

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.243 of 2023

Against the judgment dated 11.05.2023 of the High Court of Sindh, Karachi passed in Criminal Appeal No.30 of 2022 and Confirmation Case No.01 of 2022

Rajesh alias Rajoo

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s): Ms. Amna Bano, ASC

For the State: Ms. Rahat Ehsan, Addl. P.G. Sindh

Date of Hearing: 26.06.2025

JUDGMENT

Irfan Saadat Khan, J.- This Jail Petition is directed against the judgment passed by the High Court of Sindh, Karachi in Criminal Appeal No.30 of 2022 and Confirmation Case No.1 of 2022 dated 11.05.2023, whereby the judgment of the Trial Court in Sessions Case No.1533 of 2020 dated 12.01.2022 was upheld. The Trial Court convicted the accused under section 265—H (ii) of the Code of Criminal Procedure, 1898 (**‘Cr.P.C.’**), for committing the offence under section 302(b) of the Pakistan Penal Code, 1860 (**‘PPC’**), and sentenced him to death as *Ta’zir*, further directing him to pay compensation of Rs.10,00,000/- (ten *lac*) to the legal heirs of the deceased under section 544-A Cr.P.C. or in case of default thereof to suffer S.I. for six months.

2. Briefly stated the facts of the case as per contents of the FIR are that, the complainant, Premchand, along with his family resides in Haji Mureed Goth, Firdous Colony, Gulbhar, Karachi. His sister, Mst. Radha (the '**deceased**') aged about 31/32 years was married to Rajesh alias Rajoo (the '**accused**') and the pair had one daughter and were living in the complainant's *Mohallah*. On 07.10.2020, while the complainant was at work, his younger brother informed him on the telephone that the *Mohallah* people had informed him that Radha got burnt and was taken to Civil Hospital, Karachi. Upon receiving this information, he went to his home and, thereafter, along with his wife and other family members went to Civil Hospital. The complainant tried to meet the injured Radha, but the doctors did not allow him to meet her. He then asked the accused as to what had happened, but Rajesh could not satisfactorily explain anything to him. After one day when the deceased regained consciousness the complainant met her and asked her as to what had happened, whereupon she told him that the accused had set her on fire due to some domestic quarrel and that he was now pressurizing the deceased not to give any statement either to the Police or to any of the family members. On 12.10.2020, Radha expired at 03:40 p.m. in the Hospital and thereafter the complainant went to the concerned Police Station for lodging the FIR against the accused since, according to him the accused was the person who had set his sister on fire, as a result of which she had expired and the reason behind this act was the day-to-day domestic quarrels between them.

3. The matter proceeded before the Trial Court, which examined as many as 12 prosecution witnesses. The accused also produced two witnesses in his defence. After hearing the matter and examining the video recording produced by the complainant with regard to the deceased-Radha's dying declaration, scrutinizing the alleged crime weapon and taking into consideration other factors, the Trial Court convicted the accused in the terms mentioned above, *vide*: judgment dated 12.01.2022. The High Court then affirmed the conviction,

sentence and the amount of compensation awarded by the Trial Court through the decision *supra*, which is now impugned before us.

4. Ms. Amna Bano, learned ASC has appeared on behalf of the petitioner and stated at the outset that there was no witness to the incident. She stated that the Trial Court and the High Court have not considered the aspect that it was not the accused who set the deceased on fire rather the lamp (*diya*) used for worship purposes caused deceased to suffer burns due to which she passed away. She stated that the purported dying declaration is not confidence-inspiring since the same is neither properly audible nor could it be ascertained that the deceased had given a clear and unblemished deposition so as to connect the accused in setting her ablaze. She stated that even the complainant was not an eye witness to the incident and the FIR had been lodged after a delay of almost four days. The learned counsel argued that there was no motive available with the accused to set ablaze his wife over petty domestic quarrels, which are common between a husband and a wife and that it is still unexplained as to why the accused would kill the mother of his young daughter. She finally stated that in view of these factors the accused may be acquitted by giving him benefit of doubt by considering non-availability of the motive and other mitigating factors.

5. Ms. Rahat Ehsan, learned Additional Prosecutor General, Sindh appeared on behalf of the State and stated that nobody but the accused was guilty of committing the crime of burning his wife, since no one else was present in the house at that moment and that the story that the deceased sustained the burns due to a lamp (*diya*) is a concocted and fabricated story which is hardly believable. She stated that from the dying declaration it is evident that it was the accused who set ablaze the deceased by first throwing mustard oil, which is a combustible liquid, upon her and then setting her on fire. She admitted that no doubt the audio and video recording, regarding the dying declaration, is not properly audible but

equally true is the fact that all the factors lead to the conclusion that it was the petitioner who set ablaze his wife due to everyday quarrels between them. She stated that the petitioner had acted in the most gruesome and brutal manner and he does not deserve any leniency; therefore, the conviction, sentence and the compensation awarded by the two courts below may be affirmed.

6. We have heard the learned counsel for the petitioner as well as the learned State counsel at some length and have also perused the record. In the interest of substantial justice, we have also heard the video clip regarding the dying declaration of Mst. Radha, in the open Court.

7. At the very outset, it is noted that the FIR has been lodged after a delay of more than four days although it has been explained that it was only after the death of Mst. Radha that the FIR was registered, and that no FIR pertaining to the act of Rajesh setting ablaze Radha was lodged till her death as is evident, according to the evidence of the complainant, from the facts emanating in the instant matter including the dying declaration. The record also reveals that the main case of the prosecution hinges on the dying declaration given by Mst. Radha. In order to do substantial justice, the said dying declaration was played in the Court, however, it is an admitted fact that the said dying declaration is not properly audible. It has also come on record that there are major contradictions in the deposition of Premchand (complainant/PW-1), Beena (deceased's sister/PW-5), Sonia (deceased's sister/PW-6) and Ravi (PW-11). The complainant stated at one stage that he heard Mst. Radha himself with regard to her dying declaration and that she told, that it was Rajesh who had set her on fire, whereas at another place he stated that he was available outside the room. Similarly, Beena (PW-5) stated in her deposition that when they recorded the dying declaration on the mobile phone of Mohan Lal (accused's brother/DW-2) there were 5 to 6 persons available in the room who heard the dying declaration, whereas according

to the deposition of Sonia (PW-6), she stated that Ravi (PW-11) recorded the dying declaration on the mobile phone of Mohan Lal (DW-2) in her presence. There is also a contradiction in the deposition of PWs *inter se*, as according to deposition of complainant and Beena the incident took place due to a quarrel between Rajesh and Mst. Radha whereas according to the deposition of Sonia, while Mst. Radha used to visit her parents' house regularly she had never complained about the attitude of Rajesh. It has also come on the record that according to some witnesses it was Rajesh who took Mst. Radha in an injured and burnt condition in a *rikshaw* to the Civil Hospital, whereas at a different place it was mentioned that he was not available at the time of the incident and had gone out to fetch bread etc. for breakfast. It has also come on the record that according to the accused the fire took place due to lamp (*diya*) ignited by Mst. Radha for worship purposes.

8. As per the deposition of Mohan Lal (DW-2), he stated that a few days ago, a similar type of incident took place at his house also when his residence caught fire due to a lamp (*diya*) used for worship purposes. The most intriguing fact in the instant matter is with regard to the dying declaration given by Mst. Radha.

9. Here it must be explained that a 'dying declaration' is the statement which is made by the victim of homicide offences as to the cause of their death. The rule relating to dying declaration and its admissibility is provided in Article 46 of the Qanun-e Shahadat Order, 1984, which explains that the statement of a dying person is relevant and admissible in evidence, however, for recording such declaration no particular mode has been provided. The principles laid down by this Court are that a dying declaration is a weaker type of evidence, which needs corroboration and that a conviction can be based on the basis of such a declaration when fully corroborated by the other reliable evidence. Thus, the facts and circumstances of each case, have to be kept in view and also the credibility, reliability and acceptability of such a declaration, by the Court.

10. It would thus be beneficial to delineate the jurisprudential framework governing the evidentiary value of a dying declaration, as enshrined under Article 46 of the Qanun-e-Shahadat Order, 1984. While such a statement may constitute an exception to the general rule of direct evidence, thereby permitting its admissibility in a criminal trial even in the absence of cross-examination of the declarant, the superior courts have consistently maintained that a dying declaration is, at best, a weaker type of evidence which requires cautious appraisal and must ordinarily be corroborated by other reliable and confidence-inspiring material. A conviction cannot rest solely on a dying declaration if the same is shrouded in mystery or is fraught with infirmities. The credibility, voluntariness, and the mental fitness of the declarant, along with the absence of extraneous influence, are *sine qua non* for its evidentiary acceptance. It is further emphasized that a dying declaration must not only be truthful and free from external coercion but also supported by surrounding circumstances, including the medical evidence, which confirms the declarant's capacity to make such a statement.

11. In the instant case it has come on the record that Radha was 38.5% burnt and whether she was able to give a dying declaration in such a situation was again a question to be answered by the prosecution. Moreover, such declaration was neither recorded by the I.O or the doctor or any other independent person but by the relatives of Radha. Even otherwise the same is, admittedly, not properly audible. On first principle, the sanctity attached to such a statement by the statute should be respected unless there are clear circumstances brought out in the evidence to show that a dying declaration is not reliable. An audio tape or video produced before a court as evidence ought to be clearly audible or viewable. In this regard we were able to lay our hands on the decision given in the case of Muhammad Saeed and another vs. The State and another (2024 SCMR 1421) wherein it was held as under:

"11. Under Article 46 of the Qanun-e-Shahadat Order, 1984 the sanctity of a dying declaration has to be evaluated with great care and caution and the evidence consisting of dying declaration has to be appreciated with due diligence.

A dying declaration is a question of fact which has to be determined on the facts of each case. To find out truth or falsity of a dying declaration, a case is generally to be considered in all its physical environment and circumstances.

A dying declaration can be made before a private person but it should be free from any influence and the person before whom it is made has to be examined. It is necessary to ascertain that the dying declaration was made honestly, its maker was in a fit state of mind to make the statement, its maker was free from outside influence, its maker was fearing death and had made truthful statement.

Reference in above regard is made to the cases of 'Farmanullah v. Qadeem Khan' (2001 SCMR 1474) and 'Majeed v. The State' (2010 SCMR 55)."

[underlying and bold is supplied for emphasis]

The video recording of the dying declaration shows the Mst. Radha deceased had not made any statement at her own rather she was being dictated and tutored by her relatives to make a statement against the petitioner. It is clear that she was only saying yes or no in response to the statements made by her relatives present at the relevant time and as such it was not her own statement rather the statement of her relatives which was recorded in the video recording thus the said statement cannot be considered as the dying declaration of the deceased. Even otherwise it clearly shows that Mst. Radha-deceased was under the influence of her relatives who were present at the relevant time and recorded her alleged dying declaration. No certificate of the concerned Medical Officer has been produced in the prosecution evidence to show that the deceased was medically fit to make the statement. None from the Hospital staff appeared in the witness box to affirm that any dying declaration was made by the deceased as claimed by the prosecution. The case of Ghulam Zohra v. Muhammad Sadiq (1997 SCMR 449) is relevant in the present context, wherein this court observed as under:

"There can be no cavil with the proposition that the statement of the deceased in the form of an F.I.R. can be treated as a dying declaration which by itself is good enough for sustaining the conviction on a capital charge. Question in the instant case, however, is whether the maker of the statement Exh. 14 was in a fit condition to make the statement which he is said to have made. It is not denied that the deceased Naveedul Hassan was brought to the hospital

in unconscious condition which fact is borne out from the statement of Doctor Abdul Basit. Medical Certificate Exh.44 also shows that 75 % of the body of the injured was burnt and he was in a shock at the time of his examination by Doctor Abdul Majeed. In the supplementary Medico-Legal Report Exh.45, it is stated that the injured "expired at 9-00 p.m. on 29-2-1984 due to septicemia and Cardio-respiratory failure from 80% burn". **In the face of this medical evidence, the learned Judges of the High Court rightly observed that it was the duty of the Police Officer to have obtained a certificate from the Doctor before recording the statement of the injured that he was in a fit condition to give the statement. Such a certificate admittedly was not obtained and no reasonable explanation for this omission was given by the Police Officer. In the circumstances, fitness of the injured to make the statement Exh.14 remained doubtful and the High Court rightly so held."**

[underlying and bold is supplied for emphasis]

Likewise in the case of Zahida Bibi v. State (PLD 2006 Supreme Court 255) it was held that:

"17. [...] The medical evidence revealed that 70% body of the deceased was burnt and this is a matter of common sense that in such a precarious condition, it was not possible for the deceased to narrate the occurrence in each detail to Muhammad Kashif (P.W.3), rickshaw driver and Sh. Bashir Hussain, S.I. (P.W.2) who recorded the statement of deceased in the Hospital. The Sub-Inspector has claimed to have obtained the permission from Dr. Muhammad Absar Sirati (P.W.10) present on duty and no doubt the said doctor has also confirmed to have given such permission but certainly the statement of the deceased was recorded in absence of the doctor and the staff of the hospital. This may be seen that permission for recording the statement of deceased was not obtained from Dr. Muhammad Obaidullah (P.W.5) who initially examined the deceased on her arrival in the hospital and provided her the treatment so much so the chart of the patient containing initial investigation regarding the condition of the deceased prepared by him was not produced in evidence to show that she was conscious and was fit to make a statement. Sultan Ahmed Chaudhry, A.S.P. (P.W.12) stated that petitioner had cordial relations with the deceased and as per his investigation, none of the witnesses was present at the spot at the time of occurrence and that except the dying declaration of the deceased, no other evidence, direct or circumstantial, was available. This is an admitted fact that the statement of the deceased was not recorded by the Sub-Inspector of police in hospital in presence of the doctor and further neither any member of the hospital staff was associated at the time of recording the statement nor it was got verified by any official of the hospital that the statement was actually made by the deceased. Be that as it may, the status of such a statement would be hardly a statement under section 161, Cr.P.C. and not a dying declaration of the deceased. This may be seen that the dying declaration or a statement of a person without the test of cross-examination is a weak kind of evidence and its credibility certainly depends upon the authenticity of the record and the circumstances under which it is recorded, therefore, believing or disbelieving the evidence of dying declaration is a matter of judgment but it is dangerous to accept such statement without careful scrutiny of the evidence and the surrounding circumstances, to draw a correct conclusion regarding its truthfulness. The rule of criminal administration of justice is that the dying declaration like the statement of an interested witness requires close scrutiny and is not to be believed merely for the reason that dying person is not expected to tell lie. **This is a matter of common knowledge that in such circumstances in preference to any other person, a doctor is most trustworthy and reliable person**

for a patient to depose confidence in him with the expectation of sympathy and better treatment to disclose the true facts. In the present case, in the manner in which the statement of deceased was recorded by the Sub-Inspector, would seriously reflect upon its correctness and consequently, could not be considered worthy of any credit to be relied upon as dying declaration."

[underlying and bold is supplied for emphasis]

Similarly, in the case of Tahir Khan vs. The State (2011 SCMR 646) it was observed as under:

"12. It is thus absolutely clear from the principles laid down by this Court that a dying declaration is a weaker type of evidence, which needs corroboration and that conviction can be based on the basis of such a declaration when fully corroborated by the other reliable evidence. Thus the facts and circumstances of each case, have to be kept in view and also the credibility, reliability and acceptability of such a declaration, by the Court."

12. Moreover, the video recording of the dying declaration of Mst. Radha-deceased was never sent to the office of the FSL to determine its genuineness, therefore, it is not safe to rely upon said recording. Reference in this context may be made to the case of Ishtiaq Ahmed Mirza v. Federation of Pakistan (PLD 2019 Supreme Court 675).

If all these factors are read in conjunction with each other and in juxtaposition it would reveal that the instant case is not free from doubts and surmises. The dying declaration was not recorded in accordance with the law, there is no FSL report about the authenticity of the video recording of the dying declaration of the deceased and the dying declaration admittedly not being properly audible could not be relied upon keeping in view the principles elaborately discussed in the above referred decisions.

13. Insofar as the motive of matrimonial/domestic dispute between the petitioner and the deceased is concerned, admittedly the deceased and petitioner were living together in their house as husband and wife till the date of occurrence. No litigation, civil or criminal, was pending between them till the date of the unfortunate incident of the instant case. It has also been brought on the record that the petitioner himself took his wife Mst. Radha (deceased) from his house to

the Hospital. The deceased was alive when she was brought to the Hospital by the petitioner and she died after four days from the date of her admission in the Hospital. If the petitioner had any intention to commit the murder of his wife (Mst. Radha-deceased) then he should have made sure the death of his wife at the spot instead of taking her to the Hospital in injured condition.

14: We, therefore, in the light of what has been stated above, are of the view that, it cannot be said in the instant matter that the prosecution has proved its case up to the hilt and that there is no element of doubt in the instant matter, rather, in our view, the doubts in the instant matter are quite obvious and evident and it is settled proposition of law that even in the case of slightest doubt, the benefit of such doubt has to be given to the accused who is the favourite child of the law.

15. We, therefore, under the circumstances convert this jail petition into an appeal and allow the same. The judgments of the Trial Court dated 12.01.2022 and the High Court dated 11.05.2023 are set aside and the appellant is acquitted of the charges levelled against him. The appellant if not required to be incarcerated in any other case shall be released forthwith.

Announced in open Court on 9/7/2025.

ISLAMABAD
26.06.2025
arshed

“Approved for Reporting”