**(2003) 08 AP CK 0034**

**Andhra Pradesh High Court**

**Case No:** Criminal A. No. 135 and Criminal R.C. No. 255 of 2000

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| Shaik Iqbal John | APPELLANT |
| Vs | |
| Shaik Khader Basha and Others | RESPONDENT |

**Date of Decision:** Aug. 1, 2003

**Acts Referred:**

- Dowry Prohibition Act, 1961 - Section 3, 4, 8A
- Penal Code, 1860 (IPC) - Section 498A

**Citation:** (2003) 2 ALD(Cri) 385 : (2003) 2 ALT(Cri) 482 : (2004) 2 DMC 454 : (2004) 2 RCR(Criminal) 401

**Hon'ble Judges:** K.C. Bhanu, J

**Bench:** Single Bench

**Advocate:** G. Dasaratharami Reddy and P.P, for the Appellant; C.V. Nagarjuna Reddy and P.P., for the Respondent

**Final Decision:** Dismissed

**Judgement**

K.C. Bhanu, J.

While the appeal is filed by the State, the revision is filed by P.W. 2 in C.C. No. 203/1998, dated 9.9.1999, on the file of the II Additional judicial I Class, Magistrate, Cuddapah, Since both the cases arise out of the same case, they are disposed of by a common judgment.

2. Smt. Shaik Mumtaj Begum lodged a report with the police alleging that at the time of her marriage with A-1, a sum of Rs. 10,000/- a Godrej cot, an almirah, and some household articles besides some gold ornaments were given to A-1. After she joined her matrimonial home, A-1 to A-6 started harassing her to bring additional dowry and unable to bear the harassment, she came back to her parent''s house, After completion of investigation, the police filed a charge-sheet which was registered as C.C. No. 203/1998. Charges u/s 498-A, IPC and Sections 3 and 4 of the Dowry Prohibition Act were framed. The accused denied their guilt. On behalf of the

Prosecution six witnesses were examined and two documents were marked. The Trial Court on assessment of the evidence on record came to the conclusion that Prosecution miserably failed to establish the charges. It accordingly acquitted the accused by its judgment, dated 9.9.1999, challenging the legality and correctness of which the appeal and the revision petition came to be filed as aforesaid.

3. The charges levelled against the accused are u/s 498-A, IPC and Sections 3 and 4 of the Dowry Prohibition Act, u/s 3 of the Dowry Prohibition Act, if any person gives or takes or abets the giving or taking of dowry shall be punishable. u/s 4 if any person demands, directly or indirectly, from the parents or other relatives or guardian of a bridge or bridegroom, as the case may be any dowry, he shall be punishable. Dowry is defined u/s 2. It reads as follows :

"2. Definition of ''dowry''--In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly--

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehar in the case of persons to whom the Muslim Personal Law (Shariat) applies.

4. A conjoint reading of Sections 2 and 3 shows that any property or valuable security given or agreed to be given as provided u/s 2 is ''dowry'', but dower or mehar in the case of persons to whom the Muslim Personal Law applies is not ''dowry'', and a giver or taker or abettor of giving or taking of dowry is punishable u/s 3 subject, of course, to the exceptions contained in Sub-section (2) of Section 3 of the Act.

5. Section 8-A of the Dowry Prohibition Act provides that where any person is prosecuted for taking or abetting the taking of any dowry u/s 3, or the demanding of dowry u/s 4, the burden of proving that he had not committed such an offence shall be on him. Therefore, Unlike in normal criminal jurisprudence where the burden is always on the Prosecution to prove its case but when a taker or a better of taking of dowry, or when a person who demands dowry, is prosecuted under Sections 3 and 4 of the Act respectively, the burden is on him to prove that he had not committed such an offence, but there is no such burden on a giver of dowry in whose case the burden, is on the Prosecution to prove its case. This is so in the case of a person to. whom the Muslim Personal Law (Shariat) does not apply. But in the case of a person to whom such Personal Law applies, the law is slightly different.

6. The definition of dowry dews not include dower or mehar in the case of a person to whom the Muslim Personal Law (Shariat) applies. There is no presumption in law

that any property or valuable security given or agreed to be given as provided by Section 2 of the Act is dowry and not mehar or dower in the case of persons to whom such Personal Law applies. In the absence of such presumption in favour of the Prosecution, the initial burden is always on the Prosecution of proving that any such property or valuable security is not dower or mehar. Once the Prosecution successfully discharges this initial burden, the onus shifts on the accused to prove that he had not committed an offence u/s 3 or 4 of the Act. Till the Prosecution proves its initial obligation, such property or valuable security cannot be presumed to be given as dowry and not as dower or mehar. However, in the case of a giver of dowry to whom such Personal Law applies, the burden to prove that the property or valuable security given is not dower or mehar and that such Personal Law does not apply to the giver is on the Prosecution, since the presumption provided u/s 8-A does not extend to a giver of dowry prosecuted u/s 3 of the Act.

7. Admittedly in this case the parties are Muslims to whom Muslim Personal Law applies. Therefore, the initial burden is on the Prosecution to establish that the amount and the presents given by P.W. 1 to A-1 do not come within the meaning of mehar or dower. None of the witnesses in this case stated that the cash and other presents were given to A-1 as dowry and not as mehar or dower. Therefore, the Prosecution has failed to prove the charge u/s 3 of the Act.

8. Coming to the charge u/s 4 of the Act, to attract this section, there must be a demand for dowry directly or indirectly by a person from the parents of other relatives of a bride of bridegroom. P.Ws. 1 and 2 did not specifically state that the accused demanded them to pay the cash and giver the ornaments etc. In the absence of any demand by the accused Section 4 of the said Act has no application.

9. As regards the charge u/s 498-A, I.P.C. a perusal of the above section makes it clear that to attract this section there must be harassment of the wife by her husband or his relatives to meet any unlawful demand for any property. P.Ws. 1 and 2 stated that after P.W. 1 gave birth to a child, the accused started harassing her to bring refrigerator, motorcycle and gold chain. Though P.W. 3 states that the accused also demanded an amount of Rs. 10,000/- towards additional dowry, P.Ws. 1 and 2 did not say so. Ex. P-1 report does not specifically stated that A-l demanded refrigerator and motorcycle. An omnibus allegation is levelled against all the accused stating that they necked out P.W. 1 to bring additional dowry. But P.W. 1 deposed in the Court that it was A-1 who made the demand. She did not state anything against the other accused. Even as regards the allegation against A-1, P.W. 1 admitted that a "Panchayat" was convened with regard to the demand made by A-1. None of the members of the "Panchayat" was examined to show that the issue of demand of dowry by A-1 was neither raised nor discussed in the "Panchayat". P.W. 1 went to the extent of saying that A-1 beat her as a result of which she lost a tooth, but there is no medical evidence or ocular evidence in support of the allegation. It was elicited in her cross-examination that she did not sustain any

injuries. The Trial Court, therefore, rightly did not place reliance upon the evidence of P.Ws. 1 and 2.

10. Coming to the evidence of P.W. 3, he invented a new theory that the accused persons were harassing P.W. 1 to bring additional dowry of Rs. 10,000/-. P.Ws. 1 and 2 did not state about such demand. Therefore, P.W. 3 cannot be believed. The evidence of P.W. 4 is not of much relevance, P.W, 6 came to know through P.W. 2 about the harassment and the demand of additional dowry, but P.W. 2 did not say that he told P.W. 5. P.W. 6 is the Investigating Officer. Thus, the evidence on record does not establish any of the charges levelled against the accused.

11. Learned Counsel for the revisionist contended that the accused admitted in the examination u/s 313, Cr.P.C., to have taken certain golden ornaments, household articles and cash, etc., and on the basis of that admission accused can be convicted. This Court is unable to accept this contention. The reason is that, an admission in Section 313, Cr.P.C. examination can at best be taken into consideration along with the other evidence, if any, in favour of the prosecution. But if there is no such other evidence, the admission cannot be the sole basis for conviction. In the absence of any satisfactory evidence to prove the charges levelled against the accused, this Court is not inclined to interfere with the impugned judgment.

12. In the result, confirming the order of acquittal recorded by the Trial Court, the appeal and the revision petition are dismissed.