

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio*

**CRIMINAL APPEAL NO.30 OF 2022
CONFIRMATION CASE NO.01 OF 2022**

Appellant: Rajesh @ Rajoo son of Megharam
through Mr. Javed Ahmed Qazi,
Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General Sindh.

Date of Hearing: 08.05.2023

Date of Judgment: 11.05.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Accused Rajesh son of Megharam was tried before the Ist Additional Sessions Judge/Model Criminal Trial Court (MCTC-I) Karachi in Session Case Nos.1533/2020, arising out of FIR No.243/2020 under Section 302 PPC and vide judgment dated 12.01.2022 accused Rajesh alias Rajoo was convicted u/s.265-H(ii) Cr.PC for offence under section 302(b) PPC and awarded death sentence as Ta'zir subject to confirmation by this court. The accused was directed to pay compensation to the legal heirs of the deceased in the sum of Rs.10,00,000/- (Rupees Ten Lacs) u/s.544-A Cr.P.C. and in case of failure he shall suffer SI for six months more. The accused was also extended the benefit of Section 382-B Cr.PC.

2. The brief facts of the case as narrated in the FIR are that on 07.10.2020 Ravi, the brother of complainant has informed him that their sister Radha has been burnt due to fire incident in her house No.K-753, Haji Mureed Goth, Firdous Colony, Gulbahar, Karachi and she is lying in Civil Hospital Karachi under treatment. During treatment, her sister disclosed that she was set on fire by her husband Rajesh alias Raju due to some quarrel. The husband of his sister has restrained him to inform police till final treatment of Radha in the hospital.

On 12.10.2020 at about 0340 hours she expired during treatment in Civil Hospital Karachi. Hence the instant FIR was lodged.

3. After usual investigation, the case was challaned and the accused was sent up for trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 11 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and claimed false implication. However, the accused did not give evidence on oath but did produce two DWs in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 12.01.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that there was no eye witness to the fire; no last seen evidence; that it was a case purely of circumstantial evidence which is woefully lacking in this case; that the FIR was lodged after a delay of 5 days which went unexplained which enabled the complainant party to cook up a false case in collusion with the police; that the cause of the fire which killed the deceased was unknown i.e deliberate or by accident; that the appellant was not present at the time of the fire; that the accused confession before the police was inadmissible in evidence; that the dying declaration could not be relied upon as it was belated; that the medical evidence did not support the ocular evidence; that there were no burns on the appellant's hands and that for any or all of the above reasons the appellant be acquitted by being extended the benefit of the doubt. In support of his contention, he has placed reliance on the cases of **Zahoor Elahi v. The State** (1997 SCMR 385), **Ahmad Nawaz v. The State** (2016 P. Cr.LJ 1267), **Munawar v. The State** (2022 YLR 198), **Kashif Ali alias Kalu v. The State** (2022 SCMR 1515), **Sh. Muhammad Amjad v. The State** (PLD 2003 SC 704), **Naseeb Ullah v. The State** (2012 YLR 2570), **Mst. Zahida Bibi v. The State** (PLD 2006 SC 255), **Noor**

Muhammad v. The State (2009 P. Cr.LJ 797), **Abbas v. The State** (2008 MLD 854), **Mst. Ghulam Zohra v. Malik Muhammad Sadiq** (1997 SCMR 449), **Farman Ahmed v. Muhammad Inayat** (2007 SCMR 1825), **Hayatullah v. The State** (2018 SCMR 2092), **Wajihuddin v. The State** (2021 MLD 1809), **Sardar Bibi v The State** (2017 SCMR 344), **Ibrar Hussain v The State** (2007 SCMR 605), **Syed Saeed Muhammad Shah v The State** (1993 SCMR 550), **Amir Zaman v Mahboob** (1985 SCMR 685), **Muhammad Arif v The State** (2019 SCMR 631), **Taj Muhammad v The State** (2022 P Cr. L J 126) and **Bakhtzada v The State** (2013 YLR 230).

8. On the other hand learned APG appearing on behalf of the State has fully supported the impugned judgment. In support of his contention, he has placed reliance on the case of **Majeed v The State** (2010 SCMR 55), **Noor Muhammad v The State** (1999 SCMR 2722), **Abdul Razaq v The Abdul Ghaffar** (2020 SCMR 202), **Shamshad Ali v The State** (2011 SCMR 1394) and **Muhammad Imran v The State** (2021 SCMR 69).

9. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General Sindh and gone through the entire evidence which has been read out by the appellant's counsel, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. After our reassessment of the evidence we find that the prosecution has proved its case beyond a reasonable doubt against the appellant for the following reasons keeping in view that each criminal case is based on its own particular facts, circumstances and evidence:-

(a) That there has been a delay in 5 days in lodging the FIR. The incident took place on 07.10.2020 and the FIR was lodged on 12.10.2020. On 07.10.2020 it was unclear how the fire which lead to the burn injuries on Mst Radha (the deceased) had been caused. The fire might have been caused by accident and as such initially after the incident no FIR was lodged. It was only two days later on 09.10.2020 that relatives PW's Ravi, Beena and Sonia came to know through the deceased that it was the accused who had set fire to her. During the 3 days prior to lodging the FIR the deceased was in the ICU and as such her family were more concerned with her welfare rather than lodging an FIR which is quite natural under the circumstances. However when the deceased died on 12.10.2020 3 days later an FIR was immediately lodged against the appellant who was arrested at the hospital. Under these tragic circumstances **although we are put to caution** we do not find that the delay in lodging the FIR is fatal to the prosecution case based on the particular facts and circumstances of this particular case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi V The State** (2011 SCMR 872).

(b) That from the evidence of a number of witnesses it does not seem in doubt that the deceased received burn injuries on account of a fire which started at her house. As such we find this to be the case. Whether the fire was started accidentally or deliberately we will deal with later in this Judgment.

(c) Based on the medical evidence of PW 7 Abdul Jabbar MLO who treated the deceased on her arrival up to her death whereby he found that the deceased was burnt due to fire with 38.5% of her body being burnt and her death certificate we find that the deceased died on account of her burn injuries which she received during the fire which was not challenged during cross examination. In fact the defence of the appellant appears to be that he was absent at the time of the fire with his 8 year old daughter Sadna and that the fire started by accident. He does not seem to dispute that his wife who was the deceased died on account of the burns which she received during the fire.

(d) Admittedly there is no eye witness as to who started the fire and no last seen evidence to connect the appellant to the fire at his house apart from the appellant's suggestion during cross examination to the complainant PW 1 Premchand that he was out of his house with his daughter at the time of the fire searching for bread and paratha.

(e) The case against the appellant is therefore based on circumstantial evidence as conceded by the prosecution. With regard to circumstantial evidence leading to a conviction in a capital case it was held as under in **Fayyaz Ahmed V State** (2017 SCMR 2026) at P.2030 para's 5 and 6 which are reproduced as under;

"To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is, that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature where many links are missing in the chain.

To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon as we have noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence. "Reasonable Doubt" does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. If it is short of such standard, it is better to discard the same so that an innocent person might not be sent to gallows. To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without missing,

link, otherwise at random reliance on such evidence would result in failure of justice.

It may also be kept in mind that sometimes the investigating agency collects circumstantial evidence seems apparently believable however, if the strict standards of scrutiny are applied there would appear many cracks and doubts in the same which are always inherent therein and in that case Courts have to discard and disbelieve the same." (bold added)

11. Thus, keeping in view the law on circumstantial evidence what evidence is there to link the accused to the murder of his wife by burning her to death.

(i) The **first link** is the fact that the appellant was the husband of the deceased and that they were both living in the same house at the time of the fire which lead to the deceased being burnt to death and the appellant has given no explanation as to where he was at the time of the fire as he sees to jump from defence to defence.

(ii) The **next link** is the dying declaration which the deceased made to her relatives in the ICU. Three days before she died. It is notable that MLO Abdul Jabbar who was treating the deceased stated in his evidence that it was incorrect that there was a chance of survival of the deceased and thus knowing her condition she must have expected her imminent death.

The guidelines for considering the evidence of a dying declaration were set out as under in the case of **Majeed** (Supra);

*"It is a well-settled principle of law that if dying declaration is made even before a private person, is free from influence and the persons before whom such dying declaration was made was examined then it becomes **substantive piece of evidence** and for that no corroboration is required and such declaration can be made basis of conviction. This Court gave following guiding principles for relying upon the dying declaration in the case of Farmanullah v. Qadeem Khan 2001 SCMR 1474.*

"(i) There is no specified forum before whom such declaration is required to made.

(ii) There is no bar that it cannot be made before a private person.

(iii) There is no legal requirement that the declaration must be read over or it must be signed by its maker.

(iv) It should be influence free.

- (v) In order to prove such declaration the person by whom it was recorded should be examined.
- (vi) Such declaration becomes substantive evidence when it is proved that it was made by the deceased.
- (vii) Corroboration of a dying declaration is not a rule of law, but requirement of prudence.
- (viii) Such declaration when proved by cogent evidence can be made a base for conviction."

12. In this case there are three witnesses who gave evidence regarding the deceased dying declaration before them which evidence is reproduced as under for ease of reference;

Evidence in chief of PW 11 Ravi.

"This incident took place on 7.10.2020. At about 0930 hours my neighbor Sanjey has informed me that there is some smoke from the house of Radha, my sister. I immediately went there and I saw the house was burnt and no one was available. On the first floor the in-laws of Radha were residing, I went there. I inquired about the fire incident. They disclosed that the fire spread due to lamp (DIYA). I then went to the house of Shankar my brother in law. I disclosed him that Radha has sustained burn injuries due to fire incident in her house, she is in hospital. I went to Civil Hospital. I saw in-laws of Radha at the hospital. They did not allow me to meet with my sister Radha. I came back to my house. I informed my sister Sonia, who resides at Hyderabad. I also advised her to visit Radha. Sonia inquired me about the incident, I disclosed the facts. Sonia did not come due to Chehlum days. She came on 9.10.2020. On the same date my sister Beena also came. They came with their husbands. We visited hospital on 09.10.2020. We met with Radha and asked her about the fire incident. She disclosed that she was not burnt due to lamp (DIYA) but her husband Rajesh set her on fire. She further disclosed that Rajesh was not going for work since two days, as such, there occurred quarrel between couple. I recorded the video with mobile phone of Mohan (husband of Sonia), whatever disclosed by Radha. We came back at home. On 12.10.2020 at about 0330 or 0400 hours Radha expired in the hospital during treatment. My brother Premchand has informed the police at Police Station. The police came at Civil Hospital and conducted the legal formalities. I see Ex. 3/A, 3/B, 3/E & 3/H and say these are same, correct and bear my signatures. The accused was also arrested from Civil Hospital in my presence. I.O. has recorded my statement under section 161 Cr.P.C. on 19.10.2020 I handed over two USBs to I.O. wherein the video was recorded by me regarding the statement of deceased Radha. I also handed over the screenshots of Whatsapp data. I.O. again recorded my statement under section 161 Cr.P.C. Accused Rajesh and USBs present in the Court are same". (bold added)

Evidence in Chief of PW 5 Beena

"On 7.10.2020 I was present in my house at Jhampeer District Thatta. My brother Ravi has called me on telephone that there occurred fire incident in the house of my sister Radha. He further disclosed that Radha has sustained fire burnt injuries and is admitted in hospital. He further disclosed that in-laws of injured Radha do not allow him to meet with Radha. On 9.10.2020 I came alongwith my husband at the house of my parents in Karachi. On the same date my sister Sonia and her husband Mohan Lal came from Hyderabad at house of my parents in Karachi. I along with my sister Sonia and my husband so also husband of Sonia went to hospital. I met with my injured sister Radha and asked about the incident. She disclosed to us that her husband did not go for work since two days. There occurred altercation and quarrel between her and her husband Rajesh. She further disclosed that due to such quarrel her husband set her on fire in the house. My brother Ravi was also available at the time of our meeting with injured Radha. Ravi also recorded video clip with mobile phone. On 12.10.2020 my sister Radha expired due to burn injuries in the Civil Hospital during treatment. My brother Pream has lodged such FIR. I.O. has recorded my statement U/s. 161 Cr.P.C. at P.S. My statement U/s. 164 Cr.P.C. was also recorded before the Judicial Magistrate on 17.10.2020. I produce my statement us 164 Cr.P.C. as CTC at Exh. 9/A and say it is same, correct, bears my RTI and my photograph. Accused Rajesh @ Rajoo present in the court is same". (bold added)

Evidence in Chief of PW 6 Sonia.

On 7.10.2020 I was present in my house at Hyderabad. I received phone call of my brother Ravi. He disclosed that there occurred fire incident in the house of my sister Radha in Karachi. He further disclosed that Radha has sustained fire burn injuries and is admitted in Civil Hospital, Karachi. Ravi met with Radha on same date but the in laws have refused the meeting of Ravi with my sister Radha in the hospital. On 9.10.2020, I came along with my husband at the house of my parents in Karachi. On the same date my sister Beena and her husband came from Jhampeer at house of my parents in Karachi. We went to hospital to meet with my sister Radha on the same date viz. 09.10.2020. We asked Radha about the incident. She disclosed to us that her husband has set her on fire. We asked as to why her husband set her on fire? She replied that her husband did not go for work since two days. There occurred altercation and quarrel between her and her husband Rajesh, therefore, her husband set her on fire in the house. On 12.10.2020 Radha has expired in Civil Hospital, Karachi. On 14.10.2020 my 161 Cr.P.C. which I produce at Ex. 10/A, which is same, correct and bears my signature. On 17.10.2020 my 164 Cr.P.C. statement was recorded before the learned Judicial Magistrate which I produce at Ex. 10/B, it is same, correct and bears my RTI and photograph. Accused Rajesh present in the Court is same. (bold added) ♪

13. We find that the evidence of all the three witnesses mentioned above fulfills the criteria/guidelines laid down by the Supreme Court which are also set out above for us to rely on their evidence in terms of the dying declaration against the accused which we do so as a piece of substantive evidence. This is more so since they all gave their Section 161 and 164 Cr.PC statements with relative promptitude which were not materially improved upon during their evidence and none of their evidence was dented during a lengthy cross examination. Admittedly all the witnesses and the accused are related to each other but there is no enmity between them and no reason for the witnesses to falsely implicate the accused. It is well settled by now that in such circumstances even related witness evidence can be relied upon as their evidence must be treated at its own worth under these circumstances. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

(iii) The **next link in the chain of evidence** is the USB containing the video of the deceased dying declaration. The declaration itself was not denied but only claimed to be managed. As such we treat the USB/Video evidence as corroborative/supportive of the evidence of the dying declaration and attach some although lesser weight to its evidentiary value.

(iv) The **next link in the chain of evidence** is that there was a fire in deceased and the accused house as proven by the prosecution evidence as discussed above.

(v) The **next link in the chain of evidence** is the medical evidence which proves that the deceased died on account of the burns which she received from the fire at the house of her and the accused.

(vi) The **next link in the chain of evidence** is the recovery of a burnt rilly and a bottle of chemical which was found at the vardat which fully corroborates/supports the evidence that the deceased was deliberately burnt.

(vii) The **next link in the chain of evidence** is the medical evidence which proves that the appellant had burnt fingers as per PW 8 MLO Muhammed Asad's evidence and his medical report both of which went unchallenged during cross examination and for which the appellant had no explanation for which fits in with the prosecution case of the appellant setting fire to his wife.

(viii) That it does not appeal to logic, commonsense or reason that a real relative would let the real murderer of his real relative get away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammad Ashraf V State** (2021 SCMR 758),

(ix) That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case for instance by foisting the burnt rilly and chemical substance at his house and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(x) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to affect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the fire started to the deceased being taken to hospital with serious burn injuries to the dying declaration of the deceased before three witnesses to the recovery of the burnt rilly and chemical substance at the deceased and accused house to the death of the deceased through her burn injuries to the arrest of the appellant at the hospital to the appellant being found to have burn injuries on his fingers.

(xi) That the motive for the murder was a quarrel between the appellant and his wife.

(xii) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply false implication. However there seems to be no reason for such false implication as there appears to be no enmity between the parties. He then during cross examination of PW 1 the complainant stated that he was out with his 8 year old daughter at the time of the incident looking for bread but he made no effort to call this alibi witness who is living with his grandmother and once he put forward this defence he should have at least taken some steps to prove it. In this respect reliance is placed on the case of **Anwar Shamim V State** (2010 SCMR 1791). He did not give evidence on oath and his two DW's support the prosecution case that the deceased suffered serious burns injuries and was visited by the witnesses who gave evidence of her dying declaration. The DW's only seem to suggest that the witnesses should not have visited the deceased due to the danger of infection. However as per medical evidence the deceased did not die of any kind of infection. Thus, for the reasons mentioned above we disbelieve the defence case of false implication as an after thought in the face of reliable, trust worthy and confidence inspiring evidence against the appellant which has not at all dented the prosecution case.

14. Thus, for the reasons mentioned above the prosecution has *proved an unbroken chain of evidence, where one end of the same touches the dead body*,

and the other the neck of the accused and as such we maintain the conviction of the appellant.

15. With regard to sentencing we can maintain the death penalty based on circumstantial evidence. In this respect reliance is placed on the case of **Muhammed Amjad V State** (PLD 2003 SC 704). In this case a young mother has been murdered in cold blood in the most brutal manner by being burnt to death over a quarrel. A young child has also lost her mother. The effects on the family are devastating. Crimes against women and in particular domestic violence seem to be on the rise these days. Some so called aggrieved men seem to have little compulsion in throwing acid over women for the most trivial of perceived reasons ruining their entire lives and denting their futures. Rather than showing respect for our women folk men often treat them with utmost cruelty and brutality as if we live in medieval times and where women were regarded as chattels. For those men who behave in such an unspeakable manner towards women and/or children the court must send a loud and clear message that such shameful and disgraceful conduct will not be tolerated in a society governed by the rule of law and Islamic values and concepts and in such like cases the only appropriate sentence is a deterrent one. As such based on the particular facts and circumstances of this most barbaric case where a husband burnt his wife alive over a quarrel we uphold the death sentence.

16. As such the appeal is dismissed and the confirmation reference is answered in the affirmative.