

**Usman Vs. the State**

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**Court :** Rajasthan

**Decided On :** Mar-14-1975

**Reported in :** 1975WLN(UC)100

**Judge :** Kan Singh and; S.N. Modi, JJ.

**Appeal No. :** D.B. Criminal Appeal No. 260 of 1971

**Appellant :** Usman

**Respondent :** The State

**Disposition :** Appeal dismissed

**Judgement :**

**Kan Singh, J.**

1. On 26-2-71 Usman appellant was convicted by the learned Sessions Judge, Jodhpur, of an offence under Section 302 IPC and sentenced to imprisonment for life.

2. The deceased Rukia was the wife of the accused. The couple were married about a year before the incident giving rise to the present case. It appears that on 21-4-70 Mst. Rukia had a quarrel with the sister of her husband, who had beaten her. The parents of Usman were not happy with Usman as he was not earning and was being felt as a burden by the parents. Some time in the evening of 21-4-70

when Usman came home, his wife Rukia complained to him about the misbehaviour of her sister-in-law. It appears that Usman did not take kindly to this complaint and he thought of finishing Rukia. He obtained kerosene oil from a shop through his sister. The kerosene oil was then pouted on the person of Rukia and Usman set fire to Rukia's clothes with a matchstick. As a result, Rukia sustained severe burns. She cried and this attracted her mother-in law and a few neighbours. P.W. 6 Riyaz-Mohamed, P.W. 7 Mohd. Ali and P.W. 8 Abdul Rashid, on the scene, Rukia was removed to the M.G.. Hospital She was admitted by Dr. Parihar who had been examined as D.W. 4. He treated her and then informed the Udaimandir Police about this. The couple were residing at Udaimandir, Jodhpur, at a short distance from the Police Station. The information that was conveyed from the hospital was recorded by P.W. 11 Shri Ganpatraj Bhandari, SHO, Udaimandir Police Station, in the roznamcha. Shri Bhandan then proceeded to the hospital. He recorded a dying declaration of Rukia Ex. P. 13 on record. He found that Rukia was in bad shape though she was quite conscious & able to make a statement. Shri Bhandari asked one of this subordinates to arrange to bring a Magistrate for the recording of a dying declaration of Rukia, Dr. S.K. Pathak PW. 12, the medico-jurist at the M.G. Hospital, was also there. Dr. Pathak waited for sometime for the arrival of the Magistrate but finding that the Magistrate had not come, he on his own recorded another statement of Rukia, Ex. P. 10 on record. Shri Parasmal, a First Class Magistrate, PW. 14, also reached the hospital after some time and he too recorded Rukia's statement. It is Ex. P. 15 on recorded. Rukia died the next morning. The post mortem was done by Dr. S.K. Pathak who found the following injuries on Rukia's body:

1. Burns of 3 and 4 degree on face, neck, thorax, abdomen both the upper extremities.
2. Hair are also burnt.
3. Burns of first and second degree on both thighs.
4. Burns of second and third degree present on buttocks and back.

In the opinion of Dr. Pathak, Rukia died due to shock as a result of severe burns. These burns, according to him, were sufficient in the ordinary course of nature to cause the death. The police completed the investigation and then accused Usman was challenged and eventually tried by the learned Sessions Judge, Jodhpur, with the result as already mentioned at the outset.

3. The prosecution case rested on the three dying declarations recorded by Shri Ganpatraj Bhandri, Dr. S.K. Pathak and Shri Parasmal respectively. The learned Sessions Judge scrutinised the evidence regarding the dying declarations and held that the evidence relating to the dying declarations was reliable and these dying declarations were credible and in the light of the surrounding circumstances, could be taken to be sufficient for convening the accused.

4. We may first deal with the three main witnesses regarding the dying declarations, PW. 11 Shri Ganpatraj Bhandari stated that he had seen Rukia at the hospital, that she had burns on her body and that he enquired from the doctor present there to find out whether Rukia was in a fit state to give her statement. The doctor gave his opinion that Rukia was in a fit state to give her statement vide Ex. P.12. Rukia then gave her statement which the witness recorded as Ex. P. 13. The witness had reached the hospital at about 9.30 p.m and then after the necessary preliminary interrogation, he recorded the statement Ex. P. 13. The witness clearly states that Rukia was fully conscious and she could understand the questions that were put to her. About the non taking of the thumb mark of the deceased on the statement, the witness stated that as the deceased had burns on her thumb, her thumb impression was not taken on the statement. According to the witness, Rukia had clearly stated before him that it was her husband Usman who had poured kerosene oil on her person and then set fire to her clothes.

5. The next witness regarding the dying declaration is PW. 12 Dr. S.K Pathak. He had seen the condition of Rukia and found that she was in a fit mental state to make her statement. To start with, he waited for the Arrival of the Magistrate. But as the Magistrate had not come on the scene as promptly as was expected, he proceeded to record the statement of Rukia at about 10.30 p.m. The statement was recorded by him in the form of the questions and answers Rukia stated before

him that she had been beaten by her husband's sister and further she had told her husband how his sister had beaten her and refused to give her food. Her husband did not say anything but then obtained four annas worth kerosene oil through his other sister Ameena. The kerosene oil was then poured by her husband over her body and her husband then applied a burning match-stick to her clothes. As a result of this, she was burnt and then on her cries, her mother in law came to her and so did some of the neighbours. The mother-in-law as well as the neighbours then tried to put out the fire by pouring water on the person of Rukia. Then she was brought to the hospital. The third witness about the dying-declaration is PW. 14 Shri Parasmal. Shri Parasmal was approached by the police with an application Ex P. 14 for proceeding to the M.G. Hospital and for recording the dying declaration of Rukia, wife of Usman Accordingly Shri Parasmal proceeded to the hospital. He saw that at that time Rukia was lying on a table in the Surgical Ward of the hospital. She had a number of burns on her body and her condition was serious. At the same time, according to the witness, Rukia was fully conscious and she could answer the questions put to her. Accordingly, Shri Parasmal recorded the statement of Rukia at 11.50 p.m. It was as follows:

My husband Usman did not give food to me for three days. A quarrel ensued between my husband's sister and myself (i.e her brother's wife) over supply of food. I am her brother's wife. My mother-in-law Jenb and my husband's sister Kulsam did not give bread to me. When my husband came to the house in the evening. I told him that his sister had beaten me. My mother-in-law told my husband that he should take his prostitute i.e. I with him. Then in a fit of rage my husband got kerosene oil of annas four purchased. He poured that kerosene on my body and applied a burning match-stick to it. As a result of it, I caught fire. I raised a hue and cry. Then my mother-in-law and my husband's sister etc. assembled, There were three-four persons whose voices I could not recognise.

6. Accused Usman denied to have committed any offence He expressed complete ignorance about the circumstances in which his wife met her end. He further could not say why the prosecution witnesses were deposing against him though he added that their evidence was false.

7. In challenging the conviction of the accused, the learned Counsel for the appellant contends that the version regarding the accused setting fire to the clothes of his wife was not at all believable. Firstly, the prosecution had not brought out any motive for the crime. Secondly, there were no marks of struggle on the body of Rukia. A struggle, according to the learned Counsel, would be quite natural on the part of the deceased as well as the accused as they were young persons, both being teen-agers, say about 17 or 18 years age. It is unbelievable that the wife would meekly submit to being burnt alive in the manner her husband tried to do. Then the learned Counsel pointed out that one would expect burns on the person of the accused as well, if the accused were to set fire to his wife's clothes in the manner stated by the deponents of dying declarations. Then the learned Counsel submitted that it was not at all believable that the deceased would be in a fit state to give her statement. He emphasised that morphia injections were given to the deceased and thereafter the deceased would not be conscious enough for giving any statement. He referred us to the entries made on the medical history Ex. P. 20. as also the statement of Dr. Parihar DW. 4 who was the first to attend Rukia at the hospital. Dr. Parihar had, however, stated that on 21-4-70 he had examined Rukia who was under condition of shock at the time of her admission. Further, her pulse and blood pressure were unrecordable. The deceased was complaining of pain though she was not much restless. He further stated that he prescribed a morphia injection which must have been administered in the ward to which the patient had been taken. But Dr. Parihar had admitted that on administration of morphia injection the patient may or may not become non attentive because if the pain is severe, there may be decrease in the intensity of the pain, but it is not necessary that it may not be felt all together. He further made it clear that in cases of burning the, mental faculty remains clear and the patient could understand the questions, and answer them.

8. Now we have carefully gone through the statements of the two doctors and those of PW. 11 Shri Ganpatraj Bhandari and PW. 14 Shri Parasmal, We are satisfied that the deceased was conscious enough to comprehend the questions that were put to her and be able to answer them intelligible. There is no reason to distrust PW. 14 Parasmal Magistrate, or PW. 12 Dr. S.K. Pathak on the point. We may not attach that much value to the statement of PW. 11 Shri Ganpatraj, SHO.

This is however, not to say that the statement of Shri Ganpatraj is of no value all together It has o be taken in conjunction with the other statements regarding the dying declarations.

9. Now if the deceased was in a position to make a statement as we think she was then the next question is, was there a probability of her being tutored to make a statement implicates her husband. It is noteworthy that the incident had taken place at about 7.30 p.m. The girl was removed to the hospital and was admitted there at 8.30 p.m. and at 9.30 p.m. Shri Ganpatraj recorded the first dying declaration. At 10.30 p.m. Dr. S.K. Pathak recorded the second dying declaration and the last dying declaration was recorded by Shri Parasmal Magistrate at 11.50 p.m. The three dying declarations were thus made without any considerable lapse of time after the incident. What is noteworthy is that there was no suggestion worth the name in cross-examination of the witnesses regarding the dying declarations that there was any one present there who would be prompting the deceased of make a statement against her husband. Indeed, there is absolutely nothing to show that any one from the side of the parents of the girl was present near the girl at or about the time when the three dying declarations were recorded one after the other. We have, therefore, nothing to show that the three dying declarations were the result of any prompting by some one else. Then there is one more circumstance which be cannot lose sight of. It were the neighboure who had taken the girl to the hospital and though the girl was in a pretty serious state so much to that she had expired within 12 hours of the incident, her husband was not there by her side during this long interval Now, about the so called marks of struggle, one cannot be sure. The girl had extensive burns and some of them were even 3 or 4 degree burns and therefore even if there were any other mark of violence on her body, they may not be apparent or visible on account of the burns.

10. Now whether the accused too would be receiving any burns or not will be just a matter of chance. If having set fire to the clothes of the wife, the accused stays at some distance, then he himself may not receive any burns. The speed with which the clothes were burning would depend on the quantity of kerosene oil poured on the clothes and also on the nature of the clothing. It sufficient quantity of kerosene oil had been poured, then the clothes would burn quickly and there may

not be much time for the girl to do anything except crying for help which she did. It is true that no motives has emerged for the husband to commit this crime in any of the three dying declarations, but the proof regarding the motive is not the Sine qua non for the conviction if other wise the dying declarations are not suffering from any inherent improbability. It seems that the wife complained to the husband about the misbehaviour of his sister and it was on account of that complaint that the husband reacted by getting kerecsena oil and then pouring it on the body of his wife and then setting fire to the clothes. The husband may have been infuriated CD account of the complaint made by the wife which he may not either have believed or thought it to be false one or he was siding with his sister too much as against his wife. Be that as it may, it cannot be said that in the circumstances in which the parties were placed, the husband could not have acted in the manner he did.

11. The learned Counsel then invited our attention to a recent case of their lordships of the Supreme Court - Rasheed Beg and Ors. v. State of Madhya Pradesh : 1974 CriLJ361 , and argued that where there were a number of dying declarations, that itself should arouse court's suspicion and, in the circumstances, they should not be taken to be sufficient for conviction without corroboration. It is, however, to be noticed 'hat in that case the deceased who was a boy of 12 years had implicated certain persons in his first dying declaration but in the second dying declaration he added two more names as culprits. It was observed by their lordships that in the circumstances the possibility of tutoring could not be ruled out and secondly, the conviction based on common names in the two dying declarations had to be set aside. It is true that where dying declarations are made under suspicious circumstances, need for corroborative evidence would be there but that cannot be in the very nature of things a rule of universal application. In Pandharinath Budho Patil v. The State of Maharashtra, reported as 1969 C.A.R. 234 (SC), a case cited by the learned Sessions Judge in his judgment, their lordships observed that 'it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated. It is also not correct to lay down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence. A dying declaration stands on the same footing as any other piece of evidence and has to be judged

and tested in the light of surrounding circumstances and with reference to principles governing the weighing of evidence.' Their lordships pointed out that 'in order to test the reliability of a dying declaration, the Court has to see the circumstances in which the dying declaration has been made, for example, the opportunity of the dying man for observation, whether the capacity of the dying man to remember the facts stated had not been impaired at the time he was making the statement and also if the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.' Normally, a dying declaration has to be subjected to a close scrutiny so that it could form a basis of conviction. We have kept in view these principles. As already observed by us, Rukia was taken to the hospital without any delay, then a message was sent to the Udaimandir Police Station and Shri Ganptraj, Station House Officer, proceeded to the hospital without any delay on his part. Then the first thing he did on reaching the hospital at 9.30 pm. was to ascertain whether Rukia was in a fit state to give her statement and then he recorded her statement. Attempt was then made to secure the presence of a Magistrate but as there was found to be some delay, PW. 12 Dr. S.K. Pathak recorded the second dying declaration at 10.30 pm and finally at 11.50 p.m. Shri Parasmal Magistrate recorded the third dying declaration. There was no possibility of any tutoring as it does not appear that any one on the side of the girl's parents was there. Then we have not been able to find any explanation as to why the husband of the girl was not present by her side in her suffering when she was in a pretty bad shape. Therefore weighing the dying declarations in the light of the surrounding circumstances of the case, we are satisfied that the dying declarations are dependable and could be attended upon. The inherent probabilities of the dying declarations as well as the surrounding circumstances assure us both regarding the genuineness of the dying declarations as well as about their veracity.

12. In the result, therefore, we do not find any force in this appeal which we hereby dismiss.

13. The learned Counsel for the appellant orally prays for grant of a certificate for appealing to the Supreme Court. But as the fate of the appeal has turned on the appreciation of the evidence, we do not find the case to be a fit one for granting

the certificate. The oral prayer for certificate is there-fore hereby refused.

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