IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Muhammad Hashim Khan Kakar
Mr. Justice Salahuddin Panhwar
Mr. Justice Ishtiaq Ibrahim

Jail Petition No.95 of 2022
(Against the judgment dated 22.02.2022 passed by the Islamabad High Court, Islamabad in Cr.A. No.190 of 2018 and Murder Reference No.09/2018)

Muhammad Ramzan

...Petitioner

versus

The State.

...Respondent

For the Petitioner:	*Mr. Sagheer Ahmad Qadri, ASC*
For the State:	*Ms. Chand Bibi, DPG*
Date of hearing:	*20.02.2025*

JUDGMENT

Ishtiaq Ibrahim, J.- Tried by learned Sessions Judge, Islamabad (West) (**"Trial Court"**), in case FIR No.105 dated 22.05.2018, under section 302 PPC, registered at Police Station Noon, Islamabad, Muhammad Ramzan, the petitioner, having been found guilty of committing murder of his wife Mst. Ameen Bibi alias Yasmeen deceased, was convicted under section 302(b) PPC and sentenced to death as *Ta'azir* and to pay rupees two lacs, as compensation to legal heirs of the deceased within the meaning of section 544-A Cr.P.C. and in default of payment thereof to further undergo six months simple imprisonment vide judgment dated 10.09.2018 (**"impugned judgment"**).

2. The learned Islamabad High Court, Islamabad, while dismissing Cr.A No.190 of 2018 of the petitioner, maintained his conviction and sentence and answered the Murder Reference No.9/2018, sent by the learned trial Court in the affirmative vide judgment dated 22.02.2022 (**"impugned judgment"**).

3. Being discontented from his conviction and sentence, the petitioner has filed the instant Jail Petition No.95 of 2022, before this Court.

4. Briefly, the prosecution's case as per First Information Report (**"FIR"**) is that on 22.05.2018 at about 10.45 AM, petitioner Muhammad Ramzan met with Dilawar Hussain ASI (PW.5), who was on patrolling at *Dhodana Link road* and reported him to the effect that he was residing in a rented house situated at *Dhok Maleyar old Abadi* for the last 3/4 months; that at about 03.00 AM, he while administering intoxication through tablets to his wife Mst. Ameen Bibi alias Yasmeen has committed her murder by strangulation and has placed her dead body in an iron box. Report/complaint of the petitioner was reduced into writing in the shape of Exh.PF and sent to Police Station on the basis of which FIR was registered. The petitioner was taken into custody by Dilawar Hussain ASI and then handed over to Abdul Rehman Inspector (PW.10), who also arrived at the spot. The petitioner then led the police to his house where on his pointation the police recovered dead body of Mst. Ameen Bibi alias Yasmeen deceased lying in an iron box, having a rope around the neck and mouth closed off-white white tape.

5. On completion of investigation, report under section 173 Cr.P.C. was submitted against the petitioner before the learned trial Court, where he was formally charge sheeted under section 302 PPC to which he pleaded not guilty and claimed trial. To prove guilt of the petitioner, the prosecution examined as many as

eleven witnesses. After closure of the prosecution's evidence statement of the petitioner was recorded under section 342 Cr.P.C., wherein he denied the prosecution's allegation and professed his innocence. He, however, neither wished to be examined on oath under section 340(2) Cr.P.C. nor opted to produce evidence in defence. On conclusion of trial, the learned trial Court after hearing both the sides convicted and sentenced the petitioner as mentioned in the initial paragraph of the judgment. The petitioner questioned his conviction and sentence before the Islamabad High Court, Islamabad, through Cr.A. No.190 of 2018, but the same was dismissed and consequently, the Murder Reference sent by the trial Court for confirmation of death sentence of the petitioner was answered in the affirmative, hence, this petition.

6. Learned counsel for the petitioner argued that both the courts below have erred in law while recording conviction of the petitioner in a capital charge on the sole basis of FIR, allegedly recorded on the report of the petitioner; that petitioner has categorically denied in his statement under section 342 Cr.P.C. registration of the FIR on the basis of his report; that FIR is not a substantive piece of evidence unless proved by its maker; that there is no direct evidence of the occurrence and recovery of dead body of the deceased from the house has also not been proved by the prosecution through independent evidence; that there is no circumstantial evidence so as to make a chain of circumstances that its one end touch the dead body of the deceased and another neck of the petitioner. He lastly contended that the impugned judgments of the courts below being against the principles of appreciation of evidence are not sustainable in the eye of law.

7. Conversely, learned DPG appearing on behalf of the State contended that prosecution has proved the gruesome and brutal

murder of the deceased against the petitioner through cogent and confidence inspiring evidence. She while supporting the impugned judgments of the courts below sought dismissal of the instant petition.

8. We have given our anxious consideration to the submissions advanced at the bar from both sides and perused the evidence and impugned judgments of the Courts below.

9. We have noticed that both the courts below while taking the FIR, registered on the basis of a complaint Exh.PF, allegedly made by the petitioner to Dilawar Khan ASI, as a confession of the petitioner before police and recovery of the dead body of the deceased on the alleged pointation of the petitioner, have recorded conviction of the petitioner and awarded him sentence of death. Petitioner in his statement under section 342 Cr.P.C., has categorically denied Exh.PF while replying to question No.7 in the following manner:-

> ***"I have been falsely involved in this case. I had no reason whatsoever for committing murder of my own wife. In fact, on the day of occurrence in the morning, some unknown assailants had committed murder of my wife. I went to Police Station and provided information and asked them to proceed further. As it was a blind murder so the I.O. get rid of this case and manage my false involvement by way of factious proceedings in this case. I never led the police to the recovery of dead body and in this regard proceedings are also fake. I am innocent."***

10. A look over the cross-examination of author of Exh.PF and the Investigating Officer, the defence has confronted them with the suggestion that actually the petitioner had provided them information about murder of his wife by some assailant(s) but instead of recording his report the petitioner was implicated falsely in this case, which the PWs have denied. The said

suggestion of the defence suggests that from the very inception that petitioner has denied Exh.PF. In view of denial of the FIR by the petitioner, the most crucial points for determination are whether complaint Exh.PF was registered on the report of the petitioner and, if yes, whether the same can be used as evidence against him?

11. Dilawar Hussain ASI (PW.5) is the author of the Exh.PF. In cross-examination, he has admitted that it is not mentioned in Exh.PF that the same was read over to Muhammad Ramzan petitioner. He further admitted that he had not obtained signature or thumb impression of the petitioner over Exh.PF. In absence of any signature or thumb impression of the petitioner over Exh.PF, mere bald assertion of PW Dilawar Hussain ASI would not be sufficient to prove Exh.PF to be the report of the petitioner. The prosecution has not furnished any explanation, much less plausible, as to why the petitioner was not produced before the Judicial Magistrate for recording his confessional statement. If petitioner was ready to confess his guilt before the police then not recording the confessional statement of the petitioner by the Court is beyond our comprehension. The prosecution's evidence is silent to the effect that after reporting the incident, the petitioner was tutored by someone; as a result, he resiled and deviated from his stance. In the circumstances, we are firm in our view to hold that the prosecution has not proved Exh.PF, on the basis of which FIR was registered, to be a document scribed on the report of the petitioner.

12. For the sake of discussion, if we consider Exh.PF to be report of the petitioner, then at the most it could be considered as confession before police which is inadmissible evidence within the meaning of Article 38 of the Qanun-e-Shahadat Order, 1984 (**"QSO"**). Article 38 of the **("QSO"),** read as under:-

> **"Article.38. Confession to police officer not to be proved**: No confession made to a police officer shall be proved as against a person accused of any offence."

In case titled, *"Muhammad Saleh Vs the State" (PLD 1965 Supreme Court 366)*, this Court has held that report made by an accused to police is inadmissible evidence. Relevant part of the judgment is reproduce below:-

> "Muhammad Saleh himself went to Police Station to report the matter. What he said was recorded at 11.30 a.m. on 26th February. That statement was inadmissible evidence on account of its inculpatory nature."

It is settled law that FIR by itself is not a substantive piece of evidence unless its contents are affirmed on oath in the witness box by its maker and its maker is subjected to the test of cross-examination. In view of Articles 140 and 153 of the QSO, FIR being a previous statement can only be used for contradicting its maker but unless the same is not proved through its maker, cannot be used as a substantive piece of evidence in favour of the prosecution's case. In this regard we would refer to the judgment of the Supreme Court of India in *"Nasar Ali's case (AIR 1957 SC 366),* wherein it has been held that:-

> "A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under section 157 of the Evidence Act or to contradict it under section 145 of that Act. ***It cannot be used as evidence against the maker at the trial if he himself becomes an accused nor it corroborate or contradict other witnesses.*** It is a cardinal principle of criminal jurisprudence that the innocence of an accused person is presumed till otherwise proved. It is the

> duty of the prosecution to prove the guilt of the accused subject to any statutory exception.".

As stated earlier, FIR is not a substantive piece of evidence unless proved by its maker by deposing on oath in the witness box in support thereof except recorded on the report of a person who is near to die. In such eventuality, the FIR is commonly known as *"dying declaration"*, and is admissible evidence under Article 46 of the QSO, however, such declaration can also not be used as corroboration of the testimony of another witness, as held by this Court in case titled, *"Ghaus Muhammad alias Ghaus and another Vs the State (1979 SCMR 155).* Relevant part of the judgment is referred below:-

> "The maker of the FIR has died. It cannot be used as corroboration of the testimony of another person, namely, Nur Muhammad PW. At best the prosecution can use it for showing that the name of Nur Muhammad is mentioned in the FIR but that by itself would not advance the prosecution case."

13. In view of our discussion and the law on the subject referred above, we are firm in our view to hold that, even if, we accept that FIR of this case to be report of the petitioner, the same cannot be used as admissible evidence against him. Both the courts below have erred in law by taking into consideration the FIR as admissible evidence against the petitioner that too in the case of a capital charge.

14. Adverting to the circumstantial evidence in the shape of recovery of the dead body of the deceased on the alleged pointation of the petitioner from his house, statement of Abdul Rehman Inspector (PW.10) in this regard is of worth consideration. He has deposed that after disclosure the petitioner led them to a house near Islamabad *Home Dhoke Malayarn* wherefrom he recovered dead body of Mst. Ameen Bibi alias

Yasmeen deceased, lying in an iron box; that the box was locked and its key was with the petitioner, who opened it; that there was a rope around the neck of the deceased and her mouth was closed with off-white tape. In cross-examination, Abdul Rehman Inspector has stated that he had not made any effort to get fingers prints from the tape over the mouth of the deceased; that he did not notice any wrapper or box of the tablets; that he did not record statement of Matloob Hussain, the owner of the house where the petitioner was residing. Again stated that he had recorded his statement but he could not be cited as a witness in calendar. At the trial, the prosecution has not produced Matloob Hussain, the owner of the house as witness. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above witness been produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of *"Mst. Saima Noreen v. The State"(2024 SCMR 1310).*

Abdul Rehman Inspector admitted that the place of occurrence was surrounded by *Abadi* but he did not associate any person to the recovery of the dead body. He further admitted that he did not prepare recovery memo of the dead body of the deceased and simply made memo of iron box. No private witness of the locality was associated to attest the alleged recovery of iron box. Due to non-association of any private witness of the locality to attest the recovery memo lacks independent corroboration, thus, the same is disbelieved. Reliance in this regard is placed on the case of *"Muhamamd Ismail v. The State" (2017 SCMR 898).*

15. The present case hinges upon circumstantial evidence. The first circumstance relied upon by the prosecution was the report Exh.PF, allegedly recorded on the report of the petitioner which in light of the judgments *(supra),* being an inadmissible evidence has been ruled out by us from consideration. There is no denial that deceased was the wife of the petitioner and residing with him jointly in one and the same house. The deceased being his vulnerable dependent, the petitioner was supposed to report the unnatural death of his deceased wife in the police Station. In our view, the petitioner has discharged his burden by rushing to the Police Station and giving information to police about murder of the deceased, though the police have given different version in this regard which the petitioner has denied from its very inception as according to him he went to Police Station and reported about murder of his deceased wife by unknown culprit(s), but the police instead of recording his version roped him in the instant case falsely by attributing a false report Exh.PF to him which neither bears his signature nor thumb impression nor its contents has any nexus with reality. None recovery of intoxication tablets or its wrapper from the spot or from any other place on the pointation of the petitioner and not associating any independent witness from the locality to the alleged recovery/discovery proceedings coupled with preparation of no recovery memo qua dead body of the deceased by the Investigating Officer, create serious doubts in the prosecution's case. The prosecution has not explained as to why pointation memo/discovery memo of the dead body of the deceased was not prepared by the Investigating Officer (I.O). The I.O has also not furnished any convincing reason in this regard. If the I.O. was conscious of the fact of preparation of the recovery memo/pointation memo of the Iron box then non-recovery of the pointation memo of the dead body of the deceased on the discovery of the petitioner is beyond our comprehension. In such eventuality, recovery of the dead

body of the deceased on the alleged pointation of the petitioner cannot be held as discovery within the meaning of Article 40 of the QSO. Similarly, non-production of Matloob Hussain, owner of the house in which the petitioner was residing on rent with the deceased, is another serious blow to the prosecution's case. As per contents of FIR, the motive of the occurrence was stated to be immoral character of the deceased, however the same has not been proved in the evidence before the Trial Court. Hence, the motive of the occurrence remained shrouded in mystery. The alleged motive lacks the force necessary to connect the petitioner with the commission of the offence. Reliance in this regard is placed on the case of '*Muhammad Ijaz v. The State''(2024 SCMR 1507).*

16. No doubt, as per testimony of Dr. Shazia (PW.12), who had conducted autopsy on the dead body, the deceased met her unnatural death due to strangulation, but in absence of any direct or circumstantial evidence, only medical evidence would not be sufficient to prove that it was the petitioner who committed murder of the deceased. It is by now well settled that medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant. Reference in this context may be made to the cases of *"Muhammad Hassan & another v. The State & another" (2024 SCMR 1427) and "Iftikhar Hussain alias Kharoo v. The State" (2024 SCMR 1449).*

17. The impugned judgments of the courts below being against the principles of appreciation of evidence in the criminal dispensation of justice and the law settled by this Court are not sustainable in the eye of law. Accordingly, this petition is converted into appeal and is allowed. The conviction and sentence of the appellant recorded by the two courts below

through the impugned judgments are set-aside. He be released forthwith, if not required in any other case.

18. Above are the detailed reasons of our short order of even date.

Islamabad
20.02.2025
Approved for reporting.
M.Siraj Afridi PS