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**(2016) 04 SHI CK 0114**

**In the High Court Of Himachal Pradesh**

**Case No : Criminal Appeal No. 297 of 2007**

State of Himachal Pradesh

APPELLANT

Vs

Narian Singh and others

RESPONDENT

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**Date of Decision :** 28-04-2016

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 304B, 498A

**Citation :** (2016) sup HimLR 2899 : (2016) ILRHP 1470 : (2016) 2 SimLC 1082

**Hon'ble Judges :** Mr. Sanjay Karol and Mr. Ajay Mohan Goel, JJ.

**Bench :** Division Bench

**Advocate :** Mr. R.S. Verma, Mr. V.S. Chauhan, Addl. Advocate Generals and Mr. Vikram Thakur, Deputy Advocate General, for the Appellant; Mr. Bimal Gupta, Senior Advocate with Mr. Vineet Vashista, Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Ajay Mohan Goel, J.—The present appeal has been filed by the State against judgment passed by learned Additional Sessions Judge (Fast Track), Kullu, in Sessions Trial No. 109/04, RBT. Sess. Trial No. 6/05, dated 24.04.2007, vide which learned trial Court has acquitted the accused persons for offences under Section 498 A and 304-B, I.P.C.

2. We have heard the learned counsel for the parties and have also gone through the record of the case.

3. The case of the prosecution was that a complaint was filed by Sangat Ram, an agriculturist, who was having 8 daughters and one son. Deceased (Lata) his daughter was married to accused Narian Singh as per Hindu rites. Out of the said wedlock, accused Narian Singh and deceased had one son and even at the time of her death, the deceased was in family way. Deceased was subjected to beatings and maltreatment on account of demand of dowry by the accused but the complainant was not able to meet the dowry demands of the accused persons as he was a poor man. Earlier also, a case was registered under Section

498A I.P.C. against the accused by deceased Lata when she was subjected to cruelty. However, this case was compounded during the course of trial. About 3 months back, the vehicle of accused Narian Singh met with an accident and the accused asked the deceased to bring an amount of Rs. 50,000/- from her parents, to which demand, the deceased showed her reluctance. As a result, the deceased was subjected to beatings and maltreatment by the accused persons and it was suspected that his daughter was done to death during the intervening night of 22/23.08.2004 by the accused persons as the deceased was not able to meet their illegal demands of dowry. FIR was registered at Police Station Kullu on 23.08.2004, copy of which is Ext. PW10/A.

4. In order to prove its case, the prosecution in all examined 12 witnesses. The accused examined two witnesses in defence. PW-1 Sangat Ram is father of the deceased. PW-2 Savitri Devi is the mother of the deceased. PW-3 Poonam is the younger sister of the deceased. PW-4 Dr. Sonam Chhering had conducted the postmortem of the dead body of the deceased along with Dr. Sumedh Kaul. PW-5 Trilok Singh was the Pradhan of Gram Panchayat Bhuin. PW-6 Karan Rai Singh had photographed the dead body on the intervening night of 22/23.08.2004 in village Suibhra on the request of the police. PW-7 HHC Mohar Dass has placed on record the Daily Diary of P.P. Bhuntar pertaining to the month of August, 2004. PW-8 H.C. Roop Singh was posted as MHC in Police Station Kullu since September, 2003 and on 23.08.2004 S.I. Bhup Ram, Police Post Bhuntar, had deposited 5 sealed parcels duly sealed with the seal of Zonal Hospital Kullu alongwith a letter of Doctor and sample seal with him in the Malkhana. PW-9 Constable Pratap Singh had deposited the case property in F.S.L. Junga on 26.08.2004. PW-10 Inspector Badri Singh has recorded FIR on the basis of the statement of Sangat Ram, which statement was recorded by S.I. Bhup Ram. PW-11 S.I. Bhup Ram was posted as Incharge P.P. Bhuntar. PW-12 Devinder Thakur was posted as Additional Superintendent of Police at the relevant time and he had recorded the statements of Sangat Ram and Mela Ram under Section 161 Cr.P.C. and also carried out partial investigation of the case. DW-1 Narender Sharma is Record Keeper, General Record Room, Kullu (D.C. Office), who had brought the record of case titled State v. Narian Singh etc. decided on 05.08.2005. Badri Singh who was the S.H.O. of Police Station Kullu, was also examined by the accused as DW-2.

5. PW-1 Sangat Ram, father of the deceased, has stated that deceased was married with Narian Singh in the year 2001. The marriage was solemnized as per Hindu customs and rites. Only after 18 days of her marriage, the deceased was beaten up by the accused persons and turned out of her matrimonial house, upon which, she came back to the house of her father. It was disclosed by the deceased that beatings were given to her on the ground that she had not brought any cash on account of dowry during her marriage, whereas, the accused had spent Rs. 70,000/- for solemnization of the marriage of accused Narian Singh with the deceased. He further states that thereafter accused Nihala Ram, father of accused Narian Singh came to his house along with ward Panch

Sarvan Kumar of Suibhra and Pradhan of Gram Panchayat Bhuin Trilok Singh along with his other relatives. He further deposed that Nihala Ram in the presence of above mentioned persons stated that the accused do not want to keep the deceased in their house as the deceased neither used to listen to them nor she was performing her work properly. On this, Pradhan of the Gram Panchayat and Ward Panch made Nihala Ram to understand that the deceased was newly married and with the passage of time she would also work and pay heed to them. Accordingly, on the intervention of the said persons he sent their daughter to her matrimonial house, who was left there by his wife Savitra Devi and his mother Parmi Devi. After one month, the deceased again came back to his house. He further mentioned that the deceased used to visit his house sometimes after 15 days and sometimes after one month. However, she used to complain to them that the accused persons were maltreating her for not bringing dowry in cash and kind. This continued for about 2- 3 years and in the meanwhile, the deceased gave birth to a male child, who was aged 1? years when Lata Devi died. The deceased had also made a complaint in the regard in between at Police Post Bhuntar when she was to deliver her child. He further states that his son-in-law accused Narian Singh was having a jeep, which he used to drive himself. He further deposed that he visited the house of accused after the marriage of his daughter only once. He has further mentioned that the marriage of deceased Lata Devi was solemnized from the old house of Nihala Ram but after solemnization of marriage, Lata Devi was residing in the new house of the accused, which was at a distance of 70-80 Meters from the old house. He has further mentioned that even after the filing of the case by Lata Devi, her husband used to maltreat her on the ground that despite the fact she was residing with him, she had filed a case against him. The deceased was brought to the Court and the case was compromised and withdrawn. The same was withdrawn 6-7 days prior to her death. His daughter Poonam had visited the deceased in the house of the accused about 6-7 days prior to her death, which he later qualified by stating that she may have visited her deceased's sister 7-10 days before her death or 3-4 days before her death or a week earlier. When Poonam returned back from the house of the deceased, she disclosed that accused Narian Singh was beating Lata Devi. Jeep of the accused had met with an accident for which he was demanding money from Lata Devi. This accident had taken place one or two months before the death of the deceased. The factum of death of the deceased was disclosed to him by Sodhu Ram, younger brother of accused Nihala Ram, Sarvan, Panch and his brother at about 2.30 A.M. on 22nd August, 2004. He was intimated that Lata Devi died due to hanging. He reached the house of accused at around 3.30 A.M. accompanied by his brother Mela Ram, Mast Ram and other persons. When they were proceeding to the house of the accused, police met them in the way to the house of the accused and they were carrying dead body of Lata in a vehicle to dead body house. Thereafter, he returned back to his house and at about 7.00 A.M. went to P.P. Bhuntar and reported the matter to police.

6. PW-2 Savitra Devi, mother of the deceased, has stated that after 15 days of marriage of the deceased with accused Narian Singh, she visited her parents' house and disclosed that the accused had started quarrelling with her and gave her beatings on the ground that she had not brought anything in dowry. The deceased had further disclosed that she was being maltreated by Nihala Ram, Sunehru Devi, Narian Singh, Soma Devi, Rambha and Anita. After about 15 days, Nihala Ram came with Ward Panch Sarvan and Pradhan of the Panchayat along with Dila Ram, Rama Nand to their house. In presence of the above mentioned persons, Nihala Ram accused stated that he had spent Rs. 70,000/- to 75,000/- on the marriage of Narian Singh but the parents of the deceased had not given anything in cash or dowry to them and betrayed them and hence they did not intend to take the deceased with them. On this, Pradhan Gram Panchayat Tarlok Singh made accused Nihala Ram to understand that since Lata Devi had been married to his son, hence he should take Lata Devi with him. The members of the Panchayat also asked them to leave their daughter in the house of the accused. Therefore, on the following day she along with her mother-in-law accompanied her daughter and left her in her matrimonial house. Thereafter, the deceased used to visit their house after interval of 15-20 days and every time she disclosed that the accused were proclaiming that they had not been given anything by the parents of the deceased in dowry. Her son-in-law accused Narian Singh was having a jeep, which he used to drive himself, the deceased used to complain that as no money or dowry had been given, therefore, she used to be maltreated by the accused. Once the deceased had complained that she was also beaten by her sister-in-law and once she complained that she was given beatings by her father-in-law Nihala Ram. At another occasion, she had complained that she had been given beatings by her husband Narian Singh. The deceased had also reported the matter to the police at P.P. Bhuntar, which matter was compromised later on. She has further deposed that the deceased had lodged another complaint also, which matter was compromised in the Police Post itself. One or two months prior to her death, Lata Devi had disclosed to them that the jeep of accused Narian Singh had met with an accident and the accused had asked her to bring money for the repair of jeep and demanded Rs. 50,000/- as her parents had not given anything in dowry. She further stated that about after one month from the date of marriage, accused Narian Singh had demanded Rs. 35,000/- for depositing instalments of the purchase of jeep in the bank. This demand was on the ground that they have not given any money in dowry. She has further stated that they are poor persons, they were not in a position to pay Rs. 35,000/- or Rs. 70,000/- as she had 8 daughters and one son. Her daughter Poonam had visited deceased about 3 days prior to her death. Poonam disclosed on her return that Narian Singh accused had given beating to Lata Devi and that Narian Singh accused had proclaimed on her asking that as the deceased has not brought anything with her in dowry she would receive only beating and nothing else. She has further stated that her daughter died because the accused maltreated her for not bringing dowry.

7. PW-3 Poonam is the younger sister of the deceased. She has stated that after 15-18 days of the marriage of the deceased, she had returned to their house and disclosed that her father-in-law and mother-in-law were stating that she had brought very less dowry. The deceased had also disclosed that her husband, parents-in-law and sister-in-law Soma Devi used to beat her. The deceased remained at her parents house for sometime and thereafter her father-in-law came to their house along with the Ward Panch and the Pradhan of Gram Panchayat and some other relatives. In front of the above named persons, accused Nihala Ram stated that he had spent Rs. 70,000/- for the marriage of his son, whereas the deceased had not brought anything in dowry. Therefore, he mentioned that, he would not take the deceased back. On this, the Pradhan of the Gram Panchayat Shri Tarlok Singh made him understand that the demand was neither proper nor it was justified and that he should take back his daughter-in-law. Thereafter on the following day, her mother and grand-mother accompanied the deceased to her matrimonial house and left her there. She has further deposed that whenever the accused used to maltreat the deceased, she used to visit her parental house and complain about this maltreatment. The deceased each time disclosed that the maltreatment was for bringing no money and dowry. She has further stated that her parents are very poor and having many children and hence they are not in a position to meet out the demands of the accused persons. She has also deposed that in between once deceased disclosed that her parents in-laws and husband had asked her to bring an amount of Rs. 35,000/- for making payment of loan instalment. She has also deposed that when her sister was in family way and 29th was the date of delivery given by the Doctor, she was beaten up by the accused on 25th of that month and ousted from her matrimonial house on the demand of dowry. Next day, they went to the matrimonial house of her deceased sister to collect her clothes where she was again beaten up by the accused persons. On this, her deceased sister reported the matter to the police and a case was lodged against the accused. However, since the deceased was residing with the accused persons in their house, hence she withdrew the case from the Court in the hope that the accused persons will treat her properly. The case was withdrawn from the Court about 5-6 days prior to her suicide. Poonam has further deposed that on 19.08.2004 she visited house of her deceased sister and stayed overnight in her house. In her presence accused Narian Singh gave beatings to the deceased sister mercilessly and at that time again the accused had made demand of cash, dowry in the pretext of repair of his jeep. The information of her sister having committed suicide was received in their house on the intervening night of 22/23.08.2004.

8. PW-5 Trilok Singh, Pradhan of Gram Panchayat Bhui, has stated that he knew the accused persons as they belong to his Panchayat. He has further deposed that village Jarat where Sangat Ram resides, falls in his Panchayat. Accused Narian Singh was married with Lata Devi in the year 2001. In February, 2002, accused Nihala Ram visited him and disclosed that his daughter-in-law Lata Devi

had gone to the house of her parents on the festival of Lohri but did not return back. He also disclosed that his son Narian Singh visited the house of in-laws but despite this, she did not accompany him. Thereafter, PW-5 along with his Ward Panch Sarvan Singh accompanied Nihala Ram accused to the house of Sangat Ram and they got the matter compromised between the parties and on account of that compromise Lata Devi came to the house of the accused on the following day. He has further mentioned that on 22.08.2004 Narian Singh and Ward Panch Sarvan visited him at about 11.00 P.M. and Narian Singh disclosed that his wife had died by hanging herself with Dupata to a fan in his house. Narian Singh asked him to visit the spot but he refused and advised him to report the matter to the police. It was around midnight when the police came on the spot and he associated the police.

9. Thus, it can be inferred that as per the prosecution, the deceased committed suicide on account of maltreatment meted out to her by the accused which include demands of dowry and physical abuse inflicted on her by the accused on the pretext that the deceased had not brought dowry with him.

10. Before proceeding any further, it is relevant to take note of the fact that here is a case which admittedly is of unnatural death and the death has taken place within 7 years of the marriage of the deceased.

11. Section 113-B of the Evidence Act, 1872 reads as under:-

"113-B. Presumption as to dowry death.

- When the question is whether a person has committed the dowry death of a woman, and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

12. Section 304-B of the IPC reads as under:-

"304-B. Dowry death. ? (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death."

13. The Hon"ble Supreme Court in Surinder Singh v. State of Haryana, (2014) 4 SCC 129, has held as under:-

"17. Thus, the words "soon before" appear in Section 113B of the Indian Evidence Act, 1872 and also in Section 304B of the IPC. For the presumptions contemplated under these Sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The

interpretation of the words "soon before" is, therefore, important. The question is how "soon before"? This would obviously depend on facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, "soon before" is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

18. In this connection we may refer to judgment of this Court in *Kans Raj v. State of Punjab*, where this Court considered the term "soon before". The relevant observations are as under: (SCC pp. 222-23, para 15)

"15. ... "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

Thus, there must be a nexus between the demand of dowry, cruelty or

harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

14. Thus, it is evident that for the purposes contemplated in Section 113-B of the Evidence Act 1872 and Section 304-B I.P.C., to spring into action, it is necessary to demonstrate that cruelty or harassment was caused soon before the death. Therefore, the interpretation of the words "soon before" assumes great significance and importance and these words have to be interpreted keeping in view the facts and circumstances of each case. The question obviously will be how "soon before" her death such woman was subjected by the accused to cruelty or harassment for or in connection with demand for dowry. The cruelty or harassment will differ from case to case and it will obviously be relating to the mindset of people which will also vary from person to person. Besides cruelty being both mental and/or physical it can also be verbal or emotional.

15. In the context of the present case, it is not disputed that PW-1, PW-2 and PW-3 are very closely related to the deceased. In these circumstances, their statements have to be minutely scrutinised in order to ascertain their trustworthiness and truthfulness. Because the death has taken place within 7 years from the date of the marriage of the accused, this does not mean that the presumption as contemplated in Section 304-B I.P.C. will not have to be substantiated by the prosecution by placing on record cogent and reliable material.

16. In the present case, PW-1 father of the deceased has stated that when the deceased initially came back to his house after about 18 days of her marriage, she complained that she was being maltreated for not bringing any cash on account of dowry, whereas the accused had spent Rs. 70,000/- for solemnizing the marriage. He has further stated that when Nihala Ram came to his house along with other persons, said Nihala Ram was complaining that the deceased will not be taken back to his house as she was neither working properly nor listening to them. When this statement is compared with that of PW-2 Savitra Devi with regard to the same incident, it is found that Savitra Devi in her deposition has stated that when Nihala Ram came to their house along with Panchayat Pradhan Trilok Singh, Ward Panch Sarvan and others, he stated that he had spent an amount of Rs. 70,000/- to Rs. 75,000/- on the marriage of Narian Singh but the parents of the deceased did not give anything in cash or dowry to them and hence they do not want to take back the deceased with them. Thus, the version of the both main witnesses of the prosecution with regard to the above said incident is different. In our opinion, the variation cannot be termed to be a minor one. Not only this, a perusal of the first information report will demonstrate that there is no mention about this Rs. 70,000/- in the same. PW-2 and PW-3 have mentioned in their statements that the accused had demanded an amount of Rs. 35,000/- from the deceased in order to pay a loan



instalment. No such averment has been made in his statement by the father of the deceased PW-1. Exts. DB and DC are the complaints made by the deceased dated 25.01.2003 and 24.01.2003 respectively. A perusal of Exts. DB and DC will demonstrate that though in this complaint there are allegations of verbal abuse inflicted upon the deceased by the accused, however, there is no mention of her being physically abused by the accused. PW-1 has mentioned that his daughter Poonam had visited the house of the deceased a few days before she committed suicide and on her return, Poonam had intimated him that the deceased was being beaten up by Narian Singh who was demanding money from her as the jeep of the accused had met with an accident. On the other hand, PW-2 Savitra Devi gives a total different narration. She has stated that about one or two months before her death, the deceased had visited them and disclosed that the jeep of accused Narian Singh had met with an accident and he was asking her to bring money for the repair of the jeep and was demanding Rs. 50,000/- in this regard. This was followed by another demand after one month for an amount of Rs. 35,000/- for depositing the instalment of the purchase of the jeep. Incidentally, PW-5 Trilok Singh, Pradhan of the Gram Panchayat, who happens to be an independent witness of the prosecution, has stated in his cross-examination that when Nihala Ram had visited him in February, 2002, he had disclosed that he wanted to bring the deceased to her marital house. He has further stated in his cross-examination that Nihala Ram had not demanded any dowry in his presence nor parents of Lata Devi had stated or talked about any type of beating given to Lata Devi by her in-laws or husband. He has also admitted that Nihala Ram and his family reside in a separate house and accused Narian Singh resides in a separate house. He has also mentioned in his cross-examination that the parents of the deceased never complained to him regarding any demand for dowry or bringing less dowry or beating or harassment by the accused persons. He stated that it is correct that Nihala Ram never demanded any money from the parents of Lata Devi.

17. PW-4 Dr. Sonam Chhering, who conducted the postmortem of the deceased, has stated that ligature mark about 6 cm long obliquely placed between angle of mandible on left extending towards right side about 2 cm below angle of mandible on right side. The mark was about 1.5 cm wide. The colour of the ligature mark was brownish red in colour. She has further deposed that no other injury mark was found on the person of Smt. Lata Devi which further belies the fact that the deceased was subjected to physical abuse before her death as has been alleged by the prosecution on the basis of the testimony of PW-1, PW-2 in general and PW-3 in particular.

18. Further, as per PW-3, she had visited the house of the deceased about 3 days before her death and the deceased was given beatings by accused Narian Singh in her presence. Why the parents of the deceased or her sister did not take up the issue of the deceased being given persistent physical abuse by the accused with any appropriate authority, has also not been cogently explained by the prosecution. Rapat Ext. DA also does not disclose that the deceased was

subjected to any physical abuse by the accused. The allegation primarily is to the effect that the accused are verbally abusing the deceased. One more important aspect of the matter is that PW-1, PW-2 and PW-3 have all stated that the deceased used to visit her parental house after 15-20 days and every time when she used to go back to her parents, she was consistently complaining about the behaviour of the accused towards her. However, it is a matter of record that except the complaints filed by the deceased, her parents or her sister had never made any grievance in this regard either to police or Gram Panchayat etc., which is evident from the deposition of PW-5, who has also mentioned in his statement that when immediately after her marriage the deceased had come back to her parental house, her father-in-law had visited him and told him that his daughter-in-law had gone to her parental house for Lohri and thereafter had not returned back. On this particular deposition, PW-5 has not been confronted by the prosecution, especially in view of the fact that the version of PW-1, PW-2 and PW-3 with regard to this incident was totally different.

19. There are vital contradictions and inconsistencies in the statements of PW-1, PW-2 and PW-3. All these witnesses are close relatives of the deceased. The prosecution has failed to clarify as to why there are contradictions and inconsistencies in the depositions of these three witnesses. On the other hand, PW-5 has stated that no demand for dowry was raised by the accused in his presence nor any complaint was made to him by the parents of the deceased in this regard. There is no reason as to why we should not believe the testimony of the said witness, who happens to be the Pradhan of the concerned Gram Panchayat. In this background, at the most the conduct of the accused persons create a suspicion that their alleged acts might have resulted in the deceased taking extreme step of committing suicide, however, this suspicion cannot be made the basis to convict them. The prosecution has failed to establish beyond reasonable doubt that the accused are guilty of the offences alleged against them. Besides going through the records of the case, we have also at length gone through the judgment passed by the learned trial Court. The learned trial Court has in detail dealt with all aspects of the matter and has minutely scrutinised the evidence placed on record by the prosecution. It has after due deliberation and due application of mind come to the conclusion that the prosecution has failed to bring home the guilt against the accused persons beyond reasonable doubt. We agree with the said conclusion arrived at by the learned trial Court. According to us also, the prosecution has failed to drive home the guilt against the accused persons beyond reasonable doubt and as such, in our view also, they are entitled to the benefit of doubt. Therefore, we agree with the findings recorded by the learned trial Court and dismiss the appeal being without merit. Bail bonds, if any, furnished by the accused are discharged.