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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

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

CRL.A NO. 1759 OF 2024

CRIME NO.1683/2014 OF PALA POLICE STATION, KOTTAYAM AGAINST THE JUDGMENT DATED 16.09.2015 IN SC NO.463 OF 2014 OF ADDITIONAL DISTRICT COURT, PALA

APPELLANT/1st ACCUSED:

LIGI SEBASTIAN @ KEVIN
AGED 44 YEARS
NADUVAKKUNNEL VEEDU, KOPRAKKALAM BHAGOM,
ELMNGULAM VILLAGE, KOTTAYAM DIST, PIN - 686579

BY ADVS.
V.T.RAGHUNATH
C.V.RAJALAKSHMI

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI, PIN – 682031

BY ADV. SANAL P.RAJ, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 11.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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C.JAYACHANDRAN, J.

Crl.A.No.1759 of 2024

Dated, this the 11th day of April, 2025

JUDGMENT

This appeal is carried from the judgment of the Additional Sessions Court, Pala in S.C.No.463/2014, which convicted the appellant/accused for offences under Sections 450 and 394, read with Section 34 of the Penal Code; and sentenced him for rigorous imprisonment for a period of six years, each. The appeal centers around the narrow compass of the running of sentences in terms of Section 31 Cr.P.C, that is to say, whether the sentences are to run concurrently or consecutively. The judgment is silent in this regard. According to the appellant/accused, the sentences are to run concurrently; and not consecutively. Inasmuch as it is not specified so in the judgment impugned, by virtue of Section 31 Cr.P.C, the sentences will run consecutively, which is the sole point on which the appellant seeks interference.

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2. Heard the learned counsel for the appellant and the learned Public Prosecutor. Perused the records.

3. It is relevant to note that the offences in question are under Sections 450 and 394 of the Penal Code. Section 394 is extracted here below:

> *"**394. Voluntarily causing hurt in committing robbery.** - If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."*

Section 450 is extracted here below:

> *"**450. House-trespass in order to commit offence punishable with imprisonment for life.** - Whoever commits house-trespass in order to the committing of any offence punishable with [imprisonment for life], shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine."*



4. It could thus be seen that the offence is made up of two parts, where each part constitute in itself separate offence. Section 394 contemplates causing hurt while committing robbery; whereas Section 450 speaks of committing house-trespass, in order to commit an offence punishable with imprisonment with life. This Court is of the opinion that Section 71 of the Penal Code applies in such circumstances, which prohibits imposition of punishment for more than one of such offence, unless it is so expressly provided. In the instant case, going by the prosecution allegation, the accused committed house-trespass for the purpose of committing robbery. The 1st accused caught hold of PW1 by her throat and sprayed some liquid on her face. The 2nd accused caught hold PW2 on her neck and attempted to put some foreign object into the mouth of PW2, besides pasting a plaster, so as to close the mouth of PW2. Needless to say that, the offences were committed during the course of the same transaction. The significance of sentencing, when two offences forming part

of the same transaction is found to have been committed, has been explained by the Hon'ble Supreme Court in ***Mohd.Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (prevention), Ahmedabad and Another*** [(1988) 4 SCC 183]. The relevant findings are extracted here below:

> *"9. The section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive ?*
>
> *10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."*



5. The same issue received the consideration of a three Judges Bench of the Hon'ble Supreme Court in ***State of Maharashtra and Another v. Najakat Alia Mubarak Ali*** [2001 (6) SCC 311]. The relevant findings are as follows:

> *"17. In the above context, it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well."*

6. These two judgments were taken stock of by the Hon'ble Supreme Court in ***Nagaraja Rao v. Central Bureau of Investigation*** [2015 (4) SCC 302], so as to give a direction that the sentences in the facts of that case will run concurrently.

7. This Court also takes into account the settled legal position that a criminal court, while awarding sentence, is

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duty bound to specify whether it should run concurrently or consecutively. In the judgment under appeal, this duty is not seen assumed by the learned Sessions Judge.

8. For the afore reasons, this appeal succeeds and it is directed that the sentence of rigorous imprisonment for a period of six years, each, for offences under Sections 394 and 450, read with Section 34 of the Penal Code, will run concurrently. Needless to say that, the appellant/accused will be entitled to the benefit of the above direction in the matter of his release. This Court is not making any observation as regards the punishment of three other crimes/cases, in which the petitioner is said to have been involved, going by the contents of the memorandum of appeal.

This appeal is allowed as indicated above.

Sd/-

C.JAYACHANDRAN, JUDGE

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