S.Gopal Reddy vs State Of Andhra Pradesh on 11 July, 1996

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Author: M.K Mukherjee

Bench: M.K Mukherjee

PETITIONER:
S.GOPAL REDDY

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 11/07/1996

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
MUKHERJEE M.K. (J)

CITATION:
1996 SCC (4) 596 JT 1996 (6) 268
1996 SCALE (5)78

ACT:

HEADNOTE:

JUDGMENT:

THE 11TH DAY OF JULY, 1996 Present:

Hon'ble Dr. Justice A.S.Anand Hon,ble Mr.Justice M.K.Mukherjee P.P.Rao, Sr.Adv. A.Sudarshen Reddy, B.Rajeshwar Rao, Ramkrishna Reddy, Vimal Dave, Advs. with him for the appellant Guntur Prabhakar, Adv. for the Respondent J U D G M E N T The following Judgment of the Court was delivered:

S.Gopal Reddy V. State of Andhra Pradesh J U D G M E N T DR. ANAND,J.

The appellant alongwith his brother was tried for offences under Section 420 IPC read with Section 4 Dowry Prohibition Act, 1961. The trial Court convicted them both and sentenced them to undergo 9 months R.I. and to a fine of Rs. 500/- each and in default to undergo S.I. for four months for the offence under Section 420 IPC and to R.I. for 6 months and a fine of Rs. 1000/- each and in default S.I. for six months for the offence under Section 4 Dowry Prohibition Act, 1961 (hereinafter the Act). In an appeal against their sentence and conviction, the Additional Metropolitan Sessions Judge held that no offence under Section 420 IPC was made out and set aside their conviction and sentence for the said offence while confirming their conviction and sentence for the offence under Section 4 of the Act. Both the convicts unsuccessfully invoked the revisional jurisdiction of the High Court.

This appeal by special leave filed by the appellant is directed against the order of the High Court of Andhra Pradesh dated 16.10.1990 dismissing the Criminal Revision Petition filed by the convicts. The brother of the appellant filed SLP (Crl.) 2336 of 1990 against the revisional order of the High Court but that S.L.P. was dismissed by this Court on 15.2.1991.

The prosecution case is as follows :

The appellant (hereinafter the first accused) is the younger brother of the petitioner (hereinafter the second accused) in S.L.P. (Crl.) No.2336 of 1990, which as already noticed was dismissed on 15.2.1991 by this Court. The first accused had been selected for Indian Police Service and was undergoing training in the year 1985 and on completion of the training was posted as an Assistant Superintendent of Police in Jammu & Kashmir Police force. His brother, the second accused, was at the relevant time working with the Osmania University at Hyderabad. P.W.1, Shri G.Narayana Reddy, the complainant, was practising as a lawyer at Hyderabad. PW1 has four daughters. Ms.Vani is the eldest among the four daughters. She was working as a cashier with the State Bank of India at Hyderabad. PW 1 was looking for marriage alliance for his daughter Ms. Vani. A proposal to get Ms.Vani married to the first accused was made by P.W.2, Shri Lakshma Reddy, a common friend of the appellant and PW1. Lateron P.W.2 introduced the second accused to P.W.1, who later on also met Ms Vani and approved of the match. After some time, the first accused also met Ms.Vani at the Institute of Public Enterprises and both of them approved each other for marriage. It is alleged that on 6.5.1985, the second accused accompanied by

P.W.2 and some others went to the house of P.W.1 to pursue the talks regarding marriage. There were some talks regarding giving of dowry and the terms were finally agreed between them on 7.5.1985 at the house of the second accused. The first accused was not present either on 6.5.1985 or on 7.5.1985. It is alleged that as per the terms settled between the parties, P.W.1 agreed to give to his daughter (1) house at Hyderabad (2) jewels, cash and clothes worth about at rupees one lakh and (3) a sum of Rs 50,000/- in cash for purchase of a car. The date of marriage, however, was to be fixed after consulting the first accused PW1, however, later on insisted on having an engagement ceremony and contacted the first accused but the first accused persuaded P.W.1 not to rush through the same as it was not possible for him to intimate the date to his friends at a short notice. The first accused came to Hyderabad from Dehradun, where he was undergoing training, on 6.8.1985 and stayed at Hyderabad till 15.8.1985. The first accused attended the birthday party of the youngest sister of Ms.Vani on 15.8.1985 and later on sent a bank draft of Rs.100/- as the birthday gift for her to Ms.Vani.

In the letter Ex.P1 which accompanied the bank draft, some reference was allegedly made regarding the settlement of dowry. It is alleged that the first accused later on wrote several letters including exhibits P6,P7,P9 and P10 to Ms. Vani It is the prosecution case that the second accused, on being approached by PW1 for fixing the date of marriage, demanded Rs. 1 lakh instead of Rs. 50,000/- for purchase of car. The second accused also insisted that the said amount should be paid before marriage. The 'dowry' talks between the second accused and PW1, however, remained inconclusive. Lateron the date of marriage was fixed as 2.11.1985. On 1.10.1985, the first accused allegedly wrote a letter, exhibit P6, to Ms.Vani asking her to cancel the date of marriage or to fulfil the demands made by his elders. The first accused came to Hyderabad on 20.10.1985 when P.W.1 told him about the demand of additional payment of Rs.50,000/- made by the second accused for the purchase of car. The first accused told P.W.1 that he would consult his brother and inform him about it and left for his native place. lt is alleged that on his return from the village, the first accused asked P.W.1 to give Rs.75,000/- instead of Rs.50,000/- as agreed upon earlier instead of Rs. 1 lakh as demanded by the second accused. According to the prosecution case this talk took place in the presence of Shri Narasinga Rao (not examined) The first accused suggested that P.W.1 should give Rs.50,000/- immediately towards the purchase of the car and the balance of Rs.25,000/- should be paid within one year after the marriage but PW1 did not accept the suggestion. According to the prosecution case `Varapuja' was performed by PW1 and his other relatives at the house of the second accused on 31.10.1985 At that time P.W.1 allegedly handed over to the first accused, a document Exhabit P-13 dated 12.10.1985, purporting to settle a house in the name of his daughter Ms.Vani alongwith a bank pass book, Exhibit P-12 showing a cash balance of Rs.50,881/- in the name of Ms.Vani. The first accused is reported to have, after examining the document Exhibit P-13, flared up saying that the settlement was for a Double Storeyed House and the document Exhibit P-13 purporting to settle the house in the name of Ms.Vanl was only a single storey building. He threatened to get the marriage cancelled if P.W.1 failed to comply with the settlement as arrived at on the earlier occasions. The efforts of P.W.1 to persuade the first accused not to cancel the marriage did not yield any results and ultimately the marriage did not take place. The first accused then returned all the articles that had been given to him at the time of `Varapuja'. Aggrieved, by the failure of the marriage negotiations,

P.W.1 on 22.1.1986 sent a complaint to the Director of National Police Academy where the first accused was undergoing training Subsequently, PW1 also went to the Academy to meet the Director when he learnt from the personal assistant to the Director of the Academy that the first accused was getting married to another girl on 30th of March, 1986 at Bolaram and showed to him the wedding invitation card. P.W.1, thereupon, gave another complaint to the director on 26.3.1986, who, however, advised him to approach the concerned police for necessary action. P.W.1 filed a report Ex.P20 at Chikkadapalli Police Station on 28.3.1986. The Inspector of Police P.W.7, registered the complaint as Crime Case No.109/1986 and took up the investigation. During the investigation, various letters purported to have been written by the first accused to Ms.Vani were sent to the handwriting expert P.W.3, who gave his opinion regarding the existence of similarities between the specimen writings of the first accused and the disputed writings. Both the first accused and his brother, the second accused, were thereafter chargesheeted and tried for offences punishable under section 420 I.P.C. read with an offence punishable under section 4 of the Act and convicted and sentenced as noticed above.

Mr. P.P.Rao the learned senior counsel appearing for the appellant submitted that the courts below had committed an error in not correctly interpreting the ambit and scope of section 4 of the Dowry Prohibition Act, 1961 read with the definition of `dowry' under section 2 of the said Act. According to the learned counsel, for "demand" of dowry to become an offence under Section 4 of the Act, it must be made at the time of marriage and not during the negotiations for marriage. Reliance in this behalf is placed on the use of the expressions `bride' and `bridegroom' in Section 4 to emphasise that at the stage of pre-marriage negotiations, the boy and the girl are not `bridegroom' and `bride' and therefore the `demand' made at that stage cannot be construed as a `demand' of dowry punishable under Section 4 of the Act. On merits, counsel argued that reliance placed by the trial court as well as the appellate and the revisional court on various letters purporting to have been written by the first accused was erroneous since the appellant had denied their authorship and there was no satisfactory evidence on the record to connect the appellant with those letters except the "inconclusive" and uncorroborated evidence of the handwriting expert. Mr.Rao further argued that in the present case there was no unimpeachable evidence available on the record to bring home the guilt of the appellant and the failure of the prosecution to examine Ms.Vani and Shri Narsinga Rao was a serious lacuna in the prosecution case. Argued Mr. Rao that the evidence of PW1, the complainant had not received any corroboration at all and since the evidence of PW1 was not wholly reliable, conviction of the appellant without any corroboration of the evidence of PW1 was not justified. Mr. Rao urged that the complainant had exaggerated the case and roped in the appellant, whose elder brother alone had made the demand for dowry, out of anger and frustration and that let alone `demanding dowry', the first accused was not even a privy to the demand of dowry as made by the second accused, his elder brother.

Learned counsel for the respondent-State, however, supported the judgment of the trial court and the High Court and argued that the case against the appellant had been established beyond a reasonable doubt and that this court need not interfere in exercise of its jurisdiction under Article 136 of the Constitution of India with findings of fact arrived at after appreciation of evidence by the courts below. According to Mr. Prabhakar, the interpretation sought to be placed by Mr. Rao on Section 4 of the Act would defeat the very object of the Act, which was enacted to curb the practice of

"demand" or acceptance and receipt of dowry" and that the definition of `dowry' as contained in Section 2 of the Act included the demand of dowry `at or before or after the marriage'.

The curse of dowry has been raising its ugly head every now and then but the evil has been flourishing beyond imaginable proportions. It was to curb this evil, that led the Parliament to enact The Dowry Prohibition Act in 1961. The Act is intended to prohibit the giving or taking of dowry end makes its `demand' by itself also an offence under Section 4 of the Act. Even the abetment of giving, taking or demanding dowry has been made an offence. Further, the Act provides that any agreement for giving or taking of dowry shall be void and the offences under the Act have also been made non-compoundable vide Section 8 of the Act. Keeping in view the object which is sought to be achieved by the Act and the evil it attempts to stamp out, a three Judges Bench of this court in L.V. Jadhav vs. Shankar Rao Abasaheb Pawar & Others (1983 4 SCC 231) opined that the expression "Dowry" wherever used in the Act must be liberally construed.

Before proceeding further, we consider it desirable to notice some of the relevant provisions of the Dowry Prohibition Act,1961.

> "Section 2- `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 after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in case of person to whom the Muslim Personal law (Shariat) applies.

. . . . . .

. . . . . .

Section 3-Penalty for giving or taking dowry- If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years(Substituted for the words "six months" w.e.f. 19th November, 1986).

Section-4: Penalty for demanding dowry-if any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which

may extend to two years and with fine which may extend to ten thousand rupees.

Provided that the Court may, for adequate and special reasons to be mentioned in the judgments impose a sentence of imprisonment for a term of less than six months."

The definition of the term 'dowry' under Section 2 of the Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become 'dowry' punishable under the Act. Property or valuable security so as to constitute 'dowry' within the meaning of the Act must therefore be given or demanded "as consideration for the marriage".

Section 4 of the Act aims at discouraging the very "demand" of "dowry" as a 'Consideration for the marriage' between the parties thereto and lays down that if any person after the commencement of the Act, "demands", directly or indirectly, from the parents or guardians of a 'bride' or 'bridegroom', as the case may be, any 'dowry', he shall be punishable with imprisonment which may extend to six months or with fine which may extend to Rs.5,000/- or with both. Thus, it would be seen that section 4 makes punishable the very demand of property or valuable security as a consideration for marriage, which demand, if satisfied, would constitute the graver offence under section a of the Act punishable with imprisonment for a term which shall not be less than five years and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more.

The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security 'made at or after the performance of marriage' as is urged by Mr. Rao. The legislature has in its wisdom while providing for the definition of 'dowry' emphasised that any money, property or valuable security given, as a consideration for marriage, 'before, at or after the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry'as commonly used and understood is different than the peculiar definition thereof under the Act. Under Section 4 of the Act, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any "demand" of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or vice-versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognised claim and is consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression 'dowry' under the Act must be interpreted in the sense which the Statute wishes to attribute to it. Mr. P.P.Rao, learned senior counsel referred to various dictionaries for the meaning of 'dowry', 'bride' and 'bridegroom' and on the basis of those meanings submitted that 'dowry' must be construed only as such property, goods or valuable security which is given to a husband by and on behalf of the wife at marriage and any demand made prior to marriage would not amount to dowry. We cannot agree. Where definition has been given in a statute itself, it is neither proper nor desirable to look to the dictionaries etc. to find out the meaning of the expression. The definition

given in the statute is the determinative- factor. The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage. Dowry as a quid pro for marriage is prohibited and not the giving of traditional presents to the bride or the bride groom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection on regard, would not fall within the mischief of the expression 'dowry' mare punishable under the Act.

It is a well known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary. We are unable to persuade ourselves to agree with Mr. Rao that it is only the property or valuable security given at the time of marriage which would bring the same within the definition of 'dowry' punishable under the Act, as such an interpretation would be defeating the very object for which the Act was enacted. Keeping in view the object of the Act, "demand of dowry" as a consideration for a proposed marriage would also come within the meaning of the expression dowry under the Act. If we were to agree with Mr. Rao that it is only the demand made at or after marriage which is punishable under Section 4 of the Act, Some serious consequences, which the legislature wanted to avoid, are bound to follow. Take for example a case where the bridegroom or his parents or other relatives make a 'demand' of dowry during marriage negotiations and lateron after bringing the bridal party to the bride's house find that the bride or her parents or relative have not met the earlier 'demand' and call off the marriage and leave the bride house should they escape the punishment under the Act. The answer has to be an emphatic 'no'. It would be adding insult to injury if we were to countenance that their action would not attract the provisions of Section 4 of the Act. Such an interpretation would frustrate the very object of the Act and would also run contrary to the accepted principles relating to the interpretation of statutes.

In Reserve Bank of India Etc. Etc.. vs. Peerless General Finance And Investment Co. Ltd. & Others Etc.. Etc.. (1987) 1 SCC 424 while dealing with the question of interpretation of a statute, this court observed:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored.
>
> Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statutemaker, provided by such context, its scheme, the sections, clauses, phrases

> and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."
>
> Again, in N.K.Jain & Others vs. C.K.Shah & Others(1991)

2 SCC 495 it was observed that in gathering the meaning of a word used in the statute, the context in which that word has been used has significance and the legislative purpose must be noted by reading the statute as a whole and bearing in mind the context in which the word has been used in the statute.

In Seaford Court Estates Ltd. vs. Asher, (1949) 2 All ER 155(CA), Lord Denning advised a purposive approach to the interpretation of a word used in a statute and observed:

> "The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have note, provided for this or that, or have been guilty of some or other ambiguity. It would certainly Leave the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

(emphasis supplied) An argument, similar to the one As raised by Mr. Rao regarding the use of the expressions 'bride'and 'bridegroom' occurring in Section 4 of the Act to urge that "demand" of property or valuable security would not be "dowry" if it is made during the negotiations for marriage until the boy and the girl acquire the status of 'bridegroom' and 'bride', at or immediately after the marriage, was raised and repelled by this court in L.V. Jadhav's case (supra).

In L.V. Jadhav's case (supra) while interpreting the meaning of 'dowry' under Section 2 of the Act and co- relating it to the requirements of Section 4 of the Act, the Bench observed:

> "..... Section 4 which Lays down that "if any person after the commencement of this Act, demands, directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both". According to Webster's New World Dictionary, 1962 edn. bride means a woman who has just been married or is about to be married, and bridegroom means a man who has just been married or is about to be married. If we give this meaning of a bride or a bridegroom to the word bride or bridegroom used in Section 4 of the Act, property or valuable security demanded and consented to be given prior to the time when the woman had become a bride or the man had become a bridegroom, may not be "dowry" within the meaning of the Act. Act. We are also of the opinion that the object of Section 4 of the Act is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for 'giving' property or valuable security which demand, if satisfied, would constitute an offence under Section 3 read with Section 2 of the Act.
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> There is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence..... "

Therefore, interpreting the expression 'dowry and 'demand' in the context of the scheme of the Act, we are of the opinion that any 'demand of 'dowry' made before at or after the marriage, where such demand is made as a consideration for marriage would attract the provisions of Section 4 of the Act.

The alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides has always sent stock waves to the civilized society but unfortunately the evil has continued unabated. Awakening of the collective consciousness is the need of the day. Change of heart and attitude is needed. A wider social movement not only of educating women of their rights but all of the men folk to respect and recognise the basic human values is essentially needed to bury this pernicious social evil. The role of the courts, under the circumstances, assumes a great importance. The courts are expected to deal with such cases in a realistic manner so as to further the object of the legislation. However, the courts must not lose right of the fact that the Act, though a piece of social legislation, is a penal statute. One of the cardinal rules of interpretation in such cases is that a penal statute must be strictly construed. The courts have, thus, to be watchful to see that emotions or sentiments are not allowed to influence their judgment, one way or the other and that they do not ignore the golden thread passing through criminal jurisprudence that an accused is presumed to be innocent till proved guilty and that the guilt of an accused must be established beyond a reasonable doubt. They must carefully assess the evidence and not allow either suspicion or surmise or conjectures to state the place of proof in their zeal to stamp out the evil from the society while at the same time not adopting the easy course of letting technicalities or minor discrepancies in the evidence result in acquitting an accused. They must critically analyses the evidence and decide the case in a realistic manner.

It is in the light of the scheme of the Act and the above principles that we shall now consider the merits of the present case. This Court, generally speaking, does not interfere with the findings recorded on appreciation of evidence by the courts below except where there appears to have occurred gross miscarriage of justice or there exist sufficient reasons which justify the examination of some of the relevant evidence by this court itself.

There is no dispute that the marriage of the appellant was settled with Ms. Vani, daughter of PW1 and ultimately it did not take place and broke down. According to PW1, the reason for the brake down of the marriage was his refusal and inability to comply with the "demand" for enhancing the 'dowry' as made by the appellant and his brother, the second accused. The High Court considered the evidence on the record and observed"

> "From the evidence of PW1 it is clear that it is only the 2nd petitioner that initially demanded the dowry in connection with the marriage of his younger brother, the first petitioner. He alone was present when PW1 agreed to give a cash of Rs. 50,000/- for purchase of car, a house, jewels, clothing and cash valued at rupees one lakh. This took place in the month of June, 1985 when PW1 approached the second petitioner for fixation of date for marriage some time in the month of September, 1985. According to PW1, the second petitioner demanded rupees one lakh for purchase of car. But, however, PW1 persuaded the second petitioner to fix the date leaving that matter open to be decided in consultation with the first petitioner. When the first petitioner came to Hyderabad in October, 1985 PW1 complained to him about the demand for additional dowry and that the first petitioner would appear to have told PW1 that he would discuss with his brother and inform him. Then the first petitioner went to his native place and return to Hyderabad and asked PW1 to give Rs. 75,000/- for purchase of car.
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> The High Court further observed :
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> " Thus the demand for dowry either initially or at later emanated only from the second petitioner, the elder brother for the first petitioner. From the evidence it would appear that the petitioners come from a lower middle class family and fortunately the first petitioner was selected for I.P.S. and from the tone of letters written by the first petitioner to Kum. Vani particularly from Ex. P-6 letter it would appear that he was more interested in acting according to the wishes respondent who he probably felt was responsible for his coming up in life. The recitals in Ex.P-6 would show that he did not like to hurt the feelings of the second petitioner and probably for that reason he could not say anything when his elder brother demanded for more dowry. We cannot say how the first petitioner would have acted if only he had freedom to act according to his wishes. But the first petitioner was obliged to act according to the wishes of his elder brother in asking for more dowry. However, I feel that this cannot be a circumstances to exonerate him from his liability from demand of dowry under Section 4 of the Dowry Prohibition Act.

(Emphasis supplied) From the above noted observations, it appears that the High Court felt that the appellant was perhaps acting as "His Master's Voice" of his elder brother. The High Court accepted the evidence of PW1 to hold that the appellant had demanded enhanced dowry of Rs 75000/ for purchase of car on his return from the native village and had repeated his demand at the him; of "Varapuja" and lateron did not marry Ms Vani as PW1 was unable to meet the demands as projected by the appellant and his elder brother. The High Court appears to have too readily accepted the version of PW1 without properly analyzing and appreciating the same.

Since, PW1 is the sole witness, we have considered it proper to examine his evidence with caution.

From our critical analysis of the evidence of PW1,it emerges that at the time of initial demand of dowry as a consideration for marriage of the appellant it was only the brother of the appellant, the second accused, who was present and it was the second accused alone with whom the negotiations took place in presence of PW2 According to PW1, the brother of the appellant later on demanded rupees one lakh for the purchase of car as against the initial agreement of rupees fifty thousand or the said purpose. Admittedly, the first accused was not present at either of the two occasions. According to PW1 when the appellant came to Hyderabad in October, 1985 he (PW1) complained to him about the demand for a additional dowry made by his brother and the appellant told him that he would discuss the matter with his brother and inform him. It was, thereafter. According to PW1 that then the appellant returned to Hyderabad from his native place that he asked the complainant (PW1) to give Rs.75,000/- for purchase of the car. Shri Narsingh Rao is stated to have been present at that time, but he has not been examined at the trial. The above statement of PW1 has, however, surfaced for the first time at the trial only. These is no mention of it in the first information report, Ex.P-20 or even in the two complaints which had been sent by PW1 to the Director, National Police Academy prior to the lodging of Ex. P-20. PW1 admitted in his evidence "I have not stated in Ex. P-20 and in my 161 statement that A-1 on return from his native place demanded rupees seventy five thousand instead of rupees one lakh for purchase of car and that I said that what was the agreed for purchase of car was only Rs. 50,000/- and not Rs. 75,000/- . This story, therefore, appears to be an after thought, made with a view to implicate the appellant with the commission af an offence under Section 4 of the Act. Had this been the state of affairs, we see no reason as to why the fact would not have found mention at least in the complaints made to 'the Director of the Academy where the appellant was under-going training. PW1, being a lawyer, must be presumed to be aware of the importance and relevance of the statement attributed to the appellant to incorporate it in the complaints and the FIR. We find this part of the evidence of PW1 rather difficult to accept without any independent corroboration. There is no corroboration available on the record as even Shri Narsingh Rao has not been examined.

According to PW1, the demand of dowry was repeated by the appellant at the time of "Varapuja" which was performed on 31.10.1985 at the house of the second accused also. PW1 stated that he handed over the documents pertaining to the house, rupees fifty thousand in cash and pass book showing the deposit of about rupees fifty thousand in the bank in the name of Ms.Vani to the appellant alongwith other articles of 'varapuje'and on seeing the documents the appellant flared up and said that since the settlement was for a two storeyed house and not a single storey house, as reflected in Ex.P13, he would cancel the marriage unless the 'demands' as made earlier were fulfilled. The story of "varapuja" which has been too readily accepted by the courts below, again appears to us to be of a doubtful nature and does not inspire confidence. The following admission of PW1 in his evidence, in the context of "varapuja" allegedly held on 31.10.1985 has significance :

"It is not true that Varapuja is puja of brideroom according to my understanding. I did not take any prohit for Varapuja. I did not take any photograph on that occasion. I did get any Lagna Patrika prepared for the marriage. It is not true that I am deposing falsely that there was Varapuja and that offered money on that occasion.

I started marriage preparation probably in the month of September, or October, I cannot say on what date I booked hall for the marriage. Ex. P.8 is only cancellation receipt of the marriage hall. I have not got invitation cards printed. I did not write any letters to anybody informing them of the marriage or inviting them to the marriage as I received letter from A-1 to cancel the marriage in the month of October,itself cancellation of the date of marriage was prior to Varapuja.

(emphasis ours) The above admission creates a lot of doubt about the performance of 'varapuja.' According to PW1, he had received a letter from the appellant to the marriage in the month of October itself. Therefore, if the marriage had been it does not stand to reason as to why 'vrapuja' should have take? place at all. The holding of 'Varapuja' appears to be highly improbable. No corroboration of any nature to support this part of the evidence of PW1 is forthcoming on the record.

That the marriage between the parties did not take place is not in dispute but these is no satisfactory evidence on the record to show that the appellant cancelled the marriage on account of non-fulfilment of dowry demand allegedly made by him. The letter which PW1 claims to have himself received from the appellant regarding cancellation of marriage prior to 'varapuja' ceremony has not been produced. Reliance instead has been placed by the prosecution on letter Ex P-6 allegedly written by the appellant to Ms.Vani cancelling the date of marriage. We shall refer to the documentary evidence in the latter part of the judgment. The failure of PW1 to produce the letter allegedly received by him from the first accused invites an adverse presumption against him that had he produced the letter, the same would have belied his evidence. The evidence of PW1, who is the sole witness, suffers from serious inconsistencies and exaggerations. He admittedly is the most interested person to

establish his case. He is the complainant an the case. It was he who had made two complaints to the Director of National Police Academy against the appellant before lodging the FIR, Ex.P20. He is a lawyer by profession. He would be presumed to know the importance of the 'demand made by the appellant on the two occasions. He, however, has offered no explanation as to why those facts are conspicuous by their absence from the FIR and the two complaints made to the Director of the Academy. PW1, does not appear to us to be a wholly reliable witness. He has made conscious improvements at the trial to implicate the appellant by indulging in exaggerations and that detracts materially from his reliability. Prudence, therefore, requires that the Court should look for corroboration of his evidence in material particulars before accepting the same. Neither Ms Vani nor Shri Narsingh Rao in whose presence the appellant is said to have demanded dowry have been examined as Witnesses. The failure to examine them is a serious lacuna in the prosecution case. It was Ms. Vani who could have deposed about the circumstances which led to the breakdown of the metrimonial negotiations, before its maturity. Various letter which PW1 produced at the trial were allegedly written by the appellant to the handwriting expert prosecution has sought to corroborate the evidence of PW1 regarding the authorship of those letters. The opinion of PW3,the Assistant Director in the State Forensic & Science Laboratory, Hyderabad, in our view can not be said to be of inching type to attribute the authorship of those letters to the appellant. PW3 during his statement deposed :

"In my opinion (1) there are similarities indicating common authorship between the red enclosed writings marked as S-12 to S-23 and the red enclosed writings marked as Q.4 to Q.7. But definite present standards.(2) No opinion can be given on the authorship of the red enclosed signatures and writings marked as Q-1 to Q-3 and Q-8 to Q-

15 on the basis of present standards.

(emphasis supplied) The expert further opined :

"When all the writing characteristics are considered collectively, they led to the conclusion that there are similarities indicating common authorship between the standard writings marked S-12 to S-25 and the questioned writings marked Q-4 to Q-7. But no definite opinion can be given on the basis of the present standards Extensive admitted writings are required for offering definite opinion.

(emphasis supplied) During his cross-examination PW3 admitted :

"Q. From the available standards you cannot say that the signatures of Exs. P.7 and P.9 is the same person who wrote Exs. P.7 and P.9.

Ans: we can compare truly like live, signatures with signatures and writings with writings and not a signature with a writing."

> Thus, the evidence of PW3, is not definite and cannot be said to be of a clinching nature to connect the appellant with the disputed letters. The evidence of an expert is rather weak type of evidence and the courts do not generally consider it as offering 'conclusive' proof and therefore safe to rely upon the same without seeking, independent and reliable corroboration. In Magan Bihari Lal Vs. State of Punjab (AIR 1977 SC 1091), while dealing with evidence of a handwriting expert, this Court opined: "We think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with mare caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra Vs. State of U.P. AIR 1957 SC 381 that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Vs. Md. Isa, AIR 1963 SC 1728 that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Vs. Subodh Kumar, AIR 1964 SC 529 where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin Vs. State of M.P. AIR 1967 SC 1326 and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial."

We are unable to agree, in the established facts and circumstanced of this case, with the view expressed by the courts below that PW1 is a competent witness to speak about the handwriting of the appellant and that the opinion of PW3 has received corroboration from the evidence of PW1. PW1 admittedly did not receive any of those letters. He had no occasion to be familiar with the handwriting of the appellant. He is not a handwriting expert. The bald assertion of PW1 that he was "familiar" with the handwriting of the appellant and fully "acquainted" with the contents of the letters, admittedly not addressed to him, without disclosing how he was familiar with the handwriting of the appellant, is difficult to accept. Section 67 of the Evidence Act enjoins that before a document can be looked into, it has to be proved. Section 67, of course, does not prescribe any particular mode of proof. Section 47 of the Evidence Act which occurs in the chapter relating to 'relevancy of facts' provides that the opinion of a person who is acquainted with the handwriting of a particular person is a relevant fact. Similarly, opinion of a handwriting expert is also a relevant fact for identifying any handwriting. The ordinary method of proving a document is by calling as a witness the person who had executed the document or saw it being executed or signed or is otherwise qualified and competent to express his opinion as to the handwriting. There are some

other modes of proof of documents also as by comparison of the handwriting as envisaged under Section 73 of the Evidence Act or through the evidence of a handwriting expert under Section 45 of the Act, besides by the admission of the person against whom the document is intended to be used. The receiver of the document, on establishing his acquaintance with the handwriting of the person and competence to identify the writing with which he is familiar, may also prove a document. These modes are legitimate methods of proving documents but before they can be accepted they must bear sufficient strength to carry conviction. Keeping in view the in-conclusive and indefinite nature of the evidence of the handwriting expert PW3 and the lack of competence on the part of PW1 to be familiar with the handwriting of the appellant, the approach adopted by the courts below to arrive at the conclusion that the disputed letters were written by the appellant to Ms.Vani on the basis of the evidence of PW1 and PW3 was not proper. The doubtful evidence of PW1 could neither offer any corroboration to the inconclusive and indefinite opinion of the handwriting expert PW3 nor could it receive any corroboration from the opinion of PW3. We are not satisfied, in the established facts and circumstances of this case, that the prosecution has established either the genuineness or the authorship of the disputed letters allegedly written by the appellant from the evidence of PW1 or PW3. The courts below appear to have taken a rather superficial view of the matter while relying upon the evidence of PW1 and PW3 to hold the appellant guilty. We find it unsafe to base the conviction of the appellant on the basis of the evidence of PW1 or PW3 in the absence of substantial independent corroboration,internally or externally, of their evidence, which in this case is totally wanting.

To us it appears that the demand of dowry in connection with and as consideration for the marriage of the appellant with Ms.Vani was made by the second accused the elder brother of the appellant and that no such demand is established to have been directly made by the appellant. The High Court rightly found the second accused, guilty of an offence under Section 4 of the Act against which S.L.P. (Criminal) No.2336 of 1990, as earlier noticed stands dismissed by this court on 15.2.1991. The evidence on the record does not establish beyond a reasonable doubt that any demand of dowry within the meaning of Section 2 read with Section 4 of the Act was made by the appellant. May be the appellant was in agreement with his elder brother regarding 'demand' of 'dowry' but convictions cannot be based on such assumptions without the offence being proved beyond a reasonable doubt. The courts below appear to have allowed emotions and sentiments, rather than legally admissible and trustworthy evidence, to influence their judgment. The evidence on the record does not establish the case against the appellant beyond a reasonable doubt. He is, therefore, entitled to the benefit of doubt. This appeal, thus,succeeds and is allowed. The conviction and sentence of the appellant is hereby set aside. The appellant is on bail. His bail bonds shall stand discharged.