

**(2016) 07 RAJ CK 0069**  
**In the Rajasthan High Court**  
**Case No : Criminal Appeal No. 690 of 2006**

State of Rajasthan

APPELLANT

Vs

Raju Ram

RESPONDENT

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**Date of Decision :** 14-07-2016

**Acts Referred:**

Dowry Prohibition Act, 1961 — Section 3, 4  
Evidence Act, 1872 — Section 32  
Penal Code, 1860 (IPC) — Section 302, 304B, 498A

**Citation :** (2016) 3 CriLR 1393

**Hon'ble Judges :** Mr. Gopal Krishan Vyas and Mr. G.R. Moolchandani, JJ.

**Bench :** Division Bench

**Advocate :** Mr. Rajesh Bhati, PP, for the Appellant; Mr. Pradeep Choudhary, Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Mr. G.R. Moolchandani, J.—This appeal arises out of the judgment dated 27/4/2006 passed by Additional District and Sessions Judge (Fast Track) Balotra, District Barmer in Sessions Case No.126/2004 (52/2004) by which the learned trial Court has acquitted accused Baga Ram and Smt. Nainu for the offence under Sections 302, 304B, 498A of IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961, and has convicted accused Raju Ram under Section 498A with a conviction of two years rigorous imprisonment with a fine of Rs. 3,000/- and has acquitted Raju Ram for the offence under Sections 302 in alternate 304B and Sections 3 and 4 of the Dowry Prohibition Act.

2. Brief facts of the case are that complainant Chhagana Ram submitted a written report on 30/4/2004 before Police Station Gudamalani stating that his sister Pyari was got married with Rajuram three years back and her mother-in-law, father-in-law and husband were causing cruelty with her and were demanding dowry. Our family is poor, so unable to meet their demands. They had tortured to my sister severely. Yesterday my sister had come to us to meet

us, but our brother-in-law (Rajuram) came and fetched her. I told him that her clothes are to be stitched so take her tomorrow, but my brother-in-law did not yield and forcibly took away my sister draggingly. She was badly beaten there and was burnt by him after pouring kerosene, on the basis of this, FIR No.42 of 2004 was lodged under Sections 498A, 326, 307/34 IPC coupled with Sections 2/4 of Dowry Prohibition Act, 1961 and after investigation, charge-sheet was filed against all the three accused, namely, Raju Ram, Baga Ram and Smt. Nainu.

The accused persons did not plead guilty, so they were charged for the offence under Sections 498A, 302 in alternate 304B and Sections 3 and 4 of the Dowry Prohibition Act, prosecution produced 20 witnesses and 23 documents were exhibited. Two witnesses were also produced by the defence, and the trial Court while acquitting Baga Ram and Smt. Nainu, convicted accused Rajuram under Sections 498A of IPC and acquitted him for the offence under Sections 302 alternatively 304B coupled with Sections 3 and 4 of the Dowry Prohibition Act as aforesaid.

3. Learned public prosecutor while arguing the case for the appellant-State has contended that the learned trial Court has committed error by not convicting the accused under Sections 302, 304B of IPC and Sections 3 and 4 of the Dowry Prohibition Act and acquitting the other two accused respondent Nos.2 and 3.

There was a dying declaration of the deceased but the learned trial Court has wrongly not relied upon the dying declaration and evidence of the prosecution, so the judgment passed by the learned trial Court is grossly incorrect and after allowing the appeal of the State, so far as acquittal is concerned, it be reversed and all three accused be convicted under Sections 302, 304B, 498A coupled with Section 3/4 of Dowry Prohibition Act.

4. Learned counsel for the respondents has contended that there is no wrong in the findings of the learned trial Court, the dying declaration has correctly not been relied by the learned trial Court since all the witnesses of the dying declaration have become hostile and have not supported that version, even doctor has told that he did not know as to what was said by the deceased. Moreover, the deceased did cause self immolation by suicide and her hands, palm and fingers did not burn, so she was in a position to sign, but suspiciously has not taken her signature or thumb impression has not been taken on the said dying declaration. While doctor has specifically said that hands of the deceased were out of burn then non-procurement of the signature on dying declaration makes it unreliable and an impermissible document, not worthy to be relied. It has also been observed during the course of the argument that there is no appeal from the side of the accused Rajuram, who was convicted under Section 498A of IPC for two years of imprisonment with a fine of Rs. 3,000/- so appeal does not bear any merit and is liable to be dismissed.

5. We have heard the learned public prosecutor as well as to the learned counsel for the accused and have perused and examined the impugned judgment and

have carefully gone through the record.

At the very outset, it is pertinent to appreciate that deceased "Smt. Pyari" was married with Rajuram and sister of Rajuram Smt. Jaiti DW.1 was married with Ladaram (brother of deceased Jaiti) and Smt. Jaiti DW.1 has clearly said that Smt. Pyari is a sister of my husband and she has married with my brother Raju and our marriages were performed together. Entire evidence discloses that the marriage between both the families was performed on the basis of "Aata Saata" (a kind of nuptial solemnized by giving a girl to a family and receiving back a girl from that family and a mutual kind of exchange) and almost in all evidence of the witnesses, it has been admitted that there was "Aata Saata" and marriage of Pyari was performed through this methodology and PW.10 Chhaganram has said :-

"esjs HkbbZ yknw dh "kknh MsMkokl esa ckxk dh csVh o jktw dh cgu ls dh gqbZ gSA jktw dh "kknh o yknw dh "kknh vkeus&lkeus vkaVs&lkaVs esa dh gqbZ gSA yknw dh "kknh esa ge dksbZ ngst ugha yk, FksA geus dksbZ ngst ugha ekWaxk FkkA geus yknw dh "kknh esa dHkh dksbZ ngst oxSjg ugha ekaxk FkkA gekjs es? koky lekt esa ngst ekWaxus dh dksbZ izFkk ugha gSA ;g dguk lgh gS fd vkaVs&lkaVs esa "kknh blfy, dh tkrh gS D;ksafd ngst esa nsus ds fy, iSl ugha gksrk gSA"

Likewise Tulchharam PW.15 has also said :-

"ge pkj HkbbZ o nks cgus gSaA cM+k gsek] yknw o Nxuk o eSa gwWaA yknw dh "kknh MsMkokl esa eqyfte ckxkjk dh iq=h ls dh gqbZ Fkh ;g ckr lgh gSA bl "kknh dks gks;s gq, djhc 10&12 lky gks pqds gSA ;g dguk lgh gS fd esjh cgu I;kjh dh "kknh jktw ds lkFk o jktw dh cfig tsrh dh "kknh esjs HkbbZ yknw ds lkFk vkaVs&lkaVs esa dh x;h FkhA ;g dguk lgh gS fd vkaVs&lkaVs esa "kknh blfy, dh tkrh gS fd gekjs lekt esa xjhc rc ds ykxksa ds ikl ngst nsus ds fy, ugha gksrk blfy, vkaVs&lkaVs esa dh tkrh gSA"

He has also said that :-

"esjs ikl tc Hkh I;kjh vkrh Fkh rks esjs ls dHkh Hkh mldh lklq&llqj ;k ifr }kjk ngst ekaxus okyh ckr eq>s ugha crk;haA ;g dguk lgh gS dh I;kjh dks geus tks Hkh xgus ;k diM+s "kknh ds le; o mlds ckn fn;s os geus mldh bPNk ls euethZ ls fn;s Fks llqjky i{k dh vksj ls dksbZ ekax ugha dh"

6. Ex. P5, which is termed to be the "Dying declaration" of deceased Pyari, has been reduced into writing by the SHO Gudamalani Narpal Singh, on which no signature of the deceased has been obtained. Mere a note is there that both the hands of the injured are burnt so she is not able to sign, whereas this mentioning is totally false because PW.8 Dr. Fusaram has said that her hands were secure and her face, frontal part of the body and hands were not burnt, so non-signing of this declaration makes it dubious.

All the witnesses of this important document, namely, Durgalal, Babu Khan, Bhavaram and Chhaganlal have also not supported this document because

Durgaram PW.4 has turned hostile and has said that he did not disclose any fact that Pyari informed thanedar Narpat that her husband, mother-in-law, and father-in-law ignited her and has also said that he was not there when the statement of deceased was taken and has further said that it is wrong that Pyari was burnt by her mother-in-law, father-in-law and husband. He has also said that :-

"esjk ?kj I;kjh ds ?kj ls 200&300 ikaoMk dh nwjh ij fLFkr gSA ihgj esa I;kjh us vkdj lkl] llqj] o ifr }kjk rax djus dh ckr crk;h gks rks eSaus dHkh ugha lquh FkhA"

7. Babu Khan PW.5 has also not supported Ex. P5 and this witnesses have also become "hostile" and has said that while he went to the hospital, Pyari was unconscious and she did not talk anything before him. The mentioning of Ex. P5 has already been denied by this witness.

Bhavaram PW.11 has also turned "hostile" and has denied visiting hospital or recording of any statement of deceased before him.

Chhaganlal PW.2 has also become hostile and has even said that thanedar Narpat had taken statement of Pyari then she had said that none has caused burnt to her and she has ignited herself even recital of Parchabayan has been denied by this witness.

8. Dr. Foosaram PW.8 has also made important utterances with respect to the non-validity of dying declaration and has said I do not remember as to what statements were given by Pyari to the Police. He has also said that I did not remember whether I informed to Narpat SHO Gudamalani that Pyari was not in a position to depose. He has also said that I have not mentioned any opinion or note on Ex.P.5 that Pyari was mentally capable to state anything or not. He has even said that it is correct to say that I do not remember as to whether I gave any treatment to the patient Pyari or not.

9. Ex. D5 Extract of General Diary (Rojnamcha) is also an important document which has got a recital that the medical officer had advised that the injured/deceased was extensively burnt, so was not in a position to give correct statements and PW. 19 Dhanpatraj and PW. 14 Narpat, the scribe of Ex. P5 (dying declaration) has himself said that when I reached at the hospital, Pyari was not admitted in the hospital and was lying on a Charpai in barameda and has further said that:-

"vLirky ls c;ku ysdj Fkkus igqWaps ml le; esjs ikl Jherh I;kjh ds c;ku FksA ysfdu os c;ku viw.kZ Fks blfy, eSaus eqdnek ntZ ugha fd;k FkkA ;g dguk lgh gS fd fdlh Hkh laKs; vij/k dh lwpu pkgs og ekSf[kd pkgs fyf[kr gks] pkgs nwjHkk" k ij nh x;h gks mlesa i;kZIr fooj.k gks rks eqdnek ntZ djus dh dksbZ eukgh ugha gSA izn" kZ ih0 5 iw.kZ c;ku ugha gS rFkk et:ck lgh c;ku nsus dh fLFkfr esa ugha Fkh blfy, eSaus viw.kZ gksus ls eqdnek ntZ ugha fd;k FkkA"

10. Elucidation as discussed above candidly suggests and it emanates that the dying declaration recorded by the Thana Adhikari Narpat is not at all reliable

because the signatures or the thumb impression of the victim has not been taken, notwithstanding her hands were un-harmed and she was in a position to sign. All the witnesses of Ex. P5 the dying declaration, have not supported this document and have become hostile and there is no medical endorsement that the person making statement/the victim was in a fit position to narrate correct statements and the Doctor has also admitted ignorance towards the nature of the utterances. Even the person recording the statement i.e. Narpat, the Station House Officer has himself said that her statements were incomplete, therefore, he did not register the case and this fact is also recorded in Ex.D.5.-the General Diary, so all the witnesses of Ex. P5 have not supported this document.

11. Rajuram came to his in law's home to fetch Piyari and she was forcibly taken draggily because of the "Gauna" ceremony of Raju's sister, which might have infuriated the deceased to take this extreme step of self immolation. Since DW.1 Jaiti, who is none-else but Bhabhi and Nannad of the deceased has narrated all this version in her statements and has said that Pyari never sought anybody's consent, while visiting her Pihar and has said that:-

"Jherh I;kjh ?kj ls ckgj vkdj esjh cgu ds ekFks ij gkFk Qsjdj <+k.kh ds vanj pyh x;h o <+k.kh ds vUnj tkdj vius "kjhj ij igus gq, diM+ksa dks vkx yxk yh o jM+s dh ftl ij esjk HkbbZ jktw nkSM+dj <+k.kh ds vUnj x;k o I;kjh ds yxh vkx dks mlus /kwy ls cq>kus dh dksf'k" dh o vkx cq>kus ds ckn mldks xqM+kekykuh vLirky ys x;s] fQj xqM+kekykuh ls mls tks/kiqj tgkWa mldh ekSr gks x;hA esjh o Jherh I;kjh dh "kknh vkaVs&lkaVs esa gqbZ Fkh] gekjs lekt esa ngst dk fjokt ugha gSA xjhc yksx gksus ds dkj.k vkaVs&lkaVs esa "kknh djrs gSa] ngst dk dksbZ fjokt ugha gSA esjs ekrk&firk o HkbbZ jktw us ngst ckcr~ Jherh I;kjh ls dHkh dksbZ >xM+k ugha fd;k u gh ngst dh ekWax dhA Jherh I;kjh T;knkrj esjs lkFk ihgj esa jgrh Fkh rFkk esjs ls dHkh Hkh mlus esjs HkbbZ jktw }kjk ngst ekWaxus dh ckr ugha dgh FkhA esjk nsoj rpylk o Nxu us ;g eqdnek >wBk fd;k gS] ngst dh dksbZ ckr ugha FkhA Jherh I;kjh us Lor% gh Lo;a us vkx yxkdj vkRegR;k dh gSA mls llqjky esa dksbZ nq%[k ugha FkkA"

All the prominent witnesses pertaining to dying declaration have become hostile and nothing positive has been adduced by the prosecution that the deceased was subjected to cruelty because of the demand of dowry, though evidence with respect to coercive dragging of a respectable woman in order to compel her to come to in-law's home to participate in certain nuptial Gauna ceremony and impinging slap, a delicting behaviour not plausible to be endorsed with respectable feminine clam.

Almost all the family members of the deceased have said that Rajuram and his family immediately took injured Pyari to hospital and Jodhpur on reference and tried their level best to save her life which is enough to infer that Rajuram and his family tried their level best to save injured Pyari and DW.1 Jaiti-a family member and Nannad Cum Bhabhi of deceased has narrated the true picture of the incident in her defence statements which appears to be more plausible.

12. The degree of susceptibility and sensitivity of every individual varies, subjects of feeble will, impaired psyche and diminutive will power often sway under emotional impulses and, sometime resort to unethical and even jeopardise their own life by opting extreme suicidal misdemeanor.

13. The Courts has to weigh all the attended circumstances and come to the independent finding whether dying declaration was properly recorded and whether it was voluntary and truthful.

14. The testimony produced by the prosecution and the defence is suffice to indicate that the dying declaration of the deceased is not worthy to be relied.

15. On the basis of the evidence on record, we are of the considered view that the dying declaration of the deceased recorded by the police officer is not corroborated by the persons stated to be present there and is not trust worthy, as such, the prosecution has failed to establish and prove their case beyond reasonable doubt.

16. The learned trial Court has dealt with the entire evidence in totality and has properly appreciated the entire evidence and this Court does not find any illegality in the findings and judgment impugned.

17. Hence, the appeal lacks merit and deserves to be dismissed.

18. Consequently, the instant appeal is dismissed. There is an endorsement on the warrant that the convict has already served and undergone with the sentence awarded and has also deposited the fine imposed, so has been released from the jail on 2/5/2006, hence, he is not required to surrender.