury sustained to the head. It was the Doctor's deposition that injuries No.1 & 2 were sufficient in the ordinary course to cause death. Injury No. 1 is an abrasion on the left side of the forehead, 2 cms outer to mid-line and 5 cm above the eyebrow with a dimension of 4 X 2.5 cms, the scalp underneath showing a contusion over an area of 7.5 X 0.5 cms and a fissured fracture on the skull, involving the frontal bone; extending downwards and to the left to involve the temporal bone and left side of middle cranial

fossa. Injury no. 2 is a sutured wound obliquely placed on the left side of face and eyebrow with its lower, inner and midline touching the eyebrow. It was also opined that injury Nos.1 and 2 can be caused by MO1. In cross examination, while asserting that injury nos.1 and 2 can be caused by a single strike, it was also opined that both the injuries can be caused from a fall from a height and contact with a rough and hard object. Injury No.4 was also possible, if the person fell and rolled on the ground, was the expert opinion. PW9 had verified the case sheet of the MCH and pointed out that blood sample contained ethyl alcohol. The expert opinion given by PW9 does not establish the homicide and there is a possibility of the deceased having fallen from a height in which fall the injuries could be sustained by contact with a hard object. The medical opinion hence does not unequivocally establish homicide and this is also consistent with the history narrated by the by-standers, of a fall from a height.

10. Now we go to the testimony of the so called eye witness and the other witnesses who offered direct evidence of what ensued at the party held on the previous

night and the alleged criminal act of the accused. PW6 claims to be an invitee to the house of PW8, who was getting married on the next day. There was a tea party and then later a feast (supper). PW6 reached PW8's house at 5 p.m and helped in serving food to the invitees. He spoke of the presence of both the deceased and the accused. According to him, while the feast was going on, accidentally the hand of the accused struck down a glass of water which spilled on to the plantain-leaf, kept for taking food. This resulted in a scuffle in which the deceased pushed the accused, who fell down. PW10 and PW6 intervened and separated both of them. This was around 7.30 p.m and later, while they were sitting on the verandah of PW8's house, the accused, with his leg, nudged on PW7's leg twice or thrice. PW7 got up and walked away. The deceased then questioned the accused and again there was an altercation which was around 9 p.m. Later, the accused went inside the house of PW8 to sleep and the deceased, along with PW6, went to the petty shop of PW10, to sleep.

11. The deceased laid down on a raised platform, in the petty shop and PW6 on the side of the shop at

around 10 p.m. At around 11 p.m, PW10 came and asked them to go to sleep. While asleep, PW6 heard a sound and when he looked in that direction, he saw the accused standing near the deceased, with a stick and saw him beating the head of the deceased, on the forehead. The deceased fell down from the raised platform and when PW6 raised a hue and cry, PW8 came running and the accused moved slightly to the east. PW6 identified MO1 as the weapon used by the accused and the pair of slippers which were lying inside the shop room as that of the deceased which was marked as MO2 series. PW8 and PW6 then lifted the deceased and made him sit on a chair inside the shamiana, erected for the wedding in PW8's house. PW8 then called PW10 and when water was sprinkled on the face of the victim, he opened his eyes and demanded that he be taken to the hospital. The victim then became unconscious and he was taken to the hospital in PW2's autorickshaw by PW10 and his son.

12. PW6 says that after this he went back home and that he had told PW8 about what happened. PW6 joined the wedding party on the next day but the accused was not seen after the incident. PW6 did not see any large injury on the deceased and later came to know that the victim

succumbed. PW6 also said that he saw the incident from the light coming from the shamiana. In cross-examination he admitted that he was questioned by the police after the death and before that he had spoken to the authorities without specifying the authority he spoke to. It was also stated that on the 3rd, he informed one Vijayan, his friend who was a Police constable in the Pulikeezh Station. According to PW6, his friend told him that if the S.I calls, he will tell him. In cross examination, PW6 said that when PW7 was queried, she said that the accused was a relative and he had misbehaved. It was also his statement in cross examination that when the deceased was lifted on to a chair in the shamiana, none sleeping in the house were woken up. He also said that he informed the father of the deceased about the incident. Very strangely he also made a statement that he had not told the police about seeing the accused in the scene of occurrence.

13. PW7 is the lady with whom the accused is said to have misbehaved. She spoke of a scuffle in the evening, but did not corroborate the statement of PW6 regarding a second scuffle. According to her, after the

feast, they were sitting on the verandah when accused misbehaved with her upon which she got up and went inside the house. She categorically stated in cross examination that there was no quarrel in the night. PW8 is the groom in whose house, a party was hosted on the previous night. He spoke of the scuffle in the evening in tandem with what PW6 stated before Court. PW8 also did not speak of the incident involving PW7.

14. PW8 slept on the verandah of his house and woke up on hearing a scream from the direction of the petty shop. When he rushed there, he saw the accused standing near the shop with a stick which was identified as MO1. The subsequent events are also in tandem with what was spoken by PW6. In cross examination he had contrary versions regarding the information passed on to the family of the deceased. It is seen recorded that PW8 stated that the family of the deceased was informed but answering a specific question, he denied of having passed on the information to the family of the deceased. Again, he deposed that he did not notice what was held by the accused when he saw him near the shop. He also did not notice the weapon at the scene of occurrence.

15. PW10 is the brother of PW8. He also did not speak of the incident involving PW7. He admitted that in the hospital, he told the Doctor that the injured had fallen from a height. His explanation was that since the marriage was on the next day, he did not want to create any trouble. In cross examination he admitted that the deceased was drunk when he came to the house of PW8 and had further consumed toddy from the nearby shop. According to him, the water spilled by the accused fell on the leaf kept for serving food to the deceased. He denied that PW6 and himself was kept in custody and that when the house of PW6 was shown to the C.I, PW6 was available and he was summoned to the Station on the next day. He also deposed that PW6 and PW8 were not in police custody. According to him they did not attend the funeral of the deceased, since they were afraid of being manhandled by the locals.

16. PW14 is the Circle Inspector who conducted the investigation. He does not speak of the accused having absconded and admitted his arrest on 03.02.2006; as per Ext.P10 from Mannar junction. The report of the FSL is marked as Ext.P11. In cross examination, the I.O admitted

that PW6, PW8 and PW10 were taken into custody. It was specifically deposed that none of the witnesses had spoken about the light at the scene of occurrence.

17. The Trial Court relied on the evidence of PW6, PW8 and PW10, on the identity of the assailant and his presence in the premises. Though there were some embellishments in their evidence, as spoken of by the I.O, it was found that they were not material. It was held that there was nothing to impeach or discredit the version of the said witnesses and there is no deliberate attempt to wrongly inculpate the accused. The Trial Court found that there is a ring of truth in their evidence and the delay was explained by PW6 & PW10. The explanation was to ensure that the marriage fixed on the 29th is not impeded and at the earliest opportunity they disclosed the actual facts. The Trial Court justified the different versions projected earlier and found inspiration from the direct evidence as available from the testimonies of PW6, PW8 and PW10. Brushing aside the contention of the accused regarding the conduct of the witnesses, it was held that the different reason projected first, was a minor lapse, which would not go to the root of the matter

and there is justification for the delay in speaking the truth; which is not unnatural. Even if the embellishments are eschewed, there is clear evidence to establish the truth, which is in conformity with the probabilities available from the circumstances was the categoric finding.

18. Admittedly the deceased suffered the injuries on the night of 28.01.2006. According to the witnesses, the accused and the deceased had a scuffle in the evening and there is no consistent stand with respect to the later incident involving PW7, which is spoken of only by PW6. After the feast, the accused slept inside the house of PW8 and the deceased slept with PW6 in the petty shop of PW10. In this context, it has to be noticed that the detailed description in the FIS made by PW1, as informed by PW10, does not speak about the presence of PW6, the eye-witness. The conduct of the eye-witness is also very curious and he suppressed the incident till the death occurred. PW6, who saw the incident, PW8 who immediately reached the spot, and PW10 who was summoned, did not reveal the incident to anybody. These witnesses were admittedly suspects and it is on their evidence

alone that the accused now stands convicted.

19. The explanation for the delay by PW10 does not impress us since if PW8 & 10 were not involved in the incident and there was an eye-witness to the attack of the accused on the deceased; there is no reason why the marriage function on the next day should be hampered. Admittedly, PW10, who was the brother of the groom, PW8 did not attend the marriage function. At both the hospitals to which the injured was taken, the history cited was fall from a height. As correctly pointed out by the learned Counsel for the appellant, both the hospitals did not give intimation to the Police since the injuries sustained were consistent with the description of the accident. The Doctors, who examined the patient did not find any reason to suspect a medico-legal case. The said inference of the Doctors is also corroborated by the evidence of the Doctor who conducted postmortem examination of the victim. Except for PW10, none of the witnesses speak of a grievous injury to the deceased or even bleeding.

20. Pertinent is the fact that there was no blood stains detected on MO1 weapon or even found from the

scene of occurrence. The scene of occurrence, according to the witnesses, is the petty shop of PW10. As seen from Ext.P4 scene plan, the petty shop is at a distance of 12.05 meters from the house of PW8. PW6,8 & 10 speak of lifting the victim on to a chair in the shamiana in front of the house of PW8. Obviously if the deceased was found lying on the ground near the petty shop, he had to be carried to the house of PW8, which is not spoken of by any of the witnesses.

21. *Jarnail Singh* [supra] is relevant insofar as material witnesses having not been examined. Vijayan, a Police constable to whom PW6 had spoken about the incident was not examined by the prosecution. The father of the deceased was not examined to establish the time of the complaint made by him to the Police. The I.O, PW14, specifically spoke of such a complaint having been raised without mentioning the time. This raises a serious suspicion about the FIS, which was given only after the death of the victim. When the victim was hospitalised on the 29th and the death occurred on the 4th day, definitely, considering the grievous injuries, the family would also have raised a complaint, which is not produced before

Court despite an admission by the I.O of having received such a complaint. The son of PW10 accompanied the deceased to the hospital, who was also not examined. The prosecution failed in its duty for not having examined the material witnesses.

22. PW6, despite being an eye-witness, did not accompany the victim to the hospital, nor did he raise a complaint before the Police Station, which is very near to the scene of occurrence. PW6 has not spoken of the incident to anybody till his statement was taken by the Police, after the death of the victim. PW10, the person who accompanied the victim to the hospital, clearly stated that he narrated the history of the accident as a fall from a height, which is recorded in Ext.P7 & P8, respectively of the Medical College Hospital, Kottayam and the Pushpagiri Medical College Hospital, Thiruvalla. The witnesses were all actively present in the scene of occurrence and their version of what occurred to the victim/deceased is unbelievable for reason of the suppression for a considerable period of time. There can be a reasonable hypothesis that the witnesses had spoken against the accused while they were in police custody to

extricate themselves from being implicated in the crime.

23. Obviously the Police did not swallow the version given by the witnesses of a fall from a height, which led to PW6, PW8 & PW10 being taken into custody on suspicion. Only later, before Court, the Doctor who conducted postmortem examination opined that the injuries sustained could be caused by a fall from a height with contact on a hard object. We disagree with the finding of the trial court that there is no reason to discredit the witnesses, especially for reason of the suppression practiced by them; which according to us has not been satisfactorily explained. The conduct of the witnesses commend us to disbelieve them especially for reason of the suppression. The analysis of the entire evidence led by the prosecution does not impress on us the guilt of the accused unequivocally and unerringly. The direct evidence led by the prosecution including the eye-witness testimony, in the overall circumstance of the case and the delay in registering a complaint restrains us from attaching any credence to such testimonies. The history of the occurrence spoken of by the witnesses at the hospitals is contrary to what they stated later. The

inconsistencies pointed out in the version of the witnesses also enhances the doubts we entertain. There is also no scientific evidence available connecting the accused to the crime. There was no blood detected in MO1 nor were any blood stains revealed in the alleged weapon. There is no blood detected from the scene of occurrence or from inside the shamiana where the injured is said to have been seated. The version of PW6, PW8 & PW10 of how the accused was lifted on to a seat in the shamiana from the ground does not agree with the scene of occurrence as seen from the site plan; which is at some distance from the shamiana. We find it difficult to sustain the conviction entered into by the trial court. We hence allow the appeal and acquit the accused giving him the benefit of doubt. The appellant/accused shall be released forthwith if he is not required in any other case.

24. Before we leave the matter, we have to notice one irregularity insofar as the sentencing is concerned. When we have set aside the conviction; the issue on sentencing may not be relevant, but we deem it appropriate to speak on it to serve as a guideline for the Lower Courts. The learned Sessions Judge, on

conviction of the accused, directed imprisonment for life, which was further directed to be not less than 14 years. There was a further direction to pay compensation under S.357 Cr.P.C. of Rupees One lakh and in default, to undergo simple imprisonment for five years. It was also directed that the accused will be liable to undergo the default sentence before the substantive sentence, if the compensation is not paid forthwith.

25. The first defect we notice is the fact that the learned Sessions Judge did not deem it fit to impose a fine under S.302. The punishment for murder is death or imprisonment for life and liability to fine. There is no discretion on the Judge not to impose the fine. The learned Judge has ordered compensation under S.357, which provision as available under sub-section (1) of S.357(1) Cr.P.C. is by applying the fine imposed in payment of compensation, to any person for any loss or injury caused by the offence under sub-clauses (b), (c) & (d) of S.357(1). While sentencing the convicted person along with substantive sentence prescribed there should also be a fine imposed; which is mandatory and distinct from he compensation liable to be imposed and paid under sub-

section (3) of S. 357, which arises only in the context of a sentence where fine is not mandatory.

26. The learned Sessions Judge also could not have specified the period of imprisonment for life as 14 years, since that period is applied only in commutation of sentence by the Government under S.433(b) of Cr.P.C. We also notice the decision of the Hon'ble Supreme Court in *V.Sriharan* [supra], which specifically found that the power conferred to specify the period of imprisonment beyond that provided for commutation/remission in Swami *Shraddananda v. State of Karnataka [(2008) 13 SCC 767]* is one specifically conferred on the Constitutional Courts and not on the Sessions Courts.

27. The impugned judgment further directs compensation to be made forthwith and on failure, the default sentence to run first before the commencement of the substantive sentence of imprisonment for life imposed for the offence, which is highly irregular. Sub-section (2) of S. 357 provides that when fine is imposed in a case in which an appeal is provided, the payment shall not be made before the period for presenting an appeal has elapsed and in the event of an appeal presented, not

before the decision in the appeal.

28. The further defect is in directing the defaullt sentence to be first undergone. Useful reference can be made to *Sharad Hiru Kolambe v. State of Maharashtra [(2018) 18 SCC 718]*. In that case, under the various provisions of the IPC and a state enactment, substantive sentences were imposed with fine. In default of fine, various periods of imprisonment, totaling 10 years was also imposed. The substantive sentence of imprisonment under the various provisions extended between five years and life. There was also a direction that the sentences would run concurrently. The appellant continued in custody from 2001, during the trial and the appeal. The Government commuted the sentence to 14 years under Ss.432 & 433, which was completed in the year 2015. The appellant could not be released, since he had not paid the fines and the default sentences were to run for a further period of 10 years. In 2017 the District Probation Officer submitted a report noting that the appellant's family was in a state of starvation.

29. Before the Hon'ble Supreme Court the contention raised was that since there was a direction

that the sentences would run concurrently and the substantive sentences having been commuted to 14 years, then the default sentences should also run concurrently. In that event, the maximum default sentence would be for three years. Looking at the provisions of the IPC and Cr.P.C it was held that the default sentence would be in addition to the substantive sentence. It was held:

> ***10. ... ... Sections 30 and 429(2) of the Code also touch upon the principle that default sentence shall be in addition to substantive sentence. In terms of said Section 30(2) the default sentence awarded by a Magistrate is not to be counted while considering the maximum punishment that can be substantively awarded by the Magistrate, while under Section 429(2), in cases where two or more substantive sentences are to be undergone one after the other, the default sentence, if awarded, would not begin to run till the substantive sentences are over. Similarly, under Section 428 of the Code, the period undergone during investigation, inquiry or trial has to be set off against substantive sentence but not against default sentence. The idea is thus clear that default sentence is not to be merged with or allowed to run concurrently with a substantive sentence. Thus, the sentence of imprisonment for non-payment of fine would be in excess of or in addition to the substantive sentence to which an offender may have been sentenced or to which he may be liable under commutation of a sentence.***

30. It was also held that the default sentences cannot run concurrently relying on *V.K.Bansal v. State of Haryana [(2013) 7 SCC 211]* since then the imposition of fine under each charge for which the accused has been found guilty would be rendered futile. Hence the direction that the life imprisonment will be for 14 years, the failure to impose a fine, the direction to pay compensation without applying the fine stipulated and the direction to pay compensation forthwith with a further condition of default sentence running prior to the substantive sentence, run contrary to the statutory provisions and the judicial precedents.

Appeal allowed with the above observations.

Sd/-
K.VINOD CHANDRAN, JUDGE

Sd/-
C.JAYACHANDRAN, JUDGE

lgk/sp/jma