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has been referred, reports that the detention is justified, the Government should determine what the period of detention should be and not before. The fixing of the period of detention in the initial order itself in the present case was, therefore, contrary to the scheme of the Act and cannot be supported. The learned Advocate-General, however, urged that in view of the provision in section 11(2) that if the Advisory Board reports that there is no sufficient cause for the detention, the person concerned would be released forthwith, the direction in the order dated 30th July, 1951, that the petitioner should be detained till 31st March, 1952, could be ignored as mere surplusage. We cannot accept that view. It is obvious that such a direction would tend to prejudice a fair consideration of the petitioner's case when it is placed before the Advisory Board. It cannot be too often emphasised that before a person is deprived of his personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected.

Petition allowed.

Agent for the respondent: *P. A. Mehta.*

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GURDEV SINGH—*Caveator.*

[SAIYED FAZL ALI, MEHR CHAND MAHAJAN and CHANDRASEKHARA AIYAR JJ.]

Criminal Procedure Code (V of 1898), s. 234(1)—Misjoinder of charges—Firing single shot at two persons to kill them—Whether one offence or two offences.

The appellant was tried in respect of the following charges: (i) causing the death of A and thereby committing an offence punishable under s. 302, Penal Code, (ii) firing a short at B and

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C with the intention of causing their death and thereby committing an offence punishable under s. 307, Penal Code, and (iii) firing a shot at D with the intention of killing him and thereby committing an offence punishable under s. 307, Penal Code. It was contended on his behalf that there was a misjoinder of charges as the second charge was really a charge in respect of two offences (*viz.*, attempt to murder B and attempt to murder C) and the accused had therefore been charged with, and tried for, more than three offences in contravention of s. 234(1) of the Criminal Procedure Code: *Held*, that there was nothing wrong in the trial as the single act of firing a shot at B and C is one offence and not two offences and the trial was not bad for misjoinder of charges. [Their Lordships however observed that they should not be understood as laying down the wide proposition that in no case can a single act constitute more than one offence.]

Promotha Natha Roy v. *King Emperor* (17 C.W.N. 479), *Johan Subarna* v. *King Emperor* (10 C.W.N. 520), *Poonit Singh* v. *Madho Bhot* (I.L.R. 13 Cal. 270) and *Sudheendra Kumar Roy* v. *Emperor* (I.L.R. 60 Cal. 643) approved.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 38 of 1950. Appeal from the judgment and order of the High Court of Patiala (Teja Singh C. J., and Gurnam Singh J.) dated 5th October, 1950, in Criminal Appeal No. 28 of 1950, affirming the conviction and sentence of the appellant by the Sessions Judge of Sangrur.

Gopal Singh and *Kartar Singh*, for the appellant.

Narinder Singh, Advocate General for the Patiala and East Punjab States Union (*Jindra Lal*, with him) for the respondent.

Jai Gopal Sethi (*R. L. Kohli*, with him) for the Caveator.

1951. December 19. The Judgment of the Court was delivered by

FAZL ALI J.—This is an appeal against the judgment of the High Court at Patiala upholding the conviction and sentence of the appellant, who was tried by the Sessions Judge of Sangrur for the offence of murder and sentenced to death.

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The prosecution story is a somewhat long and complicated one, but ignoring unnecessary details, the material facts may be shortly stated as follows:—

On the 5th October, 1949, there was a quarrel between the appellant and one Darbara Singh, in the course of which the appellant attacked the latter with a *phaura* (a cutting instrument). About that time, Gurmail Singh, the deceased person, returned to his house, which was close to the house of Darbara Singh, from his cotton field, where he had been working, in order to take tea for his companions who were still working in his field. The appellant asked Gurmail Singh to lend him a spear to enable him to kill Darbara Singh, but since the latter refused to do so, there ensued a quarrel between him and the appellant, in the course of which they exchanged abuses and grappled with each other, and the fight was stopped only by the intervention of certain persons present at the place. It appears that the appellant was greatly affected by this quarrel, and thereafter he is said to have armed himself with a rifle and attacked 3 persons in the vicinity of Gurmail Singh's cotton field. He fired firstly at Kartar Singh, son of Sarwan Singh, while the latter was returning to his house from the field of Gurmail Singh, but he was not hurt. Soon after that, while Gurmail Singh was returning to his field after attending to his buffaloes in a garden which was nearby, the appellant chased him and fired at him thereby causing his instantaneous death. Lastly, he is said to have fired at Kartar Singh, son of Bishan Singh and one Jangir Singh, while they were raising an alarm, but the bullet missed them. Upon these allegations, the following three charges were framed against him:—

"(1) That you.....fired a shot at Gurmail Singh deceased with rifle P. I. with the intention of killing him and caused his death and thereby committed an offence punishable under section 302.....

(2) That you..... fired a shot at Kartar Singh and Jangir Singh with rifle P. I. with the intention of causing death and made an attempt to cause their death

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....and thereby committed an offence punishable under section 307.....

(3) That you.....fired a gun-shot at Kartar Singh s/o Sarwan Singh.....with the intention of killing him and made an attempt to cause his death and thereby committed an offence punishable under section 307.."

It appears that the appellant was an Instructor in the Home Guards, and the rifle which he is said to have used had been given to him by his superior officer with 20 rounds of ammunition.

To support their verson of the occurrence, the prosecution examined 3 eye-witnesses whose evidence has been accepted by both the courts below after careful scrutiny. The learned Sessions Judge acquitted the appellant of the second and third charges under section 307 of the Indian Penal Code, holding that there was no convincing evidence that the appellant intended to murder Jangir Singh and the other 2 persons. He however convicted him of the first charge under section 302 of the Indian Penal Code and sentenced him to death, which sentence was later confirmed by the High Court.

The learned counsel for the appellant had very little to argue on the merits of the case, but he seriously contended that there had been a misjoinder of charges which could not be tried together under the law, and the illegality so committed had vitiated the whole trial of the appellant. It appears that in the High Court, the line of argument on this point was somewhat different from the line adopted in this court. What was stressed in that court seems to have been that the three incidents in respect of which the appellant was charged not having happened in the course of the same transaction, they could not have been properly made the subject of one trial, and for this contention reliance was placed mainly on section 235 (1) of the Criminal Procedure Code, which provides that "if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence." It should be noted

that that section is only one of the exceptions to the general rule laid down in section 233 of the Code that for every distinct offence, there shall be a separate charge and every such charge shall be tried separately. In this court, no reference was made to section 235, but the argument was confined to the question as to whether the present case falls within another exception of section 233 which is contained in section 234 (1) which runs as follows:—

"When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for any number of them not exceeding three."

It was argued before us that even though only 3 charges have been framed against the appellant, he has in fact been tried for 4 offences and not 3. The 4 offences are said to be these:—

(1) Committing the murder of Gurmail Singh;

(2) Attempting to murder Kartar Singh, son of Sarwan Singh;

(3) Attempting to murder Jangir Singh; and

(4) Attempting to murder Kartar Singh, son of Sarwan Singh;

The learned counsel contended that the fact that the appellant has been acquitted of the last 3 offences and convicted only of the first offence was immaterial to the point raised by him, and we have only to see whether all the offences mentioned above could be properly tried together. In our opinion, the short reply to this contention is that the second charge which relates to the appellant firing at Kartar Singh and Jangir Singh is not a charge with respect to 2 offences but is a charge with respect to one offence only. The evidence adduced by the prosecution shows that the appellant fired only one bullet. The word "offence" has been defined in the Criminal Procedure Code as meaning "any act or omission made punishable by any law for the time being in force". There seems to be

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nothing wrong in law to regard the single act of firing by the appellant as one offence only. On the other hand, we think that it would be taking an extremely narrow and artificial view to split it into 2 offences. There are several reported cases in which a similar view has been taken, and in our opinion they have not been incorrectly decided. In *Queen Empress* v. *Ragu Rai*(1), where a person stole several bullocks from the same herdsman at the same time, it was held that only one offence had been committed. In *Promotha Nath Ray* v. *King Emperor*(2), it was held that misappropriation in regard to several account books constituted only one offence. In *Johan Subarna* v. *King Emperor*(3), it was held that when an attempt to cheat a number of men by speaking to them in a body had been committed, one joint charge was valid. In *Poonit Sing* v. *Madho Bhot* (4), it was held that only one offence had been committed by a person who gave false information in one statement to the police against 2 persons. In *Sudheendra-Kumar Ray* v. *Emperor*(5), a person who was chased by 2 constables had fired at them several times, but it seems to have been rightly assumed that the firing did not constitute more than one offence, though the point was not specifically raised or decided. In our opinion, there is no substance in the point raised, though we should not be understood as laying down the wide proposition that in no case can a single act constitute more than one offence.

The other points urged on behalf of the appellant before us were somewhat unsubstantial points relating to the merits of the case, which it is not usual for this court to allow to be raised in appeals by special leave.

In our opinion, this appeal is without merit, and it is accordingly dismissed.

Appeal dismissed.

Agent for the appellant: *R. S. Narula.*
Agent for the respondent: *P. A. Mehta.*
Agent for the caveator: *Vidya Sagar.*

(1) 1881 A.W.N. 154.
(2) 17 C.W.N. 479.
(3) 10 C.W.N. 520.
(4) I.L.R. 13 Cal. 270.
(5) I.L.R. 60 Cal. 643.