A

ANIL RAI

v.

STATE OF BIHAR

AUGUST 6, 2001

B

[K.T. THOMAS AND R.P. SETHI, JJ.]

Constitution of India—Articles 21, 141 and 142—Delay in pronouncement of Judgments by High Court—Practice deprecated—Guidelines for expeditious
C *pronouncement of Judgments laid down—Criminal Procedure Code, 1973—S.353 (1).*

Criminal Procedure Code—S.157—

FIR—Promptly recorded and investigation started—Delay in sending
D *the copy to the area Magistrate—Held, does not vitiate the prosecution case—Doubting the authenticity of FIR—Not every delay but only extraordinary and unexplained delay—Delay immaterial if prosecution gives cogent and reasonable explanation for such delay.*

Evidence Act 1872 :

E

Witnesses—Testimony of—Name of PWs not mentioned in the FIR—Reliability of—Held, the purpose of FIR is to set the criminal law into motion and does not require the details or names of all the witnesses—Thus, merely because names of some of the PWs had not been mentioned in the FIR, their testimony does become unreliable.

F

Witnesses—Inimical witnesses—Reliability of—Held, cannot be discarded merely on the ground of enmity which is otherwise convincing and consistent, particularly if he enmity is proved to be the motive for the commission of crime.

G *Hostile witness—Witness declared hostile for not mentioning the name of one of the accused—Held, does not completely efface the evidence of such witness—If his testimony is corroborated by other reliable evidence, conviction can be based thereupon.*

Penal Code—S, 302/149—Applicability of—Murder—Common object—

H

No proof that there was unlawful assembly to cause the death of deceased persons—Held, sharing of common object and participation in the occurrence by each one of the accused has to be positively proved Held, on facts conviction and sentence under S. 302/149 cannot be sustained.

Appellants alongwith five others were prosecuted for offences under S. 302 r/w S. 149 IPC and under S. 27 of the Arms Act. The prosecution case was that appellants along with others formed an unlawful assembly in furtherance of the common object of committing the murder of 'L' and 'C'. On the date of occurrence while 'L' was returning home, accused persons caught hold of him. On hearing the noise, family members of 'L' *viz.* 'C', PWs 1, 3, 5 and 6 rushed to the spot. When 'L' succeeded in extricating himself and tried to run away, A1 shot at him with his rifle. The moment 'C' reached the place of occurrence, A2 shot at him with his gun. Both 'L' and 'C' died on the spot. Accused were arrested and charge-sheet was filed against them. Trial Court convicted A1 and A2 under S. 302 and rest of the accused under S 302 r/w S. 149 IPC. Trial court also convicted all the accused under S. 27 of the Arms Act. On appeal, High Court confirmed the conviction and sentence of A1 to A7 and acquitted A8 and A9 for offences under S-302 r/w S. 149 IPC. SLP filed by A7 was dismissed by this court on account of his failure to produce proof of surrender. However, subsequently it was brought to the notice of this court that said accused had surrendered and was confined in jail. In the meantime A1 and A6 died. Aggrieved by their conviction and sentence A2 to A5 have filed the present appeals. In the present appeals, High Court after completion of arguments pronounced the judgment only after two years that too only when one of the judges concerned had reached the date of his superannuation.

On behalf of appellants it was contended that as the witnesses relied upon by the courts were inimical towards the accused persons, their testimony could not be relied upon without corroboration in material particulars; that there was delay in sending the copy of FIR to Area Magistrate; PW6 cannot be held to be an eye-witness as she has not seen the occurrence; that as the names of PWs1 and 5 were not mentioned in the FIR, no reliance can be placed upon their testimony; and that since PW 12 was declared as hostile witness and in his deposition he did not name A2, A2 was entitled to acquittal.

Disposing of the appeals, the Court

HELD : (Per Sethi, J)

1.1. Justice should not only be done but should also appear to have been

A done. Similarly whereas justice delayed is justice denied, justice withheld is even worst than that. The inordinate, unexplained and negligent delay in pronouncing the judgment is alleged to have actually negatived the right of appeal conferred upon the convicts under the provisions of the Code of Criminal Procedure. Such a delay is not only against the provisions of law but in fact infringes the right of personal liberty guaranteed by Article 21 of the Constitution of India. Any procedure or course of action which does not ensure a reasonable quick adjudication had been termed to be unjust. Such a course is stated to be contrary to the maxim "Actus Cariac Neminem Gadavi", that an act of the court shall prejudice none. The prevalence of such a practice and horrible situation in some of the High Courts in the country has necessitated the desirability of considering the effect of such delay on the rights of the litigant public. Delay in disposal of an appeal on account of inadequate number of judges, insufficiency of infrastructure, strike of lawyers and the circumstances attributable to the State is understandable but once the entire process of participation in justice delivery system is over and only thing to be done is the pronouncement of judgment, no excuse can be found to further delay for adjudication of the rights of the parties, particularly when it affects any of their rights conferred by the Constitution under Part-III.

[306-F, C, D, E,; 307-A, B]

Bhagwan Das Fateh Chand Daswani v. *H.P.A. International and Ors.*, [2000] 2 SCC 13; *Hussainara Khatoon* v. *Home Secretary, State of Bihar,* [1980] 1 SCC 81; *A.R. Antulay* v. *R.S. Nayak,* [1992] 1 SCC 225; *Kartar Singh* v. *State of Punjab,* [1994] 3 SCC 569; *Raj Deo Sharma* v. *State of Bihar,* [1998] 7 SCC 507; *Raj Deo Sharma (II)* v. *State of Bihar,* [1999] 7 SCC 604; *Akhtari Bi* v. *State of M.P.,* [2001] 4 SCC 355 and *R.C. Sharma* v. *Union of India and Ors.,* [1976] 3 SCC 574, relied on.

Surender Nath Sarkar v. *Emperor,* AIR (1942) Calcutta 225; *Jagarnath Singh and Ors.* v. *Francis Kharia and Ors.,* AIR (1948) Patna 414 and *Sohagiya* v. *Ram Brikash Mahto,* (1961 BLJR 282), referred to.

1.2. The intention of the Legislature regarding pronouncement of judgments can be inferred from the provisions of the Code of Criminal Procedure. Sub-section (1) of Section 353 of the Code provides that the judgment in every trial in any criminal court of original jurisdiction, shall be pronounced in open court immediately after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words "some subsequent time" mentioned in Section 353

contemplates the passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months. [308-C, D, E] A

1.3. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of justice dispensation system, it has to be without delay. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come to the expectation of the society of ensuring speedy, untainted and unpolluted justice. Under the prevalent circumstances in some of the High Courts, it is appropriate to provide some guidelines regarding the pronouncement of judgments which shall be followed by all concerned, being the mandate of this Court. Such guidelines, for the present, are as under: B C

(i) The Chief Justice of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause title, date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned. D

(ii) That Chief Justice of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month. E

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover. F G

(iv) Where a judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned H

A within two days excluding the intervening holidays.

(v) If the judgment, for any reasons, is not pronounced within a period of six months, any of the parties of the said list shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other bench for fresh B arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances. [308-E, G, H; 309-A-H]

2. Enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of C inimical witnesses, the courts are required to scrutinize their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity held to be a double edged D weapon may be instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eyewitnesses, which is otherwise E convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eye-witnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the F commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime cannot be made a basis to discard or reject the testimony of the eye-witnesses, whose deposition is otherwise consistent and convincing. [313-C, D, E, F, G]

G 3. S. 157 of the code is designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under Section 159 of the Code of Criminal Procedure. But where the FIR is shown to have actually been recorded without delay and investigation started on the basis H of the FIR, the delay in sending the copy of the report to the Magistrate cannot

by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. Extraordinary delay in sending the copy of the FIR to the Magistrate can be a circumstance to provide a legitimate basis for suspecting that the first information report was recorded on a later day than the stated day affording sufficient time to the prosecution to introduce improvements and imbelishment by setting up a distorted version of the occurrence. The delay contemplated under Section 157 of the Code of Criminal procedure for doubting the authenticity of the FIR is not every delay but only extraordinary and unexplained delay. However, in the absence of prejudice to the accused the omission by the police to submit the report does not vitiate the trial. In the present case, the FIR is shown to have been lodged within 15 minutes after the occurrence and most of the accused apprehended immediately. There does not appear to be any possibility of falsely implicating the accused persons. On facts also the courts below did not find any delay in despatch of the copy of FIR to the Area Magistrate.

[314-F, G, H; 315-A, B, C, D]

Pala Singh and Anr. v. *State of Punjab,* AIR (1972) SC 2679 and *Sarwan Singh and Ors.* v. *State of Punjab,* AIR (1976) SC 2304, relied on.

4. The purpose of the FIR is to set the criminal law in motion which does not require the details or the names of all the witnesses who have seen the occurrence. It is not necessary that elaboration of every fact that had happened should be given by the person who lodges the first information report. It has to be kept in mind that PW6 whose husband had been killed must have been extremely perturbed at the time of lodging of the FIR and in that state of mental agony she might not have been able to give details relating to the names of the wiitnesses who had seen the occurrence. The presence of all the eyewitnesses has been accepted by the courts below and there is no reason to take a different view, particularly this being a question of fact which was fully noticed by the two courts on fact and inspite of that the courts had believed the testimony of PWs 1 and 5. It is not the case of the appellant that the names of the accused persons were not mentioned in the FIR. It is also not the case of the appellant that the statements made under Section 161 of the Cr. P.C. of the aforesaid witnesses were not immediately recorded by the investigation agency. The submission that because the names of PWs1 and 5 are not mentioned in the FIR no reliance can be placed on their testimony is far fetched and without any substance. [317-D, E, F, G]

5. There is no substance in the submission that as PW12 was declared

A hostile and his not naming A2 the prosecution case against A2 could not succeed. The mere fact that the court gave the permission to the Public Prosecutor to cross-examine his own witness by declaring him hostile does not completely efface the evidence of such witness. The evidence remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence. In the instant case PW12 B did not mention the presence of A2 for which he was declared hostile. In his cross examination he admitted that bloodstained earth was recovered from the spot where the deceased fell down. The occurrence having taken place and the two persons having died on the date of occurrence have been admitted even by PW12. There is, therefore, no reason to hold that as PW12 has not C named A2, he is entitled to acquittal. [317-H; 318-A, C, D, E]

6. Application of Section 149 IPC would be highly unsafe unless it is positively proved that each one of the accused shared the common object and accordingly participated in the occurrence. Where the prosecution fails to prove the existence of sharing of common object by all the members of the D unlawful assembly it is unsafe to convict all the accused persons merely on proof of their presence or some overt act which did not cause the death of the deceased. Both the courts below have not found on facts that all the accused persons including A3 to A7 shared the common object with which A1 and A2 and fired the shots. Neither any direct evidence nor any E circumstances have been brought on record to hold or infer the existence of such a common object. Even if the existence of a common object is held proved, it cannot be the common object for any offence other than committing the offence of rioting. There is no evidence to show that the unlawful assembly, of which they were a part, had the object of causing the death of either of the deceased persons. The prosecution has established that the common object F of the unlawful assembly was to commit the offence of rioting armed with deadly weapons punishable under Section 148 IPC. The causing of death of the deceased persons was the individual acts of A1 and A2 and the prosecution evidence does not show that other accused persons shared the said common object. Therefore, the conviction of A3 to A7 for the offence punishable under G Section 302 read with Section 149 IPC is not sustainable. They are, however, liable to be convicted under Section 148 IPC read with Section 149 IPC. Their conviction and sentence under the Arms Act cannot be interfered with.

[319-C; 321-B, C, D, H; 322-C, D]

Masalti v. *State of U.P.*, [1964] 8 SCR 133; *Lalji* v. *State of U.P.*, [1989] H 1 SCC 439 and *Shamshul Kanwar* v. *State of U.P.*, [1995] 4 SCC 430, relied on.

Per Thomas, J. (Supplementing) : A

1. If delay in pronouncing judgments occurred on the part of the judges of the subordinate judiciary the whip of the High Court studded with supervisory and administrative authority could be used and it had been used quite often to chide them and sometimes to take action against the erring judicial officers. But what happens when the High Court judges do not B pronounce judgments after lapse of several months, and perhaps even years since completion of arguments? the Constitution did not provide anything in that area presumably because the architects of the Constitution believed that no High Court Judge would cause such long and distressing delays. Such expectation of the makers of the Constitution remained unsullied during the C early period of the post Constitution years. But unfortunately, the later years have shown slackness on the part of a few judges of the superior Courts in India with the result that once arguments in a list concluded before them the records remain consigned to hibernation. Judges themselves normally forget the details of the facts and niceties of the legal points advanced. Sometimes the interval is so long that the judges forget even the fact that such a case is D pending with them expecting judicial verdict. Though it is an unpleasant fact, it is a stark reality. It is in the above background, after bestowing deep thoughts with a sense of commitment, some remedial measures as instructions were laid down. However it is made clear that if the Chief Justice of a High Court thinks that more effective measures can be evolved by him for slashing E down the interval between conclusion of arguments and delivery of judgment in that particular court, it is open to him to do so as substitute for the measures suggested here-in-before. But until such measures are evolved by the Chief Justice of the concerned High Court the measures suggested above would hold the field. The above-enumerated measures are intended to remain only until such time as the Parliament would enact measures to deal with this problem. F

[324-F, G, H; 325-A, B, F; 326-G-H; 327-A]

R.C. Sharma v. *UOI,* [1976] 3 SCC 574, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 389 of 1998. G

From the Judgment and Order dated 14.8.1997 of the Patna High Court in Crl. A. No. 170 of 1991.

WITH

Crl. Appeal Nos. 387-88/98, Crl. Appeal No. 199/99. H

A R.K. Jain and K.B. Sinha, Ajay Bhalla, Rajeev Singh, Rajesh Prasad Singh, Tripurari Ray, Vishwajit Singh, B.B. Singh and Kumar Rajesh Singh for the appearing parties.

The Judgment of the Court was delivered by

B **SETHI, J.** Before adverting to the merits of the appeal, I propose to deal with the shocking state of affairs prevalent in some High Courts as brought to our notice by the learned counsel for the appellants. The dismay picture depicted before us on the basis of the facts of these appeals is that a few judges in some High Courts, after conclusion of the arguments, keep the files withheld with them and do not pronounce judgments for periods spread C over years. In the present appeals, the arguments were concluded and judgment was reserved by the High Court on 23rd August, 1995 which was pronounced on 14th August, 1997.

The inordinate, unexclaimed and negligent delay in pronouncing the judgment is alleged to have actually negatived the right of appeal conferred D upon the convicts under the provisions of Code of Criminal Procedure. It is submitted that such a delay is not only against the provisions of law but in fact infringes the right of personal liberty guaranteed by Article 21 of the Constitution of India. Any procedure or course of action which does not ensure a reasonable quick adjudication has been termed to be unjust. Such a E course is stated to be contrary to the maxim "Actus Cariae Neminem Gadavi", that an act of the court shall prejudice none.

The prevalence of such a practice and horrible situation in some of the High Courts in the country has necessitated the desirability of considering the effect of such delay on the rights of the litigant public. Though reluctantly, F yet for preserving and strengthening the belief of people in the institution of the judiciary, we have decided to consider this aspect and to give appropriate directions.

It has been held time and again that justice should not only be done but should also appear to have been done. Similarly whereas justice delayed is G justice denied, justice withheld is even worst than that. This Court in *Madhav Hayawadanrao Hoskot* v. *State of Maharashtra,* [1978] 3 SCC 544 observed that procedure contemplated under Article 21 of the Constitution means "fair and reasonable procedure" which comports with civilised norms like natural justice rooted firm in community consciousness—not primitive processual barabarity nor legislated normative mockery. Right of appeal in a criminal H case culminating in conviction was held to be the basis of the civilised

jurisprudence. Conferment of right of appeal to meet the requirement of Article 21 of the Constitution cannot be made a fraught by protracting the pronouncement of judgment for reasons which are not attributable either to the litigant or to the State or to the legal profession. Delay in disposal of an appeal on account of inadequate number of judges, insufficiency of infrastructure, strike of lawyers and the circumstances attributable to the State is understandable but once the entire process of participation in justice delivery system is over and only thing to be done is the pronouncement of judgment, no excuse can be found to further delay for adjudication of the rights of the parties, particularly when it affects any to their rights conferred by the Constitution under Part-III.

Learned counsel for the appellants has referred to the judgments in *Surender Nath Sarkar* v. *Emperor*, AIR (1942) Calcutta 225, *Jagarnath Singh and Ors.* v. *Francis Kharia and Ors.*, AIR (1948) Patna 414, *Sohagiya* v. *Ram Briksh Mahto*, (1961) BLJR 282 to show that only on the ground of delay in rendering the judgment for the period ranging from six months to ten months, the High Courts had held such judgments bad in law and set them aside. In *R.C. Sharma* v. *Union of India and Ors.*, [1976] 3 SCC 574 this Court, after noticing that the Civil Procedure Code did not provide a time limit in delivery of a judgment held :

> "Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extra-ordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgment. Justice, as we have often observed, must not only be done but must manifestly appear to be done."

In *Bhagwan Das Fateh Chand Daswani* v. *H.P.A. International and Ors.*, [2000] 2 SCC 13 this Court observed that "a long delay in delivering the judgment gives rise to unnecessary speculation in the minds of parties to a case." This Court in various cases including *Hussainar Khatoon* v. *Home Secretary, State of Bihar*, [1980] 1 SCC 81, *Hussainara Khatoon* v. *Home Secretary, State of Bihar*, [1980] 1 SCC 98, *A.R. Antulay* v. *R.S. Nayak*, [1992] 1 SCC 225, *Kartar Singh* v. *State of Punjab*, [1994] 3 SCC 569, *Raj Deo Sharma* v. *State of Bihar*, [1998] 7 SCC 507, *Raj Deo Sharma (II)* v.

A *State of Bihar,* [1999] 7 SCC 604 and *Akhtari Bi* v. *State of M.P.,* [2001] 4 SCC 355 has in unambiguous terms, held that "the right of speedy trial to be part of Article 21 of the Constitution of India."

Adverse effect of the problem of not pronouncing the reserved judgments within a reasonable time was considered by the Arrears Committee constituted B by the Government of India on the recommendation of the Chief Justices' Conference. In its report of 1989-90 Chapter VIII, the Committee recommended that reserved judgments should ordinarily be pronounced within a period of six weeks from the date of conclusion of the arguments. If, however, a reserved judgment is not pronounced for a period of three months C from the date of the conclusion of the arguments, the Chief Justice was recommended to be authorised to either post the case for delivering judgment in open court or withdraw the case and post it for disposal before an appropriate bench.

The intention of the Legislature regarding pronouncement of judgments D can be inferred from the provisions of the Code of Criminal Procedure. Sub-section (1) of Section 353 of the Code provides that the judgment in every trial in any criminal court of original jurisdiction, shall be pronounced in open court *immediately* after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words "some subsequent time" mentioned in Section 353 contemplates the E passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months.

F It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of justice dispensation system, it has to be without delay. In a country like ours where people consider the judges only second to God, efforts be made G to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eye-brows, some time genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the Rule of Law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted H to be made ugly. It is the policy and purpose of law, to have speedy justice

for which efforts are required to be made to come to the expectation of the society of ensuring speedy, untainted and unpolluted justice. A

Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guildelines, as for present, are as under: B

(i) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause title date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned. C

(ii) That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month. D

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the concerned Chief Justice shall draw the attention of the Bench concerned to pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover. E F

(iv) Where a judgment is not pronounced within three months, from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays. G

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said list shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other bench for fresh arguments. It is open to the Chief Justice to grant the H

A said prayer or to pass any other order as he deems fit in the circumstances.

We hope and trust that the above guidelines shall be strictly followed and implemented, considering them as self imposed restraints.

B Let me now deal with the merits of the appeals which are directed against the common judgment of the High Court of Patna passed in Criminal Appeal Nos. 158, 168, 170, 184 and 196 of 1991 confirming the conviction and sentence of 7 out of 9 accused persons for offences including under Sections 302 and 149 IPC and sentencing them to life imprisonment and acquitting the remaining two. The acquitted accused are Ram Parvesh Yadav C (A8) and Bhajwan Yadav @ Gorakh Kahar (A9) and the Special Leave Petion filed by Satya Narain Yadav (A7) was dismissed by this Court on 27.3.1998 on account of his failure to produce the proof of surrender. It has, however, been brought to my notice that the aforesaid accused thereafter surrendered and is presently confined in the jail. Avinash Chand Rai (A1) D and Amit Kumar Rai (A6) have since died.

The facts of the case are that the present appellants, along with five others formed an unlawful assembly in furtherance of the common object of which they committed the murder of Lal Muni Rai and Chand Muni Rai on 21st June, 1989 at about 6 p.m. in their village Kuchhila. Both the deceased E were real brothers with whom the accused persons are stated to have previous enmity. On the date of occurrence when Lal Muni Rai @ Rabinder Nath Rai was returning to his home after attending the meeting at Panchayat Bhawan in connection with the Jawahar Rojgar Yojna, the accused caught hold of him when he reached at a place few yards towards the north of the house of the accused Subhash Chand Rai (A2). Accused were armed with weapons like F guns and rifles. When Lal Muni Rai was caught hold of by the accused some noise was raised which attracted the attention of his family members with the result Chand Muni Rai (deceased), Bipin Rai (PW1), Sishir Rai (PW3), Sanjaiv Rai (PW5) and Hoshila Devi (PW6) rushed to the spot. On reaching the spot they saw that Lal Muni Rai had been held up by all the accused persons G excepting Subhash Chand Rai (A2). When Lal Muni Rai Succeeded in extricating himself from the clutches of the accused persons and tried to run away from the place of occurrence, he was shot at by Avinash Chand Rai (A1) with his rifle. The shot hit the occipital region of Lal Muni Rai who fell down on the ground and died on the spot. Another accused who was not immediately identified at that time also shot at Lal Muni Rai with his gun. H The moment Chand Muni Rai reached near the place of occurrence, Subhash

Chand Rai (A2) who was standing in his verandah shot him from there with his gun which hit and injured Chand Muni Rai with the result he fell down and died on the spot. Avinash Chand Rai (A1) fired some shots towards the other family members of the deceased but none of them was injured. Three of the accused ran away from the place of occurrence and left the village. The remaining accused rushed towards the house of Avinash Chand Rai (A1) and concealed themselves there. Terrified at that moment, the witnesses, the family members of the deceased persons, fled away from the place of occurrence and came back there again after some time. The firing shots were heard by police personnel at Kuchhila Police Station which was at a distance of about half a kilometer from the place of occurrence with the result Akhileshwar Kumar Singh, ASI (PW11) and Arbind Kumar, ASI (PW13) reached on the spot with the police force. They found the dead bodies of the deceased lying on the ground and found Hoshila Devi (PW6) weeping. Statement of PW6 was recorded on the spot. The accused are stated to have fired at the police party also. There was exchange of fire between the accused and the police force. After some time Shri R.K. Sharma, S.I, arrived at the scene along with additional police force. He directed PW11 to inform the senior police officers through wireless and bring more additional force for the purposes of apprehending the accused. R.K. Poddar, Inspector of Police, Mohania Police Station and other police officers arrived at the spot whereafter the house of the accused was searched in the presence of Yamuna Dubey and Matuki Singh. During the search of the house of Avinash Chand Rai (A1), where he was living with Anil Rai (A4), was arrested with a rifle, four live cartridges and six empty cartridges. On the roof of the house of the Avinash Chand Rai (A1) two unknown persons, one armed with country made gun and other armed with Regular Double Barrel Gun were apprehended, who upon inquiry, disclosed their names as Ram Parvesh Yadav @ Bharat Dusadh (A8) and Bhajwan Yadav @ Gorakh Kahar (A9). Both of them were arrested along with their guns, live and mis-fired cartridges. Amit Kumar Rai (A6) was found in the house of Avinash Chand Rai (A1) who was arrested along with gun and 5 cartridges. The seizure list of the recovered articles were prepared by the police officers in the presence of the witnesses. The three accused, who had run away from the village, were apprehended later. The police registered the case and after completion of investigation submitted the charge-sheet against them. All the accused persons pleaded not guilty and claimed to be tried.

In all the prosecution examined 14 witnesses. PWs 1, 2, 5, 6 and 12 were cited as eye-witnesses. However, Mukati Singh (PW12) was declared

A hostile at the trial. The defence has also examined three witnesses, one of whom is Dr. Basant Kumar, stated to have examined the injured accused persons. On appreciation of the evidence, the trial court held that prosecution had succeeded in proving the charges against the accused persons, on proof of which Avinash Chand Rai (A1) and Subhash Chand Rai (A2) were convicted under Section 302 IPC and rest of the accused under Section 302 B read with Section 149 IPC. All the accused were also found guilty for the commission of the offence under Section 27 of the Arms Act. All the accused persons were sentenced to life imprisonment for the offence under Section 302 read with Section 149 IPC and to rigorous imprisonment for one year for the offence under Section 27 of the Arms Act. All the sentences were directed C to run concurrently.

The appeals filed by the accused persons, as noticed earlier, were disposed of by the High Court vide the judgment impugned in these appeals. Criminal Appeal No. 158 of 1991 filed by Subhash Chand Rai (A2) and Criminal Appeal No. 170 filed by Avinash Chand Rai (A1) and Awadh D Bihari Rai (A3), Criminal Appeal No. 184 of 1991 filed by Avinash Chand Rai (A1) and Amit Kumar Rai (A6) and Criminal Appeal No. 196/91 filed by Avinash Chand Rai (A1) were dismissed. Criminal Appeal No. 186/91 filed by Ram Parvesh Yadav (A8) and Bhajwan Yadav (A9) was partly allowed in so far as their conviction under Section 302 read with Section 149 was concerned. The said appeal, in so far as it related to Satya Narain Yadav E (A7) was dismissed. However, conviction and sentence of A8 and A9 under Section 27 of the Arms Act was not disturbed.

The State has not filed any appeal against the judgment of acquittal relating to A8 and A9.

F Learned counsel appearing for the appellant Subhash Chand Rai (A2) has assailed the judgments of the trial as well as the High Courts on various grounds. It is contended that as the witnesses relied upon by the courts were inimical towards the accused persons, their testimony could not be relied upon without corroboration in material particulars. He has also tried to take G benefit of the alleged delay in sending the copy of the FIR to the Area Magistrate. Referring to the deposition of witnesses, the learned counsel contended that Hoshila Devi (PW6) cannot be held to be an eye-witness as she has not seen the occurrence. It is further submitted that as the names of PWs1 and 5 are not mentioned in the FIR, no reliance can be placed upon their testimony. Pointing out to some conflict between the deposition of eye-H witnesses and medical evidence with respect to the injuries received by the

deceased and with reference to the recovery of single barrel gun from Subhash Chand Rai (A2) it is contended that the prosecution has failed to connect the accused with the commission of the crime as the accused are alleged to have received some injuries allegedly inflicted upon them by the police after arrest. It is submitted that investigation being tainted, the benefit of acquittal should be given to the accused persons. It is further submitted that as Mukati Singh (PW12) declared as hostile witness, in his deposition did not name A2, he is entitled to acquittal by setting aside the impugned judgment in these appeals.

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There is no doubt that PWs1, 2, 5 and 6 relied upon and believed by the trial as well as the High Courts are not friendly to the accused persons on account of previous existing enmity between them. The admitted position of law is that enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the courts are required to scrutinise their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity held to be a double edged weapon may be instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eye-witnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eye-witnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may on some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime cannot be made a basis to discard or reject the testimony of the eye-witnesses, the deposition of whom is otherwise consistent and convincing.

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Regarding sending a copy of the FIR to the Area Magistrate, Section 157 of the Code of Criminal Procedure provides :

"157. Procedure for investigation :—(1) If, from information received

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A or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report ot the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State B Government may, be general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary to take measures for the discovery and arrest of the offender :

C Provided that :

(a) When information as to the Commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed is person or depute a subordinate officers to make an investigation D on the spot ;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in clauses (a) and (b) of the E proviso to sub-section (1), the officer-in-charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section and in the case mentioned in clause (b) of the said proviso the officer shall also forthwith notify to the informant, if any in such manner as may be prescribed by the State F Government, the fact that he will not investigate the case or cause it to be investigated."

This provision is designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under Section 159 G of the Code of Criminal Procedure. But where the FIR is shown to have actually been recorded without delay and investigation started on the basis of the FIR, the delay in sending the copy of the report to the Magistrate cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable *Pala Singh and Anr.* v. *State of Punjab,* AIR (1972) SC 2679. Extraordinary delay in sending the copy of the FIR to the Magistrate H can be a circumstance to provide a legitimate basis for suspecting that the

first information report was recorded at much later day than the stated day affording sufficient time to the prosecution to introduce improvements and imbelishment by setting up a distorted version of the occurrence. The delay contemplated under Section 157 of the Code of Criminal Procedure for doubting the authenticity of the FIR is not every delay but only extraordinary and unexplained delay. However, in the absence of prejudice to the accused the omission by the police to submit the report does not vitiate the trial. This Court in *Sarwan Singh and Ors.* v. *State of Punjab,* AIR (1976) SC 2304 held that delay in despatch of first information report by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when it is found on facts that the prosecution had given a very cogent and reasonable explanation for the delay in despatch of the FIR.

In the present case the FIR is shown to have been lodged within 15 minutes after the occurrence and most of the accused apprehended immediately. There does not appear to be any possibility of falsely implicating the accused persons. On facts also the courts below did not find any delay in despatch of the copy of the FIR to the Area Magistrate. Learned counsel for the appellant Subhash Chand Rai (A2) has not referred to any evidence to convince us that there was any unexplained inordinate delay in sending the copy of the FIR to the Area Magistrate.

Assailing the testimony of Hoshila Devi (PW6), the learned counsel for the appellant Subhash Chand Rai (A2) has submitted that as there is a conflict between her testimony and the medical evidence, she cannot be considered to be an eye-witness. It is further contended that as she had stated that the said accused had fired with a rifle and the actual recovery from him was that of a gun, she should not be believed. In her statement recorded at the trial, Hoshila Devi (PW6) has given a vivid description of the incident seen by her. She has stated that after hearing the noise from the north of the village to the effect that Lal Muni Rai had been captured by some people, she along with other inmates who were at home, rushed to the spot. She saw Avinash Chand Rai (A1), Anil Rai (A4), Awani Rai (A5), Awadh Bihari Rai (A3) Amit Rai (A6), Sat Naraina @ Satta (A7) along with two other persons armed with weapons like rifles and guns and had captured Lal Muni Rai who was trying to escape from their clutches. As soon as Lal Muni Rai got free and moved two-three steps, Avinash Chand Rai (A1) fired from behind at him which hit his forehead and he fell down on the ground. Another person who was stranger to her also fired at Lal Muni Rai. The moment her husband Chand Muni Rai reached near the place of occurrence, Subhash Chand Rai (A2)

A fired from his weapon from his verandah which hit the left temple of her husband who fell down on the ground. The said accused then fired shots at PW6 and others who saved their lives by running away from the place of occurrence. They went back at the place of occurrence after some time. It has also come in evidence that the accused had fired the police personnel as well. PW6 has nowhere stated that her husband had received one only gun shot. B She has narrated only that shot which was fired at in her presence. The possibility of any other shot fired by Subhash Chand Rai (A2) or a stray bullet fired by other accused persons hitting the deceased cannot be ruled out. Both the trial as well as the High Court have rightly held that her testimony inspires the confidence of the court and ruled out any possibility C of her being tutored or not being an eye-witness to the occurrence.

Dr. Jai Shankar Misra (PW10) deposed in the trial court that he had conducted the post mortem of the dead body of Chand Muni Rai. In his cross-examination the witness stated "Injury Nos. 1 and 3 on Chand Muni Rai are independent with each other. They have been caused by two different D shots. Both the injuries were caused by rifle on Chand Muni". Taking advantage of the mention of two injuries with two different shots, the learned counsel for the appellant has tried to make a mountain out of the mole. As noticed earlier, the possibility of the deceased getting another shot from the aforesaid appellant or any other accused cannot be ruled out. Learned counsel E further submitted that as the doctor has stated that the aforesaid injuries were caused by rifle, the prosecution case cannot be accepted because what was recovered from the appellant Subhash Chand Rai (A2) was a gun and not a rifle. In his examination-in-chief the witness stated that injuries were ante mortem and were grievous in nature which were caused by "fire arm". There is no dispute that both gun and rifle are the fire-arms. The expert witness has F nowhere stated that such injuries could not be caused by gun shots. It has to be kept in mind that the witness PW10 was expert on the medical science and not a ballastic expert. Otherwise also the opinion of the expert would lose its significance in view of the reliable, consistent ocular testimony of PWs 1, 2, 5 and 6. Such a plea was rejected by this Court in *Punjab Singh* v. *State of* G *Haryana,* AIR (1984) SC 1233 for two reasons, (1) that if direct evidence is satisfactory and reliable, the same cannot be rejected on hypothetical medical evidence, and (2) if medical evidence when properly read shows two alternative possibilities but not any inconsistency, the one consistent with the reliable and satisfactory statements of eye-witness has to be accepted.

H Learned counsel has also tried to take benefit of alleged discrepancies

with respect to the description of guns and rifles in the hands of various accused persons. Arguing the appeal on behalf of Subhash Chand Rai (A2), the learned counsel submitted that as witnesses had stated that he was equipped with a rifle when he fired at Chand Muni Rai, but a gun was actually recovered at the time of his arrest, no reliance could be placed on the testimony of PWs1, 2, 5 and 6. It is not disputed that eye-witnesses relied upon by the trial as well as the High Court are not experts of fire arms. There is hardly any difference between the gun and the rifle for a common man. It has come in evidence that all the 9 accused persons were armed with fire arms, some of which were mentioned as rifles and the others as guns. They had seen weapons at a time when the accused had indulged in indiscriminate firing and the witnesses were apprehending danger to their lives. It is common experience that in the confusion of the moment the witnesses are prone to make such errors especially if seized by sudden fear. The eye-witnesses PWs1, 2, 5 and 6 have withstood the test of cross-examination and have been relied upon by both the courts below. I do not find any ground to hold that the statements of the aforesaid eye-witnesses cannot be accepted.

I also do not find any substance in the submission that because the names of PWs1 and 5 are not mentioned in the FIR no reliance can be placed on their testimony. The purpose of the FIR is to set the criminal law into motion which does not require the detains or the names of all the witnesses who have seen the occurrence. It is not necessary that elaboration of every fact that had happened should be given by the person who lodges the first information report. It has to be kept in mind that PW6 whose husband had been killed must have been extremely perturbed at the time of lodging of the FIR and in that state of mental agony she might not have been able to give details relating to the names of the witnesses who had seen the occurrence. The presence of all the eye-witnesses has been accepted by the courts below and I don not see any reason to take a different view, particularly this being a question of fact which was fully noticed by the two courts on fact and inspite of that that courts had believed the testimony of PW6 of PWs 1 and 5. It is not the case of the appellant that the names of the accused persons were not mentioned in the FIR. It is also not the case of the appellant that the statements made under Section 161 of the Cr.P.C. of the aforesaid witnesses were not immediately recorded by the investigating agency. The plea raised is far fetched and without any substance.

I also do not find any substance in the submission of the learned counsel for the appellant Subhash Chand Rai (A2) that as Mukati Singh (PW12) was

A declared hostile in not naming his client, the prosecution case could not succeed. The mere fact that the court gave the permission to the Public Prosecutor to cross-examine his own witness by declaring him hostile does not completely efface the evidence of such witness. The evidence remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence. The said witness in his B statement recorded in the court stated that after the meeting in the Panchayat Bhawan he along with Lal Muni Rai and others were coming back to the village and when they reached near Puwal heap of Baij Nath Ram he saw accused Avinash Chand Rai (A1), Anil Rai and Awadh Bihari Rai with others, equipped with rifles and guns. They caught hold of Lal Muni Rai. The C witness cried and raised alarm that Lal Muni Rai was held by the aforesaid persons after which a number of people from the village rushed to the place including Chand Muni Rai (deceased He, however, did not mention the presence of Subhash Chand Rai (A2) for which he was declared hostile. In his cross examination he admitted that blood-stained earth was recovered from the spot where Lal Muni Rai and Chand Muni Rai had fell down. D Regarding presence of the eye-witnesses he stated, "I do not remember that I stated before Darogaji that by the time the wife and son of Chand Muni Rai came to secure Chand Muni Rai". The occurrence having taken place and the two persons having died on the date of occurrence have been admitted even by PW12. There is, therefore, no reason to hold that as the Mukati Singh E (PW12) has not named appellant Subhash Chand Rai (A2), he is entitled to acquittal.

In the defence evidence produced it was shown that the accused persons had also received the injuries. It was, however, conceded that such injuries were not sustained by them during the occurrence. The case of the defence F is that on account of the torture to which the accused were allegedly subjected after their arrest, they had received the injuries. Receipt of injuries after the occurrence, if any, does not help the accused persons in any way. If the accused had been subjected to beating or torture after their arrest, they were at liberty to file a case against the responsible police officials but cannot G claim the benefit of acquittal on account of alleged beating by the police after the occurrence. It has come in evidence that indiscriminate firing had been resorted to at the police by the accused persons which perhaps could be a reason of provoking the police to give them a thrashing. Be it as it may, such minor injuries noticed on the bodies of some of the accused persons do not, in any way, weaken the prosecution case.

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On the basis of the ocular testimony of PWs 1, 2, 5 and 6 the recovery of weapons from Avinash Chand Rai (A1) and Subhash Chand Rai (A2), the existence of enmity between them and the deceased and the medical evidence, I find no ground to interfere with the finding of conviction and sentence in so far as it relates to Avinash Chand Rai (A1) and Subhash Chand Rai (A2). Appeals filed by Subhash Chand Rai (A2), having no merits, are dismissed.

Learned counsel appearing for other accused persons have, however, submitted that the conviction and sentences of their clients under Section 302 read with Section 149 IPC is not justified.

The scope of Section 149 IPC has been explained by this court in various judgments holding that application of Section 149 IPC would be highly unsafe unless it is positively proved that each one of the accused shared the common object and accordingly participated in the occurrence. In *Masalti* v. *State of U.P.*, (1964) 8 SCR 133 it was observed :

> "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 the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that however, being aware of facts which render any assembly an unlawful assembly, intentionally 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 section 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 said persons entertained one or more of the common objects as specified in section 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 observations made by this Court in the case of *Baladin v. State of U.P.*, 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 purusuance of the common object of the

A assembly. In fact Section 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 assembly, is guilty of that offence; and that B emphatically brings out the principle that the punishment prescribed by Section 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".

C *In Lalji* v. *State of U.P.*, [1989] 1 SCC 439 this Court held :

"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 and vicarious liability of the members of the D unlawful assembly for the unlawful acts committed pursuant to the common 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 E 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 F object. Everyone must be taken to have intended the probable and natural result 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 complaint party, the prosecution is not obliged to prove which specific overt act G 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 overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful H assembly may fasten vicariously criminal liability under section 149.

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

In *Shamshul Kanwar* v. *State of U.P.*, [1995] 4 SCC 430 it was held that to infer common object it is not necessary that each one of the accused should have participated in the attack when the evidence of the eye-witnesses B clearly establish that each one of those convicted accused was member of the unlawful assembly whose common object was to commit murder. Where the prosecution fails to prove the existence of sharing of common object by all the members of the unlawful assembly it is unsafe to convict all the accused persons merely on proof of their presence or some overt act which did not C cause the death of the deceased. Both the courts below have not found on facts that all the accused persons including A3 to A7 shared the common object with which A1 and A2 and fired the shots. Neither any direct evidence nor any circumstances have been brought on record to hold or infer the existence of such a common object. Learned counsel for the appellants have submitted that there is nothing in the evidence to show that the rest of the D accused share the common object with A1 and A2 to cause death of Lal Muni Rai and Chand Muni Rai. Even if the existence of a common object is held proved, it cannot be the common object for any offence other than committing the offence of rioting. I find substance in such a submission in the peculiar facts and circumstances of the case. The proved case of the prosecution is E that when Lal Muni Rai along with others were coming back, he was intercepted by the accused persons who were armed with weapons and if the object of the unlawful assembly was to cause his death, there was no cause or occasion for them to only catch hold of the said deceased Lal Muni Rai and beat him. He was shot at by Avinash Chand Rai (A1) only after he escaped from the clutches of the other accused persons. The other accused F persons might not have in their contemplation that if the rioting, intended to by them, failed anyone of them would shoot at the victim.

However, there is sufficient evidence on the record to show that A3 to A7 had formed an unlawful assembly with A1 and A2, the common object G of which was to use force and violence against the deceased Lal Muni Rai. It has also come in evidence that the aforesaid accused persons who had formed an unlawful assembly for the offence of rioting were armed with deadly weapons which, when used as weapons of offence, were likely to cause the death. There is no evidence to show that the unlawful assembly, of which they were a part, had the object of causing the death either of Lal H

A Muni Rai or the Chand Muni Rai. The death of Chand Muni Rai was caused by Subhash Chand Rai (A2) who admittedly, was not a part of the unlawful assembly and is proved to have fired the gun shot from his verandah. The High Court has not adverted to this aspect of the matter so far as A3 to A7 are concerned but on similar reasoning acquitted A8 and A9 from the offence of murder with the help of Section 149 IPC, despite holding, "no doubt B Bharat and Gorakh appellant were apprehended in the same night from the house of co-accused Anil Rai but that by itself would not prove their participating in the incident of murder of Lal Muni Rai and Chand Muni Rai". They were, however, convicted under Section 27 of the Arms Act. I do not find any difference between the case of A3 to A7 and A8 and A9. The C prosecution has established that the common object of the unlawful assembly was to commit the offence of rioting armed with deadly weapons punishable under Section 148 of the IPC. The causing of death of the deceased persons was the individual acts of A1 and A2 and the prosecution evidence does not show that other accused persons shared the said common object. Therefore, the conviction of A2 to A7 for the offence punishable under Section 302 read D with Section 149 IPC is not sustainable. They are, however, liable to be convicted under Section 148 IPC read with Section 149 IPC. Their conviction and sentence under the Arms Act cannot be interfered with.

As noticed earlier, the SLP filed by Satya Narain (A7) was dismissed E by this Court on account of his failure to produce the proof of surrender. It has been stated at the Bar and admitted by the learned counsel appearing for the State that the said accused surrendered thereafter and is presently undergoing the imprisonment awarded to him vide the judgment impugned. In view of the finding that A3 and A7 are not guilty of the offence under Section 302 read with Section 149 IPC can any benefit of this judgment be F given to Satya Narain (A7). This Court in *Raja Ram and Ors.* v. *State of U.P.*, [1994] 2 SCC 568 considered the case of non-appealing accused which was identical to the case of the appellants and held him entitled to the benefit of altered conviction and sentence. Again in *Dandu Lakshmi Reddy* v. *State of A.P.*, [1999] 7 SCC 69 this Court held :

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> "The mother of the appellant Narayanamma is languishing in jail at present pursuant to the conviction and sentence awarded to her in this case. Of course her conviction is not before us as she did not file any special leave petition. But this Court has set up a judicious precedent for the purpose of averting miscarriage of justice in similar situations. H On the evaluation of a case, if this Court reaches the conclusion that

no conviction of any accused is possible the benefit of that decision must be extended to his co-accused also though he has not challenged the order by means of an appeal petition to this court vide *Raja Ram* v. *State of M.P.*, [1994] 2 SCC 568." A

I am of the opinion that under the facts and circumstances of the case, A7 is also entitled to the benefit of altered conviction and sentence. B

Under the circumstances the appeal filed by Subhash Chand Rai (A2) is dismissed. The appeals filed by Appellants Awadh Bihari Rai (A3), Anil Rai (A4), Awani Rai (A5) and Amit Kumar Rai (A6) are partly allowed by setting aside their conviction and sentence under Section 302 read with Section 149 IPC. They are held guilty for the commission of offence punishable under Section 148 read with Section 149 IPC and sentenced to three years rigorous imprisonment. Their conviction and sentence under Section 27 of the Arms Act is upheld. As already noticed Satya Narain (A7), whose SLP was dismissed by this Court on 27.3.1998 is also given the benefit of altered conviction and sentence with the result that his conviction under Section 302 read with Section 149 is set aside and instead he is convicted under Section 148 read with Section 149 IPC and sentenced to three years rigorous imprisonment. His conviction and sentence under Section 27 of the Arms Act is upheld. The conviction and sentence awarded to A3 to A7 shall run concurrently. If the aforesaid accused persons (A3 to A7) have already undergone the sentences awarded to them, they shall be set at liberty forthwith if not required in any other case. C D E

THOMAS, J. I read the judgment drafted by Brother Sethi J. I am in full agreement with the conclusions regarding the merits of the case. Regarding the aspect of delay in pronouncing judgments after conclusion of arguments I wish to add a few words on my own in support of all what Sethi J. has said about it. F

In 1961 a learned judge of the Patna High Court expressed his anguish when a magistrate took nine months to pronounce a judgment. The words used by him for expressing his judicial wrath is the following : G

"The magistrate who cannot find time to write judgment within reasonable time after hearing arguments ought not do any judicial work at all. This Court strongly disapproves the magistrates making such a tremendous delay in the delivery of his judgments." H

A Now when two judges of the Patna High Court took two years for pronouncing a judgment after concluding arguments when the parties were languishing in jail, the counsel appearing in this Court in challenge of the said judgment asked in unison whether the exhortation made by the Patna High Court in 1961 is not intended to apply to the High Court.

B A glimpse on the situation of the case as it remained in the High Court persuades me to feel that what happened in this case is only the tip of the iceberg. When the sessions court convicted nine persons on different counts including murder as per his judgment dated 4.5.1991, all the convicted persons filed appeals before the High Court of Patna. While remaining in jail the C convicted persons waited for their turn to reach for the High Court to get time to hear their appeals. It took five years for such turn to reach. Advocates engaged by them then addressed arguments before the Division Bench and learned judges on conclusion of arguments on 23.8.1995, adjourned the appeals sine die for judgment. The convicted persons while remaining in jail again waited for the D' day. The members of their family would naturally have D been anxiously waiting for the same, but days and weeks and months and even years passed without anything happening from the Court. In the meanwhile, one of the convicted persons died in jail. By then even the anxiety of the other convicted persons would have died down and appeals would have been consigned to records. It is difficult to comprehend how the judges E would have kept the details and the nuance of the arguments in their memory alive after the lapse of a long long period.

Unfortunately, the judges concerned had no concern until one of them reached near the date of his superannuation. They then reminded themselves of the obligation of delivering the judgment. It was thus that the impugned F judgment had come out, at last, from torpidity.

If delay in pronouncing judgments occurred on the part of the judges of the subordinate judiciary the whip of the High Court studded with supervisory and administrative authority could be used and it had been used quite often to chide them and sometimes to take action against the erring G judicial officers. But what happens when the High Court judges do not pronounce judgments after lapse of several months, and perhaps even years since completion of arguments ? The Constitution did not provide anything in that area presumably because the architects of the Constitution believed that no High Court judge would cause such long and distressing delays. Such H expectation of the makers of the Constitution remained unsullied during the

early period of the post Constitution years. But unfortunately, the later years have shown slackness on the part of a few judges of the superior Courts in India with the result that once arguments in a lis concluded before them the records remain consigned to hibernation. Judges themselves normally forget the details of the facts and niceties of the legal points advanced. Sometimes the interval is so long that the judges forget even the fact that such a case is pending with them expecting judicial verdict. Though it is an unpleasant fact, it is a stark reality.

Should the situation continue to remain so helpless for all concerned. The Apex Court made an exhortation in 1976 through a judgment which is reported as *RC Sharma* v. *UOI.,* [1976] 3 SCC 574 for expediting delivery of judgments. I too wish to repeat those words as follows :

> "Nevertheless an unreasonable delay between hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments."

Quarter of a century has elapsed thereafter but the situation, instead of improving has only worsened. We understand that many cases remain in area of "judgment reserved" for long periods. It is heartening that most of the judges of the High Courts are discharging their duties by expeditiously pronouncing judgments. But it is disheartening that a handful of few are unmindful of their obligation and the oath of office they have solemnly taken as they cause such inordinate delay in pronouncing judgments. It is in the above background, after bestowing deep thoughts with a sense of commitment, that we have decided to chalk out some remedial measures to be mentioned in this judgment as instructions.

Sethi J. has enumerated them succinctly as follows :

(i) The Chief Justice of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title date of

reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned.

(ii) That Chief Justice of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months from the date of reserving judgment any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.

I have chosen to reiterate the above instructions in this separate judgment only for providing added emphasis to them. I make it clear that if the Chief Justice of a High Court thinks that more effective measures can be evolved by him for slashing down the interval between conclusion of arguments and delivery of judgment in that particular court, it is open to him to do so as substitute for the measures suggested by us here-in-before. But until such measures are evolved by the Chief justice of the concerned High Court we

expect that the measures suggested above would hold the field. I may also mention that the above-enumerated measures are intended to remain only until such time as the Parliament would enact measures to deal with this problem. A

With the above words I respectfully concur with all what brother Sethi J. has said in his judgment. B

S.V.K. Appeals disposed of.