A STATE OF MAHARASHTRA AND ANR.

v.

NAJAKAT ALIA MUBARAK ALI

MAY 9, 2001

B [K.T. THOMAS, R.P. SETHI AND S.N. PHUKAN, JJ.]

Code of Criminal Procedure, 1973:

Section 428—Requisites for application of—Set off—Entitlement to—
C *Accused involved in two separate offences for which he was arrested—Conviction—Set off in respect of both the cases—Legality of—Held, section 428 Cr. P.C. does not contain any indication that if an accused was in jail as an under-trial prisoner in a second case, the benefit of set off would be denied to him in respect of the second case—Statue not making any distinction*
D *between the first case and second case for application of the said section—Words "of the same case" occurring therein not to be understood as suggesting that set off is allowable only if the earlier jail life was undergone by an accused exclusively for the case in which the sentence is imposed—Section 427.*

E **Respondent was involved in two separate offences for which he was arrested. After being charge sheeted in both the cases, he was tried separately. He was convicted in the first case and was held to be entitled to the set off under Section 428 of the Criminal Procedure Code by Sessions Court. Subsequently, he was convicted in the other case also and was again held entitled to the set off under Section 428 Cr.P.C. In due course, respondent**
F **prayed for his release as according to him he had already served the sentences imposed on him in both the cases. The jail authorities, however, placing reliance upon a Resolution dated 7.9.1974 adopted by the State Government, refused to release him on the ground that he could not be given set off in the second case as he had been given set off in the first case. Respondent**
G **filed a petition in High Court which was allowed holding that respondent was entitled to benefit of Section 428 Cr.P.C. in both the cases for the period of detention undergone by him during investigation, inquiry and trial. Hence the present appeal by the State.**

On behalf of the State, it was contended that the words 'of the same
H **case' occurring in Section 428 Cr.P.C. afforded sufficient indication that the**

benefit was intended to cover only for one case and not more than that. A

Dismissing the appeal by majority the Court

HELD : (Per Thomas, J.)

1.1. Section 428 of the Criminal Procedure Code does not contain any B indication that if the prisoner was in jail as an under-trial prisoner in a second case the benefit envisaged in the Section would be denied to him in respect of the second case. The said Section permits the accused to have the period undergone by him in jail as an under-trial prisoner set off against the period of sentence imposed on him irrespective of whether he was in jail in connection with the same during that period. [608-B; 610-G] C

1.2. The words 'of the same case' in Section 428 Cr.P.C. are not to be understood as suggesting that the set off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed . The period during which the accused was in prison subsequent to D the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words 'of the same case' were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words. [609-G-H] E

1.3. The two requisites postulated in Section 428 Cr.P.C. are:

(1) During the stage of investigation, inquiry or trial of a particular case the prisoner should have been in jail at least for a certain period.

F

(2) He should have been sentenced to a term of imprisonment in that case. [609-C]

If the above two conditions are satisfied then the operative part of the provision comes into play i.e if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of G investigation, inquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The words 'if any' in the Section amplifies that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case. [609-D] H

A *K.C. Das* v. *The State,* (1979) Criminal Law Journal 362; *Lalrinfela* v. *State of Mizoram and Ors.,* (1982) Criminal Law Journal 1793; *Gedala Ramulu Naidu* v. *State of A.P. and Anr.,* (1982) Criminal Law Journal 2186 and *Chinnasamy* v. *State of Tamil Nadu and Ors.,* (1984) Criminal Law Journal 447, affirmed.

B *Raghbir Singh* v. *State of Haryana,* [1984]4 SCC 348, dissented.

2. A penumbra of the succeeding Section 428 Cr.P.C. can be glimpsed through the former provision, viz. Section 427 Cr.P.C. deals with instances wherein one person in sentenced in a case when he has already been undergoing the sentence in another case. Thus, the sentences of life C imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. Even if the sentence in one of those two cases is not imprisonment for life but only a lessor term the convergence will take place and the post convergence flow would be through the same channel. In all other cases, it D is left to the court to decide whether the sentences in two different convictions should merge into one period or not. If no order is passed by the court the two sentences would run one after the other. [607-E-H]

Per Phukan, J. (Supplementing) :

E 1. The provision as contained in Section 428 Cr.P.C. is couched in clear and unambiguous language and states the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be one undergone by him during investigation, inquiry or trial in connection with the "same case", in which he has been convicted. F Any other period which is not connected with the said case cannot be said to be reckonable for set off. [611-C]

Per Sethi, J (Disenting) :

1. A plain reading of Section 428 Cr.P.C. makes it clear that the period G of detention which the Section permits to be set off against the term of imprisonment, imposed on the accused upon conviction, must be during the investigation, inquiry or trial in connection with the same case in which he has been convicted. Generally speaking the "same case" would thus mean "same transaction" for which the accused has been tried. Two different criminal cases, therefore, cannot be treated to be the "same case" in relation H to an accused for the purposes of determining the applicability of Section

428 of the Code. The words "same case" appearing in the Section are *ejusdem generis* to the preceding words "investigation, inquiry or trial". If the period of detention relating to investigation, inquiry or trial is in a different case that would not *ipso facto* entitle the accused to claim the benefit of Section 428 but that may permit him to persuade the Court to pass an appropriate order in terms of Section 427, keeping in view the period of his under-trial detention in other cases as well. [615-G-H; 616-A-B] A B

Champalal Poonjaji Shah v. *State of Maharashtra,* AIR (1982) SC 791 and *Shabbu and Anr.* v. *State of U.P. and Anr.,* (1982) Crl. L.J. 1757, relied on.

C

Raghbir Singh v. *State of Haryana,* [1984] 4 SCC 348, affirmed.

Lalrinfela v. *State of Mizoram and Ors.,* (1982) Crl. L.J. 1793; *Gedala Ramulu Naidu* v. *State of A.P. and Anr.,* (1982) Crl. Law Journal 2186; *Chinnasamy* v. *State of Tamil Nadu and Ors.,* (1984) Crl. Law Journal 447 and *K.C. Das* v. *The State,* (1979) Crl. Law Journal 362, Impliedly overruled. D

Govt. of Andhra Pradesh and Anr. v. *Anne Venkateswara Rao, etc.,* AIR (1977) SC 1096 = [1977] 3 SCC 298; *State of Maharashtra* v. *Champalal Poonjaji Shah,* AIR (1981) SC 1675; *Mr. Boucher Pierre Andre* v. *Superintendent, Central Jail Tihar,* AIR (1975) SC 164 and *Suraj Bhan* v. *Om Prakash,* AIR (1976) SC 648. E

Nasim v. *State of U.P.,* (1978) All L.J. 1284; *K.C. Das* v. *State,* (1979) Crl. L.J. 362; *Jaswant Lal Harjivan Das Dholkia* v. *State,* (1979) Crl L.J. 971 and *Mohan Lal* v. *State of U.P.,* (1979) Luck LJ 272, referred to.

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2. The object of criminal justice system is to reform the criminal but not to encourage him for the repetition of crime. Penology has a twin object i.e. (i) punishing the criminal to avoid repetition of crime and (ii) to endeavour for his reform wherever possible. Discretion of treating under-trial detention period may be relevant consideration for the Court while passing orders in terms of Section 427 of the Code but the accused cannot be permitted to claim set off of the under-trial period undergone by him in connection with other cases. The fall out of the interpretation giving the benefit of detention during investigation, inquiry and trial in one case, in the other case, may also tempt the investigating agencies not to arrest the accused for the commission of the second offence pending conclusion of the trial and passing of sentence in the first case. After conviction and sentence in a criminal G H

case, if arrested in the second case, the accused shall not be entitled to claim the benefit of Section 428 of the Code because the sentence, upon conviction, can obviously be not equated with the period of detention contemplated under Section 428 of the Code. [619-B-E-G]

Maru Ram **v.** *Union of India,* **[1981] 1 SCC 106, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 617 of 2001.

From the Judgment and Order dated 13.11.98 of the Bombay High Court in Crl. Application No. 3154 of 1998.

S.M. Jadhav, S.S. Shinde and S.V. Deshpande for the Appellants.

Ms. Aparna Bhat, (A.C.), N.P. Midha and Jawahar Raja for the Respondent.

The Judgments of the Court were delivered by

THOMAS, J. Leave granted.

An accused has been convicted and sentenced to imprisonment in two criminal cases. As he was arrested on the same day in connection with both the cases he remained in jail as an under-trial prisoner during the same period in both cases. The question mooted in this appeal is this: Is it permissible for him to claim the benefit of set off envisaged in Section 428 of the Code of Criminal Procedure (for short 'the Code') in both cases? As the High Court of Bombay has answered the question in the affirmative by the impugned judgment this appeal is filed by the State of Maharashtra in challenge of the said view of the High Court.

A two Judge Bench of this Court has made observations in *Raghbir Singh* v. *State of Haryana,* [1984] 4 SCC 348 that on the fact situation in the said case the accused cannot claim a double benefit. In other words, learned Judges held that the accused can have the benefit of set off in one of those cases but not in both. When the said decision was cited before the High Court, the learned Single Judge who rendered the impugned judgment has stated that on the facts in the case of *Raghubir Singh* (supra) the question in issue involved here never arose. Learned Judge expressed the view that the accused is "entitled to the benefit of set off in the second case as well where he was in custody during the course of the trial". When the special

leave petition in this case came up for consideration on 20.1.2000, we felt that since Raghbir Singh was decided by a two Judge Bench it would be appropriate that this matter is heard by a larger Bench so that a fresh look can be made on Section 428 of the Code.

As the accused respondent was benefited by the decision of the High Court he would have been released from jail. That might be the reason why he did not enter appearance in this appeal despite notice served on him. So we appointed Ms. Aparna Bhatt, Advocate, as amicus curiae. She presented the case for the accused very effectively after looking up all the decisions pertaining to the subject. We are indeed immensely grateful to her and we record our appreciation for the help rendered by her.

The facts out of which the aforesaid question has winched to the fore can be stated briefly thus: Respondent accused was tried in two cases. One was numbered S.C.230 of 1995 and the other as S.C.313 of 1996. He was arrested on 21.9.1995 in connection with both cases. The Sessions Judge who convicted him in S.C. 230 of 1995 on 3.4.1998, while sentencing him, directed that the accused would be entitled to the set off under Section 428 of the Code.

Subsequently a Sessions Court (we are not sure whether the same Sessions Court or a different one) convicted him in S.C.323 of 1998 on 23.7.1998 and sentenced him to certain terms of imprisonment. The Sessions Judge concerned observed therein that the accused is entitled to the set off under Section 428 of the Code.

On 14.9.1998 the respondent accused sent an intimation to the jail authorities that he is entitled to be released from jail since he has already served the sentences imposed on him in both cases. But the jail authorities refused to release him on the premise that he could not claim the benefit of set off in the second case "as he had been given set off in the first case". The jail authorities did so on the strength of a Resolution dated 7.9.1974 adopted by the Government of Maharashtra. That resolution reads thus:

> "If a prisoner is convicted in different cases, and different set off period is granted by different courts then in that case maximum period of set off in one case should be granted to prisoners, as other set off period will be merged in the set off which is the maximum."

When the prisoner challenged the decision of the jail authorities before the High Court learned Single Judge observed that the construction placed

A by the authorities on the said Government Resolution "is completely contrary to the interpretation of Section 428 of the Code and the spirit of the section itself." Learned Single Judge after ordering the prisoner to be released forthwith from jail, directed the Government and the jail authorities "to review the cases of all persons who continue to be in custody based on the Government Resolution dated 7th September, 1994 within a period of two months and to B take steps to see that they are released within the said period of two months (if not earlier released) based on the interpretation to Section 428 as now given."

The respondent prisoner was released by the jail authorities before the C Government of Maharashtra took up the matter to this Court. The State felt that the High Court has gone wrong in giving the benefit of Section 428 of the Code to the prisoner in two cases.

In *Raghbir Singh* v. *State of Haryana,* (supra) learned Judges considered D a case in which an accused was convicted and sentenced to imprisonment for 7 years on 1.2.1980 as per the judgment rendered by a Sessions Judge, Karnal. That accused was in judicial custody from 11.1.1980 in connection with another case which was pending before a Metropolitan Magistrate, Delhi. That second case also ended in conviction and the Metropolitan Magistrate sentenced him to rigorous imprisonment for one year on 16.2.1981. That E accused claimed set off from 11.1.1980 till the dates of conviction in each cases. In that case the State conceded the claim of the accused in respect of the period between 11.1.1980 to 1.2.1980. But the State contended that the accused could not get set off from 1.2.1980 till 16.2.1981 for the second case. The said contention was based on a departmental instructions issued by a State Government on 29.11.1975 to the effect that the period of detention F undergone by a convict in execution of a sentence in one case should not be set off against the term of imprisonment imposed on him in another case. This Court upheld the said contention and the two Judge Bench made the following observation:

G "In such a case the period of detention is really a part of the period of imprisonment which he is undergoing having been sentenced earlier for another offence. It is not the period of detention undergone by him during the investigation, inquiry or trial of the same case in which he is later on convicted and sentenced to undergo imprisonment. He cannot claim a double benefit under Section 428 of the Code i.e. the H same period being counted as part of the period of imprisonment

imposed for committing the former offence and also being set off against the period of imprisonment imposed for committing the latter offence as well." A

As the said view is now sought to be reconsidered we shall examine the position by reading Section 428 of the Code once again. The Section is extracted below: B

"Period of detention undergone by the accused to be set off against the sentence of imprisonment - Where an accused person has, on conviction, been sentenced to imprisonment for a term not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him." C D

The placement of that section just below Section 427 of the Code tempts us to have a peep into the preceding section, which deals with instances wherein one person is sentenced in a case when he has already been undergoing the sentence in another case. The first sub-section of Section 427 says that the sentence in the second conviction shall commence at the expiration of the imprisonment to which the accused has been previously sentenced, "unless the court directs that the subsequent sentence shall run concurrently with such previous sentence." The second sub-section to Section 427 of the Code says that when a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence. E F

Thus, the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one stream alone. Even if the sentence in one of those two cases is not imprisonment life but only a lessor term the convergence will take place and the post convergence flow would be through the same channel. In all other cases, it is left to the court to decide whether the sentences in two different convictions should merge into one period or not. If no order is passed by the court the two sentences would run one after the other. No doubt Section 427 is intended to provide amelioration to the prisoner. When G H

A such amelioration is a statutory operation in cases falling under the second sub-section it is a matter of choice for the court when the cases fall within the first sub-section. Nonetheless, the entire section is aimed at providing amelioration to a prisoner. Thus a penumbra of the succeeding section can be glimpsed through the former provision.

B The purpose of Section 428 of the Code is also for advancing amelioration to the prisoner. We may point out that the section does not contain any indication that if the prisoner was in jail as an under-trial prisoner in a second case the benefit envisaged in the section would be denied to him in respect of the second case. However, learned counsel for the appellant contended C that the words "of the same case" in the section would afford sufficient indication that the benefit is intended to cover only for one case and not more than that. It must be remembered that the ideology enshrined in Section 428 was introduced for the first time only in the Code of Criminal Procedure, 1973. For understanding the contours of the legislative measure involved in that section, it is advantageous to have a look at the Objects and Reasons for D bringing the above legislative provision. We therefore extract the same here:

> "The Committee has noted the distressing fact that in many cases accused persons are kept in prison for very long period as under-trial prisoners and in some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as under-trial prisoner. E Indeed, there may even be cases where such a person is acquitted. No doubt, sometimes courts do take into account the period of detention undergone as under-trial prisoner when passing sentence and occasionally the sentence of imprisonment is restricted to the period already undergone. But this is not always the case so that in F many cases the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. The Committee has also noted that a large number of persons in the overcrowded jails of today are under-trial prisoners. *The new clause seeks to remedy this unsatisfactory state of affairs. The new clause provides for the setting* G *off of the period of detention as an under-trial prisoner against the sentence of imprisonment imposed on him. The Committee trusts that the provision contained in the new clause would go a long way to mitigate the evil.*"
>
> (emphasis supplied)

H The purpose is therefore clear that the convicted person is given the

right to reckon the period of his sentence of imprisonment from the date he was in jail as an under-trial prisoner. In other words, the period of his being in jail as an under-trial prisoner would be added as a part of the period of imprisonment to which he is sentenced. We may now decipher the two requisites postulated in Section 428 of the Code.

(1) During the stage of investigation, inquiry or trial of a particular case the prisoner should have been in jail at least for a certain period.

(2) He should have been sentenced to a term of imprisonment in that case.

If the above two conditions are satisfied then the operative part of the provision comes into play i.e. if the sentence of imprisonment awarded is longer than the period of detention undergone by him during the stages of investigation, inquiry or trial, the convicted person need undergo only the balance period of imprisonment after deducting the earlier period from the total period of imprisonment awarded. The words "if any" in the section amplifies that if there is no balance period left after such deduction the convict will be entitled to be set free from jail, unless he is required in any other case. In other words, if the convict was in prison, for whatever reason, during the stages of investigation, inquiry or trial of a particular case and was later convicted and sentenced to any term of imprisonment in that case the earlier period of detention undergone by him should be counted as part of the sentence imposed on him.

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 count as well.

Reading Section 428 of the Code in the above perspective, the words "of the same case" are not to be understood as suggesting that the set off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing

A sentence of imprisonment in another case also during the said period. The words "of the same case" were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words.

Various High Courts have expressed on this question. A Division Bench B of Delhi High Court has dissented from a contrary view taken by a Single Judge of that High Court and held in *K.C. Das* v. *The State,* (1979) Criminal Law Journal 362 that the statute does not make any distinction between the first case and the second case for application of Section 428 of the Code. A Division Bench of the *High Court of Gauhati in Lalrinfela* v. *State of Mizoram* C *and Ors.,* (1982) Criminal Law Journal 1793 has adopted the same view. Lahiri and Hansaria, JJ, said in the said decision that "if the accused is simultaneously arrested and detained in two or more cases and on conviction obtains set off for the period of his detention in the first case he is not ineligible to obtain set off for the period in the subsequent cases; in each case the court is to count the number of days the accused was in such detention separately and D the liability to undergo imprisonment on conviction should be restricted to the remainder of the terms of the imprisonment imposed on him in that case."

A Division Bench of the Andhra Pradesh High Court in *Gedala Ramulu Naidu* v. *State of A.P. and anr.,* (1982) Criminal Law Journal 2186 and a Division Bench of the *Madras High Court in Chinnasamy* v. *State of Tamil* E *Nadu and Ors.,* (1984) Criminal Law Journal 447 have also adopted the same view in tune with the interpretation given by us. While speaking for the Division Bench of the Madras High Natarajan, J (as he then was) has made a survey of most of the decisions thus far rendered by different High Courts and opted to flow with the view adopted by all the other High Courts almost F uniformly.

We have no reason to think that the High Courts mentioned above have gone wrong in taking the view that Section 428 of the Code permits the accused to have the period undergone by him in jail as an under-trial prisoner set off against the period of sentence imposed on him irrespective of whether G he was in jail in connection with the same case during that period. We therefore, respectfully dissent from the view expressed by the two Judge Bench of this Court in *Raghbir Singh* v. *State of Haryana,* (supra).

In the result we dismiss this appeal.

H **PHUKAN, J.** I had the advantage of going through the reasoned

judgments of both my learned Brother Judges but with respect I am unable to accept the views expressed by my learned Brother Mr. Justice R.P. Sethi . In addition to the views expressed by my learned Brother Mr. Thomas, I would like to add a para on the language of Section 428 of the Code of Criminal Procedure:

The only question which according to me needs consideration is true effect of the expression "same case" as appearing in Section 428 of the Code of Criminal Procedure. The provision is couched in clear and unambiguous language and states that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be one undergone by him during investigation, inquiry or trial in connection with the "same case", in which he has been convicted. Any other period which is not connected with the said case cannot be said to reckoneable to be for set off. The view of learned Brother Mr. Justice Thomas according to me accords the legislative intent. Acceptance of any other view would be necessary either adding or subtracting words to the existing provision; which would not be a proper procedure to be adopted while interpreting the provision in question.

I am, therefore, in respectful agreement with the views expressed by my learned Brother Mr. Justice Thomas.

SETHI, J. Despite perusing the lucid judgment of Thomas, J. from different angles and being aware of its far reaching effects in the country, so far as the under trial prisoners are concerned, I could not persuade myself to agree with the interpretation given regarding the scope and implications of Section 428 of the Code of Criminal Procedure, (hereinafter referred to as 'the Code').

Section 428 of the Code was brought on the statute book for the first time in 1973. It was incorporated in the light of the proposal put forward by the Joint Select Committee appointed for that purpose. The Committee had noted, with distress, that in many cases accused persons were kept in prison for very long period as under-trial prisoners and in some cases the sentence of imprisonment, ultimately awarded, was a fraction of the period spent in jail as under-trial prisoners. Despite the fact that sometimes courts had been taking into account the period of detention undergone as under-trial prisoners while passing sentence and occasionally the sentence of imprisonment restricted to the period already undergone. But that was not always the case as in many cases the accused persons were made to suffer jail life for a period

A out of proportion to the gravity of offence or even the punishment provided under the statute. The Committee noted with concern that a large number of persons in the over-crowded jails of the country were under-trial prisoners. The Section was sought to remedy the said unsatisfactory state of affairs by providing for setting off the period of detention as an under-trial prisoners against the sentence of imprisonment imposed on the accused.

B

The purpose of incorporating Section 428 was that period of detention undergone by the accused be given set off against the sentence of imprisonment imposed upon him in the same case. Before the incorporation of the aforesaid section, the accused, upon conviction, had to undergo the C awarded sentence of imprisonment notwithstanding the length of period spent by him in detention during investigation, inquiry or trial of the case.

Section 428 of the Code is preceded by Section 427 which provides that when any person already undergoing sentence of imprisonment is sentenced on a subsequent conviction of imprisonment, such imprisonment shall D commence at the expiration of the commencement to which he has been previously sentenced, *unless the court directs that the subsequent sentence shall run concurrently with such previous sentence.* (underlining supplied) Section 427 of the Code thus authorises a court of law to direct the sentence awarded by it to run concurrently, obviously keeping in view the facts and circumstances pertaining to the case or the accused. His detention pending E investigation, inquiry and trial in that case or some other cases being relevant consideration while directing the sentences to run consecutively or concurrently.

A plain reading of Section 428 of the Code makes it clear that the period F of detention which the section permits to be set off against the term of imprisonment, imposed on the accused upon conviction, must be during the investigation, inquiry or trial in connection with the same case in which he has been convicted. Dealing with the nature of detention for the purposes of the section, this Court in *Govt. of Andhra Pradesh & Anr.* v. *Anne Venkateswara Rao, etc.,* AIR (1977) SC 1096 = [1977] 3 SCC 298 held:

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> "Section 428 provides that the period of detention of an accused as an undertrial prisoner shall be set off against the term of imprisonment imposed on him on conviction. The section only provides for a "set off", it does not equate an "undertrial detention or remand detention with imprisonment on conviction". The provision as to set off expresses H a legislative policy; this does not mean that it does away with the

difference in the two kinds of detention and puts them on the same footing for all purposes." A

In *Champalal Poonjaji Shah* v. *State of Maharashtra,* AIR (1982) SC 791, where the petitioner was shown to have been detained firstly under the provisions of MISA and later under the provisions of COFEPOSA and after he was convicted by a Magistrate and his conviction was set aside by the B High Court, the State filed an appeal by special leave, which was allowed by this Court on August 12, 1981 (reported in AIR 1981 SC 1675) by setting aside the Judgment of acquittal passed by the High Court and restoring that of the trial magistrate convicting the accused under different heads of charges and sentencing him to suffer imprisonment for various terms ranging from two C years to four years. Later in the review petition filed, it was submitted on behalf of the accused that the total of the three periods of detention should be set off against the imprisonment imposed upon him. Rejecting the contention, the Court held:

"We are unable to agree with the submission of Shri Jethmalani. In the D very case cited by the learned counsel, the Court negatived the contention that the expression 'period of detention' in Sec. 428 Code of Criminal Procedure included the detention under the Prevention Detention Act or the Maintenance of Internal Security Act. It was observed (para 7):

E

"It is true that the section speaks of the period of detention undergone by an accused person, but it expressly says that the detention mentioned refers to the detention during the investigation, enquiry or trial of the case in which the accused person has been convicted. The section makes it clear that the period of detention which it allows to F be set off against the term of imprisonment imposed on the accused on conviction must be during the investigation, enquiry or trial in connection with the 'same case' in which he has been convicted. We therefore agree with the High Court that the period during which the Writ Petitioners were in preventive detention cannot be set off under S.428 against the term of imprisonment imposed on them" G

After holding that the period during which the petitioners therein were in preventive detention could not be 'set off' under Section 428 Code of Criminal Procedure against the term of imprisonment imposed on them, the Court went on to consider whether the period during which the petitioners were in preventive detention could for any H

A reason be considered as period during which the petitioners were in detention as under-trial prisoners or prisoners serving out a sentence on conviction. In the case of prisoner A.V. Rao, the Court held that the period commencing from the date when he would have normally been arrested pursuant to the First Information Report registered against him should be reckoned as period of detention as an under-trial prisoner. In the case of another prisoner Krishnaiah it was held that the period during which he was in preventive detention subsequent to the conviction and sentence imposed upon him should be treated as detention pursuant to conviction and sentence. The case before us is altogether different. The petitioner had been acquitted by the High Court before any of the orders of detention were made against him. There can be no question of the detention being considered as detention pursuant to conviction; nor can the detention be treated as that of an undertrial. It is only in circumstances where the prisoner would have unquestionably been in detention in connection with a criminal case if he had not been preventively detained, his preventive detention might be reckoned as detention as an undertrial prisoner or detention pursuant to conviction, for the purposes of S.428 Criminal P.C."

A perusal of the section unambiguously indicates that only such accused is entitled to its benefit of that period of detention which he has undergone during the investigation, enquiry or trial of the same case. It does not contemplate of the benefit of set-off of the period of detention during investigation, inquiry or trial in any other case. The purpose and object of the section, as pointed out by Brother Thomas, J., is aimed at providing amelioration to a prisoner in a case where he has been in detention for no fault of his. The section, however, does not intend to give any benefit or bonus to an accused guilty of commission of more than one crime by treating the period of detention during investigation, inquiry and trial in one case as that period in the other cases also for the purposes of set-off in the sentence. Such an entitlement requires the judicial determination which can be adjudicated by a court awarding the sentence in exercise of its powers under Section 427 of the Code. The words "period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case" are important to indicate the paramount concern and intention of the legislature to protect the interests of under-trial prisoners by giving them the set-off of that period in "that case", at the conclusion of the trial. The Section makes it clear that the period of detention which it allows to be set off against the term of imprisonment

imposed on the accused, on conviction, must be during the investigation, inquiry or trial in connection with the same case in which he has been convicted.

By introducing the provision of set off, the legislature intended to mitigate, to a great extent, the hardship caused to the accused persons by reason of their being unable to come out on bail during the trial period. While interpreting Section 428 of the Code, the underlying object of the Section cannot be lost sight of. Any set off claimed under Section 428 has necessarily to be within the terms of the Section and not beyond it. No accused person can claim that irrespective of the terms of Section 428 of the Code, he is entitled to the benefit of set-off in each and every case. A bare reading of the Section indicates that an accused person who has been convicted and sentenced to imprisonment for a term is entitled to claim set off of the period of detention undergone by him during the investigation, inquiry or trial of the same case against the term of imprisonment imposed on him on such conviction. The section has imposed some restrictions for a convicted person claiming the benefit of set off which are as under:-

(i) The imprisonment should be for a term.

(ii) The imprisonment should not be one awarded in default of payment of fine.

(iii) The period of detention undergone by the accused person during the investigation, inquiry or trial should relate to the *same case* in which he is convicted and sentenced to undergo imprisonment for a term.

The dictionary meaning of the word "same" is identical; referring to a person or thing just mentioned; the same thing as previously mentioned. It generally refers to the last preceding antecedents; one and the same; not distinct. Generally speaking the "same case" would thus mean "same transaction" for which the accused has been tried. Two different criminal cases, therefore, cannot be treated to be the "the same case" in relation to an accused for the purposes of determining the applicability of Section 428 of the Code.

The accused tried for various offences in one trial can be held to be entitled to the benefit of Section 428 of the Code being tried for the "same case". The words "same case" appearing in the section are *ejusdem generis*

A to the preceding words "investigation, enquiry or trial". If the period of detention relating to investigation, enquiry or trial is in a different case that would not ipso facto entitle the accused to claim the benefit of Section 428 but that may permit him to persuade the court to pass an appropriate orders in terms of Section 427, keeping in view the period of his under-trial detention in other cases as well. It is the need of the time that the court convicting the B accused should develop a healthy practice of specifying in the order the total period of pre-conviction detentions that he has undergone in that case or in some other case for the purposes of awarding the sentence upon conviction.

In *Shabbu & Anr.* v. *State of U.P. & Anr.*, (1982) Crl.L.J. 1757 a Full C Bench of the Allahabad High Court held:

> "It is thus obvious that Section 428 Cr.P.C., is intended to relieve the anguish of undertrials for their prolonged detention in jail during the investigation, inquiry or trial of a case. Its object is to confer a special benefit upon a convict whereby his liability to undergo the D imprisonment, ultimately imposed upon him in a case, stands reduced by the period during which he has remained in jail as an under-trial prisoner in the same case. It simply aims at setting off or crediting the period of pre- conviction detention of the accused of a case towards the sentence ultimately awarded to him after his conviction in that very case." E

After referring to the judgments of this Court in *Mr. Boucher Pierre Andre* v. *Superintendent Central Jail Tihar,* AIR (1975) SC 164; *Suraj Bhan* v. *Om Prakash,* AIR (1976) SC 648; *Govt. of A.P.* v. *A.V. Rao,* AIR (1977) SC 1096; the earlier judgment of that Court in *Nasim* v. *State of U.P.*, (1978) All F LJ 1284, the judgment of the Delhi High Court in *K.C. Das* v. *State,* [1979] Crl.LJ 362; of Bombay High Court in *Jaswant Lal Harjivan Das Dholkia* v. *State,* [1979] Cri. LJ 971 and *Mohan Lal* v. *State of U.P.*, (1979) Luck LJ 272 the Full Bench further held that under Section 428 the period of detention as an under-trial of an accused in a particular case can be set off only towards the sentence ultimately awarded to him in that very case. The Court further G held:

> "Whether or not the detention of a person in one case should also be treated to be his detention for the purposes of any other case, wherein he is wanted, is a question to be decided upon the facts and circumstances of each case. No set formula can be laid down in that H behalf."

Dealing with the scope and object of Section 428 this Court in *Raghbir Singh* v. *State of Haryana,* [1984] 4 SCC 348 held: A

> "There was no provision corresponding to Section 428 of the Code in the Code of Criminal Procedure, 1898 which was repealed and replaced by the present Code. It was introduced with the object of remedying the unsatisfactory state of affairs that was prevailing when the former Code was in force. It was then found that many persons were being detained in prison at the pre-conviction stage for unduly long periods, many times for periods longer than the actual sentence of imprisonment that could be imposed on them on conviction. In order to remedy the above situation, Section 428 of the Code was enacted. It provides for the setting off of the period of detention as an under-trial prisoner against the sentence of imprisonment imposed on him. Hence in order to secure the benefit of Section 428 of the Code, the prisoner should show that he had been detained in prison for the purpose of investigation, inquiry or trial of the case in which he is later on convicted and sentenced. It follows that if a person is undergoing the sentence of imprisonment imposed by a court of law on being convicted of an offence in one case during the period of investigation, inquiry or trial of some other case, he cannot claim that the period occupied by such investigation, inquiry or trial should be set off against the sentence of imprisonment to be imposed in the latter case even though he was under detention during such period. In such a case the period of detention is really a part of the period of imprisonment which he is undergoing having been sentenced earlier for another offence. It is not the period of detention undergone by him during the investigation, inquiry or trial of the same case in which he is later on convicted and sentenced to undergo imprisonment. He cannot claim a double benefit under Section 428 of the Code i.e. the same period being counted as part of the period of imprisonment imposed for committing the former offence and also being set off against the period of imprisonment imposed for committing the latter offence as well. The instruction issued by the High Court in this regard is unexceptionable. The stand of the State Government has, therefore, to be upheld."

B C D E F G

After going through the scheme of the Code and the object for which Section 428 was incorporated, I have reached the conclusion that the law laid down by this Court in *Raghubir Singh's* case (supra) does not require any H

review or a new interpretation. Taking any other view would amount to legislating and amending the plain meanings of the section. Giving a contrary interpretation may, in some cases, be against the public policy. Any person accused of a heinous crime, in that even, be at liberty to commit minor offences and being under trial prisoner in the main case, eventually may not get any imprisonment of law for the minor offences committed by him. It cannot be the object of civilised criminal jurisprudence to encourage the repetition of crime by adoption of an approach of liberality. The commercial approach of sale of commodities providing for purchasing of one expensive item and getting three free with it, cannot be imported into criminal justice system. The views of Guwahati High Court in *Lalrinfela* v. *State of Mizoram and Ors.*, (1982) Crl.L.J 1793; Andhra Pradesh High Court in *Gedala Ramulu Naidu* v. *State of A.P. and Anr.*, (1982) Crl. Law Journal 2186 and Madras High Court in *Chinnasamy* v. *State of Tamil Nadu and Ors.*, (1984) Crl. Law Journal 447 would amount to giving bonus to a person accused of a heinous crime to have the minor offences committed with it virtually without any punishment of law. Delhi High Court in *K.C. Das* v. *The State*, (1979) Crl. Law Journal 362 is shown to have adopted an approach which apparently is contradictory in terms. After holding:

> "The words "of the same case" are important. The section speaks of the "period of detention" undergone by the accused person, but it expressly says, that the detention mentioned refers to the detention during the investigation, inquiry or trial of the case in which the accused person has been convicted. The section makes it clear that the period of detention which it allows to be set off against the term of imprisonment impugned on the accused on conviction must be during the investigation, inquiry or trial in connection with the "same case" in which he has been convicted."

the Court by referring to an illustration formulated by itself in para 3 of the judgment, posed a question to itself, an answered the same, observing:

> "Will it not be true to say that the accused is an undertrial prisoner in the second case in our illustration. If it is so he will be entitled to set off his pre-conviction period against the term of imprisonment imposed on him in the second case as in the first. We see no ground to deny him the benefit in the second case."

For reaching at this conclusion the reliance was placed upon the judgment

of this Court in *Govt. of Andhra Pradesh and Anr.* v. *Anne Venkateswara Rao. etc.,* (supra). In that case, this court had nowhere held that the set off contemplated under Section 428 of the Code can be claimed by a convicted person, irrespective of his detention in the same case or in some other case.

The object of criminal justice system is to reform the criminal but not to encourage him for the repetition of crime. Penology has a twin object, i.e. (i) punishing the criminal to avoid repetition of crime and (ii) to endeavour for his reform wherever possible. The increasing crime in the country has seriously to be taken note of. Crime is an act of warfare against community touching new depths of lawlessness. The object of imposing deterrent sentences is to protect the community against callous criminals; to administer as clearly as possible to others tempted to follow into lawlessness on a war scale if they are brought to and convicted, deterrent punishment will follow and to deter criminals from repeating their criminal acts in future. Fazal Ali, J. in *Maru Ram* v. *Union of India,* [1981] 1 SCC 106 rightly observed:

> "The question, therefore, is - should the country take the risk of innocent lives being lost at the hands of criminals committing heinous crimes is the holdy hope or wishful thinking that one day or the other, a criminal, however dangerous or callous he may be, will reform himself. Valmikis are not born everyday and to expect that our present generation, with the prevailing social and economic environment, would produce Valmikis day after day is to hope for the impossible."

Discretion of treating under-trial detention period may be relevant consideration for the Court while passing orders in terms of Section 427 of the Code but the accused cannot be permitted to claim set off of the under-trial period undergone by him in connection with other cases. Powers of the Court to impose sentences should not be allowed to be regulated at the instance or discretion of the accused.

The fall out of the interpretation giving the benefit of detention during investigation, inquiry and trial in one case, in the other case, may also tempt the investigating agencies not to arrest the accused for the commission of the second offence pending conclusion of the trial and passing of sentence in the first case. After conviction and sentence in a criminal case, if arrested in the second case, the accused shall not be entitled to claim the benefit of Section 428 of the Code because the sentence, upon conviction, can obviously be not equated with the period of detention contemplated under Section 428 of the Code. As such by adopting such a recourse, the courts would not, in

A any case, advance the interests of justice but actually and factually frustrate its purpose defeating the concept of speedy trial in criminal cases.

Facts of this case are that the respondent was arrested on 29th November, 1995 in connection with CR 707/95 registered at Khar Police Station, Mumbai. During the investigation it transpired that he was also involved in the offences B registered vide CR 737/95 on 29th November, 1995 Santacruz Police Station. He was shown arrested in both crime numbers. After being chargesheeted in both the cases, he was tried separately. In one of the cases he was convicted and sentenced under Sections 395 and 397 of IPC on 3.4.1998. The learned Judge held that the accused was entitled to set off under Section 428 of C Cr.P.C. for the period of custody already undergone. He was convicted in the second case for the offences punishable under Section 392, 395 of IPC and held entitled to set off under Section 428 of Cr.P.C. The respondent prayed for his release as according to him, he had already served sentences. Relying upon the Government Resolution dated 7th September, 1974 the Jail Authorities refused to release the respondent on the ground that he could not be given D set off in the second case as he had been given set off in the first case. The accused filed a petition in the High Court which was allowed by impugned order, holding that the convict was entitled to benefit of Section 428 of the Code in both the cases for the period of detention undergone by him during investigation, inquiry and trial.

E In the light of the view I have taken the impugned judgment of the High Court cannot be sustained and is liable to be set aside. Allowing the appeal filed by the State the judgment impugned is set aside holding that the respondent is not entitled to the benefit of set off in the sentence awarded to him in the second case.

F M.P. Appeal dismissed.

KARU MARIK

v.

STATE OF BIHAR

MAY 9, 2001

[M.B. SHAH AND SHIVARAJ V. PATIL, JJ.]

Penal Code, 1860 Sections 300, 302, 324 Murder Intention Inference of—Accused assaulting deceased with chhura on her chest and when she tried to run away, accused catching hold of her hair, throwing her on the ground and again assaulting with chhura on her abdomen and back—On the basis of evidence of witnesses, Investigating officer and attending doctor and the dying declaration of the deceased, accused convicted for offence under Section 302 IPC and sentenced to rigorous imprisonment for life—Tenability of—Injuries inflicted by accused being grievous in nature and dangerous to life—Held, having regard to nature of wounds inflicted, it must be deemed that intention of accused was to cause such bodily injury as was likely to cause death Intention being a state of mind of an offender, it has to be inferred from available evidence and surrounding circumstances—Contention that accused could be convicted for offence under Section 324 IPC, rejected.

Enmity with PW-9 led accused to kill wife of PW-9. On the date of the incident, deceased had gone to ease herself towards north of her house early in the morning. In the meantime, accused armed with *chhura* went there and assaulted on her chest. When she tried to run away, accused caught hold of her hair, threw her on the ground and started giving blows with chhura on her abdomen and back. Hearing the alarm raised by deceased, her husband PW-9, PW-2 and others reached the scene of occurrence and found her in a pool of blood lying unconscious. She was taken to a hospital and on the information of PW-9. FIR was drawn. Her dying declaration was recorded by Judicial Magistrate, First Class on that day itself. She died a few days later.

On the basis of evidence of PW-2 & PW-9 coupled with the dying declaration of the deceased, evidence of attending doctor and the investigating officer, Trial Court convicted accused for offence under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life. On appeal, High Court upheld the order of conviction and sentence passed. Hence the present appeal.

A On behalf of the accused, it was contended that the deceased died in hospital after eight days of assault; that in the absence of specific evidence of doctor as to whether any particular injury or injuries were sufficient to cause death in the ordinary course, conviction of accused under Section 302 IPC was not justified and could be convicted only under Section 324 IPC; that accused had neither intention to cause death of the deceased nor such bodily B injury which he knew was likely to cause death.

On behalf of the State, it was contended that the case of the accused was covered by Clause II of Section 300 IPC; that looking to the nature of weapon used in the commission of offence and parts of the body on which injuries were inflicted, it could not be accepted that accused could be convicted C for an offence under Section 324 IPC instead of Section 302 IPC.

Dismissing the appeal, the Court

HELD : 1. The injuries inflicted by the appellant were grievous in nature and dangerous to life which resulted in causing death of the deceased. D Having regard to the nature of wounds inflicted, it must be deemed that his intention was at least to cause such bodily injury as was likely to cause death. The injuries were inflicted by a chhura, a sharp cutting weapon; even an illiterate and ignorant person can be presumed to know that an intense assault with such weapon on such vital parts of the body would cause death. In criminal cases, intention or the knowledge under which a person acts is E an important consideration. However, intention being a mental make up or a state of mind of an offender, it is difficult to prove directly as a fact, but is to be inferred from the facts and circumstances of the case. Hence, in the case on hand, it is not possible to accept the submission that the appellant could be convicted for the offence under Section 324 IPC. [626-D-F]

F 2. The manner of causing injuries, the nature of the injuries caused, the part of the body where they were inflicted, the weapon of assault employed in the commission of the offence and conduct of the accused are relevant factors in determining whether the offence committed is one of murder or culpable homicide not amounting to murder. It has to be gathered from the G available evidence and the surrounding circumstances in considering whether the offence is covered by clause I of Section 300 IPC. As far as clause II of Section 300 IPC is concerned, it is enough if the accused had the intention of causing such bodily injury as he knew to be likely to cause the death of the person whom the harm is caused. Such intention may be inferred not merely from the actual consequences of his act, but from the act itself also. H [625-E; 626-B]

Rajwant Singh v. *State of Kerala,* **AIR (1966) SC 1874, referred to.** A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 325 of 1993.

From the Judgment and Order dated 15.9.88 of the Patna High Court in Crl. A. No. 239 of 1987 (R). B

Ms. Promila (A.C.) for the Appellant.

B.B. Singh and Kumar Rajesh Singh for the Respondent.

The Judgment of the Court was delivered by C

SHIVARAJ V. PATIL, J. This appeal is by the sole accused who was convicted for offence under Section 302 IPC and sentenced to rigorous imprisonment for life by the Sessions Judge. The High Court of Patna dismissed the Criminal Appeal No. 239/87(R) by the order dated 15.9.1988 confirming the order of conviction. Hence this appeal by special leave. D

In short, the prosecution case is that on 14.8.1983 at about 6 A.M. in the morning Savitri Devi, wife of the informant Thakuri Pandit (PW-9) had gone to ease herself towards north of her house. In the meantime, the accused Karu Marik being armed with chhura went there and assaulted with chhura on her chest. She began crying and wanted to run away but the accused E caught hold of her hairs, threw her on the ground and started giving chhura blows on her abdomen and back. On raising alarm, her husband (PW-9) and Sita Dhobin (PW-2), Mukesh (PW-1) and others came there. Seeing them, the accused fled away. PW-9 found his wife in a pool of blood lying unconscious. He took her to Sadar hospital, Giridih, and admitted her. Enmity between the F accused and PW-9 was said to be the motive. Furdi bayan of PW-9 was recorded in the hospital by S.I., R.N. Singh. On that basis, F.I.R. was drawn and a case under Section 307 IPC was registered against the accused. On 14.8.1983 itself, her dying declaration was recorded by S.N. Prasad, Judicial Magistrate First Class, Giridih. Savitri Devi died on 22.8.1983 in the hospital due to the injuries caused to her by the accused. Hence the offence was G altered to one under Section 302 IPC. The accused was tried for an offence under Section 302 IPC. He pleaded not guilty and his defence was that he had been falsely implicated in the case out of enmity.

The prosecution in all examined 10 witnesses to establish the guilt of the accused. PW-1 was declared hostile. Accepting the evidence of PW-2 and H

A PW-9, the eye-witnesses coupled with the dying declaration of the deceased and keeping in view the evidence of the doctor and the Investigating Officer, the trial court held accused guilty and convicted him for an offence under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life. On appeal by the accused, the High Court re-appreciated and scrutinized the evidence objectively and appropriately and did not see any infirmity in the B order passed by the trial court. In that view, upheld the order of conviction and sentence passed by the Sessions Court.

Having perused the judgments of both the courts and looking to the evidence placed on record, we are of the opinion that the accused was rightly C convicted. It must be stated here itself that this Court on 27.9.1991 issued notice confining it to the nature of offence only. Accordingly, we heard learned counsel for the parties.

The learned counsel for the appellant submitted that the deceased died in the hospital after eight days of assault; nature of injuries inflicted on the D deceased; the weapon used and in the absence of specific evidence of the doctor as to whether any particular injury or injuries were sufficient to cause death in the ordinary course, conviction of the appellant under Section 302 IPC is not justified. According to her, the appellant could be convicted under Section 324 IPC. She pleaded that the appellant had neither intention to cause death of the deceased nor such bodily injury which he knew was likely to E cause death. On the other hand, the learned counsel for the respondent-State made submissions supporting the impugned judgment. He stated that the trial court as well as the High Court, were right and justified in convicting the accused and sentencing him for life imprisonment under Section 302 IPC based on the trustworthy and unshaken evidence of eye-witnesses coupled F with the dying declaration. He added that the case of the appellant is covered by Clause II of Section 300; the doctor has clearly stated that the injuries inflicted on the deceased were sufficient to cause death; looking to the nature of the weapon used in the commission of offence and the parts of the body on which the injuries were inflicted, it cannot be accepted that the appellant could be convicted for an offence under Section 324 IPC instead of 302 IPC.

G

We have carefully considered the submissions made by the learned counsel for the parties. Dr. Sibnarayan Prasad (PW-8) who examined the deceased has stated that he found the following injuries on the person of deceased Savitri Devi:-

H "(i) One incised injury on the right side of chest 2"x2"x6" deep in

the cavity.

(ii) One incised injury on right side of abdomen 3"x2" deep in the cavity.

(iii) One incised injury on back 3"x2" deep into cavity."

Further after operation, the following injuries were found:-

"(i) Two incised injuries in the transverse colon - each 11/2"x 1/2"x deep into the cavity of the Lumen.

(ii) Four incised injuries on the large intestine each 1/2"x1/2"x deep into the cavity of the Lumen"

He has deposed that all the injuries were grievous in nature and dangerous to life and that they could be caused by sharp cutting weapon such as dagger. He was of the opinion that death of the deceased was due to shock and haemorrhage and circulatory failure as a result of the above injuries.

The manner of causing injuries, the nature of the injuries caused, the part of the body where they were inflicted, the weapon of assault employed in the commission of the offence and conduct of the accused are relevant factors in determining whether the offence committed is one of murder or culpable homicide not amounting to murder. Even a most illiterate and rustic person would know and realize that a savage blow with a short cutting weapon on vital part like chest and abdomen would cause bodily injury which would result in death. Ordinarily, a man is presumed to intend necessary consequences of his act. This Court, dealing with the second clause of Section 300 IPC in *Rajwant Singh* v. *State of Kerala,* AIR (1966) SC 1874, in para 10 has observed that:-

> "The second clause deals with acts done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom harm is caused. The mental attitude here is two-fold. There is first the intention to cause bodily harm and next there is the subjective knowledge that death will be the likely consequence of the intended injury.

Many a times, the nature of the injury inflicted itself presents a most valuable evidence of what the intention was but that is not the only way of gauging intention. Each case must be examined on its merits. Intention being

A the state of mind of the offender, no direct evidence as a fact can be produced. It has to be gathered from the available evidence and the surrounding circumstances in considering whether the offence is covered by clause I of Section 300 IPC. As far as clause II of the Section 300 is concerned, it is enough if the accused had the intention of causing such bodily injury as he knew to be likely to cause the death of the person to whom the harm is B caused. Such intention may be inferred not merely from the actual consequences of his act, but from the act itself also.

In the case on hand, having regard to the nature of wounds inflicted, it must be deemed that his intention was at least to cause such bodily injury as was likely to cause death. The broad facts as deposed by the prosecution C witnesses accepted by the trial court as well as the High Court clearly show that the appellant gave a blow with chhura on the chest of the deceased. When she tried to run away, he caught hold of her hair, threw her on the ground and again assaulted with the chhura on the abdomen and the back of the deceased. This is the manner in which the injuries were inflicted. The D injuries inflicted were grievous in nature and dangerous to life which resulted in causing death of the deceased as deposed to by the doctor. The injuries were inflicted by the chhura, a sharp cutting weapon; even an illiterate and ignorant can be presumed to know that an intense assault with such weapon on such vital parts of the body would cause death. In criminal cases, intention E or the knowledge under which a person acts is an important consideration. However, the intention being a mental make up or a state of mind of an offender, it is difficult to prove directly as a fact, but is to be inferred from the facts and circumstances of the case. Hence, in the case on hand, it is not possible to accept the submission that the appellant could be convicted for the offence under Section 324 IPC.

F

In this view of the matter, we do not find any merit in the contentions urged on behalf of the appellant. Thus finding no merit in the appeal, it is dismissed.

M.P. Appeal dismissed.