

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Athar Minallah
Mr. Justice Irfan Saadat Khan
Mr. Justice Malik Shahzad Ahmad Khan

JAIL PETITION NO. 241 OF 2023

Against the judgment dated 08.06.2023 of the
Islamabad High Court, Islamabad passed in JA
406/2022

Nasir Hussain

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s):

Mr. Aftab Alam Yasir, ASC

For the State:

Mr. Ghulam Sarwar, PG ICT
Ms. Chand Bibi, DPG
Barrister Abdullah
a/w Safdar Hussain, S.I.

Date of Hearing:

17.06.2025

ORDER

Athar Minallah, J.- Nasir Hussain ('**appellant**') had sought leave and his petition was converted into appeal and partly allowed vide our short order of even date.

2. The appellant was nominated in crime report No.427 dated 19.11.2020 registered at Police Station Sihala, Islamabad for commission of alleged offence under section 302 of the Pakistan Penal Code, 1860 ('**PPC**'). The completion of investigation had led to filing of report under section 173 of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**') and pursuant thereto charge was framed on 15.02.2022. The appellant did not plead guilty and, therefore, upon conclusion of trial, the trial court vide judgment dated 11.11.2022 convicted the appellant under section 302(b) of PPC and sentenced him to death. The trial court had further directed the appellant to pay compensation amounting to Rs.200,000/- to the legal heirs of the deceased under section 544-A of Cr.P.C. and the same shall be recovered as arrears of land revenue and in case of non-realization of the said amount the

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appellant have to undergo further simple imprisonment for six months. The appeal preferred by the appellant was dismissed by the High Court and sentence of death was confirmed since the reference was answered in the affirmative.

3. We have heard the learned counsel for the appellant as well as the learned Prosecutor General, Islamabad. We have also perused the record with their able assistance.

4. According to the prosecution story, the crime was committed at midnight on 18.11.2020. The appellant's wife Mst. Farzana Bibi was murdered and the crime scene was the house of the appellant. Their two sons, Muhammad Hasnian (PW-1) and Muhammad Aqib (PW-2) who at the time of occurrence were 13 and 9 years of old respectively, were also present at the crime scene. Moreover, another minor Abdullah who was the appellant's nephew was also present when the occurrence had taken place. The complainant of this case Nasir Khan (PW-3) was informed at 8:30 am the next day i.e. 19.11.2020 that the dead body of her niece was brought to the hospital. The body was brought to the hospital by the appellant and he was accompanied by his two sons and the other minor. Zafar Ali, ASI (PW-8) had also reached the hospital pursuant to information received by him and he had inquired from the two children regarding the occurrence. The latter had informed the police officials that their father i.e. the appellant had committed the offence at midnight. This disclosure had led to the registration of the crime report and arrest of the appellant. The crime weapon i.e. Churri, was recovered from the crime scene and the report of the Forensic Science Laboratory was positive. The ocular account was deposed by the two children i.e. Muhammad Hasnian (P-1) and Muhammad Aqib (PW-2). Their testimonies were supported by the medical evidence brought on record by Dr. Shazia Nazeer (PW-9). The guilt of the appellant was proved by the prosecution beyond a

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reasonable doubt. However, the factum of motive was shrouded in mystery. There is nothing on record to suggest that the spouses had strained relationship prior to the occurrence. The motive setup in the crime report was that the appellant being drug addict used to physically abuse the deceased victim. However, no evidence was adduced to prove that either the appellant was a drug addict or he used to physically abuse the deceased victim. Moreover, the medical evidence is not in conformity with the ocular account regarding the time lapse between the death and the post mortem. There is also no explanation as to why the dead body was kept in the house and then brought to the hospital the next morning at about 7 am. In the facts and circumstances of this case, particularly when motive could not be proved by the prosecution and medical evidence did not completely support the otherwise reliable ocular account, handing down of sentence of death was not justified. We, therefore, allow this petition only to the extent of modifying the sentence of death to imprisonment for life. However, the conviction, compensation and sentence required to be undergone in default of payment of compensation are upheld and to that extent the appeal stands dismissed.

The above are our reasons for short order of even date.

Judge

Judge

Judge

ISLAMABAD THE

17.06.2025

(Aamir Sh.)

"Not Approved for Reporting"