

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Athar Minallah

Mr. Justice Malik Shahzad Ahmad Khan

Mr. Justice Shakeel Ahmad

Criminal Appeals No. 131 and 132 of 2023

(Against the judgment dated 29.10.2020 passed by the High Court of Sindh at Karachi in Criminal Appeal No. D-217 of 2019 and confirmation case No. 03 of 2019)

Abid Hussain *(in Cr.A No. 131/2023)*

Sabir Hussain *(in Cr.A No. 132/2023)*

... Appellant(s)

Versus

The State etc. *(in both cases)*

...Respondent(s)

For the Appellant(s) : Syed Rifaqat Hussain Shah,
ASC *(in both cases)*

For the State : Mr. Siraj Ali Khan, Addl. PG,
Sindh.

For the complainant : In-person *(via VL from Karachi)*

Date of Hearing : 12.03.2025.

JUDGMENT

Shakeel Ahmad, J.-

Cr.I.MA No. 2333/2020 and Cr.I.MA No. 2334/2020.

The above titled appeals are barred by 3 and 9 days respectively. For reasons recorded therein, these Cr.MAs are allowed and the delay caused in filing of these appeals is condoned.

Abid Hussain and Sabir Hussain sons of Illahi Bux, the appellants, were tried before the trial Court on the charges under Sections 302, 109 and 34 of the Pakistan Penal Code ("PPC"), arising out of First Information Report No. 179 of 2014 ("FIR") lodged by Sajid son of Abid Hussain (PW-1) (hereinafter referred to as the "**complainant**") on 10.06.2014 at about 4:45 P.M at Police Station Shahrah-e-Noorjehan, Karachi. The allegation against the appellants was that on 09.06.2014 at about 6:30 A.M., appellant, Abid Hussain on the instigation of his brother, appellant, Sabir Hussain had brutally murdered

Mst. Naziran, aged about forty-five years, the mother of the complainant and the wife of the appellant Abid Hussain (hereinafter referred to as the "**deceased**") by setting her on fire. The 1st Additional Sessions Judge/ Model Criminal Trial Court, Karachi Central, found the appellants guilty of the offence, convicted and sentenced them as under:-

Accused Abid Hussain s/o Illahi Bux was convicted under section 265-H(ii) Cr.P.C for offence under section 302 (b) PPC and sentenced to death as Tazir, to be hanged by the neck till he is dead. Whereas, co-accused Sabir Hussain s/o Illahi Bux was convicted under section 265-H (ii) Cr.PC and sentenced to Imprisonment for Life as Tazir, under section 302 (b) PPC. Both the accused were also directed to pay compensation to the legal heirs of deceased Mst. Naziran to the sum of Rs.10,00,000/- each under section 544-A Cr.P.C, and in case of default, they shall suffer SI for further Six months. Accused Sabir Hussain was, however, extended the benefit of section 382-B Cr.PC.

2. The prosecution's case, in essence, is that on 09.06.2014, the complainant (PW-1) was awakened by the cries and screams of his mother, the deceased, and, upon rushing to the scene, witnessed his father, Abid Hussain, standing at the door of the room while the deceased, in a severely injured and burning condition, informed him that "*Your father has set me on fire.*" Immediately thereafter, his father, Abid Hussain fled from the crime scene. The complainant, with the assistance of his maternal uncle, Shahnawaz (PW-3), shifted the deceased to the Burns Ward at Civil Hospital, Karachi, where she succumbed to her burn injuries on 10.06.2014. It is alleged that on 08.06.2014, a day prior to the incident, Abid Hussain had physically assaulted the deceased during a heated argument regarding the sale of the house in which the deceased was residing with her children alongside appellant Abid Hussain, to which she had shown resistance. On the same day, at about 9:00 P.M., the uncle of the complainant Sabir Hussain

also visited the house and, during a conversation, asked the deceased not to interfere in these domestic affairs and instructed Abid Hussain to finish his wife. Hence the *ibid* FIR was registered against the appellants. The Trial Court, vide judgment dated 03.04.2019, convicted and sentenced the appellants, as mentioned in the first para of the instant judgment. Being aggrieved of their conviction and sentence, both the appellants preferred Criminal Appeal before the High Court of Sindh which was dismissed vide impugned judgment dated 29.10.2020, maintaining the conviction and sentence awarded to the appellants by the learned Trial Court. Hence, these appeals.

3. We have heard the learned counsel for the appellants at length and have carefully examined the record of the case. We have also duly considered the arguments advanced by the learned counsel representing the State and have listened to the complainant, who appeared in person.

4. We have carefully and cautiously scrutinized the evidence of the eye-witnesses. PW-1, the complainant Sajid Hussain, and PW-2, Shahnaz, are admittedly the son and daughter of the deceased, Mst Naziran. His co-accused namely Sabir Hussain is the real paternal uncle of PW-1 and PW-2 and brother of the appellant Abid Hussain. Thus, all the parties are closely related by blood. The occurrence took place inside the house of the appellant, Abid Hussain, where they were all residing together.

5. It is alleged by the prosecution that the incident took place on 09.06.2014 at 06.30 am. It is stated that upon hearing hue and cry, the complainant (PW-1), woke up and rushed to his mother's room where he saw that his father, Abid Hussain, had set his mother on fire by pouring Kerosene oil on her. Attracted by the hue and cry, several people gathered at the scene of occurrence. Thereafter, the complainant, alongwith his maternal uncle, Shahnawaz (PW-3), shifted his injured mother to Abbasi Shaheed Hospital in a Suzuki vehicle belonging to one Shahzullah for medical treatment and subsequently moved her to Civil Hospital in the same vehicle. On 10.06.2014, at 09.15 am, she embraced death in the hospital. Apart from the complainant, the incident was also witnessed by his sister, Shahnaz (PW-2), who fully corroborated

the account narrated by the complainant. The motive as alleged in the crime report is that the appellant intended to sell the house, but the deceased strongly objected to it, and this domestic dispute ultimately led to the occurrence.

6. It is an admitted fact that the occurrence was witnessed by the son and daughter of the appellant, Abid Hussain and the deceased, who are material witnesses in this case, being inmates of the same house where the crime was committed, as is reflected from inspection report (Ex.14) and Map (Ex.15). Their testimonies are consistent and find support from the medico-legal report (Ex.29) and death certificate (Ex.30). The medical officer, who examined the deceased, observed extensive fire burns on her body, covering approximately 77%, and opined that the cause of death was cardio-pulmonary arrest resulting from such burns. During spot inspection, the investigating officer recovered one white colour bottle with a green cap, as well as the burnt clothes of the deceased. These articles were duly taken into possession and sent to Forensic Science Laboratory (FSL), and the report received therefrom (Ex-36) fully corroborates the ocular account furnished by PW-1 and PW-2. In our view, the testimonies of the eye-witnesses, who are natural witnesses by virtue of being inmates of the house, being closely related to both the appellant and the deceased and without any enmity towards the appellants, carry significant evidentiary value. Their depositions are trustworthy and gain further credence from the corroborating medical and forensic evidence on record.

7. The medico-legal report, death certificate, FSL report pertaining to the burnt clothes and bottle recovered from the crime scene, fully corroborate the ocular account. These pieces of evidence confirm that the cause of death was consistent with burn injuries caused by kerosene oil. The recovery of the kerosene oil bottle from the place of occurrence further strengthens the prosecution's case, as it establishes a direct nexus between the appellant, Abid Hussain, and the commission of the offence. The presence of such direct and cogent evidence effectively negates any possibility of the incident being an accident or suicide. Furthermore, the motive attributed to the appellant, as alleged by the prosecution,

namely, the deceased's opposition to his intention of selling the house, stands duly proved on record. We believe that it is a matter of common experience that domestic disputes over property frequently arise in our society; however, resorting to such a brutal act of setting one's spouse on fire reflects the appellant's violent disposition and points towards premeditation. In our considered view, the established motive, when read in conjunction with the brutal and deliberate manner in which the offence was committed, leaves no room for doubt that the murder of the deceased was preplanned and intentional.

8. Now adverting to the quantum of sentence, we are mindful the instant crime is extremely heinous. However, it remains to be considered whether the circumstances of the instant case warrant and justify the ultimate penalty of death. It is well-settled law that under the doctrine of "*rarest of rare*", the death sentence may be imposed where the offence is exceptionally brutal, shocking to the collective conscience of society, and where there exists a compelling need for deterrence. In the present case, the offence is of the most brutal nature, wherein the appellant, Abid Hussain, has been found guilty of the cold-blooded murder of his own wife, mother of his children, that too within the confines of their matrimonial home and in the presence of their young children. In these circumstances, the appellant Abid Hussain does not deserve any leniency whatsoever. Accordingly, his conviction and sentence awarded by the trial Court, upheld by the High Court vide impugned judgment dated 29.10.2020 are maintained and appeal bearing No. 131 of 2023 is dismissed.

9. Adverting to CrI. Appeal No. 132 of 2023, filed by co-accused Sabir Hussain, we have examined the record and find that neither his presence at the time of occurrence has been established nor has any specific role been assigned to him in the crime report lodged by PW-1. Upon a thorough appraisal of the prosecution's case, we are of the considered view that the prosecution has failed to prove his involvement or any nexus with the alleged offence. Accordingly, this appeal is allowed, and the conviction and sentence awarded to Sabir Hussain by the Courts below are hereby set aside. He shall be released

from jail forthwith if not required to be detained in any other case.

10. These are the detailed reasons for our short order of even date, reproduced below:-

“For the reasons to be recorded later, criminal appeal No. 131/2023 (Abid Hussain v. State), being without merit, is dismissed. Criminal appeal No. 132/2023 (Sabir Hussain v. State) is allowed and the appellant Sabir Hussain is acquitted of the charge against him by extending the benefit of doubt in his favour. He shall be released from the prison forthwith if not required to be incarcerated in any other case”

Judge

Judge

Judge

Islamabad
12.03.2025
APPROVED FOR REPORTING
Zia, Rameen, LC