(2011) 05 KL CK 0013

In the High Court Of Kerala

Case No : Crl A. No. 1915 of 2004

K. Lingom — APPELLANT

Vs

The Superintendent of Police and Another — RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313(1)(b)
Evidence Act, 1872 — Section 114, 4
Prevention of Corruption Act, 1988 — Section 11, 12, 13, 13(1)(d), 13(2)

Citation : (2011) 3 KLJ 253

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : J. Jose and Shaji Thomas Porkkattil, for the Appellant; P. Chandrasekharan Pillai, S. Sreekumar and P.P. Thajudeen (DC), for the Respondent

Judgement

P.S. Gopinathan, J.—The appellant, the accused in C.C. No. 6/2003 on the file of the Special Judge, SPE/CBI-I, Ernakulam was convicted by the learned Special Judge for offence u/s 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the ''PC Act''). Consequently, he was sentenced to rigorous imprisonment for two years and a fine of Rs. 20,000/- with a default sentence of simple imprisonment for six months for offence u/s 7 of the PC Act. For offence u/s 13(2), the appellant was sentenced to rigorous imprisonment for 3 years and a fine of Rs. 25,000/- with a default sentence of simple imprisonment for one year. Assailing the above conviction and sentence, this appeal was preferred. The prosecution case in brief is as follows:

The appellant was working as a Junior Engineer Grade-I (Construction) in Southern Railway, Calicut during the year 2002 and as such he was a public servant coming u/s 2(c) of the PC Act. During May and June, 2002 construction works of 11 culverts (minor bridges) between Calicut and Thanoor was going on. CW 1, P.N. Shajahan, was the Contractor. CW 1, after executing the agreement, had started the work. The appellant was supervising the execution of the work.

Part payments were permissible at different stages of work. On 27.6.2002 at about 5p.m., CW 1 went to the office of the Executive Engineer, who was examined as PW 8, requesting for taking measurements of the work so tar completed and for making part payment. PW 8 was not in the office. But the appellant was in the office. The appellant enquired as to for what purpose CW 1 wanted to meet PW 8. CW 1 stated that it was for taking steps to measure the work already executed and for part payment. Then the appellant demanded Rs. 2,000/- as illegal gratification and stated that in the event the said amount was paid he would take measurements and see that the payment was made. The appellant asked CW 1 to pay the demanded illegal gratification by the following day in between 6 p.m. and 7.30 p.m. at his residence in Railway Quarters, Calicut. CW 1 being got aggrieved of the demand, called upon PW 1, the Inspector attached to CBI and complained about the demand of illegal gratification by the appellant. PW 1, after getting instructions from the superior officers, proceeded to Calicut. CW 1 was asked to meet him at hotel Jaya in Calicut. PW 1 along with party proceeded to Calicut and camped at Jaya hotel. CW 1 arrived there and gave Ext. P1 complaint in writing alleging the demand of illegal gratification of Rs. 2000/- by the appellant. PW 1 took a copy of Ext. P1 and Ext. P1 was sent to the office at Kochi for registering a case. PW 1, thereupon arranged two officers of the Canara Bank, who were examined as PWs 2 and 7 to lay the trap. PW 1 demonstrated Phenolphthalein test in the presence of CW 1 and PWs 2 and 7 at the hotel. Copy of Ext. P1 was given to PWs 2 and 7 and appraised them about the nature of the complaint. CW 1 had brought a sum of Rs. 2,000 /-for being paid to the appellant. M07 series are the currency notes. PW 1 got the same from CW 1 and smeared with Phenolphthalein powder, and entrusted back to PW 1 to pay to the appellant only on repetition of demand for illegal gratification. Ext. P2 mahazar, wherein CW 1, PWs 2 and 7 are attestors, was prepared. In Ext. P2, the description of M07 series were specifically noted. PW 2 was asked to accompany CW 1 as a friend and to witness the demand and acceptance of the illegal gratification. CW 1 along with PW 2 proceeded to the house of the appellant in a motor cycle. PW 1 along with PW 7 and raid party with necessary apparatus and materials for conducting phenolphthalein test proceeded to the location of the quarters of the appellant and they took suitable positions as instructed by PW 1. PW 1 had instructed CW 1 to give signal, in the event MO 7 series were accepted by the appellant, by blowing horns of the motor cycle. CW 1 along with PW 2 entered the quarters of the appellant. The appellant welcomed them and they were provided a seat on the cot. The appellant according to the prosecution, discussed with CW 1 regarding the execution of the work and asked whether CW 1 had brought the money that he demanded. Responding to the query, CW 1 took out MO 7 series and handed over to the appellant which he accepted. He counted M07 series to satisfy that the amount demanded is paid. Then M07 series were kept in a bag which was marked as MO 10 and it was kept inside the cupboard in the room. CW 1 and PW 2 came out of the quarters and gave signal. PW 1 along with CW 1, PWs 2, 7 and the raid party rushed to the quarters and disclosed his identity. PW 2 and 7 were also introduced to the appellant. Thereupon, Phenolphthalein test was conducted on both hands of the appellant separately. The result was positive on both hands. The appellant was asked whether he had accepted illegal gratification from CW 1. Though with hesitation, on repeated questions, the appellant admitted. The appellant was asked about the money. The appellant stated that it was kept in MO 10 bag in the cupboard. PW 1 asked the appellant to take it out. Obeying PW 1, the appellant took out the bag and then the tainted currency notes were taken out. As ordered by PW 1 the currency notes were handed over to PW 7. Thereupon, the identity of M07 series was verified with reference to Ext. P2 mahazar and seized, for which Ext. P4 recovery mahazar was prepared. Inside MO 10 bag there was another sum of Rs. 8,560/-. Since it was stated that the said amount was the personal earnings of the appellant, it was returned to the appellant for which Ext. P3 acknowledgment was obtained. The appellant was arrested and released on bail. The records were handed over to the office. Following that, the investigation was taken over by PW 10, the Additional Superintendent of Police. PW 10, after completing the investigation submitted the final report, accusing the appellant for the above said offences, before the trial court.

2. The learned Special Judge took cognizance and issued process responding to which the appellant entered appearance. On his appearance, copies of the final report and connected documents were furnished. Thereafter, the appellant and the prosecution were heard. On finding that there are materials to send the appellant for trial, a charge for the earlier said offence was framed. The appellant pleaded not guilty when the charge was read over and explained. Therefore, the appellant was sent for trial. On the side of the prosecution, PWs 1 to 10 were examined. Exts. P1 to P22 were marked. MOs 1 to 10 were also marked. After closing the evidence for the prosecution, the appellant was questioned u/s 313(1)(b) of the Code of Criminal Procedure. The appellant stated that he was supervising the work executed by CW 1 till 26.5.2002 and thereafter the work was being supervised by P W3 and that payments were effected to CW 1 for the works executed till the appellant was supervising. The appellant further stated that there was a practice of sending labour money to sub contractors by the contractors through railway employees. Two sub contractors were examined by the appellant as DWs 1 and 2 to establish that there was a practice of sending money by the contractor to the sub contractor through the railway employees. The learned Judge, on appraisal of the evidence, arrived at a conclusion of guilt. Consequently, the appellant was convicted and sentenced as above.

3. The fact that the appellant was working as a Junior Engineer in Railway as alleged by the prosecution is not only not disputed but also admitted. In support of that allegation of prosecution, PW 3, another Junior Engineer, who was working under the appellant; and the Executive Engineer, who was examined as PW 8 had given evidence. Supporting the evidence of PWs 3 and 8, there is the evidence of the Chief Engineer as PW 9 who had accorded sanction to prosecute the appellant. The evidence of PWs 3, 8 and 9 that the appellant was working as

a Junior Engineer remains unimpeached. Ext. P7, order according sanction to prosecute the appellant, issued by PW 9 also remains unimpeached. No argument was advanced by the learned counsel appearing for the appellant, assailing the evidence of the above witnesses and Ext. P7. In the above circumstance, I concur with the lower court and find that the appellant was working as a Junior Engineer, Gr. I in Railways as alleged by the prosecution and as such he was a public servant coming u/s 2(c) of the PC Act and that the prosecution was launched with due sanction obtained from PW 9 who was the authority competent to accord sanction to prosecute the appellant

4. CW 1, the defacto complainant, was not examined for the reason that he had gone abroad and his presence could not be procured by the prosecution. We, therefore, miss his evidence. In support of the prosecution case regarding the demand and acceptance of illegal gratification, there is testimony of PWs 1, 2 and 7 supported by Exts. P1, P2 and P4. PW 1, the trap officer had given evidence in support of the prosecution case. Ext. P1 narrates the demand of illegal gratification by the appellant. PW 1 would depose that CW 1 complained him over phone and after getting authorisation from the superior officers, PW 1 proceeded to Calicut and lodged at hotel Jaya. CW 1 went there and lodged Ext. P1 complaint After taking a copy, Ext. P1 was forwarded to the CBI office, Kochi for registering a case and then PW 1 procured the presence of PW 2 and 7 and made arrangements for trapping the appellant PW 1 would also depose that CW 1 had brought MO 7 series currency notes for being paid to the appellant. PW 1 obtained the same from CW 1 in the presence of PWs 2 and 7 for which Ext. P2 mahazar was prepared. Thereafter, Phenolphthalein test was demonstrated in the presence of CW 1, PWs. 2 and 7. The contents in Ext. P1 complaint were appraised to PWs. 2 and 7 after giving a copy of the same to them. CW 1 and PW 2 were sent together with instruction to PW 2 to witness the transaction between CW 1 and the appellant. They proceeded on a motor cycle. PW 1 and party along with PW 7 proceeded to the spot in their official vehicle and took positions in and around the quarters of the appellant. PW 1 had given instruction to give signal by blowing horns in the event the appellant had accepted the tainted money. CW 1 and PW 2 went inside the quarters and later they came out. CW 1 gave signal by blowing horn. On getting signal, PW 1 rushed to the quarters of the appellant along with CW 1, PWs 2 and 7 and disclosed his identity. The hands of the appellant were subjected to Phenolphthalein test. Hands and solution turned pink. The appellant was found perplexed. When asked whether the appellant had accepted the gratification from CW 1, the appellant on repeated questions, conceded and took out MO 10 bag from the cupboard. From MO 10 bag, M07 series were taken out. As asked by PW 1, M07 series were handed over to PW 7. The identity of M07 series were verified with reference to Ext. P2 and found that M07 series are the same that were smeared with Phenolphthalein powder and entrusted to CW 1 for which Ext. P2 mahazar was prepared. Thereupon, the appellant was arrested. For recovery of MO 7 series, Ext. P4 recovery mahazar was prepared. Inside MO 10 bag there was an amount of Rs. 8560/-. It was

handed over to the appellant for which Ext. P3 acknowledgment was obtained. Thereafter, the appellant was arrested and released on bail. The house of the appellant was searched for which Ext. P5 search list was prepared. Exts. P6, P7 and P8 series are some of the documents seized from the house of the appellant. MO 1 is the solution used for demonstrating the phenolphthalein test. M02 is the cloth used for sealing MO 1. M03 and M05 are the solution used for phenolphthalein test on the hands of the appellant. M04 and M06 are the clothes used for sealing M03 and M05 bottles. PW 1 had also deposed that MO 10 bag was also subjected to Phenolphthalein test and that the result was positive. M08 is the solution used for phenolphthalein test on MO 10 bag and M09 is the clothes used for sealing M08 bottle. Returning to the office, the records were handed over. The material objects and the records were then forwarded to the trial court.

5. PW 2 would depose that he was working as officer in the Regional Office of the Canara Bank and that on 28.6.2002, he along with PW 7, a colleague, was summoned to Room No. 208 of hotel Jaya, wherein PW 1 along with the party was camping. On arrival, PW 1 disclosed the purpose for which they were summoned. A copy of Ext. P1 was given to them and the particulars were appraised. Thereafter, M07 currency notes were obtained from CW 1 and Phenolphthalein test was demonstrated after smearing Phenolphthalein powder over M07 series. M07 series were then handed over to CW 1 for which Ext. P2 mahazar was prepared, wherein he is an attestor. He would further depose that he along with CW 1 went to the quarters of the appellant and entered the quarters. PW 2 was introduced to the appellant as a friend of CW 1. They were received by the appellant and asked to sit on the cot inside the room in which the appellant was sitting on a chair. CW 1 started discussing the work. Thereupon, the appellant asked whether CW 1 had brought the money demanded on the previous day. When CW 1 answered affirmatively, the appellant stretched his hands. M07 series were taken out by CW 1 from his pocket and handed over to the appellant. The appellant accepted the same, counted the notes and then kept in the cupboard. CW 1 and PW 2 came out and gave signal to PW 1. Thereupon, PW 1 rushed to the house of the appellant along with PWs 2, 7 CW 1 and the raid party. The identity was disclosed to the appellant. The appellant was perplexed. Hands of the appellant were subjected to Phenolphthalein test which turned positive. On questioning, the appellant admitted that he had accepted the tainted notes from CW 1. As asked by PW 1, the appellant took out MO 10 bag from the cupboard and from it, M07 currency notes were taken out. It was handed over to PW 7 as directed by PW 1. M07 series were verified with reference to Ext. P2 and then seized after satisfying the identity. For seizure Ext. P4 mahazar, wherein himself, PW 7 and CW 1 are attestors, was prepared.

6. PW 7 had given evidence almost corroborating with the evidence adduced by PWs 1 and 2. PWs 1, 2 and 7 were subjected to searching lengthy cross examination. But no material was disclosed to disbelieve them. What was suggested to PWs 1 and 2 is that they forced into the quarters of the appellant

and thrust M07 series at the hands of the appellant and then seized. To PW 7, it was suggested that nothing as alleged by the prosecution occurred and the case was falsely registered to which PW 7 answered negatively. PWs. 2 and 7 are admittedly officers employed in Canara Bank and they are no way connected either to the prosecution or to CW 1 or to the appellant. On a critical analysis of the evidence of PWs 2 and 7, I find that they are independent and credible witnesses. There is nothing on record to show that they have got any favour or disfavour either with the result of the prosecution or the defence. The suggestions put to PWs 1, 2 and 7 would show that the appellant had admitted that he was in possession of M07 series. But the explanation is that M07 series were thrust into the hands of the appellant. Regarding that, absolutely there is no evidence. As I mentioned earlier, the appellant had a case that there was a practice for the railway contractors sending money to the sub-contractors through the railway employees. It is in support of that contention, DWs 1 and 2 were examined. That defence is contrary to the plea of thrusting M07 series by force. If the statement of the appellant is considered in the light of the evidence of DWs 1 and 2, the appellant had in fact impliedly admitted the acceptance of money by him. But his case is that it is for being handed over to the sub-contractor. It is too difficult to believe that the appellant, middle class officer in Railway, had been working as agent for carrying money of the contractors. However, if that defence is believed, the appellant had voluntarily accepted M07 series for handing it over to the labourers of CW 1, On a critical reappraisal of the evidence in the light of the defence version, I find that there is nothing to interfere with the conclusion of the trial court that the prosecution had succeeded to establish that the appellant had accepted M07 series from CW 1 voluntarily.

7. PW 3 and 8 were examined by the prosecution to establish that the appellant was supervising the construction of the culvert and that PW 3 was Junior Engineer Grade-II appointed to assist the appellant. PW 3 and 8 had given evidence that there was practice of giving part payment for which the measurements had to be taken periodically during different stages of the work. Referring to Exts. D2, D3 and D4 and the statement of the appellant, Sri. J. Jose, the learned counsel appearing for the appellant, would submit that the appellant was supervising the work executed by CW 1 till 26.5.2002 only and thereafter the appellant was no way connected with the work executed by CW 1. Therefore, according to the learned counsel, there was no occasion for the appellant to demand illegal gratification as he was no way connected with the execution of the work. The evidence of PWs 3 and 8 is consistent that the appellant was the Junior Engineer in charge to supervise the work. Though Exts. D2, D3 and D4 would show that appellant was taking measurements up to 26.5.2002, there is no evidence on record to come to a conclusion that the appellant was removed from the duty to supervise the work executed by CW 1 or that PW 3 alone was authorised to supervise the work. There is also no material on record to come to a conclusion that CW 1 was aware that it was PW 3 who had to supervise the work. In the above circumstance, I find that Exts. D2, D3 and D4 are not

sufficient enough to come to a conclusion that the appellant had no duty to supervise the work that was being executed by CW 1.

8. Once it is established the appellant had accepted any gratification it is for him to prove that there was no demand or acceptance as an illegal gratification as a motive or reward in respect of an official act mentioned in Section 7. Otherwise, there shall be a presumption against the public servant u/s 20 of the PC Act which reads as follows:

20. Presumption where public servant accepts gratification other than legal remuneration.- (1) Where, in any trial of an offence punishable u/s 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable u/s 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.

9. The appellant has not at been able to establish that M07 series was accepted or obtained not as a gratification from CW 1 for discharging the official duty. Relying upon the decision reported in State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, (2010) (2) SCC (Cri) 385, the learned counsel appearing for the appellant submitted that demand of illegal gratification is a sine qua non for the constitution of offence u/s 7 of the PC Act. According to the learned counsel, the prosecution failed to examine the defacto complainant and to establish the demand. Therefore, according to the learned counsel, there is absolutely no evidence regarding the demand of illegal gratification by the appellant. Since there is no evidence regarding the demand, the question of presumption according to the learned counsel would not arise. On the other hand, the learned standing counsel appearing for the CBI, relying upon the decision reported in M. Narsinga Rao v. State of A.P., (2001) SCC (Cri) 258, T.

Shankar Prasad v. State of A.P., (2004) (SC) (Cri) 870, M. Sunderamoorthy Vs. State of Tamil Nadu through Inspector of Police, , argued that in a case where the prosecution had succeeded to establish the acceptance of tainted money there shall be a statutory compulsory presumption in favour of the accused and in this case since there is no rebuttal evidence, in the light of Section 4 and 114 of the Evidence Act and Section 20 of the PC Act, there is a statutory presumption in favour of the prosecution that the appellant had accepted the illegal gratification as a reward for discharging the official duty.

10. Relying upon the decisions reported in Sathianathan Vs. State by Inspector of Police, the learned Standing Counsel for the C.B.I also argued that in the light of the evidence of PW 2 regarding the demand and acceptance of the tainted money by the appellant, the non-examination of CW 1 is not at all fatal to the prosecution. It was also submitted that despite the coercive steps taken by the prosecution to procure CW 1, his presence could not be procured since he was abroad and in the above circumstances, there is sufficient explanation by the prosecution for the non-examination of the defacto complainant. It was also submitted that the non-examination of CW 1 has no way caused any prejudice to the appellant. On the other hand, learned counsel appearing for the appellant submitted that the non- examination of CW I had caused prejudice to the appellant. According to the learned counsel certain questions which were reserved to be put to CW 1 could not be put to CW 1; and on expectation that CW 1 would be examined, those questions were not to put to PWs. 1, 2 and 7 and in this way the appellant was highly prejudiced. What was the question omitted remains to be a mystery. I find no merit in the submission. The evidence of PW 2 would show that referring to the talk on previous day, appellant asked whether money was brought and it was then M07 series were given. Before keeping it in safe custody, it was counted and the amount was satisfied. It is in the counting process both hands were tainted with phenolphthalein powder which was identified through sodium carbonate solution. The evidence of PW 2 also would show tat they had a warm welcome which indicates that it was solicited visit and payment. First defence suggestion regarding the thrushing of money is belied by the conduct. Alternate defence of entrusting money to convey to subcontractors is a contrary one and not at all probable. The defence evidence that the appellant was acting as carrier of money is unheard of.

11. Referring to Ext. D5, it was submitted by the learned counsel for the appellant that Ext. D5 would show that on 27.6.2002 the appellant was out of office from 8.55. am. to 6.25 pm and that Ext. D5 itself would belie the case of CW 1 regarding the demand of illegal gratification. As per Ext. D5, the appellant was attending minor span projects between Calicut and Farookh section. The learned Standing Counsel would submit that Ext. D5 is a document submitted after the arrest of the appellant and that the authenticity of the contacts was no way proved by the defence. It is seen that Ext. D5 was put in cross examination to PW 8 to whom Ext. D5 was seen submitted. PW 8 had deposed that he had not verified the correctness of the entries in Exts. D5. As to on which date it was

submitted to PW 8 is also not revealed out in evidence. In the above circumstances, in the absence of any other supporting evidence I am persuaded to arrive at a conclusion that Ext. D5 is not reliable to come to a conclusion that the appellant was not in the office on 27.6.02 when the first demand for illegal gratification was made. The allegation of the prosecution that the appellant had demanded illegal gratification is supported by the circumstantial evidence, namely the evidence of PWs. 1, 2, and 7 and Exts. P4 and P7 which would show that the appellant had accepted M07 series from CW 1. In the light of the defence contention and the decisions referred above, I had a very careful scrutiny of the evidence on record. From the evidence on record, I find that the evidence of PW 2 would show that he was accompanying CW 1 to the quarters of the appellant and that on 28.6.2002 the appellant repeated his demand for illegal gratification. Thereupon M07 tainted currency notes were given to the appellant by CW 1. The appellant voluntarily accepted the same. He counted the notes and then safely kept it in MO 10 bag which was put inside the cupboard in the room. The tainted currencies so accepted by the appellant from CW 1 was soon recovered by PW 1 in the presence of CW 1, PW 2 and PW 7 for which Ext. P4 mahazar was prepared. The appellant had not succeeded to establish that M07 series tainted currency notes were accepted by him from CW 1 for any purpose other than illegal gratification. On the other hand, the fact that he counted the notes after accepting the same and kept the same inside the MO 10 bag in the cupboard would persuade me to conclude that M07 series were voluntarily accepted by the appellant. In the absence of any explanation regarding the acceptance of M07 series from CW 1 it is legitimate to arrive at a presumption in the light of Section 114 of the Evidence Act and Section 20 of the PC Act that it was accepted as an illegal gratification. I find that the learned Special Judge had on appraisal of the evidence arrived at a right conclusion of guilt. The conviction under challenge is based upon cogent evidence and there is no reason to interfere with the conviction under challenge. The learned counsel for the appellant submitted that the appellant is a heart patient as evidenced by his statement before the trial court. He had sought for an opportunity to reform. As regards the health condition, no material is produced in support of the statement. The learned counsel had canvased my attention to the evidence of PW 7 that when PW 1 asked about the presence of money other than M07 in MO 10 bag, the appellant had stated that he was a heart patient and undergoing treatment. True that there is such an evidence. But that is not at all a reason to come to a conclusion that the appellant has at present suffering any heart ailment. Learned standing counsel for the prosecution submitted that the corruption is rampant in the society any leniency would only encourage the corruption and that the sentence awarded by the trial court is just and appropriate and no reason to reduce the same. Having due regard to the entire circumstances and facts of the case, including the amount of bribe, I find that the sentence awarded by the trial court is a little bit exorbitant and requires modification. I find that a sentence of rigorous imprisonment for one year each for offence u/s 7 and 13(2) r/w 13(1) (d) of the PC Act with a fine of Rs.

50,000/- u/s 13(2) of the PC Act would meet the ends of justice.

In the result, while disposing the appeal the conviction under challenge is confirmed. The sentence impugned is reduced to rigorous imprisonment for one year each for offence u/s 7 and 13(2) r/w 13 (1) (d) of the PC Act and a fine of Rs. 50,000/-under Section 13(2) r/w 13(1) (d) of PC Act. In default of payment of fine, the appellant shall undergo simple imprisonment for a period of one year. The sentences shall run concurrently. The under trial imprisonment if any, shall be set off. The trial court shall see the execution of sentence and report compliance.

