IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS: MOVVA

Present: Sri P.Rajan Uday Prakash,

Judicial Magistrate of First Class, Movva.

Monday, the Twenty Third day of December, Two Thousand Twenty Four.

Calendar Case No.420 of 2019

State represented by the Sub Inspector of Police, Challapalli police station.

... Complainant.

Versus

- Basa Nalini Manohar, s/o. Venkata Subbarao,
 35 years, H. No.5-3-622/4, Plot No.86, Vijayapuri Colony,
 Phase-II, Vanasthalipuram, Hayath Nagar, Hyderabad.
- Basa Ramadevi, w/o. Venkata Subbarao, 55 years,
 H. No.5-3-622/4, Plot No.86, Vijayapuri Colony,
 Phase-II, Vanasthalipuram, Hayath Nagar, Hyderabad.
- 3. Basa Venkata Subba Rao, s/o.Sriramamurthy, 59 years, H.No.5-3-622/4, Plot No.86, Vijayapuri Colony, Phase-II, Vanasthalipuram, Hayath Nagar, Hyderabad.

- 4. Veeranalla Gowthami Ramyasri, w/o.Balaji, 34 years,
 Plot No.86, Near Shiva Sindhu Pathasala, Vijayapuri Colony,
 Phase -II, Vanasthalipuram, Hayath Nagar, Hyderabad.
- Mendu Srinivasarao, s/o.Radhakrishna, 47 years,
 Radha Nagar, Challapalli village and mandal. ... Accused.

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This case came before me on 15-10-2024 for final hearing in the presence of the learned Assistant Public Prosecutor for the state, and the arguments of the accused having been treated as nil and closed, and on perusing the record, and having stood over for consideration till this day, this Court delivered the following:

JUDGMENT

1. The Sub Inspector of police, Challapalli police station filed the chargesheet against the accused Nos.1 to 5 in crime No.138/2017 of Challapalli police station for the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act.

The case of the prosecution:

2. the husband of the The accused No.1 is de facto complainant/Basa Santhi/**PW-1**. The accused Nos.2 and 3 are the parents of the accused No.1. The accused No.4 is the sister of the accused No.1. The accused No.5 is a distant relative of the accused No.1. The marriage of PW-1 was performed with the accused No.1 as per Hindu customs and rites at Rani Bhavani Devi function hall, Challapalli in the presence of elders of both sides. At the time of the marriage, the parents of PW-1 gave Rs.10,00,000/- towards pasupukumkuma, Rs.1,00,000/- for the sister of the accused No.1, a gold chain, a gold ring, and Rs.85,000/- for a bracelet to the accused No.1. The accused No.1 worked as a senior software engineer in Old Accenture, Bangalore city at the time of the marriage. PW-1 along with the accused Nos.2 and 4 went to Bangalore on 05-03-2017, where PW-1 started conjugal life with the accused No.1. PW-1 and the accused No.1 lead conjugal life happily for a week. The accused No.1 stated that his salary was not sufficient, and that better opportunities were available in America and requested PW-1 to bring additional dowry of Rs.10,00,000/-

from her parents' house to enable him to go to America. PW-1 called her her father/Pasupuleti Satyanarayana/**PW-2** over the phone and requested the amount of Rs.10,00,000/- for which he expressed his inability to provide the same.

The accused No.1 started harassing PW-1 since 15-03-2017 by 3. demanding additional dowry of Rs.10,00,000/-. PW-1 informed the same to her in-laws and her parents. The accused No.1 stated that he has affluent friends and that PW-1 should move closely with them for procuring money so that the accused No.1 can go to America. PW-1 did not obey the accused No.1 in this regard. On 20-03-2017, the accused No.1 harassed PW-1 and demanded her to commit prostitution. PW-1 informed the same to her parents. The parents of PW-1 along with the sister of PW-1 namely Pasupuleti Vijaya Lakshmi/LW-4, Pasupuleti Srinivasarao/PW-3 and the accused No.5 went to Bangalore on 05-04-2017 to talk to the accused No.1. PW-1 informed them of the harassment of the accused No.1. The accused No.1 did not listen to them and drove PW-1 out of the house. PW-1 informed the same to the accused Nos.2 and 3, who in turn supported the accused No.1. The accused No.5, who happens to be one of the elders of the marriage also supported the acts of the accused No.1.

4. PW-1 returned to her parents' house at Challapalli on 06-04-2017. The accused Nos.2 and 3 informed PW-1 and her parents that they would settle the disputes. The parents of PW-1 informed the elders namely Mendu Yedukondalu/PW-4 and Vemula Kumaraswamy/PW-5 about the harassment and requested them to settle the issue. Pws.2, 4 and 5 went to Hyderabad as well as Bangalore to settle the disputes by mediation, but in vain. On 14-05-2017, all the accused came to the house of PW-2 at Challapalli and PW-2 informed Pws.4 and 5 about the same. The accused demanded Rs.10,00,000/- so that the accused No.1 could to go to America, failing which they threatened that the marriage would end in divorce. PW-2 placed the matter before the police and the police conducted counselling, but in vain. Thereafter, PW-1 approached the police with written information. Basing on the written information given by PW-1, the then Sub Inspector of police/D. Chandrasekhar/**PW-6** registered a case in crime No.138/2017 for the offences punishable under section 498A read with 34

of Indian Penal Code and section 4 of the Dowry Prohibition Act and investigated into it. PW-6 secured as many as seven witnesses and examined them and recorded their statements. PW-6 served notices on the accused directing them to appear as and when required. After completion of the investigation, PW-6 filed the charge sheet against the accused Nos.1 to 5 for the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act.

- 5. The case was taken on file for the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act against the accused Nos.1 to 5 and summons were issued to them.
- On appearance of the accused Nos.1 to 5, copies of documents were furnished to them as required under section 207 of the Code of Criminal Procedure. The accused Nos.1 to 5 were examined under section 239 of the Code of Criminal Procedure for which they denied the accusations levied against them. Charges for the offences punishable under

section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act were framed against the accused Nos.1 to 5. The charges were read over and explained to them in Telugu for which they pleaded "not guilty" and claimed to be tried.

- 7. On behalf of the prosecution, Pws.1 to 6 were examined and Exs.P1 and P2 were marked. The evidence of LW-3/Pasupuleti Padma and LW-4/Pasupuleti Vijaya Lakshmi was given up by the learned Assistant Public Prosecutor. Thus, the closure of the evidence of the prosecution.
- **8.** After the completion of the evidence on behalf of the prosecution, the accused Nos.1 to 5 were examined under section 313 of the Code of Criminal Procedure by putting forth the incriminating circumstances appearing against them in the evidence of the prosecution. The accused denied the incriminating circumstances. No evidence, either oral or documentary was adduced on behalf of the accused.
- **9.** Heard the learned Assistant Public Prosecutor. Perused the material on record.

10. The points for determination are:

- 1. "Whether the accused Nos.1 to 5 harassed PW-1??"
- 2. "Whether the accused Nos.1 to 5 demanded dowry of Rs.10,00,000/- from the parents of PW-1??"
- 3. "Whether the prosecution proved the guilt of the accused Nos.1 to 5 for the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act beyond all reasonable doubt ??"

Point Nos.1 and 2:

A perusal of the record reveals that Pws.1 to 6 were examined on behalf of the prosecution. PW-1 is the victim and *de facto* complainant. PW-2 is the father of PW-1. PW-3 is the cousin of PW-1. Pws.4 and 5 are the elders who tried to settle the disputes. PW-6 is the investigating officer. The offence punishable under section 498A of Indian Penal Code stands on a different footing when juxtaposed with other offences and in most of the cases, the harassment does not even see the light of the day let alone be

known to a third person. It must be kept in mind that in most of the cases involving the offence punishable under section 498A of Indian Penal Code, there could not be many direct witnesses. In many such cases involving harassment of women, the woman concerned alone happens to be the direct witness.

Furthermore, the fact that most of the witnesses (the husband and his family members) actually happen to be the offenders is not something that aids the case of the victim in such cases. Thus, in all probability and possibility, the harassment meted out to the victim would be narrated to her immediate family members and they would be cited as witnesses. In addition, if the matter was placed before the elders, such elders would be cited as witnesses and their testimonies would be relied upon by the prosecution to corroborate the testimony of the victim. Even the testimony of the victim alone might suffice to establish the guilt of the accused beyond all reasonable doubt provided the same withstands the test of cross-examination. However, in the present case, it is seen that all the witnesses supported the case of the prosecution. That being the case, the

prosecution can rely upon the evidence of Pws.1 to 6 to establish its case beyond all reasonable doubt.

13. A perusal of the written information given to the police/**Ex.P1** reveals that when the marriage of PW-1 was arranged with the accused No.1, as per the demand of the accused Nos.1 to 3, PW-2 gave an amount of Rs.10,00,000/- to the accused Nos.1 to 3, Rs.1,00,000/- to the accused No.4, one gold chain, one gold ring, and Rs.85,000/- to purchase a gold bracelet. PW-1 and the accused No.1 started conjugal life on 05-03-2017 at Bangalore. The accused Nos.2 and 4 joined PW-1 and the accused No.1 at Bangalore. After one week, the accused No.1 forced PW-1 to call PW-2 over the phone to demand additional dowry of Rs.10,00,000/- so that he could go to the United States for a better job. PW-2 expressed his inability to provide the same. The accused No.1 is stated to have harassed PW-1 everyday 15-03-2017 bring the additional dowry of since to Rs.10,00,000/-.

- Further, the accused No.1 is stated to have demanded PW-1 to 14. spend time with his friends and to listen to them, so that they could provide financial assistance to the accused No.1. PW-1 refused the same. Since 20-03-2017, the accused No.1 is stated to have brought unknown persons to his house and forced PW-1 to commit prostitution with them. Ex.P1 further states that the accused No.1 told PW-1 that they should act as wife and husband for namesake and that he would spend time with his girl friends. As per Ex.P1, on 05-04-2017, the younger sister of PW-1 namely Pasupuleti Vijaya Lakshmi/LW-4, PW-3 and the accused No.5 came to Bangalore to talk to the accused No.1 regarding his harassment. The accused No.1 is stated to have demanded additional dowry and forced PW-1 to commit prostitution even in their presence. Thereafter, the accused No.1 drove PW-1 out of the house. When the matter was informed to the accused Nos.2 and 3, they supported the accused No.1. Even the accused No.5 is stated to have supported the accused No.1 indirectly.
- **15.** On 06-04-2017, PW-1 returned to her maternal home at Challapalli. Thereafter, the accused Nos.2 and 3 called PW-1 and her

family and informed that they would settle the issue and requested PW-1 and her family not to act hastily. PW-2, Pws.4 and 5 went to the house of the accused Nos.2 and 3 at Hyderabad and even to the house of the accused No.1 at Bangalore to settle the issue but in vain. On 14-05-2017, the accused Nos.1 to 4 are stated to have come to the maternal house of PW-1 and demanded additional dowry of Rs.10,00,000/- for the accused No.1 to go to the United States and threatened that if the same was not provided, the marriage would end in divorce. It is further stated that Pws.4 and 5 were present when such a demand was made. Thereafter, the matter was informed to the police who conducted a counseling but in vain. Later, PW-1 lodged Ex.P1 based on which the present case was registered. Thus, what can be gleaned from Ex.P1 is that according to it, an amount of Rs.10,00,000/-, Rs.1,00,000/- to the accused No.4, a gold ring, a gold chain, and Rs.85,000/- to purchase a gold bracelet were given by PW-2 when the alliance of PW-1 was fixed with the accused No.1.

16. Ex.P1 further states that the mode and manner in which PW-1 was harassed happens to be that a sum of Rs.10,00,000/- was demanded

and that the accused No.1 even demanded PW-1 to commit prostitution so that he could secure a better job in the United States. In addition, Ex.P1 categorically reveals as many as four occasions on which the elders intervened and even the specific dates for two of such occasions. Besides, Ex.P1 also mentions that Pws.4 and 5 tried to settle the disputes by going to the house of the accused Nos.2 to 4 at Hyderabad, and then to the house of the accused No.1 at Bangalore, and that they were present when the accused Nos.1 to 4 came to the house of PW-2 on 14-05-2017 to demand the additional dowry. Thus, it is apparent that besides PW-2, Pws.4 and 5 are the elders during the aforesaid three occasions. Moreover, PW-3 along with LW-4/Pasupuleti Vijaya Lakshmi and the accused No.5 were the witnesses to the very first occasion where the harassment was made known personally on 05-04-2017 at Bangalore.

In her examination-in-chief, PW-1 reiterated the contents of Ex.P1. She further stated that about ten days prior to her marriage, the amount of Rs.10,00,000/-, and Rs.85,000/- for gold articles were given to the accused Nos.1 to 3 as per their demand. It is further stated that the

amount of Rs.1,00,000/- was given to the accused No.4 at the time of the marriage of PW-1 with the accused No.1. Thus, according to PW-1, the amount of Rs.10,00,000/- and the cash of Rs.85,000/- for gold articles were given to the accused Nos.1 to 3 about 10 days prior to her marriage. In this connection, as could be seen from Ex.P1, the specific date or period prior to the marriage of PW-1 on which the cash of Rs.10,00,000/- and the cash of Rs.85,000/- for gold articles was given is not mentioned in Ex.P1. Further, as per the contents of Ex.P1, it is seen that the aforesaid cash of Rs.10,00,000/-, Rs.85,000/- for gold articles and the cash of Rs.1,00,000/stated to be given to the accused No.4 were given together. However, the evidence of PW-1 reveals otherwise. In this connection, the evidence of PW-2 reveals that according to him, the accused Nos.1, 2 and 4 came to his house and demanded the cash of Rs.10,00,000/-, Rs.85,000/- for gold articles and Rs.1,00,000/- for the accused No.4.

18. PW-2 deposed that the cash of Rs.10,00,000/- and the amount of Rs.85,000/- were given seven days prior to the marriage to the accused Nos.1 to 3 and that the amount of Rs.1,00,000/- was given to the accused

No.4 at the time of the marriage. In this connection, it must be noted that the evidence of PW-1 as well as that of PW-2 stand on a similar note with regard to when the aforesaid amounts were given. Granted, there is a little discrepancy regarding the period prior to the marriage when they were given. While PW-1 deposed that it was about ten days prior to her marriage, PW-2 deposed that it was seven days prior to the marriage. Either way, the same is not a ground to disbelieve the case of the prosecution. Even the testimony of PW-3 stands on a similar line as that of PW-2. The evidence of Pws.4 and 5 does not speak anything on this aspect. Thus, the prosecution relied upon the evidence of Pws.1 to 3 to support its contention in this regard. In this connection, it must be noted that admittedly, there is no documentary evidence to show that the aforesaid sum was given by PW-2 to any of the accused. The same is categorically admitted by Pws.1 and 2.

19. Granted, in the ordinary course of things, even presuming that such amount had been given, still, the same would never be reduced to writing. This Court is expected to have the thinking and rationale of a

prudent man and a prudent man would find it justifiable and reasonable that there was no documentary evidence to show that the aforesaid amounts were given. Probing a little further, since the aforesaid amounts were stated to be given for the marriage of PW-1 i.e., an auspicious event, and moreover considering the fact that such an event would bring two families together and more importantly, since the institute of marriage is based on mutual trust and admiration, no person in their right sense would reduce the giving of such amounts into writing. Further, the same would only indicate a lack of trust and more importantly, it would imply that a notion of an ill feeling that such marriage might result in a failure is looming upon the giver of such amounts. When such is the case, the absence of any documentary evidence in this regard is undoubtedly justifiable and plausible. However, in his cross-examination, PW-2 admitted that he did not have the capacity to give the amounts of Rs.10,00,000/- and Rs.1,00,000/-. When such is the case, the same would only cast a reasonable doubt upon the contention of the prosecution that the aforesaid amounts were given.

- In furtherance of this aspect, it must be noted that according to 20. PW-1, the accused Nos.1 to 3 came to their house and demanded the aforesaid amounts. She further deposed that the amounts were given to the accused Nos.1 to 3 and that the amount of Rs.1,00,000/- was given to the accused No.4. However, as per the examination-in-chief of PW-2, the accused Nos.1, 2 and 4 came to his house and demanded the said amounts. PW-2 deposed that the same were given to the accused Nos.1 to 3 and that the amount of Rs.1,00,000/- was given to the accused No.4. The testimony of PW-3 would go to show that the accused Nos.1 to 4 came to the house of PW-2 and demanded the said amounts. When such is the case, it is apparent that there is a discrepancy in this regard as to who exactly went to the house of PW-2 to demand the said amounts. Further, the aforesaid admission of PW-2 that he did not have the capacity to give the amounts in question cannot be lost sight of.
- 21. In addition, in the ordinary course of things, such amounts would be handed over in the presence of the marriage elders. Admittedly, the marriage of the accused No.1 and PW-1 is an arranged marriage and

admittedly, there have been talks regarding the alliance prior to the marriage. When such is the case, prudence and logic dictate that the aforesaid amounts would have been given in the presence of any one elder on behalf of the family of PW-1. Admittedly, PW-3 is not an elder to the marriage though he stated that he was present during the marriage talks. In addition, the testimony of PW-3 does not reveal anywhere that the amounts were given in his presence. When such is the case, it would only stand that no marriage elder has been examined to show that the aforesaid amounts were given to the accused. No reason has been adduced by the prosecution in this regard. Even Ex.P1 does not speak of the presence of any elder when such amounts were given. In fact, Ex.P1 does not even mention the presence of PW-3 when the amounts were given. When such is the case, it is apparent that the evidence of PW-3 does not aid the case of the prosecution.

22. Moreover, it is seen that the prosecution has been unable to examine any independent witness such as the marriage elder who would have had knowledge of the handing over of such amounts. Moreover, the

record does not reveal as to how PW-1 had come into possession of a huge amount of Rs.10,00,000/-. Even the cross-examination of PW-1 reveals that PW-2 is a farmer who had Ac.1-00 cents of land. It is further stated that PW-2 did not have an own house. Further, the cross-examination of PW-2 reveals that no elder was present when the dowry was given. This conduct of Pws.1 and 2 sways and strays from the ordinary conduct of a father performing the marriage of his daughter. In addition, PW-2 categorically admitted in his cross-examination that they only incurred the marriage expenses without giving any dowry. When such is the case, the same would only go against the case of the prosecution in this regard.

23. Thus, in view of the absence of any elder to corroborate the contention of the prosecution that the money was given, the admission of PW-2 that he did not have the capacity to give the sums of Rs.10,00,000/- and Rs.1,00,000/-, the admission of PW-2 that he only incurred the marriage expenses, the fact that PW-3 is not specifically stated to be an eye witness in this aspect and more importantly, owing to the discrepancy as to who among the accused came to the house of Pws.1 and 2 to demand the

money, it can only be said that the prosecution has not established that the dowry was given. Granted, this Court cannot be oblivious to the fact that by virtue of section 8A of the Dowry Prohibition Act, the burden is on the accused to show that they had not taken any dowry. The accused did not adduce any evidence or examine themselves or anyone on their behalf to discharge this burden. However, it must be noted that the accused can shift the onus cast upon them by virtue of section 8A onto the shoulders of the prosecution by merely denting the case of the prosecution in the course of the cross-examination of the witnesses on behalf of the prosecution. It is neither imperative nor obligatory on the part of the accused to examine themselves as witnesses or to adduce any evidence to shift this onus cast upon them.

24. In the present case, as could be gleaned from the cross-examination of Pws.1 to 3, it can safely be said that the accused have been able to discharge this onus and thereby the onus shifts onto the prosecution. The prosecution failed to establish that any sum was given to the accused Nos.1 to 4 as dowry. With regard to the role of the accused No.5, it is seen

that even according to the prosecution, the accused No.5 was not even present when the aforesaid dowry was stated to have given to the other accused. Further, the record does not reveal anywhere that the accused No.5 was aware of such dowry have been given or that it was given as per his demand. In such a scenario, it can only be said that the prosecution failed to establish even a *prima facie* case against the accused No.5 that he took any dowry.

25. With regard to the demand for dowry and the harassment in this regard, the pivotal contention of the prosecution is that all the accused harassed PW-1 to bring dowry of Rs.10,00,000/- and that such harassment was meted out to PW-1 even in the presence of the elders. It is further stated that such demand was made by the accused No.1 at Bangalore, by the accused Nos.2 to 4 over the phone and at Hyderabad, and by the accused Nos.1 to 4 at Challapalli i.e., the house of PW-2. One other specific allegation against the accused No.1 is that he even harassed PW-1 to commit prostitution to procure money to enable him to secure a better job in America. In this connection, as per Ex.P1, it is stated that PW-1

joined the accused No.1 for conjugal life at Bangalore on 05-03-2017. One week after the inception of their conjugal life, the accused No.1 is stated to have forced PW-1 to call PW-2 to demand Rs.10,00,000/- for him to secure a job in America. The same recitals finds place in the examination-in-chief of PW-1. The cross-examination of PW-1 is specifically silent on this aspect.

Even the examination-in-chief of PW-2 categorically reveals that one week after the inception of the conjugal life of PW-1 and the accused No.1, PW-1 called PW-2 over the phone and informed him that the accused No.1 demanded Rs.10,00,000/-. PW-2 further deposed that he was unable to provide the same. Even this inability of PW-2 to provide the sum of Rs.10,00,000/- and the expression of such inability finds place in Ex.P1 as well as the examination-in-chief of PW-1. The testimonies of Pws.3 to 5 also reveal that PW-1 informed PW-2 regarding the harassment of the accused No.1 for the sum of Rs.10,00,000/- and PW-2 that expressed his inability to provide the same. In this connection, though Pws.3 to 5 also deposed on this aspect, still, admittedly, they are merely hearsay witnesses

to this aspect but not direct witnesses. It is not the case of the prosecution that any of Pws.3 to 5 actually heard PW-1 calling PW-2 over the phone to request for the sum of Rs.10,00,000/- on the demand of the accused No.1. When such is the case, the evidence of Pws.3 to 5 in this regard does not aid the case of the prosecution.

A question may arise regarding the testimony of PW-2 in this regard. Admittedly, it is not the accused No.1 who demanded the sum of Rs.10,00,000/- directly from PW-2 over the phone. Even as per the prosecution, it was PW-1 who requested for the sum of Rs.10,00,000/- from PW-2 as per the demand of the accused No.1. Regardless, when PW-1 directly informed PW-2 over the phone and requested him to give the sum of Rs.10,00,000/-, it is apparent that PW-2 is a direct witness to this request or demand, and more precisely on the receiving end of the conversation with PW-1. That being said, the testimony of PW-2 is directly and substantially connected with the request by PW-1 for the sum of Rs.10,00,000/- at the demand of the accused No.1. As such, the testimony of PW-2 in this regard is of immense help to the case of the prosecution.

28. In this connection, it is seen that Ex.P1 contains another recital that the accused Nos.2 and 4 joined PW-1 and the accused No.1 at Bangalore. However, till this juncture, the record does not reveal anywhere that the accused Nos.2 and 4 demanded the sum of Rs.10,00,000/- or that they forced PW-1 to call PW-2 for the aforesaid sum. In addition, it is not stated as to how many days the accused Nos.2 and 4 lived with PW-1 and the accused No.1 at Bangalore. Even the examination-in-chief of PW-1 does not reveal any specific details on this aspect. However, the crossexamination of PW-1 categorically reveals that when PW-1 and the accused No.1 started their conjugal life, the accused No.4 came to Bangalore and stayed for two or three days only. Even as per the prosecution, PW-1 and the accused No.1 lead conjugal life happily for one week. In such a scenario, when admittedly, the accused No.4 stayed for only two or three days, it cannot be said that the accused No.4 demanded any dowry during this period. The testimony of PW-1 is silent as to the period for which the accused No.2 stayed at Bangalore. When such is the

scenario, it can only be said that the role of the accused Nos.2 and 4 in this demand for dowry during this particular period is not made out.

29. As per Ex.P1, it is stated that the accused No.1 started harassing PW-1 daily for additional dowry since 15-03-2017. Ex.P1 further states that PW-1 informed the same to her parents and her in-laws. Even the examination-in-chief of PW-1 categorically reveals that since 15-03-2017, the accused No.1 started harassing her to bring Rs.10,00,000/- and that she informed the same to her parents and her in-laws. The same recital finds place even in the evidence of Pws.2 and 3. In this connection, it is seen that as per the examination-in-chief of PW-1 and that of PW-2, it is stated that the accused abused PW-1 and beat PW-1 for additional dowry. However, Ex.P1 does not specifically state anywhere that PW-1 was subjected to physical assault or hurt at the hands of the accused No.1. When such is the case, it can only be said that this statement of Pws.1 and 2 that the accused No.1 beat PW-1 has no corroboration or basis to sustain. However, as per the evidence of Pws.1 and 2, it is categorically made out that the accused No.1 harassed PW-1 for the sum of Rs.10,00,000/- since 15-03-2017 and that the same was informed to the parents and in-laws of PW-1. Though Pws.1 and 2 were cross-examined at length, nothing of significance that would impeach their testimony in this regard was elicited. When such is the case, it can only be said that the testimonies of Pws.1 and 2 hold good till this juncture.

One other specific mode of harassment put forth by the prosecution is that the accused No.1, in particular, harassed PW-1 by demanding her to commit prostitution with his friends. In this connection, Ex.P1 contains a categorical recital that the accused No.1 brought his friends to his house at Bangalore and demanded PW-1 to commit prostitution and that this mode of harassment took place since 20-03-2017. In addition, when PW-1 informed the same to her parents, they sent PW-3, LW-4/Pasupuleti Vijaya Lakshmi and the accused No.5 to look into the matter. Ex.P1 further states that the aforesaid persons arrived at the house of PW-1 and the accused No.1 at Bangalore on 05-04-2017. Ex.P1 further states that the accused No.1 demanded PW-1 to commit prostitution even in their presence. In this connection, the record reveals that PW-1

specifically and categorically deposed in her examination-in-chief that since 20-03-2017, the accused No.1 started harassing her to spend time with his friends in the bedroom to procure money for the accused No.1 to go to America. It is further seen from the examination-in-chief of PW-1 that the accused No.1 even brought unknown persons to the house and demanded PW-1 to spend time with them physically. Even this aspect specifically finds place in Ex.P1.

31. Though PW-2 also deposed regarding this mode of harassment by the accused No.1, admittedly PW-2 is only a hearsay witness to this aspect and so his evidence is not substantive in this regard. However, the evidence of PW-3 in this connection is significant. According to Ex.P1 and the evidence of Pws.1 and 2, the accused No.5 along with PW-3 and LW-4/ Pasupuleti Vijaya Lakshmi went to Bangalore when the accused No.1 started harassing PW-1 to commit prostitution. The examination-in-chief of PW-1 categorically even mentions the date on which the aforesaid persons arrived at Bangalore i.e., on 05-04-2017, and the same date is mentioned in Ex.P1. The examination-in-chief of PW-3, who is stated to have gone to

Bangalore does not specifically mention the date on which he went to Bangalore. Regardless, the examination-in-chief of PW-3 categorically states that when PW-1 informed PW-2 that the accused No.1 was harassing PW-1 to commit prostitution, PW-2 sent him along with the accused No.5 and LW-4/Pasupuleti Vijaya Lakshmi to look into the issue. PW-3 deposed that the accused No.1 demanded the sum of Rs.10,00,000/- even in their presence or that PW-1 should perform prostitution and that the accused No.1 drove PW-1 out of the house.

32. Even Ex.P1 reveals that the accused No.1 demanded PW-1 for the sum of Rs.10,00,000/- in the presence of PW-3, the accused No.5 and LW-4/Pasupuleti Vijaya Lakshmi and in case of failure, to commit prostitution and that he drove her out of the house. It is pertinent to note that PW-3 is a direct witness to this incident in particular. The cross-examination of PW-3 reveals that he admitted that he came to know about the details of the harassment of PW-1 only through PW-2. As such, a question may arise if PW-3 was, in fact, a direct witness to this harassment. However, even the cross-examination of PW-3 reveals that he went to

Bangalore. Further, based on Ex.P1 and the evidence of Pws.1 to 3, it is established beyond all reasonable doubt that PW-3 went to Bangalore along with LW-4/Pasupuleti Vijaya Lakshmi and the accused No.5. Though PW-3 was cross-examined, his testimony remains credible and reliable and the statement in his examination-in-chief that the accused No.1 demanded PW-1 to commit prostitution even in his presence remains established and proved. Thus, till this juncture, it can safely be said that based on the contents of Ex.P1 which are squarely corroborated by the evidence of Pws.1 to 3, the prosecution has established beyond all reasonable doubt that the accused No.1 harassed PW-1 for the dowry of Rs.10,00,000/- to go to the United States and that he forced PW-1 to call PW-2 over the phone to request for such amount and more importantly, based on the direct evidence of the victim/PW-1 and the evidence of the direct eye witness/PW-3, it is established that the accused No.1 even demanded PW-1 to commit prostitution for money.

33. Till this juncture, it must be noted that no specific allegations of harassment were made out against any of the other accused except the

accused No.1. Regardless, there are certain aspects in the case of the prosecution which are yet to be examined. As per Ex.P1, it is stated that after PW-1 was driven out of the house, she called the accused Nos.2 and 3 over the phone and that they supported the accused No.1. Ex.P1 further reveals that the accused No.5 was one of the elders to the marriage of the accused No.1 and PW-1 and that he happens to be a relative of the accused No.1. It is further contended that even the accused No.5 indirectly and impliedly supported the harassment of the accused No.1. Even the examination-in-chief of PW-1 reveals that when she informed the accused Nos.2 and 3 about the harassment of the accused No.1, they supported the accused No.1. It is further stated that even the accused No.5 supported the accused No.1 and stated that PW-1 should commit prostitution and provide the dowry of Rs.10,00,000/-. Ex.P1 further reveals that PW-1 along with the aforesaid persons i.e., PW-3, the accused No.5 and LW-4/Pasupuleti Vijaya Lakshmi returned to her maternal home on 06-04-2017. The evidence of Pws.2 and 3 also reveals that when PW-1 informed the accused Nos.2 and 3, they supported the accused No.1.

34. In this aspect, it must be noted that even according to the prosecution, Pws.2 and 3 came to know that PW-1 informed the accused Nos.2 and 3 and that they supported the accused No.1. In such a scenario, it can only be said that Pws.2 and 3 are not direct eye witnesses in this aspect. After PW-1 was driven out of the house, Ex.P1 states that the accused Nos.2 and 3 informed PW-1 and her parents not to act hastily and that they would settle the matter. The evidence of PW-1 categorically speaks that the accused Nos.2 and 3 called her parents to settle the issue and asked them not to take any steps hastily. Thereafter, as per Ex.P1, it is stated that PW-2 along with Pws.4 and 5 went to the house of the accused Nos.2 and 3 at Hyderabad. In this connection, it is stated that Pws.4 and 5 acted as the elders to settle the dispute. As per Ex.P1, it is stated that after PW-1 was forced to return to her maternal home on 06-04-2017, PW-2 along with Pws.4 and 5 went to the house of the accused Nos.2 and 3 at Hyderabad. Ex.P1 further states that the aforesaid persons even went to the house of the accused No.1 at Bangalore and that despite the same, none of the accused changed their attitude. In this regard, it must be noted that Ex.P1 does not categorically state what transpired when Pws.2, 4 and 5 went to the house of the accused Nos.2 and 3 at Hyderabad and the house of the accused No.1 at Bangalore. As per the examination-in-chief of PW-1, it is stated that the accused Nos.1 to 4 demanded the dowry of Rs.10,00,000/- or that she should commit prostitution if the amount was not given. Admittedly, PW-1 was not present when Pws.2, 4 and 5 went to Hyderabad or Bangalore, for that matter. When such is the case, the evidence of PW-1 in this regard has little significance.

35. The examination-in-chief of PW-2 reveals that he along with Pws.4 and 5 went to the house of the accused Nos.2 and 3 at Hyderabad and that the accused replied that PW-1 should obey the accused No.1. According to PW-2, when they went to the house of the accused No.1 at Bangalore, a similar response was given by the accused No.1. The record reveals that no question was posed to PW-2 specifically in connection with his having gone to Hyderabad or Bangalore. Coming to the evidence of PW-4, he deposed that after PW-1 returned to her maternal home, he along with Pws.2 and 5 went to the house of the accused Nos.2 to 4 at

Hyderabad. PW-4 further stated that they requested the accused Nos.2 to 4 to reprimand the accused No.1. According to PW-4, they went to Bangalore from Hyderabad and admonished the accused No.1. Thereafter, the accused No.1 is stated to have demanded dowry of Rs.10,00,000/without listening to them. In this connection, it must be noted that the examination-in-chief of PW-4 does not state anywhere that the accused Nos.2 to 4 demanded dowry when Pws.2, 4 and 5 went to the Hyderabad. The testimony of PW-4 only states that he along with Pws.2 and 5 requested the accused Nos.2 to 4 to reprimand the accused No.1. It does not show any demand by the accused Nos.2 to 4 for dowry or in any other manner.

In his cross-examination, PW-4 deposed that he could not recollect the date when he went to Hyderabad or Bangalore. He stated that he along with Pws.2 and 5 went to Vijayapuri Colony, Vanasthalipuram i.e., the house of the accused Nos.2 to 4. He deposed that he could not say the exact location in Bangalore where they went. In this connection, PW-4 categorically deposed that he did not personally know about the

harassment and that the same was informed to him by PW-2. A perusal of the record reveals that the accused Nos.2 to 4 are stated to be residents of Vijayapuri Colony, Vasatallipuram. When such is the case, the statement of PW-4 that they went to Vijayapuri Colony, Vasatallipuram would only support the case of the prosecution. Though PW-4 deposed that he could not say the exact location of the house of the accused No.1 at Bangalore, still, the same is not fatal to the case of the prosecution. However, the examination-in-chief of PW-4 categorically reveals that the demand by the accused No.1 for the dowry of Rs.10,00,000/- was made in his presence as well.

37. The other elder, who was examined as PW-5 deposed in his examination-in-chief that he along with Pws.2 and 4 went to the house of the accused No.2 at Hyderabad. He further stated that they informed the accused No.2 of the harassment and that she did not listen to them and demanded dowry and asked them to talk to the accused No.1 at Bangalore. Thus, the examination-in-chief of PW-5 categorically states that even the accused No.2 demanded dowry and that too in his presence. Further,

according to PW-5, they went to the house of the accused No.1 at Bangalore from Hyderabad. He stated that the accused No.1 did not listen to them and demanded dowry of Rs.10,00,000/- to go to America. In his cross-examination, PW-5 deposed that he could not say the location of the house of the accused No.1 at Bangalore. However, the same cannot be fatal. He denied the suggestion that he did not personally know of the harassment. He admitted that he stated to the police that he came to know about the harassment through PW-2. However, he volunteered that some aspects of the harassment were informed by PW-2 and that he was personally aware of some aspects of the harassment.

38. In this connection, even PW-5 deposed that they went to Vijayapuri Colony, Vasatallipuram. He denied the suggestion that they did not go to Hyderabad or Bangalore. Save for these aspects, even the cross-examination of PW-5 does not contain anything of significance regarding their having gone to Hyderabad or Bangalore. Thus, though Pws.4 and 5 were cross-examined, their evidence remained unimpeachable with regard to their visit to Hyderabad and Bangalore. In addition, even the testimony

of PW-2 in this regard has withstood the test of cross-examination. When such is the case, it can safely be said that the prosecution has established beyond all reasonable doubt that PW-2, Pws.4 and 5 went to Hyderabad as well as Bangalore. However, while the testimony of PW-4 does not contain anything incriminating against the accused Nos.2 to 4 during their visit to Hyderabad, it only speaks of the demand by the accused No.1 for dowry. The evidence of PW-5 categorically reveals the demand for dowry by the accused No.2 as well as the accused No.1. The evidence of PW-2 goes to show that the accused Nos.2 and 3 stated that PW-1 should obey the accused No.1 to avoid the problems.

39. In this connection, even presuming the examination-in-chief of PW-2, Pws.4 and 5 to be true in their entirety, still, there is a sense of ambiguity regarding the demand for dowry at Hyderabad. While, the accused No.2 is stated to have demanded dowry at Hyderabad according to PW-5, no such specific demand finds place in the evidence of Pws.2 and 4. However, it must be noted that the evidence of Pws.4 and 5 categorically states that the accused No.1 demanded dowry of Rs.10,00,000/- at

Bangalore. Thus, the prosecution has established the demand for dowry of Rs.10,00,000/- by the accused No.1, though the same cannot be said with regard to the accused Nos.2 to 4. Ex.P1 further reveals that on 14-05-2017, the accused Nos.1 to 4 came to the house of PW-1 at Challapalli and demanded dowry of Rs.10,00,000/- to send the accused No.1 to the United States. It is further stated that they threatened that the marriage of PW-1 would end in divorce if the dowry was not given.

40. In this connection, Ex.P1 states that the incident on 14-05-2017 took place in the presence of Pws.2, 4 and 5 as well. The evidence of PW-1 goes to show that on 14-05-2017, the accused Nos.1 to 4 came to her house and demanded dowry of Rs.10,00,000/- and threatened that her marriage would end in divorce if the same was not provided. PW-1 further deposed that PW-2, Pws.4 and 5 along with her mother i.e., LW-3/Pasupuleti Padma were present during the event. The cross-examination of PW-1 does not contain anything in particular regarding this aspect. The same can be said with regard to the cross-examination of PW-2 as well. No question or suggestion whatsoever was posed to PW-2 in connection with this incident

stated to have taken place on 14-05-2017. A perusal of the evidence of PW-4 reveals that on 14-05-2017, the accused Nos.1, 2 and 4 came to the house of PW-2. He deposed that the accused Nos.1, 2 and 4 demanded dowry of Rs.10,00,000/- and threatened that the marriage of PW-1 would end in divorce if the same was not provided. Even the cross-examination of PW-4 does not depict anything regarding this incident in particular. Neither the presence of PW-4 during the event on 14-05-2017 questioned or challenged in his cross-examination nor was his statement that the accused Nos.1, 2 and 4 demanded dowry of Rs.10,00,000/- in his presence put to test. In such a scenario, it can only be said that notwithstanding his cross-examination, the evidence of PW-4 in this regard holds good.

41. The evidence of PW-5 also reveals that on 14-05-2017, the accused Nos.1, 2 and 4 came to the house of PW-2, demanded dowry of Rs.10,00,000/- and threatened that the marriage of PW-1 would end in divorce in case of failure to provide the sum as demanded. Akin to the cross-examination of Pws.2 and 4, even the cross-examination of PW-5 does not contain anything in particular regarding the incident that took

place on 14-05-2017. Absolutely no question or challenge was posed to PW-5 regarding either his presence on 14-05-2017 or about the demand for dowry by the accused Nos.1, 2 and 4. When such is the case, it can only be said that the evidence of PW-5 in this regard holds good as well. Thus, based on the evidence of Pws.1, 2, 4 and 5, it is apparent that the accused came to the house of PW-2 on 14-05-2017 and demanded dowry of Rs.10,00,000/- failing which the marriage of PW-1 would end in divorce. It is already seen that the cross-examination of Pws.1, 2, 4 and 5 does not impeach their evidence in this regard and so, their statements in this regard hold good. As such, the presence of the accused at the house of PW-2 on 14-05-2017 as well as their demand for dowry of Rs.10,00,000/- is established beyond all reasonable doubt.

At this juncture, some aspects in the case of the prosecution have to be looked into. In her cross-examination, PW-1 admitted that she did not approach the police at Bangalore. Admittedly, even as per the prosecution, the demand for dowry and more importantly, the demand by the accused No.1 to commit prostitution took place at Bangalore. When

such is the case, PW-1 could have approached the police at Bangalore. However, the record reveals that admittedly, PW-1 happens to be a native of Challapalli. In addition, it is nowhere revealed in this regard that PW-1 lived in Bangalore prior to her marriage at any point of time. Moreover, as per the prosecution, PW-1 and the accused No.1 lead conjugal life at Bangalore for hardly one month. It is borne by record that PW-1 and the accused No.1 started their conjugal life at Bangalore on 05-03-2017 and thereafter, PW-1 returned to her maternal home on 06-04-2017. The record does not reveal anywhere that PW-1 and the accused No.1 resumed conjugal life at Bangalore subsequent to 06-04-2017. When such is the case, this inaction of PW-1 in approaching the police at Bangalore appears justifiable and reasonable since she stayed for only one month at Bangalore.

43. One other thing worth considering is that as per the examination-in-chief of Pws.1 and 2, it is stated that when PW-1 was driven out on 05-04-2017 and returned to Challapalli, the accused No.1 is stated to have threatened PW-1 by stating that if she returned to her

maternal home, her younger sister/LW-4/Pasupuleti Vijaya Lakshmi would not get married and that the accused No.1 would marry LW-4/Pasupuleti Vijaya Lakshmi if PW-1 died. The same accusation finds place even in the evidence of PW-2. However, the record reveals that such accusation does not find place anywhere in Ex.P1. While the cross-examination of PW-1 is silent on this aspect, the cross-examination of PW-2 reveals that a suggestion was posed to him that he did not make the aforesaid accusation before the police. This suggestion was denied by PW-2. However, the record reveals that this contention in particular does not find place in Ex.P1. In addition, even the statement of PW-2 recorded by the police does not contain this aspect in particular. When such is the case, it can only be said that this statement of Pws.1 and 2 in their evidence does not find any corroboration on record and thereby, it has no basis to sustain.

44. The investigating officer, who was examined as PW-6 stated in his examination-in-chief that on 07-07-2017, PW-1 approached the police station and lodged the written information, based on which he registered the First Information Report/Ex.P2. In his cross-examination, PW-6

admitted that the entire investigation was done at Challapalli and that he did not examine the neighbours at Hyderabad and Bangalore. Delving a little further into this admission of PW-6, it is already held that PW-1 and the accused No.1 lead conjugal life at Bangalore hardly for a period of one month. When such is the case, in all probability, the neighbours at Bangalore might not have been privy to this harassment meted out to PW-1. Further, it is not the specific case of the prosecution that PW-1 was subject to extreme physical hurt or injury that might compel her to approach the neighbours for assistance or which might bring the harassment to the notice of the neighbours. In such a scenario, the nonexamination of the neighbours at Bangalore is not fatal to the case of the prosecution. In addition, even according to the prosecution, PW-1 stayed for a limited period of time at Hyderabad i.e., about seven days to be precise, as per the cross-examination of PW-1. It is not the case of the prosecution that any harassment took place during the aforesaid period of seven days. When such is the case, the question of examining the neighbours at Hyderabad does not even arise.

One significant thing worth considering is that even as per the **45.** prosecution, the accused came to the house of PW-2 at Challapalli on 14-05-2017 and demanded dowry. It is not the case of the prosecution that the accused came to the house of PW-2 at Challapalli subsequently or that they demanded dowry in any manner subsequently. When such is the case, it can only be said that as per the prosecution, the offence took place for the last instance on 14-05-2017. However, the record reveals that Ex.P1 was lodged on 07-07-2017. Thus, it is apparent that there is delay of a little more than fifty days in lodging Ex.P1. In addition, the First Information Report states that there is no delay in lodging Ex.P1. Be that as it may, as per the record, the delay of about fifty days is prima facie made out. No reason whatsoever has been adduced by the prosecution for this unexplained delay. However, as per the examination-in-chief of PW-1, it is stated that after the incident on 14-05-2017, PW-1 approached the police and that a counseling was conducted. PW-1 deposed that despite the counseling, the accused did not mend their attitude. Even the examinationin-chief of PW-2 reveals that the counseling was conducted by the police and that the accused did not mend their ways. The evidence of Pws.4 and 5 is silent on this aspect.

46. The evidence of PW-3 reveals that the counseling was conducted. In this connection, a perusal of Ex.P1 reveals that even according to Ex.P1, when the matter was informed to the police, a counseling was conducted and that despite the counseling, the accused did not change their attitude. Thus, it is made out as per the evidence of Pws.1 to 3 and even as per Ex.P1 that a counseling was conducted after 14-05-2017. In this connection, the investigating officer/PW-6 admitted in his cross-examination that usually a counseling would be conducted in matrimonial cases after the information is given to them. PW-6 volunteered that the counseling would be conducted only if the victim is interested and deposed that the counseling was, in fact, conducted in the present case. When such is the case, even the testimony of PW-6 goes to show that the counseling was conducted. However, PW-6 deposed that no counseling report was filed before this Court. In this connection, the record reveals that it does not contain any counseling report. Moreover, even the chargesheet does not mention anything about this counseling.

47. In the humble opinion of this Court, if a counseling was, in fact, conducted, PW-6 ought to have filed the report of the counseling before this Court not only to enable to this Court to come to a better understanding of the disputes between the parties but also to explain the delay in lodging Ex.P1. However, for reasons unknown or best known to PW-6, no counseling report has been filed and no reason has been adduced for this inaction either. Be that as it may, when the evidence of Pws.1 to 3 and that of PW-6 coupled with the recital in Ex.P1 categorically shows that a counseling was conducted, the absence of any report in this regard does not ipso facto render the inference that could be drawn from the evidence of Pws.1 to 3, 6 and Ex.P1 that the counseling was conducted as null and void. Moreover, it has been held on umpteen occasions by the Hon'ble Courts that a lapse in investigation by the investigating officer which does not cause any prejudice to the accused and which does not significantly affect the case on hand is not fatal to the case of the prosecution if the prosecution establishes its case otherwise. Considering the same, when the evidence of Pws.1 to 3, 6 and Ex.P1 categorically speak of the counseling, notwithstanding the absence of any report, this Court is satisfied that the prosecution has established that the counseling was conducted.

Thus, when the counseling was conducted after 14-05-2017 and that too at the instance of PW-1, it can only be said that one effort or the other was made by PW-1 to settle the disputes. In addition, the accused did not even choose to put forth any ground even by way of their cross-examination that they have made any efforts to settle the disputes. The record reveals that it was the family of PW-1 that made efforts to settle the disputes by sending PW-3, LW-4/Pasupuleti Vijaya Lakshmi and the accused No.5 on 05-04-2017 to Bangalore, and then PW-2, Pws.4 and 5 to Hyderabad and to Bangalore. In such a scenario, it can only be said that PW-1 made efforts to settle the disputes and in all possibility and probability, owing to the fact that even the counseling was conducted at the instance of PW-1, there would have been a delay in approaching the police.

Further, it is already established that PW-1 approached the police in the first instance after 14-05-2017 and thereafter, the counseling was held.

49. That being said, it can safely be presumed that this delay in lodging Ex.P1 occurred due to the efforts made by PW-1 to settle the disputes including but not limited to the counseling. When such is the case, it can only be said that this delay is not fatal to the case of the prosecution. PW-1 deposed in her cross-examination that after the First Information Report was registered, the accused Nos.1 to 4 came to Challapalli on 17-08-2017 to settle the issue. It is further stated that the accused Nos.1 to 4 agreed to return an amount of Rs.8,00,000/- and that the same was reduced in writing. PW-1 further deposed that even the accused No.2 and PW-2 signed on the paper along with two others. In this regard, it must be noted that even as per the evidence of PW-1, this action took place subsequent to the lodging of Ex.P1 and the registration of Ex.P2 and so, for obvious reasons, the same would not be depicted in either of them. However, the same would imply that one sort of effort or the other was made and thereby it would only justify the reason for the delay.

- 50. The accused tried to put forth a plea in support of their defense that some money was tendered to PW-2 after the present case was registered and notwithstanding the same, Pws.1 and 2 chose to proceed with the case even after taking money. In this connection, while the evidence of Pws.1, 3 and 5 is silent on this aspect, the evidence of PW-2 reveals that a question was posed to him in his cross-examination that they agreed to settle the matter for Rs.12,00,000/- and that even a cheque was issued in this regard. It was further suggested to PW-2 that even after the the cheque was presented, they foisted the present case for more money. In this connection, it must be noted that the aforesaid suggestions were denied by PW-2. In addition, the accused did not chose to adduce any evidence in this regard. Neither does the record reveal anything in this aspect. If, in fact, Pws.1 and 2 choose to proceed with the matter even after the receipt of the aforesaid sum, the accused could have taken one step or the other. The record reveals nothing of such sort.
- **51.** Moreover, no particulars of the aforesaid cheque such as the bank to which it pertains, when it was issued, to whom it was issued, and

more importantly, whether it was cashed or not find place on record. If the same had been cashed, the details of such transaction would undoubtedly be reflected in the bank account particulars of the accused. The same could have been filed even at the stage of the examination of the accused under section 313 of the Code of Criminal Procedure without the need for any of the accused to enter into the witness box. However, such an action has not been taken by the accused. Further, it was suggested to PW-4 that when the accused No.1 gave a cheque worth Rs.10,00,000/- to PW-2, PW-4 objected by stating that the cheque should be given by the accused No.3 but not by the accused No.1. The same was denied by PW-4. In this connection, it must be noted that as per the suggestion posed to PW-2, the amount was mentioned as Rs.12,00,000/- whereas, according to the suggestion posed to PW-4, the amount happens to be Rs.10,00,000/-. In either case, the accused did not file any documentary evidence to support this contention. It is borne by record that such a suggestion was posed even to PW-6 and PW-6 denied the same. However, the suggestion to PW-6 does not contain the quantum of money or any aspect pertaining to any cheque having been given. When such is the case, it can only be said that this plea of the accused is not tenable.

52. The last aspect to be considered is with regard to the role of each of the accused specifically. In this connection, it must be noted that based on the evidence of Pws.1 to 5, it is established beyond all reasonable doubt that the accused No.1 harassed PW-1 by demanding the dowry of Rs.10,00,000/- and even demanded her to commit prostitution. The same would undoubtedly fall within the purview of cruelty as provided in the explanation to section 498A of Indian Penal Code. Coming to the role of the accused No.2, the evidence of Pws.2, 4 and 5 would categorically go to show that the accused No.2 was very much present in person at Challapalli on 14-05-2017 and demanded the sum of Rs.10,00,000/-. Their evidence further reveals that the accused No.2 even threatened that the marriage of PW-1 would end in divorce if the amount was not arranged. It is borne by record that Pws.1, 2, 4 and 5 are direct witnesses to this demand by the accused No.2.

- **53.** With regard to the role of the accused No.2 when Pws.2, 4 and 5 went to her house, it is seen that as per the evidence of PW-2, the accused No.2 suggested that PW-1 should obey the accused No.1 meaning thereby that PW-1 should either perform prostitution or bring the sum of Rs.10,00,000/-. The statement of PW-5 categorically goes to show that the accused No.2 demanded dowry when they went to her house at Hyderabad. This specific allegation put forth by PW-5 does not find corroboration directly in the evidence of Pws.2 and 4. Regardless, when the presence of the accused No.2 at the house of PW-2 on 14-05-2017 is established beyond all reasonable doubt based on the evidence of Pws.2, 4 and 5, and when it is categorically established that she demanded dowry and threatened that PW-1 should divorce the accused No.1 if the same was not provided, the role of the accused No.2 in the harassment is established beyond all reasonable doubt.
- Coming to the role of the accused No.4, though it is stated that the accused No.4 was given Rs.1,00,000/- at the time of the marriage, the same has not been established by the prosecution. The evidence of Pws.1,

- 2, 4 and 5 would also go to establish that even the accused No.4 was very much present in person at Challapalli on 14-05-2017 and that even she demanded the dowry of Rs.10,00,000/- along with the accused Nos.1 and 2. Further, the evidence of Pws.1, 2, 4 and 5 would also establish that the accused No.4 threatened that if the amount was not provided PW-1 should divorce the accused No.1. The evidence of PW-2 does not state anywhere that the accused No.4 was present he along with Pws.4 and 5 went to Hyderabad. Even the evidence of PW-5 does not show that the accused No.4 was involved in the event of the demand for dowry that took place at the house of the accused Nos.2 and 3.
- and 5 went to the house of the accused Nos.2 to 4 and informed them, still, it does not speak of any demand for dowry by any of the accused at Hyderabad. In such is the case, the role of the accused No.4 with regard to the demand for dowry at Hyderabad is not established. However, the record reveals that the presence of the accused No.4 at Challapalli on 14-05-2017 in addition to her demand for the sum of Rs.10,00,000/- along

with the accused Nos.1 and 2, and her threat that PW-1 should divorce the accused No.1 would only go to show that even the accused No.4 played an active role in the harassment towards PW-1. The prosecution has discharged the initial burden cast upon it and the accused Nos.1, 2 and 4 failed to discharge the onus cast upon them by virtue of section 8A of the Dowry Prohibition Act. As such, the role and involvement of the accused Nos.1, 2 and 4 in the commission of the offences punishable under section 498A of Indian Penal Code and section 4 of the Dowry Prohibition Act is established beyond all reasonable doubt.

that the accused No.5 accompanied PW-3 and LW-4/Pasupuleti Vijaya Lakshmi to Bangalore to talk to the accused No.1 to settle the issue. Thereafter, as per Ex.P1, it is stated that since the accused No.5 was the relative of the accused No.1, he indirectly supported the harassment of the accused No.1. Save for this aspect, Ex.P1 does not contain any specific allegation or accusation against the accused No.5. In addition, even as per Ex.P1, the accused No.5 did not come to the house of PW-2 on 14-05-

2017. Moreover, PW-1 prayed to take necessary action against the accused Nos.1 to 4 but not the accused No.5. Coming to the evidence of PW-1, PW-1 deposed that the accused No.5 stated that she should commit prostitution as demanded by the accused No.1 and that she should provide the dowry of Rs.10,00,000/-. However, Ex.P1 does not contain this recital specifically. It only states that the accused No.5 impliedly supported the accused No.1.

57. In addition, PW-1 categorically admitted in her cross-examination that the accused No.5 is not a family member of the accused No.1. However, she immediately volunteered that the accused No.5 is a family member of the accused No.1. Coming to the evidence of PW-2, he deposed that when they questioned the accused No.5 regarding the harassment, the accused No.5 replied that PW-1 should obey the accused No.1. In furtherance of this aspect, the cross-examination of PW-2 reveals that he approached the accused No.5 for the marriage of PW-1. Save for this aspect, the cross-examination of PW-2 does not contain anything significant with regard to the accused No.5. The evidence of PW-3 does not contain anything incriminating against the accused No.5. Admittedly,

PW-3 along with the accused No.5 and LW-4/Pasupuleti Vijaya Lakshmi went to Bangalore to talk to the accused No.1 regarding the harassment. When such is the case, an inference can be drawn that PW-2 impliedly trusted the accused No.5 to settle the issue.

Besides, if the accused No.5 had, in fact, supported the accused **58.** No.1 in the harassment of PW-1, this conduct of the accused No.5, in all probability, would have come into light at Bangalore when he along with PW-3 and LW-4/Pasupuleti Vijaya Lakshmi went to question the accused No.1. However, it is not specific case of the prosecution that the accused No.5 supported the accused No.1 at Bangalore. Coming to the testimony of PW-4, he categorically deposed in his examination-in-chief that after he along with Pws.2 and 5 returned to Challapalli from Bangalore, PW-2 informed the accused No.5 about the harassment for which the accused No.5 is stated to have replied that PW-2 and his family should solve the same. This statement of PW-4 would only go to show that the accused No.5 was not interested in settling the dispute between the parties. However, the same cannot be taken to imply or infer that the accused No.5

supported the accused No.1 in the harassment. Moreover, when the testimony of PW-4 is significant to the prosecution and when nothing adverse to the case of the prosecution was deposed by PW-4, this Court cannot comprehend of any valid reason as to why this statement of PW-4 in his examination-in-chief which shows that the accused No.5 did not commit any offence and that he merely stayed silent should not be considered. Further, PW-4 categorically stated in his cross-examination that the probability of the accused No.5 having been falsely implicated cannot be ruled out.

The testimony of PW-5 is completely silent about the role of the accused No.5 and he was not even cross-examined by the learned counsel for the accused No.5. Even the testimony of the investigating officer/PW-6 does not contain anything in particular against the accused No.5. In fact, PW-6 admitted in his cross-examination that the accused No.5 was not a family member of the accused No.1. Thus, the only persons who deposed against the accused No.5 happen to be Pws.1 and 2. Pws.3 to 5, who supported Pws.1 and 2 in every aspect did not put forth anything

incriminating against the accused No.5. As a matter of fact, the testimony of PW-4 would only go to show that the accused No.5 merely remained silent during the disputes and that even the probability of the accused No.5 having been falsely implicated cannot be ruled out. Moreover, admittedly, the accused No.5 is not a close relative or the immediate family member of the accused Nos.1 to 4 and thereby, in the usual course of things, no benefit would befall him even if the dowry had been given to the accused No.1. When such is the case, it can only be said that the prosecution failed to establish that the accused No.5 was involved in the harassment meted out to PW-1. Admittedly, even as per the prosecution, no dowry or articles were given to the accused No.5. Thus, it can only be said that the prosecution failed to establish the guilt of the accused No.5 for the offences punishable under section 498A of Indian Penal Code and section 4 of Dowry Prohibition Act beyond all reasonable doubt.

Lastly, the role of the accused No.3 has to be looked into. As per the evidence of Pws.1 and 2, it is stated that the dowry was initially given to the accused Nos.1 to 3 prior to the marriage of PW-1. However, it

is already seen that the prosecution failed to establish that any such dowry was given. When such is the case, the role of the accused No.3 in this aspect is not made out. As per the examination-in-chief of PW-1, the specific allegation against the accused No.3 is that when Pws.2, 4 and 5 went to the house of the accused Nos.2 and 3 at Hyderabad, even the accused No.3 demanded dowry of Rs.10,00,000/-. Admittedly, PW-1 is not a direct witness to this incident and so, her testimony cannot be relied upon in this aspect. In his examination-in-chief, PW-2 deposed that when he along with Pws.4 and 5 went to Hyderabad, the accused Nos.2 and 3 stated that PW-1 should obey the accused No.1. The evidence of PW-4 would only go to show that he along with PW-2 and PW-5 went to the house of the accused Nos.2 and 3 and informed them of the harassment. It does not state anywhere that the accused No.3 demanded dowry. In addition, the evidence of PW-5 categorically reveals that when he along with Pws.2 and 4 went to the house of the accused Nos.2 and 3, it was the accused No.2 alone who demanded the dowry.

Thus, it is apparent that save for the evidence of Pws.1 and 2, **61.** there is no other evidence to show that even the accused No.3 demanded the dowry when Pws.4 and 5 went to the house of the accused Nos.2 and 3 at Hyderabad. In this connection, it is already held that PW-1 is only a hearsay witness to this incident and so, her testimony cannot be relied upon. Thus, the only evidence against the accused No.3 that he demanded the dowry of Rs.10,00,000/- at Hyderabad would be the testimony of PW-2. In this connection, admittedly, when Pws.2, 4 and 5 went to Hyderabad and when only PW-2 deposed that even the accused No.3 demanded dowry, the silence of Pws.4 and 5 in this regard would remain unexplained. It is already seen that Pws.4 and 5 supported the case of the prosecution to a significant extent. In such a scenario, no plausible reason or explanation comes to the mind of this Court as to why Pws.4 and 5 would not put forth the demand for dowry by the accused No.3 as well, if such demand had, in fact, been made. Thus, it can only be said that the testimony of PW-2 alone in this regard does not suffice to establish that even the accused No.3 demanded the dowry when he along with Pws.4 and 5 went to Hyderabad.

The other allegation against the accused No.3 in the evidence **62.** of PW-1 is that on 14-05-2017, the accused No.3 along with the accused Nos.1, 2 and 4 came to the house of PW-2 and demanded dowry. In this connection, a perusal of Ex.P1 seems apposite. In the second paragraph in the second page of Ex.P1, it is mentioned that on 14-05-2017, the accused Nos.1 to 4 came to the house of PW-2. It is further stated that the accused Nos.1 to 4 demanded the dowry of Rs.10,00,000/-. Delving a little further into this aspect, though this Court does not portray or consider itself an expert in this aspect, still, even to the naked eye and to the eye of a prudent man, it appears that the word father-in-law (mama) was subsequently inserted in the first line and the third line in the second paragraph in the second page of Ex.P1. The spacing of the words where the mention of the accused No.3 finds place in the said paragraph would only indicate that the word father-in-law (mama) was not initially written. To further complicate things, it appears that only the word father-in-law (mama) appears to be in a different ink, much paler in colour when juxtaposed with the rest of Ex.P1. Granted, this Court cannot be oblivious to the fact that absolutely no question whatsoever has been posed to any of the witnesses on behalf of the prosecution in their cross-examination in connection with this aspect. Be that as it may, it is the bounden duty of this Court to ensure the carriage of justice and more importantly, to thwart any miscarriage of justice.

In other words, while it is the bounden duty of this Court to punish the accused, it is the solemn duty of this Court to ensure that the innocent are not punished. The prosecution did not adduce any explanation in connection with what *appear* to be subsequent insertions in Ex.P1. Neither did PW-6 put forth any explanation in this aspect. Further, even assuming Ex.P1 to be true in its entirety and even considering the evidence of PW-1 that the accused No.3 along with the accused Nos.1, 2 and 4 came to her maternal house on 14-05-2017, still, the evidence of Pws.2, 4 and 5 would categorically go to show that only the accused Nos.1, 2 and 4 came to the house of PW-2 on 14-05-2017. PW-2 being the father of PW-1 would have no necessity to say that only the accused Nos.1, 2 and 4 came to his house on 14-05-2017 unless the same has actually happened.

- Further, even the other eye witnesses i.e., Pws.4 and 5 64. categorically stated that only the accused Nos.1, 2 and 4 came to the house of PW-2 on 14-05-2017. This Court cannot comprehend of any valid reason as to why the eye witnesses i.e., Pws.2, 4 and 5 would categorically omit to mention the name, the role and the presence of the accused No.3 in the incident that took place on 14-05-2017. Thus, the evidence of Pws.2, 4 and 5 would only go against the evidence of PW-1 and Ex.P1. When such is the case, based on what appear to be subsequent additions in Ex.P1, coupled with the fact that Pws.2, 4 and 5 categorically stated that only the accused Nos.1, 2 and 4 came to the house of PW-2 on 14-05-2017 meaning thereby that the accused No.3 did not come, this Court holds that the accused No.3 had absolutely no involvement whatsoever in the incident that took place on 14-05-2017.
- Save for the aforesaid incident dated 14-05-2017, the role of the accused No.3 in the commission of any offence is not put forth anywhere else on record expressly or impliedly. The Hon'ble Courts have time and again commented upon the misuse or rather the abuse of section

498A of Indian Penal Code to include and incriminate all the relatives of the husband, whether they were involved in the offence or not. However, it is not just the bounden duty but the solemn duty of this Court to ensure that such persons who were roped in deliberately or innocuously should not be made to suffer merely for the acts or offences of their family members. Such a solemn duty is cast on the prosecution as well. However, even when the prosecution fails to discharge its duty in this regard, the same is neither expected nor warranted on the part of this Court. In such a scenario, owing to the fact that the prosecution failed to establish the role and involvement of accused No.3 in the commission of the offences, this Court holds that the accused No.3 cannot be convicted of the offences alleged against him. Thus, point Nos.1 and 2 are answered partly in favour of the prosecution and partly in favour of the accused.

66. **Point No.3:**

This Court holds that the prosecution has established the guilt of the accused Nos.1, 2 and 4 for the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry

Prohibition Act beyond all reasonable doubt. This Court further holds that the prosecution failed to prove the guilt of the accused Nos.3 and 5 for the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act. This point is answered accordingly.

- offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act. Accordingly, the accused Nos.1, 2 and 4 are convicted of the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act under section 248(2) of the Code of Criminal Procedure.
- The accused Nos.3 and 5 are found not guilty of the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act. Accordingly, the accused Nos.3 and 5 are acquitted of the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act

under section 248(1) of the Code of Criminal Procedure. The bail bonds of the accused Nos.3 and 5, if any, shall be in force for a period of six months as contemplated under section 437A of the Code of Criminal Procedure.

69. Hearing on the quantum of sentence:

Heard the accused Nos.1, 2 and 4 regarding the quantum of sentence. The accused Nos.1, 2 and 4 stated that they did not commit any offence and that they are innocent. They further stated that they did not harass PW-1 in any manner. This is not an offence that has taken place in the spur of the moment. In addition, it is seen that the accused No.1 degraded himself to the extent of demanding his wife i.e. PW-1 to commit prostitution for his career prospects. The accused No.1 even demanded a humongous sum of Rs.10,00,000/- as dowry. The accused Nos.2 and 4, being women, supported the accused No.1 instead of admonishing him, more particularly when he demanded PW-1 to commit prostitution. Even the accused Nos.2 and 4 demanded the sum of Rs.10,00,000/- and threatened PW-1 that her marriage would end in divorce if the same was not provided. The nature of these actions and the conduct of the accused Nos.1, 2 and 4, do not warrant this Court to take a lenient view on the accused Nos.1, 2 and 4. Moreover, the nature of the offence also has a direct bearing touching upon the modesty of a woman. As such, the benevolent provisions of the Probation of Offenders Act cannot be applied to the present case.

In the result, the accused Nos.1, 2 and 4 are sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.5000/- each (Rupees five thousand only) for the offence punishable under section 498A read with 34 of Indian Penal Code. In default of payment of fine, the accused Nos.1, 2 and 4 shall undergo simple imprisonment for a period of three months. The accused Nos.1, 2 and 4 are further sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5000/- each (Rupees five thousand only) for the offence punishable under section 4 of the Dowry Prohibition Act. The sentences imposed against the accused Nos.1, 2 and 4 shall run concurrently. The bail bonds of the accused Nos.1, 2 and 4 if any, shall stand canceled. The accused Nos.1 and 2 were detained in judicial custody

during the course of the proceedings. The period of detention undergone by the accused Nos.1 and 2 shall be set off against their sentences as per the provisions of section 428 of the Code of Criminal Procedure. Since the accused No.4 has not been detained in judicial custody in the present case, the provisions of section 428 of the Code of Criminal Procedure shall not be applicable to her. The accused Nos.1, 2 and 4 are appraised of their right to appeal and the availability of free legal aid at the appellate stage. A copy of this judgment is hereby furnished to the accused Nos.1, 2 and 4 free of cost. Since no property is marked, seized or involved, no property order is passed.

Typed to my dictation by the Personal Assistant, corrected, and pronounced by me in the Open Court on this the 23rd day of December, 2024.

Sd/- P. Rajan Uday Prakash.

Judicial Magistrate of First Class,

Movva.

//True Copy//

Judicial Magistrate of First Class, Movva.

APPENDIX OF EVIDENCE WITNESSES EXAMINED

FOR PROSECUTION

FOR DEFENSE

PW1 : Basa Santhi. None.

PW2: Pasupuleti Satyanarayana.

PW3: Pasupuleti Srinivasarao.

PW4: Mendu Yedukondalu.

PW5: Vemula Kumaraswamy.

PW6: D. Chandrasekhar.

EXHIBITS MARKED

FOR PROSECUTION

Ex.P1: Report given by PW-1.

Ex.P2: First Information Report in crime No.138/2017.

FOR DEFENSE

Nil.

MATERIAL OBJECTS MARKED

Nil.

J.M.F.C., MOVVA.

CALENDAR AND JUDGMENT

Calendar Case tried by the Judicial Magistrate of First Class, Movva,

Offence	Report or complaint		Date of	Commenc ement	Close of Trial	Sentence or	Reasons for delay
	1		release	of trial		Order	Remarks
Prior to	07-07-	Served		06-11-	21-05-2024	23-12-	
14-05-	2017	41A		2023		2024	
2017		notice.					

Judgment in C.C. No.420/2019 on the file of the Judicial Magistrate of First Class, Movva.

<u>Complainant</u>: State through the Sub Inspector of police, Challapalli police station.

Accused: 1. Basa Nalini Manohar, s/o. Venkata Subbarao,
35 years, H.No.5-3-622/4, Plot No.86, Vijayapuri
Colony, Phase-II, Vanasthalipuram, Hayath Nagar,
Hyderabad.

2. Basa Ramadevi, w/o.Venkata Subbarao, 55 years, H.No.5-3-622/4, Plot No.86, Vijayapuri Colony, Phase-II, Vanasthalipuram, Hayath Nagar, Hyderabad.

- 3. Basa Venkata Subba Rao, s/o.Sriramamurthy, 59 years, H.No.5-3-622/4, Plot No.86, Vijayapuri Colony, Phase-II, Vanasthalipuram, Hayath Nagar, Hyderabad.
- 4. Veeranalla Gowthami Ramyasri, w/o.Balaji, 34 years, Plot No.86, Near Shiva Sindhu Pathasala, Vijayapuri Colony, Phase -II, Vanasthalipuram, Hayath Nagar, Hyderabad.
- Mendu Srinivasarao, s/o.Radhakrishna, 47 years,
 Radha Nagar, Challapalli village and mandal.

Offences: Punishable under sections 498A read with 34 of Indian

Penal Code and section 4 of the Dowry Prohibition Act.

Finding : Accused Nos.1, 2 and 4 are found guilty.

Accused Nos.3 and 5 are found not guilty.

<u>Sentence</u>: In the result, the accused Nos.1, 2 and 4 are found guilty of the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act. Accordingly, the accused

Nos.1, 2 and 4 are convicted of the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act under section 248(2) of the Code of Criminal Procedure. The accused Nos.3 and 5 are found not guilty of the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act. Accordingly, the accused Nos.3 and 5 are acquitted of the offences punishable under section 498A read with 34 of Indian Penal Code and section 4 of the Dowry Prohibition Act under section 248(1) of the Code of Criminal Procedure. The bail bonds of the accused Nos.3 and 5, if any, shall be in force for a period of six months as contemplated under section 437A of the Code of Criminal Procedure. In the result, the accused Nos.1, 2 and 4 are sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.5000/- each (Rupees five thousand only) for the offence punishable under section 498A read with 34 of Indian Penal Code. In default of payment of fine, the accused Nos.1, 2 and 4 shall undergo simple imprisonment for a period of three months. The accused Nos.1, 2 and 4 are further sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5000/- each (Rupees five thousand only) for the offence punishable under section 4 of the Dowry Prohibition Act. The sentences imposed against the accused Nos.1, 2 and 4 shall run concurrently. The bail bonds of the accused Nos.1, 2 and 4 if any, shall stand canceled. The accused Nos.1 and 2 were detained in judicial custody during the course of the proceedings. The period of detention undergone by the accused Nos.1 and 2 shall be set off against their sentences as per the provisions of section 428 of the Code of Criminal Procedure. Since the accused No.4 has not been detained in judicial custody in the present case, the provisions of section 428 of the Code of Criminal Procedure shall not be applicable to her. The accused Nos.1, 2 and 4 are appraised of their right to appeal and the availability of free legal aid at the appellate stage. A copy of this judgment is hereby furnished to the accused Nos.1, 2 and 4 free of cost. Since no property is marked, seized or involved, no property order is passed.

Sd/- P. Rajan Uday Prakash **Judicial Magistrate of First Class, Movva.**

Copy submitted to the Hon'ble I Additional District Judge, Krishna at Machilipatnam.

//True copy//

Judicial Magistrate of First Class,

Movva.