

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.470 OF 1997

Nandakumar @ Nandya Laxman Desai] .. Appellant

vs.

State of Maharashtra & Anr.] .. Respondents

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Mr.Mohansingh Rajput, for the Appellant.

Mr.S.R. Agarkar, APP for the State.

CORAM : BHARATI DANGRE, J

RESERVED ON : 21st September, 2023
PRONOUNCED ON: 3rd January, 2024

JUDGMENT :

1] The Appellant on being charged for committing offence punishable under Section 307 of the Indian Penal Code and alternatively under Section 307 read with 34 of the IPC, is convicted by the Additional Sessions Judge, Greater Bombay, in Sessions Case No.11/1993, by Judgment dated 31.03.1997 under Section 326 of the IPC for causing grievous injury to Regina Mery Chettiyar (PW 1), Sulbha Saudagar (PW 3) and Tarabai Mahadkar (PW 4). On finding him guilty of causing grievous hurt,

he is sentenced to undergo 3 years RI and to pay fine of Rs.5000/- i.d. to undergo sentence for 6 months.

He is also convicted for committing offence punishable under Section 324 of the IPC for causing injury to Natraj Chettiyar (PW 2) and on that count is sentenced to undergo 6 months RI and fine of Rs.1000/- i.d. to undergo sentence for one month.

The sentences imposed are directed to run separately i.e. consecutively.

2] Being aggrieved by the aforesaid Judgment, the present Appeal is filed which came to be admitted 29.08.1997. By the very same order, the Appellant was directed to be released on bail, and realization of the fine is stayed.

The Appeal on being ready for final hearing was listed before the Court on various occasions, however, the accused was not traceable, despite bailable warrant being issued, which returned un-executed.

Considering that the Appeal is pending before the Court since 1997, by an order dated 16.06.2022, Advocate Mohansingh Rajput was appointed to represent the Appellant and he was

furnished the necessary paperbook and thereafter he represented the Appellant in the Appeal.

The learned APP Mr.S.R.Agarkar represented the State.

3] On perusal of the record and proceedings of the Sessions Judge, who examined 9 witnesses on behalf of the prosecution four of whom i.e. PW 1 to PW 4 are the injured persons. Two Medical Officers are examined being PW 6 and PW 8. Whereas, PW 9 is the Investigating Officer attached to Goregaon Police Station who conducted the investigation. PW 5 and PW 7 the Panch witnesses are examined by the prosecution to establish the charge levelled against the present Appellant who was arraigned as Accused No.1, alongwith Accused No.2 Mala Chettiyar (already deceased).

The case against the accused, is that he barged entry on 19.08.1992 at about 6.45 a.m. into the house of Sulbha Saudagar (PW 3) and Regina Chettiyar (PW 1), in furtherance of common intention to commit murder by use of deadly weapons and inflicted injuries on six persons with an intention and knowledge that if they would have caused death by the injuries, they would have been guilty of the murder and thus caused hurt to the

injured and thereby committed offence under Section 307 read with 34 of the IPC.

Since accused No.2 Mala expired prior to framing of charge, it is only the present Appellant, who faced the charge under Section 307 of the IPC.

4] The witness Regina Mery stepped into the witness box as PW 1 and narrated the background in which the alleged incident had occurred.

Regina had two brothers Paul and John; Paul was married to Mala, the deceased.

It is her version that, Mala had a daughter, Shobha from her previous marriage, when she married her brother Paul and at the relevant time she was aged 5. Shobha grew up and was staying with Paul and Mala.

According to PW 1, four years before i.e. on 18th August, at about 2.00 a.m. in the night, her brother Paul visited her and requested her to accompany him, as there was some problem in his house. Sulbha and Tarabai, who were neighbours also accompanied them and on reaching they noticed that door of the house of Paul was closed, but the window was open and on peeping

inside, she noticed that Mala was sleeping in the bedroom with accused Nandkumar. This was also witnessed by her brother Paul, Sulbha and Tarabai. On noticing this, they knocked the door and Mala opened the door in a frightened state. They pointed out to her that her behaviour was improper and as per PW 1, there was dispute between her brother Paul and his wife Mala on account of her illicit relationship with accused Nandkumar. After noticing the accused Nandkumar in the company of Mala, she ran away to be followed by accused Nandkumar.

As per prosecution case, on the date of incident, Shobha, daughter of Mala was aged 20 years and Paul was objecting to frequent visits of Nandkumar, as Shobha was a grown up girl. Mala on the contrary was desirous of getting her daughter married to Nandkumar.

On 19th August, Sulbha, Tarabai and Paul went to Goregaon Police Station to lodge a complaint of the above incident. When they were coming back from the Police Station, Mala threatened them with adverse consequences and they returned to their respective homes.

5] The incident of assault is alleged to have taken place on 20th

August, when Mala knocked the door of Regina's house. On opening the door, Mala was found in the company of Nandkumar alongwith 4 to 5 other persons. Mala enquired about Paul and when she responded by saying that she was unaware about his whereabouts, Mala assaulted her by chopper on her hands. She also received injury on the upper part of right breast and over the left eye on her forehead.

As per the Regina, when her husband arrived on the spot on hearing the noise, even he was assaulted on his feet by chopper by accused Nandkumar. Thereafter, the assailants headed towards the house of Sulbha who was residing at the distance of 5-10 minutes from her residence.

As per PW 1, after being assaulted, she fell to the ground due to vertigo and because of loss of blood and injuries, she was taken to the hospital.

6] PW 2 Natraj Chettiyar is the husband of Regina and according to him, on 19.08.1992 while he was sleeping in his house, he heard a call of distress from his wife and therefore he came out by the staircase, and he was assaulted on his feet. According to him, there were six persons and he identified the

Appellant as one of the person who was present. He also deposed that Mala was also one of them and he stated that there were total 8 people. His wife was injured on left palm, chest and on her forehead over the left eye.

7] The succeeding incident revolve around PW 3 and PW 4.

PW 3, Sulbha deposed before the Court that at 6.00 a.m. while she was sleeping in her house alongwith her sister and her son on the ground floor, whereas her sisters three daughters and her own two daughters were sleeping on the loft, she heard a knock on the door and she opened the door.

As per Sulbha, the moment she opened the door, the accused sitting in the dock (Appellant) assaulted her on left hand, by something due to which her hand came out as the bone of her wrist was fractured and her palm was dangling from the skin. It is her version that as the accused also assaulted on her left hand in a quick manner, she could not see whether the weapon held by him was a sword or some other weapon. She also received injuries on back below her neck and was also assaulted on head.

When her sister Tara came to her rescue, she was also

assaulted by Nandkumar and Mala. She could see no more, as she became unconscious. She was taken to Cooper Hospital by the police and her brother, where she was offered treatment and continued to remain in the hospital for 3 weeks.

8] Corroborating Sulbha, the prosecution examined Tara as PW 4 who was sleeping in the house of Sulbha alongwith her daughters.

It is her version that since it was time for filling utensils with water and since they had to be queued up at the tap, some one knocked at the door. She also mention the presence of her son Uday aged 12 years in the house. On hearing the knock, Sulbha opened the door and immediately she was assaulted by chopper on her hands, head and body and her fingers were chopped by the accused, who is present before the court, is her version.

Tara identified the person present in the Court as the one who mounted the assault on Sulbha and it is none other than the Appellant Nandkumar. According to Tara, even she was assaulted by Nandkumar on her right hand, left hand, face, stomach and right leg. Even as per Tara, there were 5-6 persons accompanying the Nandkumar alongwith Mala.

She corroborated Sulbha, as she depose that since both of them were wearing sarees, their clothes were soaked with blood and they were handed over to the police.

According to Tara, Uday went to the Police Station which is situated near her residence, the police immediately arrived at the spot and Sulbha and herself were admitted in the hospital. According to her, Sulbha was admitted for 20-25 days.

9] The FIR is registered on the complaint filed by one Shubhangi Ruhela, who was staying with her mother, Tara, at Vivekanand Zopadpati. As per the complaint, Nandu Desai, the Appellant was frequently visiting Paul's residence, as he had developed good terms with Mala. According to her, he was of a bad character and hence Mala's proposal to engage their daughter Shobha with Nandu Desai for marriage, was turned down by Paul and therefore a quibble had ensured between them. Mala and Nandu threatened Paul of dire consequences two days ago and he consulted her mother Tara and her maternal Aunt Sulbha and accordingly reported the matter to the police.

The complaint also proceed to state that on 17.08.1992 Mala and Nandu gave threats that they will teach a lesson by taking

revenge which is the reason why all of them decided to stay together at Vivekanand Nagar Zopadpatti.

On 18.08.1992 she was present alongwith her mother Tara, Aunt Sulbha and when the door was knocked, one strong built person entered the house and started assaulting Sulbha. According to the complaint, he was followed by Nandu Desai and Mala who were armed with choppers, which were looking like swords in appearance. Because of the assault her aunt sustained severe injuries on her head, hands etc.

It is her version that five other persons with choppers in their hands were standing outside and Nandu Desai gave chopper blows on the hands, face, stomach of her mother. Her mother was seriously injured and Nandu Desai also gave one blow of chopper on her neck, but she managed to evade the same. One another strong built man gave another blow on her hand and caused injury to her forearm.

According to the complaint, Mala was holding chopper in her hand and was provoking the assailants to finish them. They were frantically searching for John Swami, son in law of her aunt and brother of Paul Swami. Thereafter, when Nandu Desai was about to leave the room, her younger brother who was hiding

behind was noticed by him and he gave blows of chopper on his legs and hands causing injuries to him. Thereafter, they ran to Rosemarry Chettiyar's house and they could hear her cries.

In the complaint, it is stated by the complainant that she knows Nandu Desai and Mala well and as regards six unknown persons, she will be able to identify them immediately if shown again.

The complainant Shubhangi, however, is not examined by the prosecution.

10] In order to corroborate the ocular evidence of the injured witnesses, two medical experts are examined by the prosecution.

PW 6, Milind Jeste who was attached to Cooper Hospital as Casualty Medical Officer is examined as PW 6. He was on duty when Shubhangi was brought to the hospital by Police Nike Buckle No. 1533 attached to Goregaon, and according to him it was around 6.55 a.m. and Yeshwant Kohli also accompanied them. He was informed, that she was attacked by sword and on examining her, he made an entry in the Casualty Register and recorded the injuries to the following effect :

CLW 2" x 2" Skin level deep.
CLW 1" x 1" on the left hand.

According to PW 6, five other injured persons were brought by the same Constable and he noticed injuries on Tarabai and considering her condition to be serious he referred her directly to the ICU ward. Similar is the case of Regina Mery Chettiyyar and Sulbha who were also referred to the ICU ward after making necessary entries in the casualty register.

One Uday Mahadkar was also brought before him, who gave history of assault by sword and PW 6 noticed following injuries on his person:

CLW 1" x muscle deep on right leg.

2" x 2" Muscle deep on left foot.

1/2" x 1/2" muscle deep on left hand.

Natraj Peter Chettiyyar who also gave history of being assaulted by sword was also examined by him and following injury was noticed :

CLW 1"x 2" muscle deep on right leg (shin) lower 1/3rd.

According to PW 6 the injured on all the injured patients could have been caused by sharp cutting weapon.

In cross-examination, he denied the suggestion that he did not properly checked Tarabai, Mery and Sulbha and without examining them, forwarded them to ICU ward.

11] PW 8 Dr.Kalpesh Shah was in charge of ICU of Cooper Hosptial and at around 7.10 a.m. three patients were brought to the ICU unit with serious injuries who were identified as Tarabai, Mery Chettiyar and Sulbha.

Serious injuries to the following effect were noticed by him on examining Tarabai :

1. Right leg 7 cm x 5 cm muscle deep wound percutaneous;
2. left forearm 6 cm x 5 cm muscle deep wound.
3. Right forearm 7 cm x 7 cm muscle deep wound.
4. Injury to left palm with muscle cut.
5. CLW on the face near upper eye lid on the right side with palpable fracture of the arbital margin on right side.

Tarabai was admitted in the hospital till 27.08.1992. The Injury Certificate of Tarabai is exhibited through the said witness (Exh.33).

Mery Chettiyar, according to PW 8, received the following injuries :

1. Right leg 7 cm x 2 cm. Subcutaneous wound.
2. Right hand 7 cm x ½ cm. X tendon deep incised wound with damage to the tendon of index finger.
3. Left hand transverse incised wound in the palm with damage to the tendon of middle ring and index fingers.
4. There was suspected injury to the digital nerves.

5. There was CLW injury over right breast 4 cm x 7 cm subcutaneous deep.
6. CLW on forehead with palpable crack fracture.

The injury certificate as well as discharge certificate are placed on record through the said witness.

PW 8 opined that the injury nos.3 and 4 sustained by Mery Chettiyar was grievous in nature and was caused by sharp edged weapon.

As far as Sulbha is concerned, she is reported to have sustained grievous injuries which were indicated in Exhibit 40 and opinion was expressed that they were caused by sharp edged weapon.

12] PW 9 Dnyaneshwar Jadhav, PSI attached to Goregaon Police Station, while in witness box gave the details of the investigation carried out by him and he had recorded the statement of Shubhangi, the complainant, who has undergone the treatment. It is on the basis of statement of Shubhangi to the effect that Nandu Desai and Mala and six other persons had assaulted with choppers appearing like swords at the residence on her maternal aunt Sulbha and thereby injured Tarabai, Sulbha, Uday and

Shubhangi herself, the offence was registered against the Appellant and six others. He visited the spot and had drawn the spot panchanama (Exhibit 36). He also collected scrapping of earth mixed with blood from three places. Apart from this, 3 bags containing clothes soaked with blood of the injured persons who were admitted in Cooper Hospital, were also collected and accused Nandkumar was arrested on 30.09.1992.

According to PW 9, since Shubhangi and Uday are not traceable, they were not examined as witnesses. Further he did not recover any weapon from any of the accused and also did not seize clothes of the accused persons. According to him, he recorded statements of witnesses firstly after the incident after registering the offence, and after that the test identification parade was conducted. But in the cross-examination PW 9 stated that the statements were recorded after arrest of the accused.

He recorded the statements of witnesses on 19.08.1992, 30.08.1992 and 02.10.1992, but he admitted that he did not draw separate panchanamas, of the house of Sulbha and the house of Regina.

The report of Chemical analysis is placed on record through him and the result of analysis reveal that the clothes worn by

injured were stained with bloods which include the saree as well as inner clothes. The blood stains are found to be of human origin and their blood groups is ascertained.

13] On appreciating the entire material placed through the Nine witnesses, the trial Judge concluded that since neither PW 6 nor PW 8 had opined that the injuries sustained by the injured PW 1 to PW 4 were dangerous to their lives, the question of probability of causing death does not arise and hence offence under Section 307 with which the accused was charged, cannot be said to be committed. However, considering that the injuries sustained are grievous in nature and specifically recording a finding that the accused before the Court is the author of the injuries, it was held that the prosecution has beyond reasonable doubt proved that he has committed the offence punishable under Section 326 by causing grievous injuries to Regina (PW 1), Sulbha (PW 3), Tara Mahadkar (PW 4) and of voluntarily causing injuries to Natraj (PW 2), and hence he was guilty of committing an offence punishable under Section 324 of the IPC.

As regards the above finding by the trial Judge, I see no legal infirmity as the evidence of the four injured witnesses is

corroborative and consistent except PW 2, who have not attributed the injuries sustained by him to the Nandkumar, the present Appellant.

14] PW 6 and PW 8 are the medical experts who have examined the injured and described the injuries sustained by PW 1, PW 3 and PW 4, to be grievous in nature. Perusal of the medical report exhibited through PW 8 undisputedly reveal that the injuries are inflicted in a rash manner and as opined by PW 8, they could have been caused by sharp weapon.

PW 1, 3 and 4 are consistent in their version that it is Nandkumar who assaulted them though PW 1 has deposed that even Mala was the assailant. The role attributed to Mala as the actual assailant may pose some difficulty, as the witnesses do not corroborate on this, but in any case, she was not tried and I need not focus on the said inconsistencies.

15] As far as the role attributed to the present Appellant is concerned, version of PW 1 to PW 4 is consistent which is further corroborated by PW 6 and PW 8, I cannot but agree with the finding recorded by the learned Sessions Judge, holding the

Appellant guilty of committing the offence under Section 326 and 324 of IPC.

Though I am convinced that the finding of conviction do not warrant any interference, difficulty posed, is about the sentence imposed.

The learned counsel for the Appellant has invited my attention to the sentence imposed upon the accused, on being found guilty under Section 326 of the IPC for causing grievous injuries to Regina, Sulbha and Tarabai and the trial Judge has imposed sentence of 3 years RI on each count and has specifically directed the sentence to run consecutively.

Even the sentence imposed on being convicted under Section 324 of the IPC for causing injury to PW 2 Natraj, is also directed to run similarly.

This aspect of the order is subjected to severe criticism by Mr. Rajput as he would place reliance upon the decision of the Apex Court in case of *Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti vs. Assistant Collector of Customs (Prevention), Ahmedabad and Another, (1988) 4 SCC 183* and he would submit that in arriving at appropriate sentence the Court must consider and sometimes reject many factors and must ensure a balancing

act. According to him, though the discretion is vested in the Courts to decide whether the sentence imposed would run concurrently or consecutively, the Courts must take into consideration the usual factors i.e. the gravity of the accusations as well as the impact of the sentences having been directed to run consecutively instead of concurrently.

16] While dealing with the said argument as to whether the sentence imposed on rendering the finding of conviction shall run concurrently or consecutively, it is necessary to reproduce Section 31 of the Code of Criminal Procedure.

31. Sentence in cases of conviction of several offences at one trial – (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a

single offence, to send the offender for trial before a higher Court: Provided that-

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

The above provision is subject to the limitation of the punishment of offence made up of several offences as contemplated in Section 71 of the IPC, which reads thus :

“71. Limit of punishment of offence made up of several offences. - Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

[Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.]

17] Another provision which must be taken note of in this regard is Section 427 which is the provision for imposing sentence on an offender already sentenced for another offence and it contemplates that when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such punishment shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with previous sentence.

Undisputedly, a discretion is vested in the Court while imposing a sentence and directing whether it shall run concurrently or consecutively. Imposition of sentence in order to punish an accused on being found guilty of committing an offence as established by the prosecution is definitely a complex and a well ordained procedure.

A befitting sentence is synonym to justice. The criminal procedure code confers discretion on Courts to determine the quantum of sentence to be awarded upon a convict based upon certain judicial standards and principles and the discretion is not only restricted to this aspect, but the Courts are also empowered to determine the manner in which such sentences may run i.e. either consecutively or concurrently.

The two provisions quoted above are relevant for the purpose of

exercise of discretion in the existing situation projected before the Court.

Section 31 of the Code confer full discretion upon the Court to order sentences for two or more offences at one trial to run concurrently having regard to the nature of offence and attended aggregating to the litigating circumstances. The Courts are within their power and discretion to determine the manner in which the sentence would run and there is no strait-jacket approach in the Courts exercising such discretion.

18] In Mohd. Akhtar Hussain(supra), the Apex Court has laid down the proportion of law on the aspect of running of the sentences, in the following words :

“17. It is no doubt true that the enormity of the crime committed by the accused is relevant for measuring the sentence. But the maximum sentence awarded in one case against the same accused is not irrelevant for consideration while giving the consecutive sentence in the second case although it is grave. The court has to consider the totality of the sentences which the accused has to undergo if the sentences are to be consecutive. The totality principle has been accepted as correct principle for guidance. In R. v. Edward Charles French', Lord Lane, C.J. observed:

We would emphasize that in the end, whether the sentences are made consecutive or concurrent the sentencing judge should try to ensure that the totality of the sentences is

correct in the light of all the circumstances of the case.

18. The trial Magistrate in this case has properly considered all aspects including the plea of guilty and given good reasons for awarding 4 years RI. That means in all, the appellant has to undergo 11 years of imprisonment. That by itself is quite long enough in a man's life. But the High Court took a narrow view of the whole matter with the enormity of the crime on the forefront. The broad expanse of discretion left by legislation to sentencing courts should not be narrowed only to the seriousness of the offence. No single consideration can definitely determine the proper sentence. In arriving at an appropriate sentence, the court must consider, and sometimes reject, many factors. The court must 'recognise, learn to control and exclude' many diverse data. It is a balancing act and tortuous process to ensure reasoned sentence. In consecutive sentences, in particular, the court cannot afford to be blind to imprisonment which the accused is already undergoing."

19] The aforesaid principle was further relied upon by the Apex Court in case of *VK Bansal vs, State of Haryana, 2013 SCC 211* in the following words :

"It is manifest from Section 427(1) that the Court has the power and the discretion to issue a direction but in the very nature of the power so conferred upon the Court the discretionary power shall have to be exercised along the judicial lines and not in a mechanical, wooden or pedantic manner. It is difficult to lay down any straight-jacket approach in the matter of exercise of such discretion in courts. There is no cut and dried formula for the Court to follow in the matter

of issue or refusal of a direction within the contemplation of Section 427(1). Whether or not a direction ought to be issued in a given case would depend upon the nature of the offence or offences committed, and the fact situation in which the question of concurrent running of the sentences arises."

The legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on single transaction, no matter different complaints in relation thereto may have been filed.

20] The higher Courts have always devised and adopted 'Prisoner/convict benefit approach' while directing concurrent running of sentences, in cases where the prosecution/subsequent conviction relates to offences arising out of single transaction.

In case of O.M. Cherian alias Thankachan vs. State of Kerala and ors. (2015) 2 SCC 501, the Apex Court has clarified that in cases of such type i.e. single transaction based offences recourse to the provision under Section 31 may not be necessary and it was clarified that the ambit of Section 31 is wide, covering not only a single transaction constituting two or more offences, but also offences arising out of two or more transactions. Accordingly, it was opined that under such circumstances Section 31 Cr.P.C. leaves a complete discretion in the Courts to order sentences to run concurrently and no restricted

approach can be prescribed. In any case, the discretion for concurrent running of sentence ought to be issued in a given case would depend upon the nature of offence committed or the offences committed and the facts and circumstances of the case.

21] In *Nagaraja Rao vs. CBI in Criminal Appeal No.104/2015*, when the appellant was convicted for committing an offence under Section 381 of IPC and also under Section 52 of the Indian Post office Act, 1898, while awarding punishment for commission of the two offences did not mention whether the punishments shall run 'concurrently' or 'consecutively' and being aggrieved by the same, the Appellant filed Criminal Appeal and the Judge confirmed the conviction and sentences and dismissed the appeal. The High Court dismissed the revision and in consequence upheld the conviction and sentences, which resulted in a Special Leave Petition being filed.

Dealing with such a scenario, their Lordships of the Apex Court categorically expressed as under :

"13. The expressions "concurrently" and "consecutively" mentioned in the Code are of immense significance while awarding punishment to the accused once he is found guilty of any offence punishable under IPC or/and of an offence punishable under any other Special Act arising out of one trial or more. It is for the reason that award of former enure to the benefit of accused whereas award of latter is detrimental to the accused's interest. It is, therefore, legally atory upon the Court

of first instance while awarding sentence to specify in clear terms in the order of conviction as to whether sentence awarded to the accused would run "concurrently" or they would run "consecutively"

15. The issue as to in which circumstances the Court should direct the sentences to run "concurrently" or "consecutively" after the accused is convicted of more than one offence in one trial or more has been the subject matter of several cases in this Court and thus remains no more res integra. This issue was considered by this Court while considering the scope of Section 31, 427 and 428 of the Code and Section 71 of IPC."

Relying upon the decision in case of Mohd. Akhtar Hussain (supra) a reference was made to a three Judges Bench decision of the Apex Court in case of *State of Maharashtra & Anr. vs. Najakat Alia Mubarak Ali*, (2001) 6 SCC 311, and in Para 20 and 21 the conclusion was recorded to the following effect :

"20. Keeping the aforesaid principle of law in mind and applying the same to the facts of this case in the light of powers available under Section 31 of the Code, we are of the considered opinion that both the sentences awarded to the appellant in the case at hand should run "concurrently" and this we do by invoking Section 31 which enables the Court to so direct.

21. In our considered opinion, this is a fit case where we can direct the sentences awarded to the appellant to run "concurrently for the reasons that firstly, the case out of which

this appeal arises relates to the year 1993 and is pending for a long period of 21 years; secondly, the two sentences were imposed on the app arose out of one offence of theft punishable under Section 381 IPC tried in one trial; thirdly, the provisions of Section 52 of the IPO Act were required to be invoked against the appellant because he was the postal employee; fourthly, the Gold Chain was long recovered and also handed over to the person concerned; fifthly, the appellant has already been dismissed from services due to impugned conviction; and lastly, the appellant has been suffering from heart ailment since long, as is proved by documents filed along with the appellant's affidavit 03.11.2014.”

22] Applying the aforesaid exposition of law to the facts of the case, when the focus of criminal justice system is upon reformation and rehabilitation of prisoners, when the role attributed to the accused by the injured witnesses is appreciated, it was in the feat of anger and as a result of the emotional outburst on account of he being confronted with Mala and since suspicion was expressed about the relationship, he mounted an assault. However, it is to be seen that the witnesses have categorically deposed that there were other assailants, but neither of them faced the charge and it is only the present accused who faced the charge and stood convicted of causing grievous hurt to the injured i.e. PW 1, 3 and 4.

The paradigm shift in imposing the sentences on the touchstone of the possibility of a prisoner/ accused being reformed, the Apex Court

in case of *Manoj alias Panu vs. State of Haryana* has set aside the decision of the High Court which upheld the sentence imposed upon the Appellant for different offences to run consecutively under IPC and Arms Act by specifically referring to the age of the Appellant at the time of commission of the offence.

The Appellant at the relevant time was aged 25 years and hence considering his young age and the fact that the sentence imposed on him was suspended, and the Appeal is heard after almost more than a decade, I deem it appropriate to maintain the finding of conviction and imposition of sentence with a variation that all the sentences imposed upon him are directed to run concurrently.

23] It is necessary to note that the Appellant on being arraigned as accused was arrested on 30.09.1992 and he was never released on bail. The trial Judge pronounced the impugned Judgment on 31.03.1997 and imposed sentence upon him, which were directed to run consecutively.

It is only on 29.08.1997, when this Court admitted the Appeal he was directed to be released on bail on furnishing bond of Rs.5,000/- and two sureties of the like amount to the satisfaction of the trial Court. The realization of the fine came to be stayed.

In the wake of aforesaid order, the Appellant was released on bail

and as such he had undergone imprisonment of 4 years 10 months and 30 days including, the period as under-trial prisoner.

In the wake of the modification in the sentence imposed by the impugned Judgment, since the sentences imposed upon him are directed to run consecutively, he has already undergone the sentence of more than 3 years of Rigorous Imprisonment.

Distinct fine amounts were imposed upon him for causing injuries to PW 1, PW 3 and PW 4 and a substantial amount was directed to be paid to the injured, in default, he was directed to undergo a fixed sentence. On being convicted for causing injury to PW 3 Natraj Chettiyar, a fine of Rs.1000/- was imposed in default he was directed to undergo sentence of one month.

Considering the fact that, I have modified the sentences imposed upon the Appellant and since for a considerable period of time, the realization of fine came to be stayed, and in any case, since the Appellant is on a freespree, after having been released on bail and is not traceable, I do not find any propriety in directing the deposit of fine. Much time has lapsed since the date of the incident and therefore, in my considered opinion, the recovery of the fine amount and payment of compensation to the injured will not be of much assistance to them.

Hence, the recovery of fine amount is waived.

24] With the aforesaid modification the imposed Judgment is upheld.
The Appeal stands partly allowed to the aforesaid extent.

[BHARATI DANGRE, J]