A RANBIR YADAV

v.

STATE OF BIHAR

MARCH 21, 1995

B [A.S. ANAND AND M.K. MUKHERJEE, JJ.]

Constitution of India—Article 227—Power of superintendence of High Court—Scope—Trial of a large number of persons—Transfer of case to bigger Court with better arrangement—Whether High Court justified in exercising its C *plenary administrative power—Held, yes.*

Article 136—Scope of interference with concurrent findings of facts.

Criminal Procedure Code, 1973—Secs. 326, 350, 216, 217—Transfer of case—Right of accused to claim a de novo trial—Transferee Court can D *exercise its judicial discretion only for further examination of a witness already examined and not for fresh examination of witnesses for a fresh trial.*

Secs. 154, 161, 162—FIR—Two incidents of rioting and murder—Investigation over the incidents started in the same night—Report lodged on the E *following morning could only be treated as a statement recorded in accordance with Sec. 161(3) of the Code and not as FIR—Admissibility of evidence of the witness.*

Indian Penal Code, 1860—Sections 148, 302/149, 436/149, 380 and 201/149—Offences of loot, arson and murder—Eye witnesses—A mob of F *500/600 people, residents of different villages came to and attacked the neighbouring village to exterminate the Bind Community—Three appellants belonging to Yadav community came on horse back armed with fire arms and led the mob, chased villagers and committed murders—Their conviction for offences upheld.*

G **According to the prosecution due to some land dispute between some villages, about 30/40 members of the Yadav community, all resident of a neighbouring village came to the village and started abusing the Binds, firing from guns injuring some and went back holding out threat that all the members of the Bind community would be killed; that on the same day** H **at about 1 P.M. a mob of about 600 Yadavs armed with weapons like guns,**

pistol, bhalas and lathis came - some of them on horse back - and attacked Bind Tolis of the village; that the mob resorted to looting cash, cloth, grain, ornament and cattle and then setting to fire the houses of the inhabitants there, some of the members of the mob chased the villagers who were trying to flee away towards the River and when these persons tried to escape on boats the miscreants fired at them, brought them down from the boats and then dragged them to the river and threw them there; that the three appellants had come no horse back with guns, led the mob and were active participants in the ravage; that on getting information a police posse went there the same night and PW96, an Inspector of Police, took up investigation of the cases registered over the first incident and on the following morning he also took up investigation of the second incident. The dead bodies of six out of the nine killed were recovered. Over the first incident, a charge sheet was submitted against six accused persons u/ss. 147, 148 and 149/307 IPC and Section 27 of the Arms Act. In respect of the second incident also two cases were registered, one in the same night u/ss.148, 149/302, 201, 436 and 320 IPC and the other on the following morning u/ss. 302/149, 307, 380, 436, 147, 148, 149, 201 and 120B IPC and Section 27 of the Arms Act. These two cases ended in a charge sheet against 152 accused persons, including the three appellants and some absconders.

The cases committed to the Court of Sessions were transferred to the 10th Court for trial and after amalgamation of two cases charges were framed against the six accused. Both the cases were then transferred to the 5th Court of Addl. Sessions Judge of trial as a petition was filed by some of the accused persons stating that when the Sessions Trial was taken up by the 10th Court for hearing on the question of framing of charges all the accused could not be accommodated in the dock meant for them as a result of which some of them had to remain outside and that one of the accused lying seriously ill, brought on a cot had to be kept on the verandah of the court room and that the court was so crowded that clerks of the lawyers were not allowed to enter and in fact the lawyers themselves had to carry the records. While disposing of this petition the 5th Court recorded an order that to avoid all sorts of infirmities and irregularities the charges against all the accused including two of the absonding accused who had surrendered in the meantime would be framed afresh. Pursuant to this order now charges u/ss. 364/149 and 201/149 IPC were added and three absconding accused persons who had surrendered since the charges were framed by the previous Court, were also arrayed in the charges. All

A the four witnesses who had earlier been examined, cross examined and then discharged by the 10th Court for further cross examination, were directed to be examined afresh considering that they were not examined in the presence of all the 140 accused as three of them had surrendered after their evidence was recorded. A revisional application filed against this order was disposed of by the High Court with a direction that in case the B defence applied to cross examine those four witnesses, the Court may order for their cross examination and in case the Court feels that any further evidence is essential for a just decision of the case, it may call them to the court. On conclusion of the trial the Court acquitted 78 of them and convicted and sentenced the other 60 in respect of all or some of the C charges. Each of the three appellants was convicted u/Ss 120-B, 148, 302/149, 436/149, 380 and 201-149 IPC. On appeal, the High Court affirmed convictions of three appellants except for the offences u/ss 120B IPC. Hence these appeals.

D The appellants contended that the trial which took place in the 5th Court was wholly without jurisdiction as the High Court had no power to transfer the case from the 10th Court to the 5th Court and that too by an administrative order at a stage when the trial had already commenced; that administrative power could not be exercised at a stage when judicial power was not only available and operational but was equally effective and E efficacious; that having regard to the facts that the 5th Court had by its order decided to frame charges afresh against the accused persons, including those three who were later put on trial after their surrender and that pursuant thereto it framed charges and proceeded with the trial, the earlier trial conducted by the 10th Court must be held to have come to an F end, and the evidence of the four witnesses who were examined therein could not be relied upon by the 5th Court for recording the impugned order of conviction and sentence; that once the trial Court had exercised its judicial discretion to hold a fresh trial, the High Court's interference with the same was not only impermissible in view of the embargo of Section 397(2) of the Code but was also unsustainable on merits; that the evidence G on record did not justify their convictions and that both the Courts below ought not to have taken into consideration and relied upon the evidence of P.C.P.W.I. as the same was inadmissible considering that the witness was permitted to refresh his memory from the report he lodged with the police in the morning which was treated as the F.I.R. of the second incident H even though it could not be so treated as PW 96 had started investigation

into the same the previous night and that the prosecution case so far as it related to the attack on the villagers when they were trying to flee away on a boat was absolutely untrue for, even though the prosecution witnesses claimed that after capturing the boat and bringing the occupants down, the rioters fired at them their dead bodies were recovered from the River though those would have been found in Tisrasia Dhab itself and that the evidence of the eye witnesses who testified about the second incident was highly discrepant and untrustworthy and, therefore, it should not have been relied upon.

Dismissing the appeals, this Court

HELD: 1.1 Under Article 227 of the Constitution of India every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and its trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodated in the Court room as a result of which some of them had to remain outside. The other grievance raised was that the Court was so crowded that even clerks of the lawyers were not being allowed to enter the Court room to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to the 5th Court, which had a bigger and better arrangement to accommodate the accused, lawyers and others connected with the trial no exception could be taken to the same, particularly by those at whose instance and for whose benefit the power was exercised. So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding there is no reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they co-exist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 Cr.P.C. it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunities to the parties of a proper hearing which, resultantly,

A would have not only delayed the trial but further incarceration of some of the accused. It is obvious therefore that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and other connected with the trial but did it with utmost dispatch. [838-G-H, 839-A-B-D-F]

B

1.2 The primary reasons, which weighed with the 5th Court for framing charges afresh and directing the prosecution to furnish the list of witnesses to be examined on its behalf were, that three accused had surrendered after charges had been framed and four witnesses for the prosecution had been examined-in-chief and three of them discharged after C cross examination and that the accused persons had been prejudiced in their defence as, instead of a lawyer of their choice a lawyer from the defence panel had appeared on their behalf on the first day of the trial. Therefore as against the present appellants and the other accused who were being tried with them the question of framing charges afresh by the D 5th Court did not and could not arise and, in fact, only additional charges were framed against them. The direction of the 5th Court regarding framing of charges afresh has therefore to be read and construed with reference to those three who surrendered later. So far as those three accused are concerned, admittedly they were not there when the trial commenced in the 10th Court and, therefore, the 5th Court was not only E legally bound to frame charges against them, but also to record the evidence of the four witnesses already examined afresh if the prosecution intended to use the same against them for, save in exceptional cases as provided in Section 299 and other sections of the Code, all evidence has to be taken in the presence of the accused, or when personal presence is F dispensed with, in the presence of his lawyer in view of Section 273 of the Code. Those three accused therefore might have legitimately and successfully assailed the reception and, for that matter, reliance upon the evidence of those four witnesses against them. However, the three appellants could not be allowed to raise any similar grievance for those witnesses were examined in their presence and cross-examined at length by the lawyers of G their choice extensively and exhaustively and therefore no prejudice could be said to have been caused to them. After an alteration or addition of the charge the interest of the prosecution and the accused had to be safeguarded by permitting them to further examine or cross examine the witness already examined, as the case may be, and by affording them an H opportunity to call other witnesses. Discretion has been given to the Court

to direct a new trial after addition or alteration of any charge, but it does not mean that every such addition or alteration in the charge which has been read over and explained to the accused would lead to inevitable inference that the Court had directed a new trial for them. Unless the Court passes a specific order and directs a new trial it cannot be presumed that a new trial has commenced only because an alteration or addition to a charge which has been read over and explained to the accused has been made. The order dated April 30, 1987 shows that while directing the prosecution to examine the 4 witnesses afresh the 5th Court adjourned the case for further trial and did not direct fresh trial. This apart, any such direction given by the court has to be judged on the touchstone of prejudice to the accused or the prosecution. [845-E-H, 846-A-C, 847-D-F]

2. Sitting in the jurisdiction under Article 136 of the Constitution of India this Court will not be justified in re- opening the whole case and disturbing concurrent findings of fact recorded on a pure appreciation of evidence unless it was held that those findings have been recorded in utter disregard of mandatory provisions of law resulting in serious prejudice and substantial injustice to the accused. The other area justifying interference would be where on the proved facts wrong inference of law has been drawn or the conclusions on facts are manifestly perverse and based on no evidence. A concurrent finding has been recorded by the Courts below to the effect that the six Yadavs had come to the village armed with various weapons including firearms, committed rioting, attempted to commit murder of two by firing and causing injuries to them and then went away holding out open threat to the villagers that the member of the Bind community would be eliminated. [851-G-H, 852-G-H]

3. The Courts below were not justified in treating Ext. 10/1 as an F.I.R. Undisputedly P.W. 96 had reached the village in the night of 11.11.1985 to investigate into the two cases registered over the incident that took place in the morning. He deposed that after reaching the village at 10.30 p.m. he got information abut the second incident also and in connection therewith he had talked to several persons. He, however, stated that he did not record the statements of the persons to whom he talked to. In cross examination it was elicited from him that on the very night he learnt that houses of some people had been looted and set on fire, some people had been murdered and that some villagers were untraceable. While being further cross examined he volunteered that he had started the investiga-

A tion of the case registered over the second incident in the same night. In the face of such admissions of P.W.96 and the various steps of investigation he took in connection with the second incident there cannot be any escape from the conclusion that the report lodged by P.C.P.W.1 on the following morning could only be treated as a statement recorded in accordance with Section 161(3) of the Code and not as an F.I.R. After P.C.P.W.1 B testified about the incident prosecution got the statement of P.C.P.W. 1 exhibited as Ext. 10/1 as according to it Ext. 10/1 was the F.I.R. Such a course was legally permissible to the prosecution to corroborate the witness in view of Section 157 of the Evidence Act. In a given case - as in the present one - the court may on the basis of subsequent materials hold that C the statement so recorded could not be treated as the F.I.R. and exclude the same from its consideration as a piece of corroborative evidence in view of Section 162 of the Code but then on that score alone the evidence of a witness cannot be held to be inadmissible. [855-A-D, 856-G-H]

D 4. The find of dead bodies in the River, does not contradict the case of the prosecution that those two persons were shot at Tisrasia Dhab as there was evidence on record that all the 10 persons including those who were shot at were taken to the bank of the river, there being signs of dragging between the two places. [857-E]

E 5. The evidence of the host of eye-witness - which both the Courts below considered and accepted - conclusively proved that all the three appellants shared the common object of the unlawful assembly to commit the offences of loot, arson and murder and causing the disappearance of the evidence of murder and that in furtherance of those common objects F some members of that unlawful assembly committed those offences for which the appellants were also liable to the convicted under Section 149 IPC. Having shifted their evidence and considered the same in the backdrop of the events preceding the incident that took place in the afternoon of 11.11.1985 the following conclusions were inevitable: (i) a mob of 500/600 people, most of whom belonged to Yadav community and were residents G of different villages came to and attacked the neighbouring village to exterminate the Bind community: (ii) the three appellants who belonged to Yadav community and were residents of three separate adjoining villages came on horse back armed with fire arms, and led the mob along with some others: and (iii) the appellants were also amongst the rioters H who chased the villages and committed the murders at Tisrasia Dhab and

the bank of the River. Therefore, the impugned convictions of the appellants must be upheld. [862-D-H] A

A.R. Antulay v. *R.S. Nayak and Another,* **[1988] 2 SCC 602;***Kehar Singh* v. *State,* **[1988] 3 SCC 609;** *Payare Lal* v. *State of Punjab,* **[1962] 3 SCR 328 and** *Zahiruddin* v. *Emperor,* **AIR (1947) P.C. 75, distinguished.** B

Pulukuri Kotayya v. *King Emperor,* **AIR (1947) PC 67 and** *Shivaji* v. *State of Maharashtra,* **AIR (1973) S.C. 2622, relied on.**

Bajwa and Ors. v. *State of U.P.,* **[1973] 3 S.C.R. 571, referred.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal C Nos. 34, 35 & 36 of 1992.

From the Judgment and Order dt. 23.5.91 of the High Court of Judicature at Patna in Criminal Appeal Nos. 183, 166 & 165 of 1989 respectively. D

Ram Jethmalani, Ms. Lata Krishnamurti and Babhash Kumar Yadav for the Appellants.

M.L. Agrawal, S.K. Patri and B.B. Singh for the Respondents.

The Judgment of the Court was delivered by E

M.K. MUKHERJEE, J.

These three appeals stem from two related incidents that took place on November 11, 1985 in village Laxmipur Taufir Bind Toli and its neighbourhood within the jurisdiction of Munger Muffasil Police Station in the F State of Bihar. Before detailing the incidents and discussing the evidence on record relating thereto it will be necessary to narrate the sequence of events leading to the trial to appreciate the contentions raised on behalf of the appellants regarding validity of the trial as well the admission of evidence of some of the prosecution witnesses therein. G

Over the first incident that took place at or about 6 A.M. two cases were registered being Munger Muffasil P.S. Case Nos. 302 and 303 of 1985 and after they were jointly investigated, a charge-sheet was submitted against six accused persons under sections 147, 148 and 149/307 IPC and section 27 of the Arms Act. In respect of the second incident, which started H

A at mid day and continued till the evening, also two cases were registered: one in the same night on the statement of one Janki Bind being case No. 304 of 1985 under sections 148, 149/302, 201, 436 and 320 IPC and the other on the following morning on the statement of one Mahender Singh being case No. 305 of 1985 under sections 302/149, 307, 380, 436, 147, 148, 149, 201 and 120B IPC and section 27 of the Arms Act. These two cases also after joint investigation ended in a charge-sheet against 152 accused persons, including the three appellants herein and some absconders.

The case relating to the second incident was committed to the Court of Session on January 28, 1986 and on receipt of the order of commitment C the learned Sessions Judge transferred it to the 10th Court of the Addl. Sessions Judge (10th Court for short) for trial (Sessions Trial No. 10 of 1986). Thereafter on February 25, 1986 and 10th Court framed various charged against the accused persons including charges under sections 302/149, 436/149, 120-B and 380/149 IPC and as they pleaded not guilty, proceeded to record evidence of the prosecution witnesses on and form D March 4, 1986. In the meantime the case relating to the first incident had also been committed to the Court of session and transferred to the same Court on March 3, 1986 for trial (Sessions Trial No. 83 of 1986).

On March 5, 1986, one of the absconding accused surrendered E before the 10th Court and prayed for being tried along with the other accused. The prayer was allowed and charges were framed against him in both the cases. Thereafter, an application was moved on behalf of some of the accused persons for amalgamation of the two trials which was allowed by the 10th Court by its order dated March 7, 1986. After such amalgamation the Court framed charges under sections 148, 307/149 and 307 IPC F against the six accused of Sessions Trial No. 83 of 1986 and commenced the trial. It also continued with the trial of 140 accused persons of Sessions Trial No. 10 of 1986, including the three appellants, and the six accused who were arraigned in the order trial also. While the trials were being proceeded with in the 10th Court the High Court passed an order on or G about April 1986 transferring both the cases to the 5th Court of the Addl. Sessions Judge, Munger (5th Court for short) for trial.

It appear that after the records of the two Sessions Trials were sent to the 5th Court pursuant to the order of the High Court, its attention was H drawn on April 16, 1986 to a petition sent by some of the accused persons

form jail. In that petition it was stated that on February 25, 1986 when the Sessions Trial No. 10 of 1986 was taken up for nearing on the question of framing of charges all the accused could not be accommodated in the dock meant for them as a result of which some of them had to remain outside. It was further stated therein that one of the accused, namely, Bansraj Yadav who was lying seriously ill and was brought on a cot had to be kept on the verandah of the court-room and that the court was so crowded that clerks of the leaned lawyers were not allowed to enter and in fact the lawyers themselves had to carry the records. In the petition it was also alleged that the trial Court (the 10th Court was then in seisin of the trials) did not pay any heed to their grievances.

A B C

While disposing of the above petition the 5th Court recorded an order to the effect that to avoid all sorts of infirmities and irregularities and for redressal of the grievance of the accused in general the charges against all the accused including Lakhan Yadav and Nageshwar Yadav (two of the absconding accused who had surrendered in the meantime) would be framed afresh. The order further reads as follows:- D

> ".....I must point it out that the learned Special P.P. has submitted that the charges were explained to the accused persons. It is worth noting that if the said petition is allowed to remain undisposed of, in future there may arise complications, particularly at the end of trial and this way without prejudice to the accused persons it is just proper, regular and expedient to explain the charges afresh to all the accused persons under the peculiar circumstances; keeping in view that there was protest with regard to the appointment of a lawyer from the defence panel by the accused on the very first day of taking of the trial and keeping in view that the accused persons did not repose confidence in the defence lawyer appointed by the previous court and further keeping in view that they re-iterated that they had been prejudiced due to the absence of their lawyers whom they had appointed. The misgivings on the part of the accused may not be sound but the court will have to adopt a procedure warranted by law so that neither side feel any sort of prejudice against the court. The confidence of both side in the working of a court is the paramount element for the fair trial of any case.

E F G H

A This court has tried to remove all sorts of infirmities and irregularities, if any, with regard to the procedure adopted for the trial of this important case. This order will not prejudice either side. To 27.4.86 for framing charges afresh against the accused persons including those who have been prepared to be put on trial. The learned Spl. P.P. is directed to furnish the list of the witnesses B who may be examined on 30.4.86 and on allottee working days in May'86, send a production warrant for production of accused Nageshwar Yadav and Lakhan Yadav on 26.4.86 in the Court.

It appears that pursuant to the above order charges were framed C afresh in as much as (i) new charges under section 364 read with 149 and 201 read with 149 IPC were added; (ii) the three absconding accused persons who had surrendered since the charges were framed by the previous Court, were also arrayed in the charges and (iii) all the charges were explained to the accused afresh.

D

Thereafter, while the trial Court was examining the witnesses produced by the prosecution an application was filed on its behalf on April 24, 1987 stating that P.W.1 Mahendra Singh, P.W. 3 Nagendra Singh, P.W. 4 Ram Chandra Singh were discharged after their examination and cross-examination by and on behalf of 137 accused and the cross-examination of E P.W. 2 Sukhdeo Singh was deferred at the instance of one of the learned advocate appearing on behalf of some of the accused. It was further stated therein that as the charges were recast in the transferee Court the prosecution was willing to produce those witnesses who had earlier been examined, cross-examined and then discharged by the 10th Court for further cross F examination. In their rejoinder to the application the accused persons stated that the said four witnesses who were examined in the previous Court should be again examined-in-chief in presence of all the accused and then only the defence would cross-examine them. While disposing of the application the 5th Court observed that all the above four witnesses were not examined in presence of all the 140 accused - as three of them had G surrendered after their evidence was recorded - they might be prejudiced. The 5th Court therefore, by its order dated April 30, 1987, directed the prosecution to examine all those four witnesses afresh.

Aggrieved by the above order the State filed a revisional application H which was disposed of by the High Court with the following order:-

"Without going into the merits, as to whether re-examination of the four witnesses named in the impugned order is in any way essential for just decisions of the case or not, since the stand taken before this Court on behalf of the prosecution is that it does not propose to re-examine them in the trial, it is enough to dispose of this application with a direction that in case the defence applied to cross-examine them, the Court may order for their cross-examination and in case the court feels that any further evidence is essential for a just decision of the case, it may call them to the Court.

The question whether the evidence recorded by the predecessor incharge of the court of the 5th Addl. Sessions Judge, Munger, of the four witnesses named in the impugned order can be looked into and relied upon by either party or not shall remain open for consideration of the hearing of the trial. The leaned Sessions Judge shall proceed with the trial without waiting for the prosecution to produce them for examination-in-chief."

In course of the trial that followed in accordance with the above directions of the High Court two of the accused died and, as such, the trial continued with 138 accused. On conclusion of the trial the Court, acquitted 78 of them and convicted and sentenced the other 60 in respect of all or some of the charges levelled against them. Five of the convicts were sentenced to death. Each of the three appellants before us was convicted under Sections 120-B, 148, 302/149, 436/145, 380 and 201/149 IPC and sentenced to various terms of imprisonment including for life. Against their convictions and sentences all the convicts filed separate sets of appeal and the State of Bihar, in its turn, filed an appeal against the acquittal of others. Along with the appeals preferred by the convicts and the State the High Court heard the reference made by the trial Court under Section 366 of the Code of Criminal Procedure, 1973 ('Code' for short) and disposed of all of them through a common judgment by rejecting the reference, dismissing the Government appeal, allowing the appeal of one of the convicts and dismissing the appeal of all other convicts with modification in convictions and sentences of some of them. As regards the three appellants before us, namely, Ranbir Yadav, Sukhdeo Yadav and Pandav Yadav, the High Court affirmed their convictions and sentences except for the offences under Section 120-B IPC. They alone have moved this Court through

these three appeals after obtaining special leave.

Mr. Jethmalani, the learned counsel appearing for all the three appellants first contended that the trial which took place in the 5th Court was wholly without jurisdiction and consequently the convictions and sentences recorded by that Court were null and void. In elaborating his contention Mr. Jethmalani submitted that the High Court had no power to transfer the case from the 10th Court to the 5th Court and that too by an administrative order at a stage when, admittedly, the trial had already commenced. Mr. Jethmalani drew our attention to Section 194 of the Code to contend that a plain reading of the Section would unmistakably show that the power of the High Court to direct a particular Court to try a case could be exercised only at the initial stage where trial was yet to commence and not thereafter. He next contended that the only other section which empowered the High Court to transfer a case under the Code was Section 407 but such a power could be exercised judicially only after complying with the requirements thereof and hearing the parties. As, admittedly, the High Court did not exercise such judicial power, the order of transfer whereby the 5th Court acquired jurisdiction, must be held to be void and ineffective. He lastly contended that such grave illegality and want of jurisdiction were not curable under Section 465 of the Code. In support of this contention he relied upon the majority judgment of this Court in *A.R. Antulay* v. *R.S. Nayak & Another,* [1988] 2 SCC 602.

Before considering the above contentions of Mr. Jethmalani, we may mention that in spite of sufficient opportunities given, the order of transfer passed by the High Court was not produced before us. Needless to say, had it been produced we would have exactly known the facts and circumstances which promoted the High Court to pass that order and clearly appended the source of power. However, from the material on record which we have already detailed, it appears that the order was passed by the High Court in the *administrative* jurisdiction. Under Article 227 of the Constitution of India every High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and its trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the instant case it appear that the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodates in the Court room

as a result of which some of them had to remain outside. It further appears that the other grievance raised was that the Court was so crowded that even clerks of the lawyers were not being allowed to enter the Court room to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to the 5th Court, which we assume had a bigger and better arrangement to accommodate the accused, lawyers and other connected with the trial no exception can be taken to the same, particularly by those at whose instance and for whose benefit the power was exercised. Mr. Jethmalani, however, contended that administrative power could not be exercised at a stage when judicial power was not only available and operational but was equally effective and efficacious. According to Mr. Jethmalani, if the former was not contained the latter would be nugatory.

We are unable to share the above view of Mr. Jethmalani. So long as power can be and is exercised purely for administrative exigency without impinging upon an prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they co-exist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial power of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunity to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused, it is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and other connected with the trial but did it with utmost dispatch.

Coming now to *A.R. Antulay's* case (supra) we find that the principles of law laid down in the majority judgment, to which Mr. Jethmalani drew our attention have no manner of application herein. There questions arose as to whether (i) the High Court could transfer a case triable according to Criminal Law Amendment Act, 1952 ('1952 Act' for short) by a Special Court constituted thereunder to another Court, which was not a Special Court and (ii) the earlier order of the Supreme Court transferring

A the case pending before the Special Court to the High Court was valid and proper. In answering both the questions in the negative the learned Judges, expressing the majority view, observed that (i) Section 7(i) of the 1952 Act created a condition which was *sine qua non* for the trial of offences under Section 6(i) of the said Act. The condition was that *notwithstanding anything contained in the Code of Criminal Procedure or any other law* the said B offence shall be triable by *Special Judges only.* By express terms therefore it took away the right of transfer of cases contained in the Code to any other Court which was not a Special Court and this was notwithstanding anything contained in Sections 406 and 407 of the Code and (ii) the earlier order of the Supereme Court tansferring the case to the High Court was C not authorised by law, namely, Section 7(i) of the 1952 Act and the Supreme Court, by its direction could not confer jurisdiction on the High Court of Bombay to try any case for which it did not possess such jurisdiction under the scheme of the 1952 Act. As in the present case the 5th Court was competent under the Code to conduct the Sessions trial the D order of transfer conferring jurisdiction on that Court and the trial that followed cannot be said to be bad in law.

Since we have found that the order of transfer was made by the High Court in exercise of its administrative powers, which was available to the High Court under Article 227 of the Constitution of India the question E raised by Mr. Jethmalani relating to the competence of the High Court to exercise powers under Section 194 of the Code need not be answered. Consequently, we need not look into the interpretation of Section 194 of the Code as given by the Court in *Kehar Singh* v. *State*, [1988] 3 SCC 609 to which our attention was drawn by Mr. Jethmalani. For the foregoing F discussion we find no merit in the first contention of Mr. Jethmalani.

Mr. Jethmalani next contended that having regard to the facts that the 5th Court had, by its order dated April 16, 1986 decided to frame charges afresh against the accused persons, including these three who were later put on trial after their surrender and that pursuant thereto it framed G charges and proceeded with the trial, the earlier trial conducted by the 10th Court must be held to have come to an end, and that necessarily meant that the evidence of the four witnesses, namely, Mahendra Singh, Nagender Singh, Sukhdeo Singh and Ramchandra Singh who were examined therein could not be relied upon by the 5th Court for recording the impugned H order of conviction and sentence. According to Mr. Jethmalani, the general

principle of law is that a Judge or Magistrate can decide a case only on the evidence recorded by him and the departure from this salutary principle is permissible only in those cases where he decides to invoke Section 326 of the Code to exercise his judicial discretion to act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by him. Mr. Jethmalani submitted that as in the instant case the trial Court had exercised its discretion to hold a de novo trial reference to and reliance upon any evidence recorded in the earlier trial were patently illegal and incompetent. In support of this contention Mr. Jethmalani relied upon the decision of this Court in *Payare Lal* v. *State of Punjab,* [1962] 3 SCR 328. While on this point Mr. Jethmalani lastly contended that once the trial Court had exercised its judicial discretion to hold a fresh trial, the High Courts interference with the same was not only impermissible in view of the embargo of Section 397(2) of the Code but was also unsustainable of merits.

To appreciate the above contentions of Mr. Jethmalani it will be imperative to first refer to the legislative history behind Section 326 of the Code. In the Code of 1898 the corresponding section was Section 350 and, so far as is material for our purposes, read as under:

> (1) "Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial. *ceases to exercise jurisdiction therein,* and is *succeeded by another Magistrate* who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself or *he may resummon the witnesses and recommence the inquiry or trial.*
>
> Provided as follows:-
>
> (a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witness or any of them be resummoned and reheard:
>
> (b) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the

A conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial."

(emphasis supplied)

B In interpreting the words "ceases to exercise jurisdiction therein" in the above quoted sub-section (1) some of the High Courts held that section 350 was intended to provide for a case where an inquiry or trial had commenced before one incumbent of a particular post and that officer had ceased to exercise jurisdiction in that post and was succeeded by another C officer, whereas some other High Courts held that it referred to the inquiry or trial and not to a particular post. Similarly the words "succeeded by another Magistrate" were interpreted by some High Courts as importing that the first Magistrate had left his post but other High Courts held that the word "succeeded" should not be construed in the narrower sense. Though, in our view, the word 'therein' appearing after the words "ceases D to exercise jurisdiction" in the context of the preceding words "in an inquiry or trial" admits of no doubt that it refers to the inquiry or trial, the legislature thought it necessary to add the following sub-section to Section 350(1) by Section 4 of Act XVIII of 1923, to put the issue beyond any pale of controversy.

E

"(3) When a case is transferred under the provisions of this Code from one Magistrate to another the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter within the meaning of sub-section (1)"

F

The next legislative change in Section 350 of the Code of 1898 was brought about by Act 26 of 1955. By that, in sub-section (1) of the Section for the words "or he may re-summon the witnesses and recommence the inquiry or trial" and the proviso, the following proviso was substituted:

G

"Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may resummon such witnesses and after such further examination, cross-examination and re-examination, if any, as he may permit, H the witness shall be discharged.

When the Code of 1898 was repealed and replaced by the Code Section 350 was renumbered as 326 without any textual change. However, later on by the Criminal Procedure Code (Amendment) Act, 1978 the section was amended to vest the power and discretion exercisable thereunder by a Magistrate to a Judge also. With the amendments detailed above Section 326 read, at the time the trial in question took place, and still reads as follows:

> "(1) Whenever any Judge or Magistrate after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself;
>
> Provided that if the succeeding Judge or Magistrate is of the opinion that *further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.*
>
> (2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).
>
> (3) xxxx xxxx xxxx
>
> (emphasis supplied)

From a comparative reading of sub-section (1) of Section 350 as it stood prior to its amendment in 1955 and as it stands since then with the change in its numeral and inclusion of the word 'Judge' therein we find that the discretion earlier given to the Presiding Officer of the Court to act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by him still remains. But so far as the other option is concerned, while earlier he could resummon *the witnesses*

A *and recommence the inquiry or trial* - which necessarily meant a de novo trial - he can now only resummon *a witness who has already been examined for further examination* and discharge him after such *further* examination, cross-examination and re-examination, if any. It is evident therefore that now the Magistrate or Judge can exercise his judicial discretion only for B *further* examination of a witness already examined and not for fresh examination of witnesses for a fresh trial. Obviously, keeping in view the inevitable frequent changes in the office of the Magistrate and Judge and in order to provide a speedy trial the legislature has taken away the well established right of the accused to claim a de novo trial and that of the Court to so direct by express words of the amending statute of 1955. C Considered in that perspective we are of the opinion that the case of *Payare Lal* (supra) which was decided when Section 350 was operating in the field without its amendment of 1955 has no relevance here. In that case, Payare Lal and another were prosecuted for offences under Section 5(2) of the Prevention of Corruption Act, 1947. The 1952 Act which laid down the D procedure for trial of such offences required the trial to be held by a Special Judge appointed under it and in accordance with certain provisions of the Code of 1898 as mentioned in Section 8 of 1952 Act. The Special Judge accordingly, heard the evidence but before he could deliver the judgment he was transferred and was succeeded by another Special Judge. E The latter did not recall the witnesses and did not hear the evidence over again but proceeded with the trial without any objection from either side from the stage at which his predecessor had left. The trial ultimately ended in conviction and in appeal the Punjab High Court held that Section 350 of the Code of 1898 applied to the trial before a Special Judge in view of F Section 8(1) of the 1952 Act and that, therefore, the succeeding Special Judge was entitled to proceed on the evidence recorded by his predecessor. In setting aside the above finding of the Punjab High Court this Court held that the 1952 Act did not intend that Section 350 of the Code of 1898 would be available as a rule of procedure prescribed for the trial of warrant cases to a Special judge as the Special Judge was not a Magistrate for the G purpose of the Act nor did the Act require that he was deemed to be such. This Court further held that the succeeding Special Judge, therefore, had no authority under the law to proceed with the trial of the case from the stage at which his predecessor had left it and that the conviction of the appellants could not be supported as he (the succeeding Special Judge) H has not heard the evidence himself. That necessarily meant, according to

this Court that the proceeding before the succeeding Special Judge was clearly incompetent. In negativing the contention of the respondent-State therein that the defect was a mere irregularity and the conviction of the appellant could, if sustainable on evidence, be upheld under Section 537 of the Code of 1898 (which corresponds to Section 465 of the Code) this Court held, relying upon the following observations of the Privy Council in *Pulukuri Kotayya* v. *Kino Emperor,* AIR (1947) PC 67:

> "When a trial is conducted in a manner different from that prescribed by the Code (as in N.A. Supramania Iyar's case, 1991 LR 28 I.A. 257), the trial is bad, and no question of curing an irregularity arises; but if the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct, the irregularity can be cured under Section 537, and none the less so because the irregularity involves, as must nearly always by the case, a breach of one or more of the very comprehensive provisions of the Code."

that the case fell wihtin the first category mentioned by the Privy Council, being one of want of competency and not of irregularity. With the above findings the Court sent the case back for retrial.

Coming now to the case in hand we find from the order passed by the 5th Court on April 16, 1986 that the primary reasons, which weighed with it for framing charges, afresh and directing the prosecution to furnish the list of witnesses to be examined on its behalf were, that three accused had surrendered after charges had been framed and four witnesses for the prosecution had been examined- in-chief and three of them discharged after cross examination and that the accused persons had been prejudiced in their defence as, instead of a lawyer of their choice a lawyer from the defence panel had appeared on their behalf on the first day of the trial. Therefore as against the present appellants and the other accused who were being tried with them the question of framing charges afresh by the 5th Court did not and could not arise; and, in fact, as already noticed, only additional charges were framed against them. The direction of the 5th Court regarding framing of charges afresh has therefore to be read and construed with reference to those three who surrendered later.

So far as those three accused are concerned, admittedly they were not there when the trial commenced in the 10th Court and, therefore, the

A 5th Court was not only legally bound to frame charges against them, but also to record the evidence of the four witnesses already examined afresh if the prosecution intended to use the same against them for, save in exceptional cases as provided in Section 299 and other sections of the Code, all evidence has to be taken in the presence of the accused, or when personal presence is dispensed with, in the presence of his lawyer in view B of Section 273 of the Code. Those three accused therefore might have legitimately and successfully assailed the reception and, for that matter, reliance upon the evidence of those four witnesses against them. However, the three appellants before us cannot be allowed to raise any similar grievance for those witnesses were examined in their presence and cross-C examined at length by the lawyers of their choice for days together. Then again, as already noticed, after the additional charges were framed against them and others under sections 364/149 and 201/149 IPC the prosecution submitted a prayer that they were willing to produce those four witnesses who had earlier been examined in the previous Court for further cross-ex-D amination but then the appellants did not avail of the opportunity and insisted upon their fresh examination which was allowed by the trial Court but, as noticed earlier set aside by the High Court. Even if we accept the contention of Mr. Jethmalani that the order of the 5th Court directing fresh examination of the prosecution witnesses was an interlocutory order and therefore the High Court could not have set aside the same in exercise of E its revisional jurisdiction in view of the embargo of Section 397 (2) of the Code and we should take no cognizance of the order of the High Court in this regard, it would only mean that the four witnesses earlier examined by the prosecution were not examined afresh. Even then, as regards the three appellants with whom only we are concerned in this appeal. It does not F alter the situation for - at the risk of repetition we reiterate - they were examined in presence of the appellants and they were cross-examined extensively and exhaustively and therefore no prejudice can be said to have been caused to them.

G The matter can be viewed from another angle also. Section 216 of the Code empowers the Court to alter or add to any charge at any time before the judgment is pronounced and provides that after such alteration or addition of the charge the Court is required to read and explain the same to the accused in accordance with sub-section (2) thereof. It is further laid down under sub-section (3) that if in the opinion of the Court the H alteration or addition to a charge is not likely to prejudice the accused in

his defence or the prosecutor in the conduct of the case the Court may in its discretion proceed with the trial immediately with the altered or added charge. Sub-section (4) provides that if the alteration or addition is such that the proceeding immediately with the trial is likely to prejudice the accused or the prosecutor the Court may either direct a new trial or adjourn the trial for such period as may be necessary. Section 217 of the Code provides that whenever a charge is altered or added to by the Court after the commencement of the trial the prosecutor and the accused shall be allowed to recall or to summon and examine with reference to such alteration or addition any witness who has already been examined unless the Court for reasons to be recorded in writing considers that the desire to recall or re-examine such witness was only for the purposes of vexation or delay or defeating the ends of justice. Besides, it permits the prosecutor and the accused to call any further witness whom the Court may think it to be material. On a combined reading of the above two sections it is, therefore, evident that after an alteration or addition of the charge the interest of the prosecution and the accused has to be safeguarded by permitting them to further examine or cross examine the witness already examined, as the case may be, and by affording them an opportunity to call other witnesses. It is undoubtedly true that discretion has been given to the Court to direct a new trial after addition or alteration of any charge, but it does not mean that every such addition or alteration in the charge which has been read over and explained to the accused would lead to inevitable inference that the Court has directed a new trial for them. It, therefore, follows that unless the Court passes a specific order and directs a new trial it cannot be presumed that a new trial has commenced only because an alteration or addition to a charge which has been read over and explained to the accused has been made. Indeed the order dated April 30, 1987 shows that while directing the prosecution to examine the 4 witnesses afresh the 5th Court adjourned the case for *further* trial and did not direct fresh trial. This apart, any such direction given by the Court has to be judged on the touchstone of prejudice to the accused or the prosecution. In the instant case, as has already been noticed after the addition of charges the prosecution expressly stated that they did not want to further examine the four witnesses already examined but they were willing to produce them if the accused so wanted. The accused, however, did not avail of this opportunity in accordance with Section 217 of the Code and, therefore, it is too late in the day for them to raise a grievance on that score. We hasten to add that

A even if we had found that there was any irregularity in the continuation of the trial against the appellants after the additional charges were framed, we would not have been justified in setting aside the impugned judgment on that ground alone for there is not an iota of material on record wherefrom it can be said that a failure of justice has occasioned thereby. To put it differently, in our view in such a case Section 465 of the Code B would have squarely applied.

In any view of the matter, therefore, we are unable to accept the contention of Mr. Jethmalani that the learned Courts below were not justified in relying upon the evidence of four witnesses, namely, Mahendra C Singh, Sukhdeo Singh, Nageshwar Singh and Ramchandra Singh who were described as P.C. (previous Court) P.Ws. 1, 2, 3 and 4 respectively against the appellant. Before we part with our discussion on this aspect of the matter it will be pertinent to mention that the trial Court did not take into consideration the evidence of the above four witnesses against the three accused who surrendered later and, then again, out of those three while D two were acquitted the third did not prefer any special leave petition in this Court.

Now that we have answered the two threshold questions raised by Mr. Jethmalani, we may proceed to set out the two incidents including their E background narrated by the prosecution during trial.

There are, two Bind Tolis known as North Laxmipur Taufir Bind Toli and South Laxmipur Taufir Bind Toli in Laxmipur Taufir *Diara* and both the inhabited mainly by the people of *Bind* community. There are other F neighbouring villages in the Diara, known as Taufir, Taufir Kariai Tola. Taufir Kajo Manto Tola, Taufir Inder Mahto Tola. Taufir Inder Marar Tola and Tikarampur and the inhabitants of these villages are mostly of *Yadav* community. All these villages are situated within the Munger Muffasil Police Station. A few years ago a new district known as Khagaria district was carved out of the old Munger district and after bifurcation G village Mathur and village Chukti fell within the newly created district of Khagaria and in the said villages mostly people of Yadav community are residing. Mouza Bind Diara Harin Mar is situated within Jamalpur Anchal under Munger Muffasil Police Station. The land bearing plots No. 297, 3/373, 473, 559, 474, 615, 618, 2/618, 2/619, 620, 622, 623, 624, 625, 626, 521, H 2312, 2/618 and 619 of the said village belong to Ratneshwar Singh and

others of village Rajdhan within Gogari Police Station in the district of Khagaria. The aforesaid plots of land, at times, remain submerged for years under water in the bed of river Ganga ('River' for short). When the lands emerge out of water, and become cultivable, people grow crops over the same.

According to the prosecution case, the said plots of land came out of the water in the year 1984 and were cultivated by accused Dharnidhar Yadav, Sakaldeo Yadav, Rajendra Yadav, Ashok Yadav and other residents of village Taufir Kariai Tola against the wishes of the land owners and without paying anything, either in cash or in kind to the land owners. Chandradeo Singh (P.W. 5), son of Tilakdhari Singh, resident of village Laxmipur Taufir Bind Toli decided to take settlement of some out of the said plots from the land owners on the basis of an agreement which is locally known as 'Manhunda'. The parties agreed to share the produce of the land and one of the terms of the agreement was that the settlee would pay wheat to the landlord at the rate of 4 maunds per bigha. Accordingly one agreement (Ext. 1)was executed by Radha Kant Singh and other co-sharers in favour of Chandradeo Singh on November 6, 1985 in respect of 14 bighas, 11 kothas and 12 dhurs of land while another (Ext. 1/1) was executed by Ratneshwar Singh and others on the same day for 11 bighas, 6 kothas and 7 dhurs. Having thus got settlement from their respective owners Chandradeo Singh informed the Yadavas of Taufir Karari Tola that he would grow crop over the said plots. In spite thereof the Yadavas of Karari Tola forcibly ploughed the plots on November 9, 1985 and sowed Raichi (a kind of oilseed). On the following day when Chandradeo Singh along with his brother Mahendra Singh (P.C. P.W. 1) and others went to cultivate those plots accused Dharnidhar Yadav, Ashok Yadav, Pramod Yadav, Sakaldeo Yadav and Wakil Yadav appeared there and chased Chandradeo Singh and his companions, who ran away to save their lives. At that time Yadavas gave out an open threat that the entire Bind Community would be eliminated if further attempt was made to cultivate the land. Chandradeo Singh intended to give information about this incident at Munger Muffasil Police Station but could not as those Yadavas and their bench men had blocked the *Bhelwa Bardhe Ghat* as well as other Ghats, through which one could, after crossing the River, go to the Police Station.

The case of the prosecution next is that on the following morning i.e. on November 11, 1983 some 30/40 members of the Yadav community, who

A are all residents of village Karari Tola came to village Lakmipur Taufir Bind Toli led by accused Pramod Yadav, Sakaldeo Yadav, Wakil Yadav, Dharnidhar Yadav and Subodh Yadav and started abusing the Binds. Seeing the mob Chandradeo Singh, Bijay Singh, Sadhu Singh and Raje Sao accosted them and requested not to resort to violence. However, the Yadavs did not listen to their request and some of them started firing from B guns. The shots fired by accused Dharnidhar Yadav struck Bijay Singh and Raje Sao, both of whom fell down there. Then the miscreants went back holding out threat that all the members of the Bind community, residing in the Diara would be killed. Over this incident two reports were lodged with the police, one by Bishnudeo Sao and another by injured Bijay Singh and, C as already noticed, two cases were registered on those informations.

According to the prosecution the threats meted out by the Yadavs in the morning were translated into action on the same day at or about 1 P.M. when a mob of about 600 Yadavs of neighbour villages armed with D weapons like guns, pistols, bhalas and lathis came - some of them on horse back - and attacked both the Bind Tolis of Laxmipur Taufir. The mob resorted to looting cash, cloth, grain, ornament and cattle and then setting to fire the houses of the inhabitants there as a result of which about 200 houses were burnt to ashes. Thereafter some of the members of the mob chased the villagers, including Ram Swarup Singh, Arjun Singh, Ramaboul E Singh, Bahadur Singh, Suresh Singh, Ghiban Singh, Lal Bahadur Singh, Bhumi Singh, Ramprabesh Singh, Rambilash Singh and Sadho Singh who were trying to flee away towards the River. When the above named persons tried to escape on boats, anchored in *Tisrasia Dhab* (a vast expanse of water) the miscreants fired at them, brought them down from the boats F and then dragged them to the River and threw them there. It is the specific case of the prosecution that, besides others, the three appellants herein had come on horse back with guns, led the mob and were active participants in the ravage. As already mentioned over this incident also two cases were registered, on the reports of one Janki Bind and other of Mahender Singh (P.C.P.W.1).

G

The prosecution case further is that on getting information that some incident has taken place in Taufir Bind Toli a police posse went there the same night and B.K. Singh (P.W. 96), an Inspector of Police, took up investigation of the two cases registered over the first incident under order H of the Deputy Superintendent of Police, Munger. On the following morning

he also took up investigation of the other two cases registered over the second incident. In conducting the investigation he took the assistance of, amongst others, two Sub Inspectors of Police, namely, Shyam Narain Prasad (P.W.68) and Naresh Prasad (P.W.99). In course of the investigation P.W. 96 inspected the places of occurrence and got sketch plans prepared. Besides, under his direction P.W. 99 seized some burnt household articles from the large number of huts which were burnt down by the miscreants. He requisitioned the services of the veterinary surgeon to conduct post-mortem examination upon carcass of the goats and the cows found dead. He also went to the River to search for and recover the dead bodies of the persons who were allegedly thrown there by the miscreants. Ultimately the dead bodies of six out of the nine killed were recovered and after their inquests were held by P.W. 68 under his direction they were sent for post-mortem examination. During investigation he seized the deed of agreement under which Chandradeo Singh claimed to have obtained the settlement of the plots in question.

A B C

While pleading not guilty to the charges levelled against them, the three appellants asserted that they were falsely implicated and each of them took up the plea of alibi. In support of its case the prosecution examined 105 witnesses. Out of them 22, who were all residents of village Taufir Bind Toli claimed to have seen both phases of the occurrence whereas 47 others of the same village testified about the second phase only. The appellants, in their turn, also examined some witnesses and exhibited some documents in support of their defence.

D E

Mr. Jethmalani took us through relevant parts of the voluminous evidence and the judgments of the learned Courts below to persuade us to re-appraise the evidence and examine the question of the credibility of the witnesses, particularly those who testified against the three appellants, and to hold that the evidence on record did not justify their convictions. Sitting in the jurisdiction under Article 136 of the Constitution of India we will not be justified in re-opening the whole case and disturbing concurrent findings of fact recorded on a pure appreciation of evidence unless we hold that those findings have been recorded in utter disregard of mandatory provisions of law resulting in serious prejudice and substantial injustice to the accused. The other area justifying our interference would be where on the proved facts wrong inference of law has been drawn or the conclusions on facts are manifestly perverse and based on no evidence. We have

F G H

A nonetheless made a critical analysis of some of the evidence on the record with a view to appreciate the criticism of Mr. Jethmalani.

To prove settlements of land in favour of P.W. 5, which according to the prosecution was the genesis of the trouble, it examined Ratneshwar Singh (P.W.64), Subodh Kumar Singh (P.W. 65), Anand Singh (P.W. 82) B and Aknileshwar Singh (W.P. 83), who are all residents of village Rajdhan in the district of Khagaria and claimed to be the owners of the land in question and exhibited the two agreements executed by them on 6.1.1985 (Exhibit 1 and 1/1). On discussion of their evidence along with that of P.W. 5 and perusal of the agreements the trial Court concluded that the prosecu- C tion succeeded in proving that land measuring about 30 bighas situated in Mouza Bind Diara Harin Mar was settled by the above land owners in favour of P.W.5. The High Court, in its turn, re-appraised the evidence and concurred with the above finding. The High Court also observed that the story of settlement of land was not seriously challenged on behalf of the appellants. Indeed, before us also no grievance was raised regarding the D above finding of fact. The next finding, recorded by the trial court on an appraisal of the evidence of P.W. 5 and others, is that some Yadavas of Taufir Karari Tola were forcibly cultivating the land since it emerged from the River bed in 1984 and the Yadavas drove P.W.5 and his companions away when, after taking settlement of the land, they went to grow crops E thereon on 10.11.85 and threatened them with dire consequences in case they dared to do so. This finding also does not appear to have been challenged in the High Court and before us also it was not challenged.

It is in the above background that the two incidents of 11.11.85 have F to be considered. We however need not detail or discuss the evidence relating to the first incident as, admittedly, the three appellants were not involved therein and, in fact, they were not arranged in S.T. No. 83 of 86. Suffice it to say, that on a proper appreciation of the evidence laid in respect thereof a concurrent finding has been recorded by the Courts below to the effect that the six Yadavs (who were facing trial for that G incident) had come to the village Laxmipur Taufir Bind Toli armed with various weapons including firearms, committed rioting, attempted to commit murder of two by firing and causing injuries to them and then went away holding out open threat to the villagers that the members of the Bind Community would be eliminated. We may now, therefore, confine out H attention to the evidence adduced during trial relating to the second

incident and the findings recorded by the trial Court and the High Court in respect thereof in general and as against the three appellants in particular. A

The incident that allegedly took place in the afternoon may be considered in two parts: while the ravage in both the Bind Tolis (North and South) of Laxmipur may be treated as the first part, the murderous assault at the Tisrasia Dhab and bank of the River the second part. To give an ocular version of the earlier part the prosecution relied upon the evidence of as many as 69 residents of the village including F.C.P.Ws. 1 to 4. Each of them gave a detailed account of the vandalism perpetrated by the riotous mob in the entire village and the looting and setting on fire of their respective houses in particular. On going through the impugned judgments we find that the Courts below detailed and discussed their evidence at length along with the evidence of Dr. Rana Pratap Singh (P.W. 43) who had examined some of them and found injuries, Dr. Amar Prasad Singh (P.W. 50) who held post- mortem examination on the carcass of the burnt cows and goats, B.K. Singh (P.W. 96) the Investigating Officer and Naresh Prasad (P.W. 99) the Sub-Inspector of Police who assisted P.W. 96 in the investigation. On such analysis the Courts recorded a finding that a riotous mob of about 500 to 600 persons came to the village, some of whom were on horsebacks, armed with deadly weapons including firearms and surrounded it. The other finding recorded is that then the riotous mob plundered the village, assaulted some of the villagers and set 460 huts on fire. B C D E

For narrating and proving the other part of the incident, which according to the prosecution was the finale to the ghastly episode, it relied upon the evidence of, besides others, P.C.P.Ws. 1 to 4, Jhingur Singh (P.W.6), Moti Singh (P.W. 8), Medhi Singh (P.W. 14), Wakil Prasad Singh (P.W.17), Banarasi Singh (P.W.18), Sarjug Singh (P.W. 19) Moharail Singh (P.W. 29) and Suresh Singh (P.W. 46) as they claimed to have also seen as to what had happened at Tisrasia Dhab and on the bank of the River. Both the Courts below recounted their evidence and after exhaustive evaluating thereof found the same consistent. On the basis thereof the Courts held that the prosecution had succeeded in proving that when the mob was engaged in committing loot and arson in the village, some villagers fled towards Tisrasia Dhab and they were chased by some of the miscreants. Amongst those who were being chased were i) Ramswarup Singh, ii) Lal Bahadur Singh, iii) Rampravesh Singh, iv) Rambilas Singh, v) Sadho Singh, F G H

A vi) Arjun Singh, vii) Bhumi Singh, viii) Ramadul Singh, ix) Shibon Singh (all dead) x) Sukhadeo Yadav (P.C.P.W. 2), xi) Nageshwar Singh (P.C.P.W.3), xii) Moharil Singh (PW 29) xiii) Suresh Singh (PW 46). All the members who were chasing were armed with rifle, gun, pistol, bhalla etc. and some of them were on horse back. The next finding recorded by the Courts is that those who were chased boarded a country boat in B Tisrasia Dhab and started rowing to go to the other side. In the meantime the rioters reached there, opened fire and captured the boat. While three of the occupants of the boat - P.C.P.W. 2, P.C.P.W. 3 AND PW 29 escaped from their clutches by jumping into the River the other ten were apprehended and some of them were fired at, as a result of which Arjun Singh C and Bhumi Singh died at the spot. Then the miscreants forcibly took the others towards the bank of the River. There they were shot at and also assaulted with other weapons. Then some of them were thrown in the River. On the following day six dead bodies out of the nine killed were recovered from the River while P.W. 46 was found lying on its bank, in an unconscious state with injuries on his person.

D

In assailing the above findings Mr. Jethmalani first contended that both the Courts below ought not to have taken into consideration and relied upon the evidence of P.C.P.W. 1 as the same was clearly inadmissible. In expanding his argument Mr. Jethmalani submitted that while being E examined in Court the witness was permitted to refresh his memory from the report he lodged with the police in the morning of 12.11.1985 (Ext. 10/1), which was treated as the F.I.R. of the second incident even though by no stretch of imagination could that report be so treated, as P.W. 96 had started investigation into the same the previous night. That necessarily meant that Ext. 10/1 was a statement made to a police officer during F investigation which could to be read for an purpose except for contradicting the maker thereof in view of Section 162 (1) of the Code, argued Mr. Jethmalani. In support of his contention Mr. Jethmalani relied upon the judgment of the Privy Council in *Zahiruddin* v. *Emperor* AIR 1947 P.C. 75. It appears that the question as to whether Ext. 10/1 could be treated as an G F.I.R. was raised both before the Trial Court and the High Court and it was answered in the affirmative. The Courts held that in the night of 11.11.1985, P.W. 96 did not examine any witness in connection with the incident that took place in that afternoon and, in fact, he did not take any step towards the investigation as he and other police officers were busy in H maintaining law and order in the village.

Having gone through the evidence of P.W. 96 we are constrained to say that the Courts below were not justified in treating Ext. 10/1 as an F.I.R. undisputedly P.W. 96 had reached the village Laxmipur Bind Toli in the night of 11.11.1985 to investigate into the two cases registered over the incident that took place in the morning. He deposed that after reaching the village at 10.30 p.m. he got information about the second incident also and in connection therewith he had talked to several persons. He, however, stated that he did to record the statements of the persons to whom he talked to. In cross examination it was elicited from him that on the very night he learnt that houses of some people had been looted and set on fire, some people had been murdered and that some villagers were untraceable. While being further cross examined he volunteered that he had started the investigation of the case registered over the second incident in the same night. In the face of such admissions of P.W. 96 and the various steps of investigation he took in connection with the second incident there cannot be any escape form the conclusion that the report lodged by P.C.P.W. 1 on the following morning could only be treated as a statement recorded in accordance with Section 161(3) of the code and not as an F.I.R. The next question, therefore is whether the evidence of P.C.P.W. 1 is in admissible as contended by Mr. Jethmalani.

In the case of *Zahiruddin* (supra) the police had got the statement of the principal witness which was, admittedly, recorded during investigation signed by him. Besides, during trial, while being examined-in-chief he refreshed his memory from that statement. The trial ended in an acquittal with a finding that when a Police Officer obtains a signed statement from a witness in contravention of Section 162 of the Criminal Procedure Code his evidence must be rejected. In appeal the High Court set aside the order of acquittal holding that breaches of the provisions of Section 162 Criminal Procedure Code were not in themselves necessarily fatal to the proceedings and might in appropriate circumstances be cured as the expression was under the term of Section 537 of the Criminal Procedure Code 1898 (Section 465 of the Code). In setting aside the order of the High Court the Privy Council observed as under:

> ".....The effect of a contravention of the Section 162(1) depends on the prohibition which has been contravened. If the contravention consists in the signing of a starter ?? made to the police and reduced into writing, the evidence of the witness who signed it

A does not become inadmissible. There are no words either in the section or elsewhere in the statute which express or imply such a consequence. Still less can it be said that the statute has the effect of vitiating the whole proceedings when evidence is given by a witness who has signed such a statement. But the value of his evidence may be seriously impaired as a consequence of the contravention of this statutory safeguard against improper practices. *The use by a witness while he is giving evidence of a statement made by him to the police raises different considerations. The categorical prohibition of such use would be merely disregarded if reliance were to be placed on the evidence of a witness who had made material use of the statement when he was giving evidence at the trial. When therefore, the Magistrate or Presiding Judge discovers that a witness has made material use of such a statement it is his duty under the section to disregard the evidence of that witness as inadmissible.* In the present case there is in the note at the end of Mr. Roy's examination-in-chief and, in the judgment of the Magistrate what amounts to a finding of fact that Mr. Roy while giving his evidence made substantial and material use of the signed statement given by him to the police, and the Magistrate was accordingly bound to disregard his evidence. The Magistrate's reason for doing so is too broadly stated for it is not the mere fact that Mr. Roy had signed the statement but the fact that he had it before him and consulted it in the witness box that renders his evidence incompetent."

(emphasis supplied)

In our considered view the above quoted passage is of no assistance to the appellants herein for in the instant case after P.C.P.W.1 testified about the incident, prosecution got the statement of P.C. P.W.1 exhibited Ex. 10/1 as according to it Ext. 10/1 was the F.I.R. Such a course was legally permissible to the prosecution to corroborate the witness in view of Section 157 of the Evidence Act. Of course in a given case - as in the present one - the Court may on the basis of subsequent materials hold that the statement so recorded could not be treated as the F.I.R. and exclude the same from its consideration as a piece of corroborative evidence in view of Section 162 of the Code but then on that score alone the evidence of a witness cannot be held to be inadmissible. The case of *Zahiruddin* (supra)

turned on its own facts, particularly the act that during his examination-in-chief the witness was allowed to refresh his memory from the statement recorded under Section 161 Criminal Procedure Code, unlike the present one where the statement was admitted in evidence after P.C. P.W.1 had testified about the facts from his own memory. A

Mr. Jethmalani next submitted that the prosecution case so far as it related to the attack on villagers when they were trying to flee away on a boat at the Tisrasia Dhab was absolutely untrue for, even though the prosecution witnesses claimed that after capturing the boat and bringing the occupants down the rioters fired at them as a result of which Arjun Singh and Bhumi Singh dropped down dead there and their dead bodies were recovered from the River. According to Mr. Jethmalani, if the evidence of the witnesses was to be believed those dead bodies would have been found in Tisrasia Dhab itself and not in the River for, admittedly, the water of the former does not flow to the latter. On perusal of the evidence on record including that of P.W.96 we are unable to accept the above contention. Culling the evidence of the witnesses who spoke about the incident at Tisrasia Dhab and the bank of the River we find that all the 10 persons who were brought down from the boat including those who were shot at were taken to the bank of the River. The above evidence again stands corroborated by the evidence of P.W. 96, who spoke of having seen signs of dragging between the two places, namely, Tisrasia Dhab and the bank of the River as well as foot prints. The find of dead bodies of Arjun Singh and Bhumi Singh in the River, therefore, does not contradict the case of the prosecution that those two persons were shot at Tisrasia Dhab. B C D E

The next argument of Mr. Jethmalani was that the evidence of P.W. 46 was wholly unreliable and the Courts below ought not to have placed reliance upon the same. Since this argument of Mr. Jethmalani is solely directed against the acceptance of his evidence for conviction of the appellant Ranbir Yadav, we will consider the same while dealing with the case of the appellants separately. Mr. Jethmalani's last criticism against the findings of the Courts below as mentioned earlier was that the evidence of the eye witnesses who testified about the second incident was highly discrepant and untrustworthy and, therefore, it should not have been relied upon. To ascertain whether the contention was borne out by record we have carefully examined the judgments of the Courts below in the light of the relevant evidence and keeping in view the following observations of this F G H

A Court in *Shivaji* v. *State of Maharashtra,* A.I.R. 1973 S.C. 2622 as it applies in all fours in this case also:

> ".....The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The top sophisticated approaches familiar
> B in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellish-
> C ments in essential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered."

D On such examination we find that the various contentions raised on behalf of the accused/appellants have been carefully examined the evidence given by the respective witnesses has been correctly marshalled and assessed and the infirmities and contradictions in them closely scrutinised. Since the concurrent findings earlier detailed have been arrived at on such exercise, we find no ground or justification to disturb the same. We may
E now, therefore, divert our attention to the case of the individual appellant.

In assailing the conviction of Ranbir Yadav, the appellant in Criminal Appeal No. 34 of 1992. Mr. Jethmalani pointed out that the only overt act that was ascribed to him was that he had assaulted Suresh Singh (P.W.46) with a stick, twisted his neck and then threw him into the River; and to
F prove this fact prosecution relied solely upon his evidence. He contended that the Courts below ought not to have accepted his evidence firstly, because the prosecution itself had found him unreliable and cross-examined him at length and, secondly, because the story of assault as given out by him stood falsified by the evidence of Dr. Akhtar Ahmad (P.W.63)
G who examined him. In dealing with the case of Sukhdeo Yadav, the appellant in Criminal Appeal No. 35 of 1992, he contended that against him the only allegation was that he had shot down Arjun Singh but the evidence of P.W.63 who held post-mortem examination upon his dead body indicated that he had no gun shot injury upon his person. As regards Pandav Yadav, the appellant in Criminal Appeal No. 36 of 1992, he urged
H that the only part assigned to him was that he and two others had fired at

and killed Bhumi Singh but the medical evidence disclosed that there was only one firearm injury. According to Mr. Jethmalani, to convict a person under Section 149 I.P.C. the prosecution has got to prove he has committed an overt act in prosecution of the common object of the unlawful assembly. Judged in that context, he submitted, the conviction of none of the three appellants could be sustained in view of the highly discrepant and untrustworthy evidence of the witnesses who spoke about the overt acts committee by the three appellants. In support of this contention he laid strong emphasis upon the judgment of this Court in *Baladin* v. *State of U.P.* A.I.R. (1956) SC 181. In that case this Court held that it was well settled that mere presence in an assembly did not make a person a member of an unlawful assembly unless it was shown that he had done something or omitted to do something which would make him a member of an unlawful or unless the case fell under Section 142 I.P.C. It was further held that it was necessary for the prosecution to lead evidence pointing to the conclusion that the accused had done or been committing some overt act in prosecution of the common object of the unlawful assembly.

If the above quoted proposition of law had still operated in the field it might have been necessary for us to closely scrutinise the evidence of the eye witnesses so far as it sought to prove the overt act allegedly committed by each of the appellants to ascertain whether the learned Courts below were justified in accepting the same. But the above interpretation given to Sections 141 and 149 I.P.C. in *Baladin's* case (supra) was explained by a four Judge Bench of this Court in *Masalti* v. *State of U.P.* A.I.R. (1965) S.C. 202 as under:

> "It appears that in the case of Baladin (S) AIR (1956) SC 181 the members of the family of the appellants and other residents of the village had assembled together; some of the shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that kind would not necessarily show that he was a member of an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of he persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by S.141, I.P.C. Section 142 provides that however, being aware of facts which render any assembly an unlawful assembly, intentionally

A joins that assembly, or continue in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of S.141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the B said persons entertained one or more of the common objects as specified by S.141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. *It is in that context that the* C *observations made by this Court in the case of Baladin. (S) AIR (1956) SC 181 assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in* D *pursuance of the common object of the assembly, in fact. S.149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same* E *assembly, is guilty of that offence: and that emphatically brings out the principle that the punishment prescribed by S.149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.* Therefore, we are satisfied that the observations made in the case of Baladin (S) AIR (1956) SC 181 must be read in the F context of the special facts of that case and cannot be treated as laying down an unqualified proposition of law such as Mr. Sawhney suggests."

(emphasis supplied)

G The above quoted principle was reiterated by this Court in *Lalji* v. *State of U.P.,* AIR (1989) S.C. 754 with the following words:

> The two essentials of the Section (Section 149 I.P.C.) are the commission of an offence by any member of an unlawful assembly H and that such offence must have been committed in prosecution

of the common object of that assembly or must be such as the members of that assembly knew to be likely to be committed. Not every person is necessarily guilty but only those who share in the common object. The common object of the assembly must be one of the five objects mentioned in S.141 I.P.C. *Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.*

Section 149 makes every member of an unlawful assembly at the time of committing of the offence guilty of that offence. Thus this section created a specific and distinct offence. In other words, it created a constructive or vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. However, the vicarious liability of the members of the unlawful assembly extends only to the acts done in pursuance of the common object of the unlawful assembly, or to such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. *Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hands commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object.* Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. *It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused.* This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While over act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten victoriously criminal liability under

A S.149. It must be noted that the basis of the constructive guilt under S.149 is mere membership of the unlawful assembly, with the requisite common object or knowledge."

(emphasis supplied)

B The Court thereafter considered the facts of the case before it and observed that after having held that the appellant formed an unlawful assembly carrying dangerous weapons with the common object of resorting to violence, it was not open to the High Court to acquit some of the members on the ground that they did not perform any violent act or that there was C no corroboration of their participation.

In view of the above interpretation given to Section 149 IPC we need not delve into or decide the contention raised by Mr. Jethmalani that the evidence regarding the specific overt acts ascribed to each of the three D appellants herein is not reliable, for the evidence of the host of eye-witnesses - which both the Courts below considered and accepted - conclusively prove that all the three appellants shared the common object of the unlawful assembly to commit the offences of loot, arson and murder and causing the disappearance of the evidence of murder and that in furtherance of those common objects some members of that unlawful E assembly committed those offences for which the appellants are also liable to be convicted under Section 149 IPC. Even if we leave aside the evidence of Suresh Singh (P.W.46) who testified about the overt acts committed by all the three appellants, of P.C. P.W. 2 who spoke about the overt acts of appellants Pandav Yadav and Sukhdeo Yadav and of P.C.P.W.1 and P.W. F 19 who deposed about the overt act of Sukhdeo Yadav there are the testimonies of the other eye-witnesses, to whom reference has already been made, and found to be trustworthy, who identified the three appellants, besides others, as having been members of the unlawful assembly. Having sifted their evidence and considered the same in the backdrop of the events preceding the incident that took place in the afternoon of 11.11.1985 we G find that the following conclusions are inevitable: (i) a mob of 500/600 people, most of whom belonged to Yadav community and were residents of different villages came to and attacked the neighbouring village Laxmipur Taufir Bind Toli to exterminate the Bind community: (ii) the three appellants who belong to Yadav community and are residents of three H separate adjoining villages came on horse back armed with fire arms, and

led the mob along with some others; and (iii) the appellants were also amongst the rioters who chased the villagers and committed the murders at Tisrasia Dhab and the bank of the River.

In drawing the above conclusions we have taken note of the following passage form the judgment of this Court in *Bajwa & Ors.* v. *State of U.P.*, [1973] 3 S.C.R. 571 to which our attention was drawn by Mr. Jethmalani.

> "The evidence through which we have been taken by the learned counsel at the bar has been examined by us with care and anxiety because in cases like the present where there are party factions, as often observed in authoritative decisions there is a tendency to include the innocent with the guilty and it is extremely difficult for the Court to guard against such a danger. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on acceptable evidence which in some measure implicates such accused and satisfies the conscience of the court. (see *Kashmira Singh* v. *State of M.P.* and *Bhaban Sahu* v. *The King*). In the case in hand, no doubt the prosecution witnesses claiming to have seen the occurrence have named all the appellants and the approver has even named those acquitted by the High Court, but in our view it would be safe only to convict those who are stated to have taken active part and about whose identity there can be no reasonable doubt."

For the foregoing discussion the impugned convictions and sentences recorded against the three appellants must be upheld. Incidentally we may also mention that the plea of alibi taken by each of the three appellants was found by both the Courts below, on proper consideration of the evidence adduced in support thereof, to be wholly unsustainable. Indeed Mr. Jethmalani did not challenge this finding.

In the result, the appeals are dismissed.

CRL.M.P. NO. 2423/93 AND CRL. M.P. NOS. 2424-25/94.

Since the criminal appeals stand dismissed these miscellaneous petitions filed in connection therewith stand disposed of.

R.A. Petition Dismissed.