

(2026) 02 OHC CK 1731
In the Orissa High Court
Case No : Criminal Appeal No. 186 Of 1997

Damodar Moharana

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 12-02-2026

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374(2)
Indian Penal Code, 1860 — Section 34, 302, 304B, 498, 498A
Dowry Prohibition Act, 1961 — Section 2, 2(i), 3, 4, 8A

Citation : (2026) 02 OHC CK 1731

Hon'ble Judges : Sibro Sankar Mishra, J

Bench : Single Bench

Advocate : B. K. Ragada, Sobhan Panigrahi

Final Decision : Allowed/ Disposed Of

Judgement

S.S. Mishra, J

1. The present Criminal Appeal filed by the appellant under Section 374(2) of the Code of Criminal Procedure is directed against the judgment and order dated 19.08.1997 passed by the learned 1st Additional Sessions Judge, Cuttack in S.T. No.18 of 1997. By the impugned judgment, the learned trial Court while acquitting the accused-appellant of the charges for the offences punishable under Sections 498-A/304(B)/302/34 of I.P.C., convicted him for the offence under Section 4 of the D.P. Act and on that count, sentenced the appellant to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/-, in default, to undergo R.I. for six months.

2. The present appeal has been pending since 1997. When the matter was called for hearing, consistently none appeared for the appellant. Therefore, this Court requested Mr. Bijaya Kumar Ragada, learned counsel, who was present in Court to assist the Court as Amicus Curiae. He has readily accepted the same and after obtaining entire record, assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Mr. Ragada.

3. Heard Mr. Bijaya Kumar Ragada, learned Amicus Curiae for the appellant and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

4. The prosecution case in terse and brief is that the deceased, Pratima alias Menaka, daughter of the informant, namely Nrusingha Charan Ojha (P.W.5), was married to Adhikari, son of Damodar Moharana. At the time of marriage, the informant allegedly gave a sum of Rs.7,000/- towards the demand of dowry, besides wooden furniture, gold and silver ornaments, a wrist watch, one Philips radio, a table fan, bell-metal utensils and other customary articles. It is further alleged that after about two months of the marriage, when the informant visited the house of the accused persons to bring the deceased to her parental home, she was not permitted to accompany him unless one television (TV) set was provided as additional dowry, compelling the informant to return empty-handed. After about fifteen days, the younger brother-in-law of the deceased brought her to the informant's house, where the deceased disclosed that she had been subjected to torture by the accused persons on account of dowry demand. After staying at her parental house for about eight to ten days, the deceased again returned to the matrimonial home. Subsequently, the informant once again brought her back, and after about fifteen to twenty days, one Indramani, another younger brother-in-law of the deceased, took her back to the house of the accused persons. About fifteen days thereafter, the informant sent certain customary articles to the house of the accused persons through his son, Niranjana. However, it is alleged that Minu, the sister-in-law of the deceased, threw away those articles, expressing dissatisfaction over non-fulfilment of the demand for dowry. Owing to such conduct, the informant and his family members allegedly stopped visiting the house of the accused persons. On 08.05.1996 at about 3.00 P.M., the informant received information that the deceased had been admitted to Athgarh Hospital with burn injuries. Immediately thereafter, he rushed to the hospital and found the deceased lying dead. Subsequently, the informant came to know that the accused persons had allegedly caused the death of the deceased by setting her on fire, whereupon he lodged the report before the police. On the stance of complete denial and claim for trial, the appellant was put to trial after the framing of charges.

5. The prosecution in order to prove its case examined eight witnesses. Out of whom, P.W.1, though cited as a seizure witness to M.O.I (stove) and M.O.II (empty kerosene tin), has not supported the prosecution case and has been declared hostile. Likewise, P.W.2, another co-villager of the accused, has also not supported the prosecution case. P.W.3 is the mother of the deceased. P.W.4 is the brother of P.W.3, who was the mediator for arranging the marriage of the deceased with the accused Adhikari. P.W.5 is the informant and is the father of the deceased. P.W.6 was the doctor, who conducted the post-mortem examination and according to him, the deceased succumbed to burn injuries. P.W.7 is another witness of the village of the accused and declared as hostile. P.W.8 was the I.O. of the case.

6. Initially, the appellant along with two others stood charged for the offences under Sections 498A, 304B, 302 of I.P.C. read with Section 34 of I.P.C. and Section 4 of the D.P. Act. However, the learned trial Court by appreciating and analysing the evidence on record, while acquitting the appellant of other charges, convicted him under Section 4 of the D.P. Act. But, the other accused persons stood acquitted from all the charges levied against them. The State has not assailed the acquittal judgment of the learned trial Court. It is the father-in-law of the deceased, who has been convicted for the commission of the offence under Section 4 of the D.P. Act has approached this Court in the present appeal. Therefore, this Court embarking upon the analysis of the evidence of the prosecution confining to the present appellant to ascertain as to whether the offence under Section 4 of the D.P. Act is made out or not. Before delving upon the evidence and materials on record, the required ingredients to be proved by the prosecution to bring home the charges under Section 4 of the D.P. Act needs to be analysed. For convenience of ready reference, Section 4 of the D.P. Act is reproduced hereunder:-

“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 judgment, impose a sentence of imprisonment for a term of less than six months.”

Following are the essential ingredients required to be established by the prosecution in order to bring home a charge under Section 4 of the D.P. Act.

(i) There must be demand directly or indirectly.

(ii) Demand must be towards dowry.

The scope and ambit of Sections 3 and 4 of the D.P. Act have been authoritatively explained by the Hon’ble Supreme Court as well as various High Courts. The Hon’ble Supreme Court, while dealing with Sections 3 and 4 of the D.P. Act in the judgment of State of U.P. Vs. Santosh Kumar[(2009) 9 SCC 626] has held thus:-

35. Section 3 of the Dowry Act deals with penalty for giving and taking of dowry. The scope and ambit of Section 3 is different from the scope and ambit of Section 304-B IPC.

36. Section 4 of the Dowry Act deals with penalty for demanding dowry, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be. The object of Section 4 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.

The Madras High Court, while dealing with the same provisions in Manjunath Eshwar Vs. State[2013 SCC ONLINE MAD 1367] has held as follows:

"11. As per the above said definition, the person on whom the charges made, should be a party to the marriage and unless he is shown as a party to the marriage, the charge under Section 4 of the Act could not be invoked, the learned Counsel adds. Section 4 of the Act goes thus—

"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 judgment, impose a sentence of imprisonment for a term of less than six months."

12. In support of his contention, the learned Counsel for the Petitioner places much reliance upon a decision of the Hon'ble Supreme Court reported in State of U.P. v. Santosh Kumar, 2010 (1) MWN (Cr.) 39 (SC), wherein Their Lordships have held as follows:

"40. Section 4 of the Dowry Act deals with penalty for demanding dowry, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be. The object of Section 4 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.

41. Thus, the ambit and scope of Sections 3 & 4 of the Dowry Act is different from the ambit and scope of Section 498-A, IPC."

13. It is made clear that the implications of Section 498, IPC would not disturb much confusion with the provisions of the Act. It is also made clear that the dowry should have been demanded directly or indirectly from the parents or other relatives or guardian or bridegroom. The learned Counsel also cites a decision of the Calcutta High Court reported in Sankar Prosad Shaw v. State, 1991 CrLJ 639, wherein the learned Judge has dealt with the definition on term ?Dowry? as referred in Section 2 of the Act. The discussion is as follows:

"In view of the definition of "Dowry" under Section 2(i) of Dowry Prohibition Act, the mere demand thereof would not be an offence under S. 4 of that Act. It should either be given or agreed to be given at or before or after the marriage in connection with the marriage. Although in common parlance one very often use the term "dowry demand" in the cases where the husband or his relations demand valuable security from the parents and other relations of the wife after

the marriage, yet this will not amount to demand for dowry under the Act in view of the definition of dowry contained in Section 2 of the Act. Demand for dowry under the Act and in the legal sense will mean the demand for dowry only when it refers to property of valuable security given or agreed to be given at or before or after the marriage.”

14. From the above, the following points emerge—

(a) The dowry should have been demanded directly or indirectly to the parents or by the parents of the bridegroom or relatives of the third party.

(b) It may be before or after the marriage.

(c) The demand must be directly or indirectly in connection with the marriage.

(d) The person, who was not a party to the marriage at the time of marriage could not be charged under Section 4 of the Act.”

7. In the light of the aforementioned provision of law and various pronouncements, the materials placed on record by the prosecution and the defence are analysed. Initially, three accused persons stood charged for offence under Sections 304B/498A/34 of I.P.C. and Section 302/34 of I.P.C. read with Section 4 of the D.P. Act. In the present case, Pratima is the deceased, who married the co-accused Adhikari Moharana. The present appellant is the father-in-law of the deceased, who has been convicted by the learned trial Court only for the offence under Section 4 of the D.P. Act. The other accused-Indramani Moharana is another son of the present appellant, who has also been acquitted from all the charges. The learned trial Court primarily convicted the present appellant for offence under Section 4 of the D.P. Act by finding from the evidence that he has demanded a television (T.V.) from the parents of the deceased. Therefore, the learned trial Court opined that the ingredients of Section 4 of the D.P. Act vis-à-vis the appellant is satisfied. The trial Court arrived at the following conclusion:-

“xxxx xxxx xxxx xxxx

xxxx xxxx xxxx xxxx

ix) Thus in view of my above discussion, I hold that the accused Dama only had taken Rs.7,000/- at the time of marriage of the deceased and had demanded one T.V. towards dowry after said marriage.

(x) Then the question arises whether such act of the accused Dama comes under the demand of dowry. Their Lordships in a decision reported in 1996 (II) OLR(SC) 229 (S.Gopal Reddy appellant-Vrs-State Andhra Pradesh-Respondent) have held that the demand for dowry made before, at or after marriage as a consideration attracts the provision of Sec.4 of the D.P. Act and mere demand of dowry is sufficient to bring home the offence U/s.4 of the D.P. Act. Further Lordships have held that voluntary presents given at or before or after marriage to bride or bride groom as the case may be, of traditional nature, which are not

given as consideration for marriage, but out of love, affection or regard would not come under the expression of dowry".

xi) In the present case, it had been undoubtedly held that the demand of T.V. after marriage of the deceased by accused Dama comes under consideration for marriage and hence attracts the provision of Section 4 of the Act. Now the question arises whether the payment of Rs.7,000/- only will come under consideration of marriage.

xii) So far the payment of Rs.7,000/- is concerned, there is no list of dowry articles in compliance of rule-2 of the Dowry Prohibition (maintenance of Lists of presents to the bride and bride-groom) Rule, 1985 (hereinafter referred to as the rule). However the fact of giving Rs.7,000/- to the accused Dama by the formant has been well established by P.W.3, P.W.4 and P.W.7. Besides according to P.W.7, the accused Dama has confessed before him to have received the same.

xiii) The law is well settled that only those articles are dowry which are given or agreed to be given as regard or reason or motive for solemnisation of marriage. Besides the proviso U/s.3(2) of the Act reads as follows:-"Provided further that where such presents are made by or on behalf of the bride or any person related to bride, such presents are of customary nature and value thereof is not excessive having regard to the financial status of the person by whom or on whose behalf such presents are given".

xi?)Thus in view of the above said provisions, I am to say that the informant is a cultivator and it has been evidenced that he was able to comply the further demand. Now a days the dowry demand has affected the root of our society. Many instances of death of the brides are coming to the notice of the Court after marriage on the ground of non-fulfilment of demand of dowry. Besides many parents are not able to dare to search for the marriage of their daughter due to heavy demand of dowry beyond their capacity. Even if educated parents are being forced to agree to comply the demand for the marriage of their daughters. In the present case, payment of cash of Rs.7,000/- at the time of marriage seems to be excess in view of the financial status of the informant, who is a cultivator. Under such circumstance there is no evidence from the side of the accused persons that Rs.7,000/-was just a present within the financial capacity of the in formant. The purpose of saying so is that the Section8-A of the Act says:

"Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3 or the demanding of dowry U/s.4, the burden of proving that he had not committed an offence under those sections shall be on him".

xv) In view of the above discussion though I find that Rs.7,000/- was towards consideration for solemnisation of marriage still no further discussions made as no charge has been made specifically under section 3 of the Act.

xvi) Thus in view of the above discussions, I have got nothing, but to hold that all the ingredients of Section-4 of the Act has been duly proved by the

prosecution to say that there was demand of dowry by the accused Dama only.”

On the analysis of the evidence on record, the learned trial Court arrived at a conclusion that the prosecution has miserably failed to bring home any charge against the co-accused persons i.e. the husband and brother-in-law of the deceased. However, on the basis of the same set up evidence, the learned trial Court convicted the appellant for offence under Section 4 of the D.P. Act and on that count, sentenced him to undergo R.I. for two years and to pay a fine of Rs.5,000/-, in default of payment of fine, further to undergo R.I. for six months.

8. The primary witnesses relied upon by the learned trial Court are P.W.3, the mother of the deceased, P.W.4, the maternal uncle of the deceased, who was also the mediator of the marriage and P.W.5, the father of the deceased. P.W.3 in her deposition has stated that two years back, Pratima (the deceased) was given in marriage with the accused-Adhikari Moharana. The marriage was “Danda Bibha”, which is a traditional marriage. She further deposed that her husband (P.W.5) had given Rs.7,000/- to the accused-Dama (the present appellant) towards dowry besides giving Rs.800/- to her son-in-law. She has also stated that other articles were given in the marriage. She went on to depose that her daughter was pressurised by the in-laws for not bringing Rs.500/-, sofa set, 10 gounis of paddy and the cow and also the in-laws were telling her daughter to bring a T.V. Her daughter was crying by narrating the ordeal faced by her. However, in the cross-examination, she has stated that the articles which have been given by them to their daughter were voluntarily given being “Bandana”. P.W.5, the father of the deceased, however, very categorically stated in his evidence that “there was no demand from the side of the accused persons and we had given some articles as per their social customs”. In the same breath, he has further deposed that after two months of marriage, his daughter came and told that the accused persons and her mother-in-laws were torturing her by not providing foods besides telling her as to why she has not brought cow, paddy, T.V. and sofa set etc. He further deposed that when he had been to the house of the accused persons, Dama (the appellant), his two daughters and his son-in-law told not to send his daughter with him as he had not fulfilled the demand of T.V., paddy, cow and sofa set etc. P.W.5 further deposed that his daughter wrote a letter and in the said letter, although she has not mentioned regarding demand of T.V. but she had mentioned to bring standard articles as the accused persons were putting her in trouble.

9. The evidence of P.Ws.3 and 5 in regard to the alleged demand of T.V. by the appellant does not emerge with clarity, rather on the contrary, both the witnesses stated that there was no specific demand made by the appellant; if any demand made, it was by the entire in-laws family. There is no specific overt act attributed to the appellant by these two witnesses. P.W.4, who is the maternal uncle of the deceased was the mediator of the marriage. He has deposed that “there was no demand in the marriage of Pratima”. In order to comply with the social customs, we had given certain articles. At the time of

"Nirbandha ceremony", Nrusingha Ojha (P.W.5) had given Rs.7,000/- to Dama (the appellant). In the same breath, however, P.W.4 has stated that after the marriage, the appellant had demanded T.V. towards dowry. In the cross-examination, the said witness again has stated that he had been examined by the police and he does not remember if he had stated before the police that the appellant had demanded a T.V. towards dowry after the marriage of Pratima with Adhikari. He went on to depose that their family had given all the articles out of love and affection and there was no demand. The said witness was confronted by the defence in the cross-examination regarding the improvement he has made while deposing in the Court and he had never stated the said facts to the police during investigation. He had denied the suggestion.

P.W.8 was the Investigating Officer in this case, who in his cross-examination at paragraph-15 has stated as under:-

"15. P.W.4 has not stated before me that on the day of Nirbandha, Rs.7,000/- was given, but he has stated regarding payment of Rs.5,000/-. P.W.4 has not stated before me that Dama demanded a T.V. towards dowry. P.W.4 has not stated before me that he heard that all the in-laws of the deceased had set fire on her body and he had been to the hospital and there he saw the dead body of the deceased. P.W.4 has not stated before me that after marriage, Pratima had visited his house, after her marriage."

10. If the evidence of P.W.4 is read juxtaposed with the evidence of P.W.8 as well as P.Ws.3 and 5, the solitary statement made by the said witness in his examination-in-chief that the appellant demanded T.V. from the family of Pratima, creates a serious doubt. It appears that the learned trial Court has missed this point while analysing the evidence and arrived at the conclusion as reproduced hereinabove.

11. Mr. Ragada, learned Amicus Curiae appearing for the appellant also strongly argued that there is a huge unexplained delay in placing the F.I.R. before the S.D.J.M., Cuttack which creates a serious dent to the prosecution. He has taken me to the F.I.R. which was registered on 08.05.1996 whereas on 13.05.1996, the said F.I.R. was placed before the S.D.J.M., Cuttack. There was no attempt made by the prosecution to explain such delay. This aspect of the matter is also looming at large on record.

12. Without delving further into this issue, suffice it to say that the evidence produced by the prosecution regarding demand of a T.V. from the family of the deceased after the marriage could not be proved by the prosecution beyond all reasonable doubt. Therefore, the only inevitable conclusion which could be drawn from reading and analysing the evidence is that the prosecution has failed to prove the case to bring home the charge under Section 4 of the D.P. Act against the appellant. Therefore, the appeal deserves interference. Accordingly, the impugned judgment and order dated 19.08.1997 passed by the learned 1st Additional Sessions Judge, Cuttack in S.T. Case No.18 of 1997 is set aside and

the appellant is acquitted of all the charges under Section 4 of the D.P. Act. The bail bond furnished stands discharged.

13. Accordingly, the CRA is allowed and disposed of.

14. This Court acknowledges the effective and meaningful assistance rendered by Mr. Bijaya Kumar Ragada, learned Amicus Curiae in this case. Learned Amicus Curiae is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as a token of appreciation.