Supreme Court of India
Kundula Bala Subrahmanyam And Anr vs State Of Andhra Pradesh on 26 March, 1993
Equivalent citations: 1993 SCR (2) 666, 1993 SCC (2) 684
Author: A Anand
Bench: Anand, A.S. (J)

PETITIONER:
KUNDULA BALA SUBRAHMANYAM AND ANR.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT26/03/1993

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
SINGH N.P. (J)

CITATION:
1993 SCR (2) 666 1993 SCC (2) 684
JT 1993 (2) 559 1993 SCALE (2)214

ACT:
Evidence Act 1872: Section 3--Appreciation of evidence--Criminal trial--Case based on circumstantial evidence--Proof--Court's duty to scrutinize evidence--Motive, oral dying declarations, medical evidence, conduct of accused immediately and after the evidence, absconding of accused--Whether prosecution proved beyond reasonable doubt.
Evidence Act, 1872: Section 32--Dying declaration--proof of--Acceptance by Court when--More than two dying declarations--Trustworthy test--Court's duty.
The Dowry Prohibition Act, 1961: Object and purpose of--Cases relating to harassment, torture, abetted suicides and dowry deaths of young brides--Causes--Solutions to such situations--Court's role what to be.

HEADNOTE:
The prosecution case was that on 23.8.1981 between 12-30 1.00 p.m., on hearing screams and cry of the deceased, aged about 18 years, P.W.2 alongwith her father PW3, and PW4 rushed to the house of the appellant They saw the father of appellant No. 1 (father-in-law of the deceased) alongwith the husband and mother-in-law of the deceased hurriedly coming out of the kitchen while the deceased was lying on the

floor engulfed in flames.

As the appellant No. 1, did not respond to the request of PW2 to give her something to extinguish the fire, PW2 requested the father of the appellant No. 1 to give a bed-sheet or blanket while the father of the appellant No. 1 was passing on a bed sheet to PW2, the appellant No. 2 (mother-in-law of the deceased) objected. In the meanwhile PW2 took the bed sheet from the father of the appellant No. 1 and tried to extinguish the fire. The deceased asked PW2 for some water. PW3 removed the burning petticoat from the body of the deceased to save her from further burning. While doing so he also received some burn injuries. PW2 poured water into the deceased's mouth and enquired from her as to what had happened.

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The deceased told PW2 that her mother-in- law had poured kerosene over her and her husband had set fire to her. The deceased asked for more water, which was again given to her by PW2. The deceased's statement made to PW2 was overheard by PW3 PW5 and some others who also reached the spot on hearing her cries.

PW5 went away to inform the matenal uncle of the deceased with one Ramakrishna on his motor cycle. There PW5 found PW1, the brother of the deceased and informed about the burning of the deceased and also what he had heard the deceased telling PW2.

PW1 reached the house of the appellant with Ramakrishna on his motor cycle. He saw a number of persons including PWs 2 and 3 gathered there. The deceased was lying on the floor and she had no clothes on her. PWl noticed that she had received burn injuries from her breasts downwards to her legs. On seeing her plight, PWl started crying and hitting his head against a piller. When the deceased noticed PW1 had come, she asked PW2 to bring her brother inside. PW2 went out and brought PWI to the kitchen. The deceased took the palm of her brother, PWl into her own palms and told him to tell mother and father that her mother-in-law poured kerosene on her and her husband set her or fire. She requested him that he should not fight, "anyhow she was dying." She also told PWl to take back the cash given to her and to divide it amongst her sisters in equal share and to get them married to nice persons. The appellant No. 1, the husband of the deceased came inside the kitchen with folded hands and begged her for forgiveness saying that he would not repeat what he had done. PWI got wild and caught hold of the neck of the appellant No. 1. FIW2 and PW3 rushed towards them and released the appellant No. 1 from the hold of PW1. They sent PWI to another uncle's house and told the uncle to take care of PW1. When PWI returned to the house of the deceased after one hour he saw that PW6, a local Doctor, was giving first-aid to the deceased and she was lying on a cot in the verandah. PW6 advised at about 3.30 p.m. to remove the deceased to the Government Hospital. The

deceased was brought to the hospital at about 5 p.m. At about 5.30 p.m., PW9, a doctor examined the deceased and declared her dead.

PWl along with his uncle went to the Police Station, adjacent to the hospital and lodged the FIR. A case under section 302 IPC was registered

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and police investigation was started.

Both the appellants were not found in the village when search for them was made by the investigating officer. The appellant No. 1 surrendered in the Court on 10.11.1981 while the appellant No. 2 surrendered in the Court on 7.12.1981.

The Trial Court held that there was no motive for the appellant to commit the crime; that the evidence of PWs 2 to 4 could not be relied upon; that PW1 had made improvements in his statements recorded at the trial and, therefore the oral dying- declaration made to him could not be relied upon. The Trial Court also held that there was unexplained delay in lodging report with the policy. It acquitted the appellants, holding that the case was one of suicide and not of murder.

The State filed appeal in the High Court. The High Court held that the chain of the established circumstances was complete and the circumstances were sufficient to establish that the appellants alone had committed the crime of murder of the deceased. The High Court convicted both the appellants for the offence under section 302/34 IPC and sentenced each one of them to imprisonment for life.

Hence this appeal before this Court under section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

The appellants contended that since the Trial Court had acquitted the appellants, the High Court was not justified in recording an order or conviction, as the findings recorded by the Trial Court could not be said to be perverse; that the dying declarations were not worthy of reliance and the motive was feeble and not established; that the surrendering of the appellants themselves in the court on 10.11.1981 and 7.12.1981 itself was enough to show that they had no guilty-conscious and the prosecution was not justified in relying upon this conduct as an adverse conduct against the appellants; and that since all neighbors had become hostile, out of fear the appellants did not act either to put off the fire or remove the deceased to the hospital.

The respondent-State submitted that the findings of the Trial Court were not only conjectural but also perverse and the evidence of the wit-

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nesses was disbelieved on mere surmises; that the Trial Court did,not properly discuss the two dying declarations made by the deceased and since the dying declarations have been proved by reliable evidence, these by themselves could

form the basis of conviction of the appellants; that the High Court after a careful appraisal of the evidence had rightly set aside the judgment of the Trial Court which suffered from illegality as well as manifest error and perversity,, and that the prosecution had established the case against the appellants beyond every reasonable doubt and their appeal deserved to be dismissed.

Dismissing the appeal, this Court,

HELD:1.01. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and these circumstances must be conclusive in nature. Moreover, all the established circumstances should be complete and there should be no gap in the chain of evidence. The proved circumstances must be consistent only with the hypothesis of the guilt of the accused alone and totally inconsistent with his innocence. The courts have, therefore, the duty to carefully scrutinize the evidence and deal with each circumstance carefully and thereafter find whether the chain of the established circumstances is complete or not before passing an order of conviction. [679 E-F]

1.02.In a case based on circumstantial evidence, motive assumes great significance as its existence is an enlightening factor in a process of presumptive reasoning. The motive in this case is alleged to be the greed of dowry. [679 H]

1.03.The evidence led by the prosecution to establish, the existence of motive is wholly reliable and is also consistent. The prosecution has successfully established that the appellants had strong and compelling motive to commit the crime because of her parents not agreeing to get the land registered in the name of the first appellant and their insistence to have the land registered in the name of their own daughter instead. The motive, has, been conclusively established by the prosecution. [682 D]

1.04.Both the dying declarations are oral. They have been made to friends and to the brother of the deceased respectively. In view of the close relationship of the witnesses to whom the oral dying declarations were

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made, it becomes necessary for the court to carefully scruitinize and appreciate the evidence of the witnesses to the dying declarations- [683. B]

1.05.PW1 is the brother of the deceased and therefore a very close relation, but mere relationship cannot be a ground to discard his testimony, if it is otherwise found to be reliable and trustworthy. In the natural course of events, the deceased who was on the verge of her death would have conveyed to her near and dear ones the circumstances leading to her receiving the burn injuries. PW1 has given a very consistent statement and has reproduced the words of the deceased clearly and truthfully. Nothing has been brought out in the cross examination to discredit his testimony at

all. [683 C-D]

1.6.Despite searching cross-examination of both PW2 and PW3, nothing has been brought out in their cross-examination to discredit them or doubt their veracity at all. After carefully analysing their evidence, it is found that PWs 2 and 3 as witnesses worthy of credence and trustworthy.[684 F]

1.07.From the evidence of PWs 1,2 and 3, both the dying declarations are provedto have been made by the deceased. They are the statements made by thedeceased and relate to the circumstances leading to her death. Both the dying declarations are consistent with each other and appear to have been made by the deceased voluntarily and in the natural course of events. They have a ring of truth about them. [684 G]

1.08The medical evidence, fully corroborates the prosecution case and lendssupport to the dying declaration and more particularly the manner inwhich the deceased had been set on fire.[686 D]

1.09.The normal human conduct of any person finding someone engulfed in flames would be to make all efforts to put off the flames and. save the life of the person. Though, the appellants were the closest relations of the deceased, they did not do anything of the kind. They rendered no first-aid to the deceased. Their conduct at the time of the occurrence, therefore, clearly points towards their guilt and is inconsistent with their innocence. The appellants did not even accompany the deceased to the hospital in the matador van. Had the husband not been a party to the crime, one would have expected that he would be the first person to take steps to remove the deceased to the hospital and leave no stone unturned

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to save her life. An innocent mother-in- law would have also done the same, even if she had no love or emotional feelings for her daughter-in-law. Neither the husband nor the mother-in-law of the deceased took any steps to remove the deceased to the hospital let alone accompany her to the hospital. This conduct also is inconsistent with their innocence and consistent only with the hypothesis, as stated by the deceased in her dying declarations, that the mother-in-law had poured kerosene on her while her husband had lit fire and put her on flames. [686 H, 687 A-D]

1.10.The prosecution has, thus, successfully established that the conduct ofboth the appellants both at the time of the occurrence and immediatelythereafter is consistent only with the hypothesis-of the guilt of the appellants and inconsistent with their innocence. [688 B]

1.11.Absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent persons may run away for fear of being falsely involved in a criminal case and arrested by the police, but coupled with the other

circumstances, the absconding of the appellants assumes Importance and significance. The prosecution has successfully established this circumstance also to connect the appellants with the crime. [688 E-F]

1.12.The prosecution has successfully established all the circumstances appearing in the evidence against the appellants by clear, cogent and reliable evidence and the chain of the established circumstances is complete and has no gaps whatsoever and the same conclusively establishes that the appellants and appellants alone committed the crime of murdering the deceased on the fateful day in the manner suggested by the prosecution. All the established circumstances are consistent only with the hypothesis that it was the appellants alone who committed the crime and the circumstances are inconsistent with any hypothesis other than their guilt. [688 G-H, 687 A]

2.01.Under Section 32, when a statement Is made by a person, as to the cause of death or as to any of the circumstances which result In his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a lit mental condition. [684 H, 685 A-B]

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2.02.A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embelishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any coroboration. If there are more than one dying declarations, then the court has also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same. [685 C-E]

2.03.Both the dying declarations are consistent with each other in all material facts and particulars. That the deceased was in a proper mental condition to make the dying declaration or that they were voluntary has neither been

doubted by the defence in the course of cross-examination of the witnesses nor even in the course of arguments both in the High Court and before this Court. Both the dying declarations have passed the test of credit worthiness and they suffer from no infirmity whatsoever.
[685 F-G]
2.04.The prosecution has successfully established a very crucial piece of circumstantial evidence in the case that the deceased had voluntarily made the dying declarations implicating both, the appellants and disclosing the manner in which she had been put on fire shortly before her death. This circumstance, therefore, has been established by the prosecution beyond every reasonable doubt by clear and cogent evidence. [685 G-H]
3.01.There has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilised society whenever it happens, continues unabated. There is a constant erosion of the basic
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human values of tolerance and the spirit of "live and let live'. Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime. It is the woman who plays a pivotal role in this crime against the younger woman, as in this case, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligations. [689 C-D]
3.02.Awakening of the collective consciousness is the need of the day. Change of heart and attitude is what is needed. If man were to regain his harmony with others and replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if woman were to receive education and become economically independent, the possibility of this pernicious social evil dying a natural death may not remain a dream only. [690-D]
3.03.The legislature, realising the gravity of the situation has amended the laws and provided for stringent punishments in such case and even permitted the raising of presumptions against the accused in cases of unnatural deaths of the brides within the first seven years of their marriage. [690 H]
3.04.The Dowry Prohibition Act was enacted in 1961 and has been amended from time to time, but this piece of social legislation, keeping in view the growing menance of the social evil, also does not appear to have served much purpose as dowry seekers are hardly brought to book and convictions recorded are rather few. [691 A]
3.05.Laws are not enough to combat the evil. A wider social movement of educating women of their rights, to conquer the menace, is what is needed more particularly in rural areas

where women are still largely uneducated and less aware of their rights and fall an easy prey to their exploitation. [691 B]

3.06.The role of courts, under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacune in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women. [691 C]

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State (Delhi Administration) v. Lavnan & Ors., Crl. Appeals 93 and 94 of 1984 decided on 23.9.1985, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 629 of 1985.

From the Judgment and Order dated 25.6.1985 of the Andhra Pradesh High Court in Criminal Appeal No. 637 of 1983. K.Madhava Reddy, A. Subba Rao and A.D.N. Rao for the Appellants.

G. Prabhakar for the Respondent.

The Judgment of the Court was delivered by DR.ANAND, J. The curse of dowry has claimed yet another victim. Kundula Bala Subrahmanyam, the husband of the deceased-Kundula Koti Nagbani and his mother Kundula Annapurna (mother-in-law of the deceased) have filed this appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the judgment of the High Court of Andhra Pradesh, Hyderabad, dated 25.6.1985, setting aside the judgment of acquittal passed by the Sessions Judge, East Godavari Division and convicting both the appellants for an offence under Section 302/34 IPC and sentencing each of them to suffer imprisonment for life.

On 23rd of August, 1981, between 12.30.1.00 p.m. on hearing screams and cry of deceased-Kundula Koti Nagbani, at that time aged about 18 years, Pulapa Lakshmi PW2, Vempati Paparao PW3 and Vempati Radha PW4, rushed to the house of the appellant and found both the appellants along with the father of appellant No. 1 (father-in-law of the deceased) hurriedly coming out of the kitchen while the deceased was lying on the floor engulfed in flames. Since, the appellants or the father-in-law of the deceased were making no attempts to put off the flames, PW2 asked appellant No. 1 to give her something so that she could extinguish the fire. He, however, did not respond. She then requested first appellant's father to give something to her so that the fire could be put off. The father of appellant No. 1 enquired if he should get a bucket of water. PW2, thereupon, requested him to give either a bed-sheet or a blanket. The father of appellant No. 1 then brought out a bed sheet (Bontha) from the cot and as he was passing it on, to PW2, the mother-in-law of the deceased,

appellant No. 2, told her husband not to give the bontha to PW2. PW2, in the meanwhile, took the bontha from the father of the first appellant and tried to extinguish the fire. The deceased turned her side. She was alive. The deceased asked PW2 for some water. Since, the petticoat of the deceased was burning, PW3, the father of PW2, who had also rushed along with her to the house of the appellant broke the thread of the petticoat to save her from further burning and threw away the burning garments In the process, he also received some burn injuries. PW2 poured water into the mouth of the deceased and enquired from her as to what had happened. The deceased told her that "her mother-in-law had poured kerosene over her and her husband had set fire to her". The deceased again felt thirsty and asked for more water which was again given to her by PW2. The above statement made by the deceased to PW2 was overheard by PW3 and some others, who had also reached on hearing the cries. Vempati Nagabhushanam PW5, another immediate neighbor of the appellants living only about 2 yards away also heard the cries of the deceased and rushed to the house of the appellant. He noticed PW3 was pulling out the petticoat of the deceased while PW2 was attempting to extinguish fire. He saw PW2 pouring water into the mouth of the deceased. He also heard the statement made by the deceased to PW2 about the manner in which she had been set on fire. PW5 thereupon went away to inform the maternal uncle of the deceased at Malakapalli. On the way, he met one Ramakrishna coming on a motor-cycle and at his request Ramakrishna gave him a ride to Malakapalli. On reaching the house of the maternal uncle of the deceased, they found the brother of the deceased Vempati Sreerama Krishna Sreeram PWl was also present there. He conveyed to them the information regarding the burning of the deceased and also what he had heard the deceased telling PW2. Ramarao and PWl then went on the same motorcycle to Dharmavaram. PWl reached the house of the appellant and saw a number of persons including PWs 2 and 3 gathered there. The deceased was lying on the floor and at that time she had no clothes on her. He noticed that she had received burn injuries from her breasts downwards to her legs. On seeing her plight, PW1 started crying and hitting his head against a pillar. When the deceased noticed that PW1 had come, she asked PW2 to call her brother PWl inside. PW2 thereupon went out and brought PW1 to the kitchen where the deceased took the palm of PWl into her own palms and told him in Hindi "please tell mother and father as I am telling you. My mother-in- law poured kerosene on me and my husband set fire. You tell father and mother about this. Don't fight. Anyhow I am dying." She also told her brother PW1 to take back the cash given to her and divide it amongst the sisters in equal share and get them married off to nice persons. At this juncture, the first appellant, husband of the deceased came inside the kitchen and with folded hands begged the deceased for forgiveness saying that he would not repeat what he had done and therefore he may be pardoned. PWl got wild and caught hold of the neck of the first appellant. PW2 and PW3 rushed towards them and released the first appellant from the hold of PW1 and sent PWl to another uncle's house and told the uncle that since PWl was in an agitated mood he should take care of him. Within an hour, however, PWl went back to the house of the deceased and by that time, a local Doctor PW6, Dr. R. Radha krishnamurthy had arrived at the house and was giving first-aid to her and she was lying on a cot in the verandah. PW6 at about 3.30 p.m. advised the removal of the deceased to the Government Hospital at Kovvur. A matador van was secured and at about 4.30 p.m. PW1, Ramarao, his maternal uncle, the wife of Ramarao and some other neighbors took the deceased to the Government Hospital at Kovvur in the matador van reaching there at about 5 p.m. At about 5.30 p.m., Dr. K. Parameswaradas PW9 examined the deceased and declared her dead. PWl thereupon went to the police station which is adjacent to the hospital alongwith his uncle and lodged the report Ex.P4 with

the Head Constable Md. Navabjani PW12. A case under section 302 IPC was registered and information was sent to Inspector of Police G. Scendavce Rao PW14 on telephone. After collecting a copy of the FIR, PW14 proceeded to the Government Hospital and from there went to the scene of occurrence. He seized M.0's 1 to 3, drew the site plan of the scene of occurrence and examined PWs 1 to 5 and PW9 at Dharmavaram. He also held the inquest proceedings from 6.30 a.m. to 8.30 a.m. on August 24 1981 and after getting the postmortem conducted handed over the dead-body to the family of the deceased. PW9 Dr. K. Parameswaradas who conducted the postmortem examination in his report Ex.Pl8 noted extensive burns to the extent of 90% on the body of the deceased and opined that the deceased had died due to the extensive burns all over the body and that the injuries were sufficient in the ordinary course of nature to cause death. During the investigation, the investigating officer made a request for the preservation of viscera of the deceased so that it could be sent for chemical examination, as according to the state-

ment of PW6, the deceased had allegedly told him that she had consumed dettol to commit suicide and since she could not bear the pain she had set herself on fire. The report of the chemical examiner Ex.Pl6, however, revealed that no poison was detected and that the death had been caused due to extensive burns. Further investigation into the case was, carried out by Md. Baduruddin PW15, Inspector of the Crime Branch. During the investigation, the father of the deceased Venkataramana handed over letters Exs.Pl-P3 to the investigating officer. Both the appellants had made themselves scarce and were not found in the village when search for them was made by the investigating officer. The first appellant surrendered in the court on 10.11.1981 while the second appellant surrendered in the court on 7th of December, 1981.

After the investigation was over, challan was filed and both the appellants were sent up for trial in the Court of Sessions Judge East Godavari Division at Rajahmundry. At the trial, the prosecution inter alia relied upon the following circumstances with a view to connect the appellant with the crime:-

(1) Motive;

(2) Two dying declarations made to PW2 and to PW1;

(3) Medical Evidence;

(4) Conduct of the appellant immediately and after the occurrence;

(5) Absconding of the appellants.

The appellants when examined under Section 313 of the Criminal Procedure Code denied their involvement and stated the case to be a false one. They, however, produced no defence.

The learned Trial Court did not accept the prosecution version and held that there was no motive for the appellant to commit the crime; that the evidence of PWs 2 to 4 could not be relied upon; that PWI had made improvements in his statements recorded at the trial and, therefore, the oral dying

declaration made to him could not be relied upon. The Trial court also held that there had been unexplained delay in lodging report with the police. The Trial Court placed reliance on the testimony of hostile witness PW6 and held that the case was one of suicide and not of murder. On those findings, the learned Sessions Judge acquitted both the appellants.

On an appeal, filed by the State, a Division Bench of the High Court of Andhra Pradesh set aside the judgment of the learned Sessions Judge and convicted both the appellants for an offence under Section 302/34 IPC. Speaking for the Division Bench, K. Ramaswamy J. (as His Lordship then was) found no hesitation to hold PWl as a witness of truth and a wholly reliable witness and also opined that the evidence of 'PWs 2 and 3 was trustworthy and reliable. The dying declarations made by the deceased to PW2 and subsequently to PWl were believed and relied upon. It was held that report Ex.P4 had been given by PWl immediately after the deceased was declared dead by the Doctor and therefore there was no delay much less unexplained delay in lodging the report. While dealing with the conduct of the appellant, it was opined that their conduct was inconsistent with their innocence and consistent only with the hypothesis that appellant no. 2 had committed the act of pouring kerosene on the deceased and appellant No. 1 had lit fire. With regard to the existence of motive, it was held that the appellants were actuated with a motive to do away with the life of the deceased for not getting the land registered in the name of the first appellant. Finally, the High Court found that the chain of the established circumstances was complete and the circumstances were sufficient to conclusive establish that the appellants and the appellants alone had committed the crime of murder of the deceased. The High Court held that the consideration of evidence on record and the reasoning of the Trial Court was most unsatisfactory and could not be sustained and therefore set aside the order of acquittal and convicted both the appellants for the offence under Section 302/34 IPC and sentenced each one of them to imprisonment for life.

Appearing for the appellants before us, Mr. Madhav Reddy, the learned Senior Counsel urged that since the Trial Court had acquitted the appellants, the High Court was not justified in recording an order of conviction as the findings recorded by the Trial Court could not be said to be perverse. It was argued that the dying declarations were not worthy of reliance and the motive was feeble and not established. Learned counsel submitted that the surrendering of the appellants themselves in the court on 10.11.1981 and 7.12.1981 itself was enough to show that they had no guilty conscious and the prosecution was not justified in relying upon the conduct as an adverse conduct against the appellants. While explaining the conduct of the appellants at the time of and after the occurrence, he submitted that since all neighbors had become hostile, out of fear the appellants did not act either to put off the fire or remove the deceased to the hospital.

In reply, learned counsel for the State argued that the findings of the Trial Court were not only conjectural but also perverse and the evidence of the witnesses was disbelieved on mere surmises. It was submitted that the Trial Court did not property discuss the two dying declarations mad by the deceased and since the dying declarations have been proved by reliable evidence, those by themselves could form the basis of conviction of the appellants. It was then submitted that the High Court after a careful appraisal of the evidence had rightly set aside the judgment of the Trial Court which suffered from illegality as well as manifest error and perversity. Learned counsel submitted that the prosecution had established the case against the appellants beyond every reasonable doubt

and their appeals deserve to be dismissed. Admittedly, there is no eye-witness in the case. The case is sought to be established by the prosecution from circumstantial evidence. In a case based on circumstantial, evidence, the settled law is that the circumstance from which the conclusion of guilt is drawn should be fully proved an these circumstances must be conclusive in nature. Moreover, all the established circumstances should be complete and there should be no gap in the chain of evidence. The proved circumstances must be consistent only wit the hypothesis of the guilt of the accused alone and totally inconsistent wit his innocence. The courts have, therefore, the duty to carefully scrutinize the evidence and deal with each circumstance carefully and thereafter fin whether the chain of the established circumstances is complete or no before passing an order of conviction. It is in the light of the above principles that we shall deal with various circumstances relied upon by the prosecution. (1)Motive: In a case based on circumstantial evidence, motive as sums great significance as its existence is an enlightening factor in process of presumptive reasoning. The motive in this case is alleged to be the greed of dowry.

On 18.5.1979, marriage between the appellant and the deceased was solemnised. The deceased aged about 18 years was prosecuting her Intermediate course of study at that time. She was the eldest of the five children of one Vempati Venkataramana, who at the relevant time was working as an Assistant Engineer with the Railways at Gorakhpur. At the time of the marriage, the parents of the deceased had agreed to give Rs. 50,000 in cash, 50 sovereigns of gold and two acres of land as dowry. The cash was paid at the time of the marriage itself alongwith 15 sovereigns of gold. The parents of the deceased had promised to give the remaining 35 gold sovereigns and get the land also registered subsequently, though the possession of the land measuring about 3.70 acres was given to the appellant No. 1. The mother-in-law of the deceased and her husband had been pressurising the deceased all along to bring the remaining sovereigns and also to get the land registered in the name of the first appellant. She conveyed it to her mother PW7. While the parents of the deceased agreed to get the land registered in the name of the deceased, the first appellant and his parents were insisting that the land should be got registered in his name and not in the name of the deceased. Since that desire was not fulfilled, the deceased was being continuously harassed and ill-treated. A strick vigil was kept on her at the house of her in-laws and she was not even allowed to meet anybody nor were the neighbors permitted to come and meet or talk to her. She was being prevented from writing letters to her family also, but stealthy, she wrote letters Exs.Pl-3 and got them posted through a neighbor. The contents of those letters are rather revealing and expose the extent of the harassment to which the deceased was being subjected to by her mother-in-law and her husband. After seeing the contents of the letters and with a view to find out the cause of her distress, PW1, her brother went to Dharmavaram on August 22, 1981, to the house of the deceased. The deceased, however, was so terrorised that she could not speak to him freely. She was surrounded by her husband and her mother-in-law, who did not talk to PWl at all to show their indifference. From the evidence of the prosecution witnesses and particularly that of the mother of the deceased PW7, the immediate provocation was the insistence of the appellants that the land be got registered in the name of the husband and the reluctance' of the parents of the deceased to do so and instead their desire to get it registered in the name of the deceased. The oral evidence led by the prosecution in this behalf is wholly consistent. In her letter Ex.P2, the deceased had clearly mentioned that she was getting her letters posted through PW4. She requested her sisters to write letters to her in Hindi so that her in-laws, who did not know Hindi, could not know what was being written. In one of her

letters, a part of which was addressed to her sister, she wrote:

> ".....I am not going to anybody's house. One day I went to the house of sister-in-law Radha to deliver the letter secretly. Their mood was changed on account of going to their house. That is why I stopped going." Do not mention even a single word in your letter that I have been writing to you. Ask mother not to worry. On hearing about your results write a letter without fail. If I get an opportunity I will definitely write a letter..." In her letter Ex.P1 to her father, she wrote: Father I am feeling much bore here because no one come to our house nor I am allowed to go their house Please always write letters. So that I may be satisfied in seeing your letters. If I may not give reply to your letter then you please don't mind it. You know here's conditions. Rest is O.K. Father you also take care of your health." In the same letter while addressing her sisters, she wrote:
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> The lock is opened. I am writing this letter secretly. In reply do not write that you have received the letter. If you write like that these people will become more angry She also wrote to her sister:
>
> not at house and there is no watch over me. I am getting the letters posted through sister-

in-law Radha secretly. You write letters mostly in Hindi only so that even if they chanced to fall in the hands of any one, they cannot understand The tenor of her letters disclose the distressing state of affairs at the house of her-in-laws. These letters coupled with the evidence of her mother go to show how the deceased was being tormented and harassed. It is indeed a shame and pity that within just two years of her marriage, her dream of a happy married life was shattered and she found herself almost as a prisoner and 'a frightened chicken' who had to write letters to her parents and sisters 'secretly' for the fear that if her in- laws came to know they would "become more angry'. She had to request her sisters to reply to her letters in Hindi so that "even if they chanced to fall in the hands of anyone, they cannot understand". One can only imagine the plight of this young bride and the sadistic behavior born out of greed for dowry of her husband and mother-in-law. Not having been able to get the land registered in the name of the first appellant appears to have frustrated them to the extent of murdering the young wife.

The evidence led by the prosecution to establish the existence of motive is wholly reliable and is also consistent. The prosecution has successfully established that the appellants had strong and compelling motive to commit the crime because of her parents not agreeing to get the land registered in the name of the first appellant and their insistence to have the land registered in the name of their own daughter instead. The motive, has, been conclusively established by the prosecution and we have no hesitation to hold that the prosecution has succeeded in establishing the existence of the motive for both the appellants to commit the crime conclusively and positively and we agree with the finding of the High Court in that behalf.

2.Dying Declarations: The next piece of circumstantial evidence relied upon by the prosecution are two dying declarations made by the deceased. According to the prosecution case, the deceased made the first dying declara- tion before PW2 when she after hearing her cries came to the house and found both the appellants and the father of appellant No. 1 coming out of the kitchen and the deceased lying on the floor engulfed in flames. According to PW2, the deceased told her that her mother- in-law had poured kerosene on her and her husband had set her on fire. This statement was also heard by PW3 & PW5. The second dying declaration was made by the deceased to her brother PW1, after he was called by her to the kitchen. The deceased, according to the prosecution case, on meeting her brother, took the palm of PWl into her own palms and inter-alia told to him that "her mother-in-law poured kerosene on her and her husband set fire to her". The statement made by the deceased to PW1 was in Hindi. Both the statements, as noticed above, relate to the circumstances leading to the cause of her death, as according to the medical evidence, the deceased died of 90% burn injuries. Both the dying declarations are oral. They have been made to friends and to the brother of the deceased respectively. In view of the close relationship of the witnesses to whom the oral dying declarations were made, it becomes necessary for us to carefully scrutinize and appreciate the evidence of the witnesses to the dying declaration.

We have already adverted to the evidence of these witnesses (PW1, PW2, PW3) while narrating the prosecution case. Indeed, PWl is the brother of the deceased and therefore a very close relation, but mere relationship cannot be a ground to discard his testimony, if it is otherwise found to be reliable and trustworthy. In the natural course of events, the deceased who was on the verge of her death would have conveyed to her near and dear ones the circumstances leading to her receiving the burn injuries. PW1 has given a very consistent statement and has reproduced the words of the deceased clearly and truthfully. Nothing has been brought out in the cross examination to discredit his testimony at all. He had at the earliest point of time disclosed as to what the deceased had told to him. The discrepancy pointed out by learned counsel for the appellants as to whether the dying declaration was made to him by his sister when she was lying on the cot in the verandah, as stated in FIR Ex.P4, or while she was lying on the floor of the kitchen, is of an insignificant nature and could be either out of confusion or the gap of time between the making of the two statements. Moreover, PW1 was not at all cross-examined on the alleged discrepancy when he gave evidence in Court. No explanation whatsoever was sought from him about the so called discrepancy. PW1, the brother of the deceased appears to us to be a truthful witness and his testimony has impressed us. He did not implicate the father of the appellant and gave evidence only about what he was actually told by his sister. From our appreciation of the evidence of PW1, we agree with the view expressed by the High Court that "considering the case from all perspectives we have no hesitation to hold that P.W.1 is a witness of truth worthy of acceptance and so he is wholly a reliable witness. Ex.P4 is a voluntary statement given by P.W.1 and it lends corroboration to the evidence of P.W.1." Coming now to the evidence of PWs2 and 3. The substratum of their evidence with regard to the dying declaration is that while that they were in the kitchen of their own house, taking tea, they heard the cry of a lady and rushed to the house of the deceased, being her close neighbors. They saw the deceased engulfed in flames sprawled on the floor of the kitchen. They also saw both the appellants as well as the father of appellant No. 1 coming out of the kitchen to the verandah. The distance between the house of PWs2 and 3 from the house of appellant is only 2 yards. After PW2 took a bontha from the father-in-law of the deceased, to the annoyance of appellant No. 2, with a view to extinguish the fire,

the deceased, on enquiry by the witness as to what had happened told her that 'my mother-in-law poured kerosene on me and my husband set me on fire". The deceased had not implicated her father-in- law, though he was also present there' PW3, father of PW2, had assisted PW2 to extinguish the flames and it was he who broke the string of the petticoat of the deceased and threw it away. In the process PW3 himself suffered burn injuries. His injuries were examined by the Doctor and found to be caused by fire. The Trial Court doubted the testimony of PW3 on the ground that he had made some improvement in his evidence in court when he stated that he had heard the deceased screaming and saying that she was "being killed". He had not stated so in his statement recorded during the investigation. This, in our opinion, is hardly an improvement of any consequence because both in his statement in court as well as the one recorded under Section 161 Cr.PC he has deposed that it was on hearing the 'screams' of the deceased that he and his daughter rushed to the house of the decased. In any event the so called improvement was not sufficient to discard his testimony. Despite searching cross-examination of both these witnesses, nothing has been brought out in their cross-examination to discredit them or doubt their veracity at all. After carefully analysing their evidence, we find PWs 2 and 3 as witnesses worthy of credence and trustworthy.

From the evidence of PWs 1, 2 and 3, both the dying declarations are proved to have been made by the deceased. They are the statements made by the deceased and relate to the circumstances leading to her death. Both the dying declarations are consistent with each other and appear to have been made by the deceased voluntarily and in the natural course of events. They have a ring of truth about them.

Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not credit-worthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration. If there are more than one dying declarations, then the court has also to scrutinise all the dying declarations to find out if each one of these passes the test of being trustworthy. The Court must further find out whether the different dying declarations are consistent with each other in material particulars before accepting and relying upon the same. Having read the evidence of PWs 1-3 with great care and attention, we are of the view that their

testimony is based on intrinsic truth. Both the dying declarations are consistent with each other in all material facts and particulars. That the deceased was in a proper mental condition to make the dying declaration or that they were voluntary has neither been doubted by the defence in the course of cross-examination of the witnesses nor even in the course of arguments both in the High Court and before us. Both the dying declarations have passed the test of creditworthiness and they suffer from no infirmity whatsoever. We have therefore no hesitation to hold that the prosecution has successfully established a very crucial piece of circumstantial evidence in the case that the deceased had voluntarily made the dying declarations implicating both the appellants and disclosing the manner in which she had been put on fire shortly before her death. This circumstance, therefore, has been established by the prosecution beyond every reasonable doubt by clear and cogent evidence.

3.Medical Evidence: The next circumstance relied upon by the prosecution is the medical evidence which has been provided by the testimony of Dr. Parameswaradas PW9. He deposed that the deceased had died of 90% burns and that kerosene smell was emitting from the deadbody. According to the report of the chemical examiner, no poison was found in the viscera. The chemical examiner's report, coupled with the other evidence on record belies the suggestion made by the defence during the cross-examination of some witnesses that with a view to commit suicide, the deceased had drunk dettol and when she could not bear the pain on account of consumption of dettol, she herself poured kerosene oil on herself and set herself on fire. Rightly, this defence case was not pursued before us with any amount of seriousness by the learned counsel for the appellants.. The medical evidence, therefore fully corroborates the prosecution case and lends support to the dying declaration and more particularly the manner in which the deceased had been set on fire.

4. Conduct of the appellant immediately and after the evidence:

The conduct of the appellants, son and mother, both at the time when the deceased lay burning on the floor of the kitchen and afterwards till she succumbed to the burn injuries is the next circumstance relied upon by the prosecution to connect the appellants with the crime. From the testimony of PWs 2, 3 and 4, who are the immediate neighbors of the appellant and the deceased, they had heard the cry of the deceased and rushed to her house. PWs 2 and 3 found the deceased lying on the floor of the kitchen engulfed in flames while both the appellants and father-in- law of the deceased were coming out of the kitchen in the verandah. None of the two appellants or the father-in-law made any attempt whatsoever to extinguish the fire and save the deceased. The raised no alarm. They stood there as if waiting for her death, rather than make any effort to save her. Their conduct, thus, runs consistent with the hypothesis of their guilt and betrays that of an innocent persons. In their statements under Section 313 of Cr. PC they did not deny their presence in the house at the time of the occurrence, but denied their involvement in the crime. The normal human conduct of any person finding someone engulfed in flames would be to make all efforts to put off the flames and save the life of the person. Though, the appellants were the closest relations of the deceased, they did not do anything of the kind. Let alone making any effort to extinguish the fire, according to PW2 when the father-in-law of the deceased, at her request, was giving her the bontha to extinguish the flames, appellant no. 2, the mother-in-law of the deceased, objected to the same.

This conduct speaks volumes about the extent of hatred which the mother-in-law exhibited towards her daughter-in-law. They rendered no first-aid to the deceased. Their conduct at the time of the occurrence, therefore, clearly points towards their guilt and is inconsistent with their ingnocence the appellants did not even accompany the deceased to the hospital in the matador van. Had the husband not been a party to the crime, one would have expected that he would be the first person to take steps to remove the deceased to the hospital and leave no stone unturned to save her life. An innocent mother-in- law would have also done the same, even if she had no love or emotional feelings for her daughter-in-law. Neither the husband nor the mother-in-law of the deceased took any steps to remove the deceased to the hospital, let alone accompany her to the hospital. This conduct also is inconsistent with their innocence and consistent only with the hypothesis, as stated by the deceased in her dying declarations, that the mother-in-law had poured kerosene on her while her husband had lit fire and put her on flames. Mr. Reddy, the learned senior counsel appearing for the appellants submitted that since the neighbors and other relations of the deceased had almost taken over the house and the person of the daughter- in-law, the appellants were afraid of being beaten and as such they rendered no aid to the deceased needs a notice only to be rejected. No suggestion whatsoever on these lines was made to any of the witnesses and in any event such an explanation betrays common sense. Since, the deceased had admittedly suffered burn injuries in the kitchen of her house, there was an obligation on the part of the appellants and the father-in-law of the deceased, who have admitted their presence in the house at the time of occurrence, to explain the circumstances leading to the deceased dying of 90% burn injuries. None has been offered. The theory of suicide was put up only as an argument of despair. While discussing the motive and the dying declarations, we have come to the conclusion that the deceased died as a result of the designed move on the part of both the appellants to put an end to her life and she did not commit suicide as was sought to be suggested during cross-examination by the defence to some witnesses. The theory of suicide has no legs to stand upon. The conduct of the appellants who did not try to extinguish the fire or render any first-aid to her, also totally betrays the theory of suicide and we agree with the High Court that the theory as set up by the appellants is highly unbelievable or acceptable. The prosecution has, thus, successfully established that the conduct of both the appellants both at the time of the occurrence and immediately thereafter is consistent only with the hypothesis of the guilt of the appellants and inconsistent with their innoncence.

5) Absconding. Prosecution has also relied upon the circumstances of the absconding of the appellants to prove its case.

A closer link with the conduct of the appellants both at the time of the occurrence and immediately thereafter is also the circumstance relating to their absconding. Md. Badruddin PW15, the investigating officer, deposed that he had taken up the investigation of the case and having examined PWsl-4 had caused search to be made for the accused but they were not found in the village and despite search, they could not be traced. Appellant No. 1 surrendered before the court on 10.11.1981 while appellant No. 2 surrundered in the court on 7.12.1981. No explanation, worth the name, much less a satisfactory explanation has been furnished by the appellants about their absence from the village till they surrendered in the court in the face of such a gruesome 'tragedy'. Indeed, absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent persons may run away for fear of being

falsely involved in a criminal case and arrested by the police, but coupled with the other circumstances which we have discussed above, the absconding of the appellants assumes importance and significance. The prosecution has successfully established this circumstance also to connect the appellants with the crime-

In view of the above discussion and our appraisal and analysis of-the evidence on record, we have no hesitation to hold that the.prosecution has successfully established all the circumstances appearing in the, evidence against the appellants by clear, cogent and reliable evidence and the chain of the established circumstances is complete and has no gaps whatsoever and the same conclusively establishes that the appellants and appellants alone committed the crime of murdering the deceased on the fateful day in the manner suggested by the prosecution. All the established circumstances are consistent only with the hypothesis that it was the appellants alone who committed.the crime And the circumstances are inconsistent with any hypothesis other than their guilt. It is most unfortunate that the husband of the deceased not only failed to perform his duties and obligations as husband to protect and take care of his wife as per the marriage vows and instead joined his mother in the most degrading and cold blooded murder of the young innocent bride. Of late there has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilised society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of "live and let live'. Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime. It is more disturbing and sad that in most of such reported cases it is the woman who plays a pivotal role in this crime against the younger woman, as in this case, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligations. In many cases, it has been noticed that the husband, even after marriage, continues to be 'Mamma's baby and the umbilical cord appears not to have been cut even at that stage. We are here tempted to recall the observations of R.N. Mishra, J. (as His Lordship then was) in State (Delhi Administration) v. Laxman & Ors. Cr. Appeals 93 and 94 of 1984 decided on 23.9.1985, while dealing with a bride burning case. It was observed:

> "Marriage, according to the community to which parties belong, is sacramental and is believed to have been ordained in heaven. The religious rites performed at the marriage altar clearly indicate that the man accepts the woman as his better-half by assuring her protection as guardian, ensuring food and necessaries of life as the provider, guaranteeing companionship as the mate and by resolving that the pleasures and sorrows in the pursuit of life shall be shared with her and Dharma shall be observed. If this be the concept marriage, there would be no scope to look for worldly considerations, particularly dowry. When a girl is transplanted from her natural setting into an alien family, the care expected is bound to be more than in the case of a plant. Plant has fife but the girl has a more developed one. Human emotions are unknown to the plant life. In the growing years in the natural setting the girl- now a bride-has formed her own habits, gathered her own impressions, developed her own aptitudes and got used to a way of life. In the new setting some of these have to be accepted and some she has to surrender. This process of adaptation is not and

> cannot be one-sided. Give and take, live and let live, are the ways of life and when the bride is received in the new family she must have a feeling of welcome and by the fond bonds of love and affection, grace and generosity, attachment and consideration that she may receive in the family of the husband, she will get into a new mould; the mould which would last for her life. She has to get used to a new set of relationships one type with the husband, another with the parents-in-law, a different one with the other superiors and yet a different one with the younger ones in the family. For this she would require loving guidance. The elders in the family, including the mother-in-law, are expected to show her the way. The husband has to stand as a mountain of support ready to protect her and espouse her cause where she is on the right and equally ready to cover her either by pulling her up or protecting her willingly taking the responsibility on to himself when she is At fault. The process has to be a natural one and there has to be exhibition of cooperation and willingness from every side. Otherwise how would the transplant succeed?"

Awakening of the collective consciousness is the need of the day. Change of heart and, attittide is what is needed. If man were to regain his harmony with others and replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if woman were to receive education and become economically independent, the possibility of this pernicious social evit dying a natural death may not remain a dream only. The legislature, realising the gravity of the situation has amended the laws and provided for stringent punishments in such cases and even permitted the raising of presumptions against an accused in cases of unnatural deaths of the brides within the first seven years of their marriage., The Dowry Prohibition Act was enacted in 1961 and has been amended from time to time, but this piece of soicial legislation, keeping in view the growing menance of the social evil also does not appear to have served much purpose as dowry seekers are hardly brought to book and convictions recorded are rather few. Laws are not enough to combat the evil. A wider social movement of educating women of their rights, to conquer the menance, is what is needed more particularly in rural areas where women are still largely uneducated and less aware of their rights and fall an easy prey to their exploitation. The role of courts, under the circumstances assumes greater importance and-it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunas in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women. The verdict of acquittal made by the Trial Court in this cast is an apt illustration of the lack of sensitivity on the part of the Trial Court. It recorded the verdict of acquittal on mere surmises and conjectures and disregarded the evidence of the witnesses for wholly insufficient and insignificant reasons. It ignored the vital factors of the case without even properly discussing the same.

The High Court was, therefore, perfectly justified in convicting the appellants for the offence of murder punishable under Section 302 readwith Section 34 IPC and sentencing each one of them to suffer imprisonment for life. We uphold the conviction and sentence of the appellants for the offence under Section 302/34 IPC and dismiss their appeal. The appellants were directed to be released on bail by this Court on 30.3.1989. Their bail bonds are cancelled and they are directed to be taken in to

custody to suffer the remaining period of their sentence.

V.P.R.

Appeal dismissed.