

**Usman Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Mar-05-2002

**Reported in :** RLW2003(3)Raj1706

**Judge :** Y.R. Meena and; A.C. Goyal, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 302

**Appeal No. :** D.B. Cr. Appeal No. 169 of 1998

**Appellant :** Usman

**Respondent :** State of Rajasthan

**Advocate for Def. :** R.P. Meena, P.P.

**Advocate for Pet/Ap. :** R.S. Sharma, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Goyal, J.**

1. This appeal is directed against the judgment dated 28.1.1998, passed by learned Additional Sessions Judge, Deeg, District Bharatpur, in Sessions Case No. 47/95, whereby the accused appellant was convicted and sentenced under Section 302 IPC to undergo life imprisonment and a fine of Rs. 1,000/- in default to

further undergo six months imprisonment.

2. The prosecution story, in brief is that one Subddin, resident of Kheri-Alimuddin, accompanied with 3-4 persons informed at Police Station Zurhara, District Bharatpur at about 4 a.m. on 13.6.1995 that Usman Mave had killed his wife by strangulation. This oral information was recorded in Rojnamcha which-is Ex.P.8. On receiving this information, S.H.O. Police Station Zurhara proceeded to village Kheri Alimuddin where P.W.5 Zor Mohammed (father of deceased Mst. Haleema) submitted a written report Ex.P.2 at about 6 a.m. on 13.6.1995 with the averments that at about 11 p.m. in the night Subddin came to his village Ranika and informed him that his daughter Haleema had been killed by her husband Usman. Thereupon, he alongwith Sarpanch Makul, Idris, Mahmood Abdul reached village Kheri Alimuddin at about 4 a.m. and found his daughter dead in her house. Villagers of Kheri Alimuddin informed that Usman killed Haleema at about 5-6 p.m. on 12.6.1995 by strangulation and Hasmat and Mst. Basri respectively father and sister of Usman were also involved in this crime.

3. A Formal F.I.R. No. 50/95 (Ex.P.5) was registered under Section 302, 120-B IPC. Investigation commenced. Site Plan (Ex.P.3) and Panchnama of the dead-body (Ex.P.4) were drawn. The accused was arrested on the same day i.e. 13.6.1995 vide Arrest Memo (Ex.P.6). Statements of witnesses were recorded under Section 161 Cr.P.C. on the same day and after usual investigation charge-sheet came to be filed only against the accused appellant. In due course the case came up for trial before the learned trial Court. Charge under Section 302 IPC was framed. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 12 witnesses. The statement of the accused was recorded as provided under Section 313 Cr.P.C. He denied the entire evidence of the prosecution. No witness was examined in defence, having heard final submissions the accused appellant was convicted and sentenced as stated hereinabove.

4. We have heard learned counsel for the appellant and learned Public Prosecutor for the State P.W.2 Dr. B.S. Thakuria, Senior Medical Officer, Primary Health Centre, Zorhara, conducted the post-mortem on the dead body of Mst. Haleema aged about 27 years, at about 9.30 a.m. on 13.6.1995 and prepared the Post-

Mortem Report (Ex.P.1). He noted following ante-mortem external injuries.

1. Abrasions 1/2' x 1/4' on the left mandible part.
2. Abrasions 1/4' x 1/4' on the left side of the neck.
3. Contusions 2-1/2' x 2' on the front of the neck.
4. Contusions 3' x 3' on the epigastrium region.
5. Contusions 1'x 1' on the left hypochondria region of abdomen.
6. Contusions 1-1/2' x 1' on the left palm lateral aspect.
7. Contusions 3' x 1' on the Rt.palm medial aspect.
8. Abrasion 1/2' x 1/6' on the left wrist' ant. aspect.

In the opinion of doctor the cause of death is Asphyxia resulting from complete blocking trachea rings and airways by pressing of neck with blunt object like danda in lying position forcing both the ends of danda till the death occurs and cessation of total respirations. It was also opined by doctor that injuries on the neck were caused by pressing on neck while other injuries were possible in scuffle.

5. Regarding medical evidence, it was argued by learned counsel that the Post-mortem was conducted not at the police request, hence this evidence was not admissible. This argument is contrary to the evidence as P.W.2 Dr. Thakuria, who stated that he conducted the post-mortem at the request of Police Station, Zorhara. It is was next argued that froth was coming out from the mouth of the deceased but visra was not collected for chemical examination, hence exact cause of death could not be ascertained. This argument has also no force as it was stated in cross- examination by P.W.2 Dr. Thakuria that obstruction in trachea is case there would be no pressure on the trachea while it was a cause of strangulation. It was also contended that there is no evidence to show that injuries were sufficient in ordinary course of nature, therefore, it is not proved beyond doubt that Mst. Haleema died because of these injuries. It was also pointed out that according to Dr. Thakuria the duration of injuries was more than 32 hours

while the duration of 12 to 18 hours is mentioned in the post- mortem report and thus the testimony of P.W. 2 Thakuria is contrary to post-mortem report Ex.P.1. On careful consideration, we come to this conclusion that these contentions have also no merit as P.W.2 Thakuria clearly deposed that Mst. Haleema died because of strangulation which was either with pressure of hands or with pressure: of a hard object ('danda'). Probable time since death has been shown 12 to 18 hours in Ex.P.1 and the said fact has been proved in his oral statement also, although at one place the duration of injuries was stated to be about 32 hours, which keeping in view the entire medical evidence appears to be a typing mistake. Therefore, it was well-proved beyond doubt that the cause of death was strangulation.

6. Now we proceed to examine the other evidence. Admittedly there is no direct evidence of eye-witnesses. The case of the prosecution is mainly based upon the extra judicial confession of the appellant coupled with some other circumstantial evidence. The prosecution has also relied upon the existence of motive. P.W. 1 Zamil Khan Mave, resident of village Samdika, deposed that on the date of occurrence he had gone to village Kheri Alimuddin to one Shri Guttal for purchase of bull at about 4 p.m., but he did not purchase the same as no agreement arrived at. Then, he went to the house of his uncle Meer Khan (P.W.12), who is neighbour of accused Usman. Usman was beating his wife in his house. Upon a query made by him, Meer Khan told that both husband and wife were quarreling. He alongwith Meer Khan went to the house of Usman and at that moment Usman came out from his house and said that ^eSaus gyhek dh tks esjh ?kjokyh gS] ukM+ ijgkFk /kj dj gR;k dj nh A\*\* When Usman was running from his house they went inside the house of Usman and found Haleema lying dead. Usman was caught hold of by the villagers. It was admitted by P.W.1 Zamil Khan in cross-examination that Subddin is the husband of elder sister of Haleema. It was also deposed that Kalu Singh, Buddi and Meer Khan were neighbours of accused Usman and they also came there. P.W.12 Meer Khan did not support the prosecution case, hence he was declared hostile. He deposed that he saw the dead body of Mst. Haleema from a distance 150' but he did not see accused Usman. He pleaded ignorance as to whether accused Usman was residing in Hyderabad. He also denied the suggestion that accused usman came to him and confessed his guilt. P.W.3 Abdul Wave, resident of village Ranika, cousin brother of deceased Haleema stated that

after coming from Hyderabad, the behaviour of Usman was changed for Mst. Haleema. P.W.4 Jume Khan, elder brother of Subddin stated that Haleema was married to Usman 8-9 years prior to the occurrence and both were having very good relations. The accused went to Hyderabad about one and half year ago and when he came back his behaviour was not good with his wife Mst. Haleema. P.W.5 Zor Mohammed, father of deceased Haleema supported the contents of F.I.R. Ex.P.2. His statement was recorded on 22.2.1996 in the trial Court. He stated that the accused went to Hyderabad four years prior to this occurrence and since then he started beating Mst. Haleema. It was also stated that Haleema was residing in a separate room with her husband Usman. In cross- examination it was stated that out of this wedlock a son was born to them who is about five years of age. P.W.6 Kamroo and P.W.8 Ali Mohammed, both residents of village Kheri Alimuddin and witnesses of site-plan Ex.P.3 were declared hostile as they did not support this site plan. Both of them, though residents of the village of the accused, denied to see even the dead body of Mst. Haleema. P.W.7 Makul, resident of village Ranika and cousin brother of Mst. Haleema accompanied P.W.5 Jar Mohammed. He and P.W.5 also proved Ex.P.4 Panchnama of the dead body. P.W.9 Lekhraj Singh, Head-Constable, P.W.10 Kishan lal are formal witnesses and P.W.11 Vijay Pal, the then S.H.O. investigated the case.

7. Learned counsel Shri Sharma contended that the evidence of extra-judicial confession is a weak piece of evidence and testimony of P.W.1 Zamil Khan is not trust-worthy as he belongs to other village, he is an interested witness being in relation to the deceased and more so P.W.12 Meer Khan did not support him. In support of these contentions, reliance has been placed upon State of Punjab v. Bhajan Singh and Ors. (1), State of Haryana v. Rajinder Singh (2), State of M.P. v. Daya Ram Hemraj (3), Surinder Kumar v. State of Punjab (4), Balbir Singh v. State of Punjab (5), Dwarka Das v. State of Gujarat (6), Jarnail Singh v. State of Punjab (7) and Sandeep v. State of Haryana (8).

8. In State of Punjab v. Bhajan Singh (supra) it was observed that the evidence of extra-judicial confession in the very nature of things is a weak piece of evidence. Similar observation as made in State of Haryana v. Rajinder Singh (supra) that for a confession to be used against the maker in a criminal trial the same has to be

both true and voluntary. In *State of M.P. v. Dayaram* (supra) the extra-judicial confession made by the accused was containing several discrepancies regarding the persons to whom the confession was made and the occasions when the confession was made and what precisely was said by the accused, therefore, the evidence of the extra-judicial confession was held unreliable. In *Surinder Kumar's case* (supra) all the four accused persons according to the prosecution jointly confessed the crime of killing the deceased before P.W.6. The Hon'ble Supreme Court observed that it does not stand to reason that all the four accused persons would jointly approach P.W.6 to make a joint confession and there was no explanation as to why instead of going to the Police, they would approach P.W.6 to take his assistance for surrendering before the Police. In *Balbir Singh's case* (supra); the only evidence against the appellant was an extra-judicial confession stated to have been made by the appellant before the Sarpanch of the village. It was held that extra judicial confession is a very weak piece of evidence and ordinarily is not accepted without independent corroboration and in this case it was of a doubtful character. In *Dwarkadas Gehanmal v. State of Gujarat* (supra) extra judicial confession was made before P.W.4, who already suspected about illicit relations between his wife and the accused and P.W.4 disclosed the confession to police after five days, hence evidence of such extra judicial confession was found not creditworthy. In *Jarnail Singh's case* (supra), on account of delay in recording confession made before a person wholly unconnected was held to be unreliable in absence of corroboration. In *Sandeep's case* (supra) three accused persons, according to prosecution came to the house of P.W.9 Laxmi Narain after three days of the occurrence and out of three one accused told him that they committed the murder of one Vishal and requested him to produce them before the Police, in view of these facts, it was held that there was no necessity for the accused persons to go to the residence of Laxmi narain, more so when Laxmi Narain was not closely acquainted with the accused nor as having any status in the society so that he could be helpful to them. Per contra learned Public Prosecutor canvassed that conviction can be based only upon the extra judicial confession and there is no ground to disbelieve the statement of P.W.1 Zamil Khan. Reliance has been placed upon *Gura Singh v. State of Rajasthan* (9). In para 6 of this judgment, it was observed by the Apex court that it is settled position of law that extra judicial

confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. It was further observed that despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely, and to whom it is made in the circumstances which tend to support the statement and corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone.

9. In the instant case the extra judicial confession made by the appellant has been sought to be proved by the testimony of P.W. 1 Zamil Khan and P.W. 12 Meer Khan. As noticed earlier, P.W. 12 Meer Khan is uncle of P.W. 1 Zamil Khan as well as neighbour of the appellant Usman. Admittedly, Zamil Khan was not the resident of village Kheri Alimuddin and another witness Meer Khan did not support his testimony but he does not seem to be an interested witness. According to the prosecution case, it was Subddin, who informed the Police as well as P.W. 5 Zor Mohammed regarding commission of this crime but Subddin was not examined on behalf of the prosecution. It is also not in dispute that Subddin was brother-in-law of deceased Haleema. According to Zamil Khan he happens to be brother of Subddin in distant relation. In view of this it cannot be said that Zamil Khan was closely related to the deceased or her brother-in-law Subddin, hence, he cannot be termed as an interested witness, rather he appears to be an independent witness according to the statement of Zamil Khan, he was present in the house of Meer Khan at the time of commission of this crime. He heard the cry of Haleema and he made an enquiry from Meer Khan and Meer Khan disclosed that both husband and wife are quarrelling and then both of them went to the house of appellant and at that point of time appellant came out of his own house and instantaneously made this confession that he had killed his wife by strangulation. Thus the confession was made just after the occurrence and that too on the spot and it is not alleged that this confession was procured under any undue influence, coercion or pressure. This is no ground to discard the testimony of Zamil Khan that another witness or extra judicial confession did not support his testimony. It is also significant to say that just after this confession made by the appellant, Zamil Khan

went inside the house and found the dead body of Haleema lying there. His statement Ex.D.1 under Section 161 Cr.P.C. was recorded on the same day the matter was reported to the Police. Therefore, the learned trial Court has rightly relied upon the evidence of extrajudicial confession being true and voluntary.

10. There is other circumstantial evidence also. Mst. Haleema was married to the appellant about 8 or 9 years prior to this occurrence and out of this wedlock a son was born to them who was about five years of age at the relevant time. There is evidence to show that the appellant went to Hyderabad about one and half year prior to this occurrence and since then his behaviour changed towards his wife Haleema. P.W.5 Zor Mohammed father of deceased categorically stated that relations of appellant with his wife Mst. Haleema were cordial before going to Hyderabad. Thereafter he started beating her. It was also stated by him that appellant Usman threatened to get rid of her and later on he did it. P.W.3 Abdul and P.W.7 Makool supported the testimony of Zor Mohammed. It is also significant to say that Mst. Haleema was pregnant by seven months at that time according to the medical evidence. It is also not disputed that both of them i.e. the appellant and Mst. Haleema were residing together in the same room and she was found dead in her house just after this occurrence. The prosecution has proved this fact also beyond doubt that the appellant was present in his house at that time. The appellant did not offer any explanation as to how and under what circumstances his wife Haleema died. All these circumstances coupled with the evidence of extrajudicial confession taken together complete the chain leading to only conclusion of guilt of the appellant. Lastly, it was argued by learned counsel Mr. Sharma that it appears to be a case of sudden incident, hence the offence does not amount to murder. But we found ourselves unable to accept this argument in view of the proved facts and circumstances and the murder of committing the murder of his wife by the appellant.

11. In the result we dismiss the appeal filed by the appellant.