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NATIONAL IRON AND STEEL CO. LTD.

August 21.

v.

THEIR WORKMEN

(P. B. GAJENDRAGADKAR, K. C. DAS GUPTA and
J. R. MUDHOLKAR, JJ.)

Industrial Dispute—Incentive bonus—Scheme—Tribunal's jurisdiction to vary—Piece-rate workmen—Rate.

The appellant runs a steel mill and there are various departments in the mill which are grouped under three headings. By agreement between the management and the workmen different production targets and different incentive bonus schemes for different departments have been in force for some time. The respondent No. 2 on behalf of the workmen claimed that incentive bonus scheme at present in force should be revised so as to cover those categories of workmen who are at present out of it. It was further claimed that the present targets of production should be refixed and brought to the 1948 level. On the failure of the parties to come to a settlement the Government referred the matter to the Industrial Tribunal for adjudication.

The Tribunal by its award directed the revision of production targets in certain departments. With regard to the claim for extension of the scheme to the clerical and Watch and Ward Staff and the workmen in the shopping department the Tribunal awarded the extension at certain specified rates. The claim for revision of the rates of bonus in the indirect productive department was rejected. The Tribunal also rejected the claim of the workmen that the rates of production bonus to all categories of workmen should be made uniform.

The appellants thereupon appealed to this Court by way of special leave. The main question raised in the appeal was whether the Tribunal had jurisdiction to refix the production targets as well as the rates of incentive bonus. A further question raised was whether piece-rate workmen are entitled to incentive bonus. The appellants made a grievance of the fact that their request to appoint assessors for giving opinion on technical matters was rejected by the Tribunal. They also alleged that the Tribunal had no adequate data before it to determine the proper production targets.

Held, that the Tribunal ought to have borne in mind the fact that for the determination of technical matters it is always desirable to have the assistance of persons who are familiar with the subject and it should not deny to itself the opportunity of obtaining the appropriate material. While it is the function of the management whether or not to introduce a scheme of incentive bonus, once such a scheme is introduced the Industrial Tribunal has jurisdiction to vary the scheme including the rates of bonus. But the scheme should not be interfered with lightly. The Tribunal is entitled to consider whether the scheme is erroneous, unrealistic or unreasonable. Where after consideration of relevant materials the Tribunal finds the targets are too high it can refix them. But it should also see that the targets fixed are not too low.

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Held, also, that piece-rate workmen are entitled to be paid at a higher rate for the excess they have produced beyond a norm. But in fixing the higher rate care should be taken to avoid glaring disparity between the total earnings of an average piece-rate worker and of a time-rate workman working over the same period.

CIVIL APPELLATE JURISDICTION : Civil Appeal
 No. 208 of 1962.

Appeal by special leave from the award dated August 19, 1960, of the Third Industrial Tribunal, West Bengal, in Case No. VIII-119 of 1958.

A. V. Viswanatha Sastri, S. K. Bose and Sardar Bahadur, for the appellant.

D. N. Mukherjee, for respondent No. 1.

Janardan Sharma and B. P. Maheshwari, for respondent No. 2.

1962. August 21. The following Judgment of the Court was delivered by

MUDHOLKAR, J.—The substantial question which falls for decision in this appeal by special leave against an award made by the Third Industrial Tribunal, West Bengal, centres round the

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question of production bonus. The appellant company runs a steel mill at Belur. There are various departments in the mill which have been grouped under three headings: direct productive departments, indirect productive departments and non-productive departments. In the last mentioned group come the general office, accounts department, establishment department, time office, stores, shipping department, drawing and design department, laboratory, progress and planning department, civil construction department, watch and ward department, medical department and welfare department. The first group consists of the following five departments :

1. Steel foundry
2. Electric Furnaces
3. Rolling Mills
4. Bolt and nuts shop and
5. Machine shops.

The second group consists the following departments :

1. Refractory attached to the electric furnaces
2. Mill General, attached to the rolling mills
3. Roll turning, attached to the rolling mills
4. Yard Mazdoors, attached to the rolling mills and
5. Civil maintenance department, electric maintenance department and mechanical maintenance department.

It is common ground that each productive department has an individual target for the purpose

of payment of production bonus over and above the wages. The existing targets were fixed (a) in 1948, in electric furnaces and rolling mills; (b) in December, 1956, in the steel foundry and (c) in January, 1959, in the bolt and nut workshop. According to the appellant the targets were revised from time to time in consultation and with the concurrence of the representatives of the workmen of the department concerned as and when occasion arose for doing so in consequence of the adoption of better methods of production, new techniques, addition of plant and machinery etc.

The workmen in three indirect productive departments, namely, refractory attached to the electric furnace, 'mill general' attached to the rolling mills and roll turning attached to the rolling mills are paid production bonus at the rate of 75% of the average rate of production bonus earned by the respective direct productive department to which these three indirect productive departments are attached.

The Yard Mazdoors attached to the rolling mills are paid on the basis of an arbitration award which is subsisting between the workmen and the company.

In civil maintenance, electric maintenance and mechanical maintenance departments, the workmen are paid production bonus at the rate of 75% of the average rate calculated on the basis of production bonus paid to the workmen in the productive departments taken together.

In the steel foundry department, the target was 20 pounds per man per day until the end of 1956. Towards the end of 1956 the Appellant had direct negotiations with the workers' representatives of the department, and in view of the additions to the

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plant and machinery and provision for additional facilities and working space and improvement in the technique of production which raised considerably the production capacity of the said department, it was agreed to raise the target upto 25 pounds per man per day. The value of machinery and plant added to this department alone would be about Rs. 2 lakhs. About Rs. 4.5 lakhs worth of electric cranes were also subsequently installed. They are working for this department and the electric furnace department. Since December, 1956 there have been further additions of machinery etc., to the extent of about Rs. 3 lakhs in this department alone.

According to the appellant the workmen all along worked without protest against the targets in force from time to time. But nine months after the revised targets came into operation the second respondent, which is one of the two unions to which the workmen of the company belong, protested against the raising of targets in the steel foundry department from 20 to 25 pounds.

According to the appellant company, different schemes for payment of incentive bonus have been adopted in the different departments because incentive bonus is directly linked up with production targets. These targets, according to the appellant, have been fixed by direct negotiations with the workman's representatives in the respective departments as for instance the increase of the targets in the steel foundry from 20 pounds to 25 pounds per head per day at the end of the year 1956. The respondent No. 1 which is the other union did not make any protest in this matter and indeed even in the proceedings before the Tribunal it did not join hands with the second respondent.

The Government of West Bengal, having come to the conclusion that an industrial dispute had arisen between the appellant and its workmen

with respect to the payment of incentive bonus, referred it for adjudication to the Third Industrial Tribunal under s. 10 of the Industrial Disputes Act, 1947. Both the unions filed their written statements before the Tribunal. Subsequently disputes on the same question with three associate companies were also referred for adjudication to the same Tribunal. We are, however, not concerned with the disputes other than the one in which the appellant, the National Iron & Steel Co. Ltd., is concerned.

The substance of the claims made on behalf of the workmen by the respondent No. 2 may be briefly summarised thus:

The incentive bonus scheme at present in force should be revised so as to cover those categories of workmen who are at present out of it and to remove all anomalies in the existing scheme as well as to remove such differences as are found to exist. It is further claimed that the present targets of production should be refixed and brought to the 1948 level.

The first respondent did not attack the targets on the standard of performance or production existing in the different departments of National Iron & Steel Co. Ltd. The main thing it wants is that the scheme of incentive bonus should be extended to all productive departments at the same rate without making any distinction between alleged direct productive workmen and alleged indirect productive workmen.

It wants that workmen in the indirect productive departments should be paid incentive bonus at the same rate at which workmen of the productive department to which the particular indirect productive department is attached are paid. It also wants that a workman employed in the maintenance department, civil maintenance department

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and siding maintenance department of the appellant should be paid one half of the total rate arrived at by adding the rates at which all the productive departments of the appellant as also the workmen of the associate companies are paid. As regards the workmen employed in the non-productive departments it wants them to be paid bonus at one-fourth of the total rate arrived at by adding the rates at which the workmen in the productive departments are paid. It wants also that four employees in the shipping department should be paid at the rate at which the workmen of the rolling mills department are paid and the three chemists in the laboratory should be paid the same rate as workmen in electric furnace department. Finally it wants incentive bonus to be assessed on the basis of basic wages and dearness allowance earned by the workmen and also on the basis of the total earnings including the earnings for the days described as non-productive days.

We may mention here that the appellant has denied that there were any anomalies in respect of the incentive schemes in the various departments. The stand that it takes is that the introduction of such schemes being entirely the function of the management the company is under no legal or moral obligation to extend it to all categories of workmen. The claim of the respondent No. 1 for the revision of targets and removal of anomalies and differences in the existing bonuses is thus said to be wholly unfounded. The appellant has further justified the classification of departments into direct productive, indirect productive and non-productive on the ground that it is in conformity with the existing practice in the industry. The employees in the productive departments are paid incentive bonus at the full rate which is normally payable for them for the

work they do and that there is no practice of employing direct productive workers in the indirect productive departments and that the workmen employed in the maintenance department are paid at 75% of the average bonus. Production bonus, according to it, is paid to such workmen as are directly engaged in production work and maintenance and that non-productive workmen are not covered by the existing scheme. It also disputes the claim made by the first respondent on behalf of four clerks in the shipping department and the three chemists in the laboratory.

After the statements were filed by all the parties it was urged on behalf of the appellant that issues should be framed. But the Tribunal did not accede to the request. Ultimately, by an order made by it, the Tribunal said that it would adjudicate only on those points which were raised in subparagraphs "1, 2(b) and (c) of paragraph 18 of the written statement filed by the NISCO Karmachari Sangha (respondent No. 1) and also on the points raised in the prayer portion in paragraph 25 of the written statement of Belur Iron & Steel Workers' Union (respondent No. 2)".

The Tribunal first considered the question of the revision of targets. According to it the target in the steel foundry department which was raised in December, 1956 from 20 lbs. to 25 lbs. should be reduced to 23 lbs. In regard to the electric furnace department, rolling mills, bolt and nut shop and machine shop the Tribunal held that the target should be 50% of the productive capacity or efficiency of the workmen of the department. It negatived the claim of the workmen for removal of the alleged anomalies in the existing bonus scheme. With regard to the workmen's claim for the exten-

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sion of the scheme to the clerical and watch and ward staff the Tribunal held as follows:

“This incentive production bonus shall be paid to workmen of the non-productive departments at the rate of 12-1/2% of the total rate to be arrived at by adding the rates at which all the productive departments may be paid. This rate is allowed in consideration of the fact that the workmen of the non-productive departments are not directly connected with production but only remotely. The calculation of this bonus will be made with reference to basic pay only excluding D.A.”

The Tribunal further held that this would also apply to the four workmen in the shipping department and three chemists in the laboratory. In so far as the workmen employed in the indirect productive department were concerned the Tribunal held that there was no case for making any change because the present rate of 75% of the bonus paid to the workmen of the productive departments was fair and reasonable. The Tribunal rejected the claim of the workmen that rates of production bonus to all categories of workmen whether employed in direct productive or indirect productive departments have to be uniform.

One of the points urged on behalf of the appellant before the Tribunal and taken in the statement of the case is that the introduction of incentive bonus, fixation of targets and fixation of production hours is a function of the management and the Tribunal has no right to interfere. It has been held by this Court in *Titaghur Paper Mills Co. Ltd. v. Its Workmen* (1) that while it is the function of the management whether or not to introduce a scheme of incentive bonus, once such a scheme is

(1) [1959] Supp. 2 S.C.R. 1012.

introduced the right to claim such bonus becomes a condition of service of workmen and, therefore, the Industrial Tribunal has jurisdiction to vary the scheme enforced by the employer including the rates of bonus. This Court has pointed out in that case that the payment of incentive bonus is payment of further emoluments to the workmen depending not upon extra profits but upon extra production, as an incentive to them to put in more than the standard performance. Where, therefore, the management has introduced a scheme for the grant of such bonus it is open to the Tribunal to vary the terms of the scheme if the circumstances of the case justify its doing so. In view of the decision in that case Mr. Vishwanatha Sastri fairly conceded that the tribunal had jurisdiction to refix the targets as well as to refix the rates of the incentive bonus provided it found that the targets were too high or the rates wholly incommensurate to the additional performance put in by the workmen. His main grievance on this score, however, was that the Tribunal had no material before it for reducing the targets in the steel foundry department from 25 lbs. per capita per day to 23 lbs. He further contended that the view of the Tribunal that the targets for the other direct productive departments should be 50% of the capacity of the unit or the efficiency of workmen would lead to startling results. He also drew our attention to an application made by the appellant during the course of the proceedings before the Tribunal for the appointment of assessors for the purpose of giving opinion on various technical matters which have to be borne in mind for the preparation of a scheme for incentive bonus payable to workmen engaged in different departments of the appellant. No order was passed on this application by the Tribunal even though on being reminded of its omission to do so the Tribunal promised to make an order later. So here we are faced with a situation where there

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is no adequate data for judging what would be reasonable and proper targets from the point of view of both the employeres and the employees and what would be the reasonable rates of incentive bonus. The Tribunal would have done well to bear in mind the fact that for the determination of technical matters it is always desirable to have the assistance of persons who are familiar with the subject. No doubt the ultimate decision would rest with Tribunal but since the decision has to be based on proper material it should not have denied to itself the opportunity of obtaining the appropriate material. On this one ground alone the award of the Tribunal with respect to the fixation of targets and the rates of incentive bonus in the various departments will have to be quashed.

For revising the target of 25 lbs. per capita per day in the steel foundry department the Tribunal had hardly any material before it. It failed to give due importance to the fact that the original target of 20 lbs. was raised to 25 lbs. by the appellant after discussing the matter with the workmen concerned and with their consent. The Tribunal would do well to remember that though it has power to vary an existing scheme and, therefore, also the targets provided therein, it cannot do so lightly. Primarily it is the function of the management to fix and ordinarily even to revise the targets. No doubt, in exercise of this function the management must consult the workmen concerned. But where all that has been done and the revised targets are the result of agreement between the management and the workmen there must be good reasons for revising the targets.

What the Tribunal has done with respect to the targets in the other productive department is still more unjustified. As already stated it has fixed the targets in these departments at 50% of the total

productive capacity per month in these mills or 50% of the efficiency of the workmen employed. It has directed that incentive bonus should be calculated at the present rate on the quantum of production in excess of those revised targets. On the face of it, it would appear to have fixed the targets at very low levels and the result of doing this would be that half or more than half of the total earnings of a workman would come to him by way of incentive bonus without the production going up. Its scheme, rather than proving as an incentive to production, would virtually be a disincentive.

Speaking about premium systems Florence Peterson in her "Survey of Labour Economics", revised edition, has observed at p. 329 :

"No matter what name they go by, all premium systems have one distinct characteristic, namely, a guaranteed rate with premium payments for production beyond an established standard. The standard may be in terms of units of output or units of time, that is, minutes or hours,...

The essential distinction in the various incentive systems have to do with (1) the point or level of production at which premiums begin, and (2) the formula used for determining premium rates.

In all premium systems the crucial factor is where the 'task' or 'standard' is set. The policy adopted can tend towards either of two directions, namely, a strict standard which is difficult to accomplish, with high premiums for better than standard, or a lenient standard with relatively small premiums. If a very strict standard is set which can be exceeded

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only through the best efforts of the most competent workers, the guaranteed rate tends to become the actual earnings rate for most of the workers. If, on the other hand, a relatively easy standard is fixed, the major portion of the total earnings of most employees on the job will consist of premium wages.

... ..

The second fundamental distinction in incentive plans has to do with the formula for the division of gains when above-standard production is attained, regardless of whether or not the established standard is high or low....

Increasing the ratio of returns to the worker is obviously done for the purpose of encouraging ever higher production. Plans providing for a decreasing ratio of returns, or a declining wage curve, are based upon the principle that increased output not only is a result of the workers efforts but is also due to improvement in working conditions for which management is responsible, and that management should therefore 'share' in the gains...."

Bearing in mind these observations and the fact that ordinarily the rate of incentive bonus is correlated to the target it would follow that if the target originally fixed by the employee is very high then the existing incentive bonus payable may well be regarded as having been fixed high. Whether that is in fact so or not would, however, be a question to be decided by the Tribunal. In this case the Tribunal without considering this point has directed that incentive bonus should be paid to the workmen in the department concerned at the existing rates even

though the targets have been halved. That direction is not proper. On behalf of the workmen Mr. Sharma alleged that the existing targets are fixed so high that for earning incentive bonus the workmen have to sweat. This contention also needs to be examined by the Tribunal. Now, since the scheme of incentive bonus already prevails in most of the departments of the company the Tribunal will have the jurisdiction to consider whether the existing scheme is onerous, unrealistic, unreasonable or otherwise. We would, however, reiterate that the scheme should not be interfered with by the Tribunal unless it comes to the definite conclusion that the targets fixed are so high that an average working with ordinary efficiency can earn only the daily wage but nothing more. It would render the task of the Tribunal easy if it tries to elicit the requisite information from assessors as well as from others conversant with the operations in each department. Where, after considering the relevant material the Tribunal finds that targets are too high or not reasonably attainable, it will undoubtedly be within its competence to refix them. But while refixing them it should take care to see that the targets are not so low that the major portion of the total earnings of most employees will consist of incentive bonus. Thus in revising the scheme prepared by the management the Tribunal has on the one hand to guard the interest of the workmen and prevent what may fairly be called sweating and on the other it has to see to it that the revised targets do not encourage laziness or reduce production to low or uneconomic levels. The Tribunal should further bear in mind that where the targets have been agreed to between the employer and the employees and even though a scheme of incentive bonus has been in operation for some time and the workmen have had experience of it no complaint has been made by them that the scheme is onerous. This would be a relevant circumstance to be taken

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into consideration when a demand is made long after the scheme has been in force for revision of targets. Again it must bear in mind the effect on production ascribable to improved techniques or to the installation of improved machinery. Here the Tribunal has adverted to none of the matters. To put it mildly, the manner in which the Tribunal has dealt with the question is wholly unsatisfactory.

We do not underestimate the difficulty presented by the question of fixing of targets. Perhaps the Tribunal's task in this regard would be rendered less difficult if, for instance, it can obtain material from which it could ascertain what the average production in each department was before the introduction of the original scheme and before improved techniques were introduced and better machinery installed. In the light of the material before it, the Tribunal should consider whether the old production could safely be accepted as the targets. We realise that here it is the appellant's case that the adoption of better techniques and installation of new machinery has made it possible for the workmen to produce more in the same time. This contention of the appellant needs to be examined. Here again, expert opinion will be valuable. If the Tribunal finds that the increase in production is solely ascribable to the innovations made and the workload of the workmen has not been increased, there would be a case for the upward revision of the old targets correspondingly. A complication will undoubtedly arise where the workload of workmen has increased. When such is the case the Tribunal will have to bear in mind the fact that workmen are after all human beings and not machines, that they are apt to feel tired if they have to work at a higher tempo than in the past, that performing mechanical operations over a long period produces not only boredom but also a great strain on the

muscular powers of workmen with the result that it produces more fatigue, physical as well as psychological. In such a case the revised target must, therefore, be reasonably below the level at which results of these kinds are apt to ensue. What we have said is not exhaustive of the factors to be borne in mind and it would be open to the Tribunal to bear in mind such other factors as would be relevant in this connection.

The next question which has to be considered is the extension of the scheme for payment of incentive bonus to the clerical and watch and ward staff. In *Burn & Co., Ltd. v. Their workmen* (1) this Court held that from the point of view of economics the clerical and subordinate staff in an industry, like its manual workers, contribute towards its production and there can, therefore, be no reason for excluding them wholly from the benefits of a scheme of incentive bonus. It was urged before this Court on the authority of decision in *Titaghur Paper Mills* case (2) that the introduction of incentive bonus is the function of the management and the Tribunal should not impose a scheme for payment of such bonus on the management. Dealing with this contention this Court observed :

“In the present case, however, the incentive bonus scheme has already been introduced by the company for the major part of its workmen and all that is now asked for is that the benefit of the scheme should be extended to the remainder of the workmen.”

Mr. Viswanatha Sastri has not challenged the correctness of the view taken by this Court in *Burn & Co's case*. (1). His main grievance with regard to the direction in the award extending incentive bonus scheme to clerical and watch and

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(1) (1960) 3 S.C.R. 323, 426. (2) (1959) Supp. 2 S.C.R. 1012;

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ward departments is that if implemented it would entitle these workmen to get in effect 100% bonus or perhaps even more. There are, as already stated, five productive departments and five indirect productive departments. Now, if we take 100 as the rate in each productive department the rate for the five indirect productive departments would be 75 and the total for all the departments would come to 875 and 12-1/2% of that would come to nearly 110 ! It is possible, as Mr. Sharma suggests that this is not what the Tribunal intended to do and that what it intended was to take the average rate for all the productive and indirect productive departments and give 12 of the average rate as bonus to the workmen of the non-productive departments. It may be that that was the intention of the Tribunal but the way in which it has expressed itself leads to the absurd result that the workmen employed in the non-productive departments will actually get more incentive bonus than workmen employed in the productive departments :

Before, however, coming to the conclusion that the scheme of incentive bonus should be extended to these workmen the Tribunal would do well to ascertain whether a case has been made out by them for grant of incentive bonus. Indeed one of the grounds which persuaded this Court in *Burn & Co's case* (1) to extend the scheme of incentive bonus to the clerical staff was that there was increase in their work in consequence of rise in production. The Tribunal would do well to ascertain whether in view of the increased production there has been a rise in the workload, if we may use that expression, with regard to non-productive workmen. If it finds that the workload has increased they could be held entitled to incentive bonus.

(1) (1960) 3 S.C.R. 423, 426.

We may further point out that in *Burn & Co's case* ⁽¹⁾ the Tribunal did not proceed to lay down the rate of incentive bonus to the clerical and subordinate staff but merely directed the company to extend the scheme to them and lay down the rates and conditions for those classes of workmen to be entitled to get the incentive bonus. This Court has impliedly approved this direction. Indeed, bearing in mind the principle that initially the whole question of incentive bonus involving the fixation of targets, prescribing rates and laying down other conditions is the function of the management, we have no doubt that the course taken by the Tribunal in *Burn & Co's case* ⁽¹⁾ was the proper one.

One more question remains to be considered and that is the contention of Mr. Viswanatha Sastri that no question arises for payment of incentive bonus to piece-rate workmen. His argument is that if a piece-rate workman produces more he earns more and, therefore, there is nothing more that he is entitled to. We do not agree. Even with regard to piece-rate workmen there is a norm and if a piece-rate workman produces anything beyond that norm he should be entitled to be paid for the excess at a higher rate. That is what is being done in England and other industrialised countries like the United States and there appears to be no reason why it should not be required to be done in our country. What the enhanced rate should be would necessarily be a matter to be determined with the assistance of assessors as well as of the company and the workmen. We would, however, administer a caution. The result of prescribing a higher rate for production above the norm should not lead to a glaring disparity between the total actual earnings of an average piece-rate workman and of a time-rate workman working over the same period of time. For, a wide disparity may lead to

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discontent, which is something which must be avoided in the interest of the industry as well as the workmen.

For the reasons stated above we quash the award in so far as it relates to the fixation of targets in the various departments of the appellant, fixation of rate of incentive bonus for time-rate workmen as well as piece-rate workmen and extension of the scheme to non-productive departments and remand the dispute to the Tribunal for adjudication after appointing assessors, considering all relevant material placed before it by the parties to the dispute and make a fresh award in the light of our observations. The rest of the award is affirmed.

There will be no order as to costs in this appeal.

Appeal allowed case remanded in part.

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(JAFAR IMAM, J. C. SHAH and J.R. MUDHOLKAR, JJ.)

Criminal Trial—Murder—Prosecution evidence discarded—Conviction on statement of accused—Statement partly exculpatory and partly inculpatory—If must be used as a whole—Code of Criminal Procedure, 1898 (Act V of 1898), s. 342.

The appellant and three others were charged with the murder of B. The prosecution case was that there was a dispute between B and the accused over diverting the flow of water in the fields, that the appellant armed with a stick and the others with spear, *kaholi* and *salang* assaulted B and B died of the injuries inflicted. In his statement under s. 342 Code of Criminal Procedure the appellant stated that B had thrown him on the ground and had