

**Dhula Ram Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-23-1994

**Reported in :** 1995CriLJ4057

**Judge :** B.R. Arora, J.

**Acts :** [Dowry Prohibition Act, 1961](#) - Sections 2 and 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304B, 306 and 498A; Code of Criminal Procedure (CrPC) - Sections 161; Muslim Personal Law

**Appeal No. :** Criminal Appeal No. 177 of 1993

**Appellant :** Dhula Ram

**Respondent :** State of Rajasthan

**Advocate for Def. :** K.L. Thakur, Public Prosecutor

**Advocate for Pet/Ap. :** K.S. Rathore, Adv.

**Judgement :**

**B.R. Arora, J.**

1. This appeal is directed against the judgment dated 16-4-1993, passed by the Additional District and Sessions Judge, Bali, by which the learned Additional Sessions Judge convicted and sentenced accused-appellant Dhula Ram for the

offence under Section 304B, I.P.C.

2. The case, of the prosecution is that on 21-6-1991, at about 1.30 p.m., accused Dhula Ram first inflicted an injury by a Khurpa on the head of his wife Smt. Kamla, thereafter sprinkled kerosene oil on her body and put her to fire. Some neighbours came to her rescue and Smt. Kamla was taken to the hospital, who was attended by PW 23 Dr. Renu Ranka - the Medical Jurist, Government Hospital, Sadri. P.W. 16 Mahendra Singh, H.C., also, came there, who recorded the statement (Ex. P. 11) of Smt. Kamla. On the basis of this statement, an F.I.R. (Ex. P.13) was registered at Police Station, Sadri, at about 3.15 p.m. As Smt. Kamla had extensive burns of 94% all over her body, she was, therefore, referred for medical treatment to Bangad Hospital, Pali, where she was declared dead. As per the case of the prosecution, at the time of the incident, Smt. Kamla was asked by her husband to clean the grains, to which she replied that she was doing the same, whereupon her husband (accused-appellant) struck an injury on her head, thereafter sprinkled kerosene oil on her body and lit the fire. She raised alarms. Certain persons from the locality came. Thereafter accused Dhula Ram put water upon her. According to the prosecution case, all this was done as the accused was pressing her to get the room owned by her to be transferred in his name. The prosecution, in support of its case, examined twenty-three witnesses and the accused, in his defence, examined two witnesses. The learned Additional Sessions Judge, after trial, acquitted the accused-appellant of the offence under Section 302, I.P.C. but convicted him for the offence under Section 304B, I.P.C. and sentenced him to undergo ten years' rigorous imprisonment and a fine of Rs. 2500/- and in default of payment of fine further to undergo one year's rigorous imprisonment. It is against this judgment dated 16-4-1993, passed by the learned Additional Sessions Judge, Bali, convicting and sentencing the appellant that the appellant has preferred this appeal.

3. It is contended by the learned counsel for the appellant that the appellant has wrongly been convicted and sentenced by the learned lower Court for the offence under Section 304B, I.P.C. Neither there is any evidence to show that deceased Smt. Kamla was subjected to cruelty or harassment by the appellant in connection with the demand for dowry nor is there any evidence to show that the appellant

ever demanded any dowry. The alleged demand of transfer of the room, owned by the deceased, in the name of the appellant, cannot be said to be a 'demand as a consideration of the marriage. The alleged demand of transfer of the room in favour of the accused, which is said to have been made after four years of their marriage, does not fall within the definition of 'dowry'. In support of his contention, learned counsel for the appellant has placed reliance over: *Inder Sain v. State*, 1981 Cri LJ 1116 (Delhi). It has, also, been contended by the learned counsel for the appellant that Smt. Kamla was not in a fit condition to make the dying declaration as she had 94% burns and further that the dying declaration was recorded by PW 16 Mahendra Singh, H.C., though the doctor on duty was present, which raises a suspicion regarding truthfulness and veracity of the dying declaration and as such the so-called dying declaration cannot be relied upon. In support of its contention, learned' counsel for the appellant has placed reliance over: *Smt. Chameli v. State* (D. B. Criminal Appeal No. 152 of 1984 decided on 15-1-1987) Reported in 1987 Raj. Cri. C. 154. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the Court below and submitted that from the evidence produced by the prosecution, the prosecution has been able to prove the case against the accused-appellant for the offence under Section 304B, I.P.C. beyond a reasonable manner of doubt and the appellant has rightly been convicted and sentenced by the learned Additional Sessions Judge and the judgment passed by the Court below does not require any interference.

4. I have considered the submissions made by the learned counsel for the parties.

5. The nature of the evidence, produced by the prosecution, consists of the statement of P.W. 1, Dr. K. N. Mathur and P.W. 19 Dr. Madan Lal, who were the Members to the Medical Board, who conducted the autopsy on the deadbody of Smt. Kamla in Bangad Hospital, Pali, and according to them Smt. Kamla died an unnatural death and she was having 94% burns. P.W. 23 Dr. Renu Ranka is the another doctor who was the Medical Jurist posted at Government Hospital, Sadri, who attended Smt. Kamla when she was first brought to the hospital and in whose presence the dying declaration (Ex. P. 11) was recorded. P.W. 5 Kitka Ram, P.W. 6 Vaka Ram, P.W. 12 Ota Ram, P.W. 13 Kesa Ram, P.W. 14 Chhogga Lal and

P.W. 20 Dhalla Ram are the Motbir witnesses to the recoveries and preparation of various memos. Out of these witnesses, P.W. 5 Kika Ram, P.W. 6 Vaka Ram and P.W. 13 Kesa Ram have not supported the prosecution case. P.W. 2 Jawana Ram, P.W. 7 Smt. Chatur Bai, P.W. 8 Bhagwati, P.W. 9 Raju and P.W. 17 Hema have been produced by the prosecution to show that Smt. Kamla was subjected to cruelty by her husband and was harassed and time and again asked to bring money from her parents. P.W. 3 Mangi Lal, P.W. 4 Ganesh Ram, P.W. 16 Mahendra Singh, H. C, and P.W. 23 Dr. Renu Ranka are the witnesses relating to dying declaration (Ex. P. 11) made by Smt. Kamla. P.W. 3 Mangi Lal and P.W. 4 Ganesh Ram were present in the hospital when the dying declaration was being recorded while P.W. 16 Mahendra Singh; H.C., recorded the dying declaration and P.W. 23 Dr. Renu Ranka, also attended Smt. Kamla when the dying declaration was recorded. P.W. 7 Chatur Bai is the mother, P.W. 8 Bhagwati is the sister, P.W. 9 Raju is the brother and P.W. 7 Hema is the father of the deceased, who have been produced to disclose the facts regarding demand of dowry made by the accused-appellant. P.W. 10 Lada Ram and P.W. 11 Smt. Pepi have stated that they, Teka Ram, Vaka Ram Teka Ram's wife were sitting near a Neem tree. Accused Dhula Ram asked Smt. Kamla that she should not accompany him to Bombay and should stay at Sadri. Thereafter Dhula Ram went to call some persons to impress upon Smt. Kamla for staying at Sadri. After fifteen minutes of the incident he came with Kika and Vagji and when all these persons reached near the house, they heard the cries 'Baloo Re Baloo Re' and they saw that Smt. Kamla was in fire-flames. Thereafter Kika Ram brought a cart and Smt. Kamla was taken to the hospital. P.W. 15 Himmat Singh was the Station House Officer, before whom the dying declaration Ex. P. 11 was produced, on the basis of which the F.I.R. was registered and thereafter he conducted the investigation. P.W. 16 Mahendra Singh was the Head Constable, the received the information on a telephone regarding the burn case in the hospital, went to the hospital, recorded the dying declaration of Smt. Kamla and thereafter took Smt. Kamla to Bangad Hospital, Pali, where she was declared dead. P.W. 18 Mr. Kishan Singh was the Deputy Superintendent of Police, who also, made some part of the investigation, and recovered the Khurpa on the information and at the instance of the accused, P.W. 22 Chandra Prakash is a Motbir witness to the Panchnama Ex. P. 3. The

accused, in his defence, examined two witnesses, viz., D.W. 1 Jai Singh, Peon posted at the Hospital and D. W. 2 Madan Lal, to show that no dying declaration was recorded by P.W. 16 Mahendra Singh, H.C., at Government Hospital, Sadri, as deceased Smt. Kamla was not in a fit condition to make any statement. The learned Additional Sessions Judge, while convicting the accused-appellant, placed reliance over the ocular testimony of the witnesses produced by the prosecution, part of the dying declaration Ex. P. 11, as according to him the part of the dying declaration does not find support from the evidence of other witnesses and the accused-appellant was not found present in the house at the time when the incident took place. The recovery of Khurpa was, also, not relied by learned trial Court as it was not found stained with the blood. The learned Additional Sessions Judge believed the prosecution case that Smt. Kamla was subjected to cruelty by the accused-appellant and a demand of dowry was made by the accused from her and as Smt. Kamala died an unnatural death within the period of seven years from the date of her marriage with the accused, therefore, he convicted and sentenced the accused-appellant for the offence under Section 304 B, I.P.C., as stated above.

6. The first question, which requires consideration in the present case is: whether the dying declaration (Ex. P. 11) recorded by P.W. 16 Mahendra Singh, H.C. can be relied-upon for convicting and sentencing the accused-appellant. The prosecution, in support of its case, examined four witnesses, viz., P.W. 3 Mangi Lal, P.W. 4 Ganesh Ram and P.W. 19 Dr. Renu Ranka, in whose presence the dying declaration was recorded. The dying declaration (Ex. P. 11) bears the signatures of P.W. 19 Dr. Renu Ranka. P.W. 16 Mahendra Singh was the Head Constable who recorded the dying declaration (Ex. P. 11). The principle, on which the dying declaration is admitted in evidence, is based on the maxim; *memoriturus proesumitur mentiri*, meaning thereby that a person will not meet his maker with a lie in his mouth. Before a conviction can rest upon a dying declaration, it must be ascertained that it is true and voluntary and must not be the result of tutoring, prompting or product of imagination. Before acting upon it, it must, also, be seen that the statement inspires confidence. When the doctor was available, there was no justification with P.W. 16 Mahendra Singh, H.C., to have recorded the dying declaration Ex. P. 11. Investigating Officers are generally

interested in the success of the investigation and, therefore, the practice of recording the dying declaration by them during the course of investigation, should not be encouraged. Even the dying declaration recorded by the investigating officer is not in question and answer form, as is required by law and it is, also, not in the language of the deceased. It is like a statement recorded under Section 161, Cr.P.C. Smt. Kamal, while making the dying declaration, was in a severe pains having 94% burns all over her body. She was not medically treated by P.W. 23 Dr. Renu Ranka and was referred for medical treatment to Bangad Hospital, Pali. The dying declaration Ex. P. 11 gives the detailed narration of the history of the case. Even the minutest details of the assaults have been given. The story of demand of the transfer of the room has, also, been given. Though the two witnesses, viz., P.W. 3 Mangi Lal and P.W. 4 Ganesh Ram were present but their signatures do not find place on the dying declaration. Even of the opinion of the doctor that Smt. Kamla was in a fit condition to give statement, is not there. Though in view of the statement given by P.W. 23 Dr. Renu Ranka nothing can turn-upon it, but how much time was taken in recording the statement, has not been shown. Certain other formalities for recording the dying declaration have not been observed. The dying declaration (Ex. P. 11) made by Smt. Kamla, therefore, raises certain suspicion and as such has to be read with care and caution and in the absence of any corroborative evidence that cannot be acted upon.

7. The next contention, raised by the learned counsel for the appellant, is that no demand of dowry was made by the accused-appellant either from deceased Smt. Kamla or from her parents or relatives at any time. The alternative argument of the learned counsel for the appellant is that even if the alleged demand of transfer of the room owned by Smt. Kamla in the name of the accused was made by the accused, even then that cannot be said to be a demand for dowry as it was made after four years of their, marriage. The prosecution, to prove the demand of dowry, has produced four witnesses. PW 7 Smt. Chatur Bai - the mother of deceased Smt. Kamla - has stated that several times she had given Rs. 2000/-or Rs. 3000/- to the accused for setting-up a business and they have, also, given a room in Bombay to her daughter Smt. Kamla and the accused was pressing Smt. Kamla time and again to get the room transferred in his name. PW 8 Bhagwati has stated that twice or thrice Smt. Chatur Bai had given money to the accused-appellant.

She has also, stated that the accused wanted that the room, which was given to Smt. Kamla by her parents, should be transferred in his name. Similar is the statement of PW 9 Raju who has stated that the money was demanded by the accused from Smt. Kamla and when she did not bring the money, she was given beatings by the accused. PW 17 Hema - the father of the deceased - has, also, stated that the accused was asking Smt. Kamla to transfer the room in his name and his wife had given sometimes Rs. 1000/- and sometime Rs. 2000/- to the accused. All these witnesses have admitted that the demand was made much after the marriage. They have, also, admitted that the room in question was transferred in the name of Smt. Kamla two or three years after the marriage. None of these witnesses have stated that at the time of marriage it was agreed upon that the room will be given to the accused. Dowry is the money, goods or assets that a woman brings to her husband in the marriage. As per Section 2 of the Dowry Prohibition Act, 'dowry' means : any property or valuable security given or agreed to be given, either directly or indirectly : by one party to a marriage to the other party to the marriage; or by the parents of either party to a marriage or by any other person, to other party to the marriage or to any other person at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or Mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. Thus, any demand made by the husband from the wife or from the parents after the marriage is solemnised for the purpose of establishing the business or for any other purpose, cannot be said to be a consideration for marriage and, therefore, it cannot be said to be a demand of dowry. 'Consideration' is something that will be kept in mind in making the decision. The demand of money made for establishment of a business, though it has not been proved in the present case, because the accused was serving in Diamond Industry or the demand for the transfer of the room in his name, which exists in the name of his wife, therefore, cannot be said to be a consideration for the marriage. At the most it can be said to be consideration for the happy marital life and not a consideration for the marriage and, therefore, it does not fall within the definition of the word 'dowry'. What is 'dowry': came up for consideration before the Hon'ble Supreme Court in the case of: L. V. Jadhav v. Shankarrao Abasaheb Pawar, (1983) 2 Crimes 470: (1983 Cri LJ 1501) and the Apex Court, after considering

various provisions of the Dowry Prohibition Act, held as under:-

'We are of the opinion that having regard to the object of the Act, a liberal construction has to be given to the word 'dowry' used in Section 4 of the Act to mean that any property or valuable security which if consented to be given on the demand being made, would become dowry within the meaning of Section 2 of the Act.'

A reading of Section 2 of the Act, therefore, makes it clear that the demand of any property or valuable security by the party to the marriage from the other party to the marriage or from the parents of either parties to a marriage at or before or after the marriage as consideration of the marriage, is a dowry. Thus, for treating a demand as a dowry it must be shown that the demand has been made as a consideration for the marriage. In the present case, the alleged demands cannot be said to be a consideration for the marriage and at the most these demands can be said to be a consideration for happy marital life or setting up a business, which does not fall within the definition of the word 'dowry'.

8. For the conviction of the accused for the offence under Section 304B, I.P.C., the prosecution has to prove, firstly, that the death of the woman has been caused by burns or bodily injury or otherwise in an abnormal circumstances; secondly, that the death of the woman has occurred within seven years of the marriage; thirdly, that she has been subjected to cruelty or harassment by her husband or any relative of her husband; and fourthly, such cruelty or harassment should be for or in connection with the demand of dowry. So far as the first three ingredients are concerned, they are fully satisfied in the present case from the evidence produced by the prosecution, but so far as the fourth ingredient : that the cruelty or harassment was in connection with a demand for dowry, is concerned, that has not been proved by the prosecution. No demand was made by the appellant even as per the prosecution witnesses, as a consideration for the marriage. The evidence, produced by the prosecution on the record, is only to this effect that twice or thrice the amount was paid to the appellant for the establishment of a business and the accused-appellant, time and again, asked his wife Smt. Kamla to transfer the room in his name. These incidents cannot be said to be the incidents

of demand for dowry. The prosecution has, therefore, failed to prove the case against the accused-appellant for the offence under Section 304B, I.P.C. and the learned Additional Sessions Judge was not justified in convicting and sentencing the appellant for the offence under Section 304B, I.P.C. However, from the evidence of PW 2 Jawana Ram, PW7 Smt. Chatur Bai, PW8 Bhagwati, PW 9 Raju and PW 17 Hema, it has been proved that Smt. Kamla was subjected to cruelty by the accused; she was given beatings times and again by the accused-appellant which drove Smt. Kamla to commit suicide by pouring kerosene oil on her body and lighting the fire and she met with her death. According to the prosecution witnesses PW3 Mangi Lal, PW4 Ganesh Ram, PW 10 Lada Ram and PW 11 Papi, the accused-appellant was not present in the house when the incident took place and he came at the house when Smt. Kamla was in the flames. The prosecution has, therefore, proved the case against the accused-appellant for the offences under Sections 498A and 306, I.P.C.

9. In the result, the appeal, filed by accused appellant Dhula Ram, is partly allowed. His conviction and sentence, imposed by the learned Additional Sessions Judge, Bali, for the offence under Section 304B, I.P.C, are set aside. However, the appellant is convicted for the offences under Sections 498A and 306 I.P.C. and is sentenced to undergo one year's rigorous imprisonment and a fine of Rs. 200/- and in default of payment of fine further to undergo one month's rigorous imprisonment for the offence under Section 498A, I.P.C. and five years' rigorous imprisonment and a fine of Rs. 1000/- and in default of payment of fine further to undergo six months' rigorous imprisonment for the offence under Sec. 306, I.P.C. The sentences imposed upon the appellant under both the counts shall run concurrently. The period of detention, undergone by the appellant during investigation, enquiry or trial shall be set-off against the term of imprisonment imposed upon him.