

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakkar
Justice Ishtiaq Ibrahim

Jail Petition No. 41/2023
*(Against the judgment dated 29.11.2022 passed by
the High Court of Sindh, Karachi in CrI. A.
No.345/2019)*

Habib Ullah	Petitioner(s)
Versus	
The State	Respondent(s)
For the Petitioner(s):	Ms. Aisha Tasneem, ASC <i>(at State expense)</i>
For the State:	Mr. Khadim Hussain, APG Sindh
Assisted By:	Ms. Tayyaba Munir, Law Clerk
Date of Hearing:	03.08.2026

JUDGMENT

Muhammad Hashim Khan Kakkar, J. The petitioner, Habib Ullah, was tried by Trial Court for committing the murder of his wife, Aqeela Bibi, in an incident which took on 14.09.2011 in the backdrop of a motive according to which continuous domestic dispute prevailed between the couple, which resulted in the intense quarrels over a mobile phone for three consecutive days prior to the incident, as informed by the minor daughter, Fazeela Bibi (PW-2), to the complainant. With these allegations the petitioner was booked in case FIR No. 339/2011, registered at police station Mobina Town, Karachi on the same day. After a regular trial the petitioner was convicted by the Trial Court for the offence under section 302(b) of the Pakistan Penal Code ("PPC") and was sentenced to suffer life imprisonment alongwith a direction to pay Rs. 500,000/- as compensation to the legal heirs of the deceased under section 544-A Cr.P.C. Being dissatisfied, the petitioner preferred an appeal before High Court of Sindh, Karachi which was dismissed vide judgment dated 29.11.2022 and it has now been assailed by the petitioner through the instant jail petition.

2. We have heard the arguments of the learned counsel for the petitioner as well as learned APG for the State and have perused the record. The material on record shows that continuous domestic dispute prevailed between the couple, which resulted in intense quarrels over a mobile phone for three consecutive days prior to the incident, as informed by the minor daughter, Fazeela Bibi (PW-2), to the complainant. PW-2 also stated that on the night of the occurrence, she saw her father bring a hammer home and saw both her parents retire together into their shared bedroom, which establishes the “*last seen*” evidence. Upon waking up the following morning, the minor children discovered their mother lying dead on the floor in a pool of blood with her head smashed, while the petitioner was absent. The medical evidence rendered by Dr. Zakia Khursheed (PW-4), who conducted the post-mortem examination, matches the ocular narrative, confirming that the deceased suffered fatal skull fractures caused by a “*heavy, hard, and blunt substance due to assault*”, which directly corresponds to the injuries inflictible by a hammer. Furthermore, the petitioner’s post-offence conduct provides corroboration of his guilty mind. Instead of informing police or comforting his four small, weeping children, he fled the matrimonial home in the middle of the night, abandoned his motherless children, failed to attend his wife’s final rites, and willfully remained an absconder for nearly seven years until his arrest on 26.02.2018. When all this evidence is viewed in cohesion, they form a complete chain of evidence that leads to the conclusion of the petitioner’s guilt beyond any reasonable doubt.

3. In our view, certain offences belong to a special category of offences known to jurisprudence as a “*Crime of Difficult Proof*”. The father of classical criminology and professor of law, Cesare Bonesana Marchese di Beccaria in a treatise written by him in 1764 named *Dei Delitti e della pene* (On Crimes and Punishment) said that, “*there are some crimes which are, at the same time, of frequent occurrence in society, and yet are of difficult proof*”. By it he meant the crimes committed inside the secrecy of homes such as infanticide, or adultery. However, this list was not exhaustive and any offence fulfilling the criteria of crime of difficult proof falls in it. In our view the cases of domestic violence equally fall within this categorization

including murder of a wife within the private bounds of her matrimonial home. Such crimes can be termed as crimes of difficult proof primarily because they are committed inside closed, private structures such as a house, where the perpetrator enjoys complete physical control over the environment and also allows the perpetrator to easily destroy vital evidence, clean up the crime scene, or stage the homicide to look like a suicide, accident, or intruder attack. Since these acts take place in the privacy of the home, the only people present are usually the victim, the perpetrator, and sometimes their minor children or immediate family members. As the perpetrator and other inmates are usually close relatives hence it is very unlikely for them to come forward or testify against the perpetrator. This is particularly true when the victim is a daughter-in-law.

4. Due to absence of primary evidence, these crimes are difficult for the prosecution to prove hence different jurisdictions across the globe have evolved specialized statutory mechanisms to prevent perpetrators from exploiting the secrecy of the home and have adapted their legal frameworks. The South Asian jurisprudence has evolved considerably in this regard, particularly regarding a woman's vulnerabilities in the region's predominantly patrilocal family system. A married woman ordinarily resides within her husband's family home, where she may be wholly dependent upon and surrounded by her husband and in-laws. As in South Asia, domestic violence against wives remains particularly prevalent, lethal violence may occur within the very confines of the matrimonial home which places the victim in a position of huge vulnerability and affording the perpetrators which includes the husband or his close relatives, a greater opportunity to conceal the true circumstances of her death by portraying the homicide as an accident or suicide. If such cases are dealt with under traditional criminal procedure and conventional evidentiary standards, such offences will go unpunished.

5. In domestic homicide, the tragedy is not only that a woman may be killed behind closed doors, it is that the doors may close upon the truth as well and hence it is the job of the legal system to extract the truth behind them. In South Asian context, if we talk about Indian legal system,

their legislatures created a unique statutory mechanism of mandatory presumption of guilt. Relevant sections are reproduced below:

“Section 80 of Bharatiya Nyaya Sanhita, 2023. (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Section 118 of Bharatiya Sakshya Adhinyam, 2023. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

It shows that by law, once unnatural death and prior cruelty within the matrimonial home are established, the court must presume the guilt of the husband and his family which legally compels those who held exclusive domain over the victim and the crime scene to account for the death. Indian Supreme Court has time again and again interpreted section 106 of Indian Evidence Act as to come into play in such situations when a wife is found dead in matrimonial home. The landmark judgment of the Supreme Court of India in *Trimukh Maroti Kirkan v. State of Maharashtra* (2006 (10) SCC 681) stated that an unnatural death inside the matrimonial home shifts the onus onto the husband. In this judgement, the Court drew upon a rich line of similar precedents, including *Nika Ram v. State of Himachal Pradesh* (AIR 1972 SC 2077), *Ganeshlal v. State of Maharashtra* (1992) 3 SCC 106 and *State of U.P. v. Dr. Ravindra Prakash Mittal* (AIR 1992 SC 2045), all of which held that when a wife is killed in the privacy of her husband’s custody and home, his failure to offer a plausible explanation, coupled with last seen evidence, conclusively completes the chain of guilt.

6. Now turning to the jurisprudence of Pakistan, while there is no explicit statutory provision creating a direct presumption of guilt in matrimonial homicides, our courts have routinely shifted the evidentiary burden onto the husband when a wife dies an unnatural death within the matrimonial home. Under Article 122 of the Qanun-e-Shahadat Order, 1984 (“**the QSO**”), when a fact is especially within the knowledge of any person, the

burden of proving that fact rests upon him. As the primary custodian and protector of his wife, the husband is legally bound to explain the circumstances surrounding her death or account for his own non-culpability because his wife lives in his home, with him and it is his responsibility to know how she ended up dead unnaturally and where was he. Furthermore, under Article 129 of the QSO, courts may draw an adverse inference of guilt from the husband's post-incident conduct such as absconding, failing to inform the authorities, abandoning minor children, or avoiding the final rites etc. This principle was reaffirmed in the landmark judgment in the case of *Waris Masih v. State* (Jail Petition 787/2018), where this Court held that because a wife resides in the custody and domestic domain of her husband, therefore, her unnatural death inside the matrimonial home shifts the onus of proof onto the husband, making his failure to provide a plausible defense or account for his conduct as a decisive link in chain of circumstantial evidence to establish his guilt.

7. We are conscious of the fact that in criminal jurisprudence, the phrases "*accused is the blue-eyed child of law*", "*the presumption of innocence*", "*the burden of proof lies on who asserts, not who denies*" and the Blackstone's ratio - "*better that ten guilty persons escape than that one innocent suffers*" places the entire burden of proof on the prosecution, however, these protective doctrines can be misused as a shield, not just for the innocent, but sometimes to defeat genuine claims of victims-particularly in the cases of sexual assault, domestic violence, and crimes against vulnerable groups (*women, children, marginalized communities*). The resolution is not to abandon the above mentioned doctrines which would be dangerous and regressive, opening the door to arbitrary conviction on suspicion alone. Resolution lies in ensuring that the doubt must be genuine, victim testimony must be elevated on its own merit with sensitivity to the nature of the crime, procedural safeguards for victims and an accused' right to be presumed innocent should not become a license for indefinite delay that also punishes the victim.

8. The Courts while dealing with the cases of vulnerable groups, particularly the unnatural death of wife inside the matrimonial home has

to apply the statutory test of “prudent man/probability” because in such like cases where a wife dies an unnatural death inside her matrimonial home and the husband offers no explanation or a false one, this circumstance - evaluated by the “prudent man/probability” standard - becomes a strong link in the chain of circumstantial evidence, sufficient to found conviction even in the absence of direct eyewitnesses testimony. Direct evidence of what happens inside the matrimonial home is rare and in such cases the prudent-man/probability standard in Article 2(4), circumstantial evidence Article 17(2)(b), special knowledge rule under Article 122 and presumption of existence of certain facts under Article 129 of the QSO together allow Courts to convict on circumstantial evidence and reasonable inference, so long as the totality of proved circumstances would lead a prudent person to conclude that the accused caused or abetted the death.

9. In the case at hand, the undisputed facts establish that the deceased met an unnatural and gruesome death inside her matrimonial home with her skull burst open by a hammer. Because the fatal act was executed behind closed doors without direct eyewitnesses, this is a case of last seen evidence which rests entirely on a tight chain of circumstantial evidence. Under Article 122 of the QSO, once the prosecution establishes foundational circumstances that reasonably point toward the existence of facts within the exclusive knowledge of the accused, the legal onus shifts onto him to provide a plausible explanation. The prosecution has successfully established this primary chain as the minor children deposed that they saw their parents together in the room on the night of the incident. The daughter informed her maternal uncle of ongoing quarrels between her parents over a mobile phone three days prior to the murder, and witnessed her father bring a hammer into the house that night that is a blunt weapon consistent with the fatal skull fracture. There is also incriminating conduct of the petitioner following the incident as he neither reported the matter to the police, nor informed the deceased’s family, nor sought medical assistance. Instead, he abandoned his minor children alone in the house with dead body of their mother and absconded for nearly seven years. The petitioner’s prolonged absconding and utter failure to discharge the burden of explaining how his wife met her death inside

his house provide the decisive, additional link that completes the unbroken chain of guilt.

10. We are also appalled by the conduct of the investigation officer in this case which highlights a major systemic flaw in how domestic homicides and gender-based crimes are handled. Despite being legally bound to collect and preserve evidence, investigating officers often approach such cases with extreme apathy, driven by ingrained patriarchal mindsets. In the present case, although the I.O. recovered a blood-stained hammer and a blood-stained bedsheet from the crime scene, he did not produce them before the court. Such omission on the part of the police constitutes a serious lapse in investigation. We are unable to discern any plausible justification for withholding such material evidence, which appears to have been treated with inexplicable disregard despite its obvious relevance to the case. Cases occurring inside the matrimonial home are already difficult to prove due to their secret nature, and deliberate or negligent police lapses make justice even harder to achieve. To combat this exact problem, countries around the world have established specialized, gender-sensitive models. In South America, Argentina created specialized women-led police stations known as *Comisaría de la Mujer y la Familia* (CMF) which operate 24/7 with fully empowered police officers, but around 90% of the workforce consists of female officers who receive specialized training in gender-based violence and work alongside social workers, counsellors, and lawyers. Similar institutions exist across South America, most notably Brazil's *Delegacias da Mulher* (Women's Police Stations). Because these stations are run primarily by women trained in handling sensitive cases, they eliminate gender bias supported by traditions, ensure proper collection of crime scene evidence, and provide a safe environment for victims and their families. Increasing the representation of women in police investigations is essential to ensuring that offences against women, particularly those committed within the domestic sphere, are investigated with the requisite sensitivity and seriousness. To effectively combat violence against women, we are of the view that the Provincial Governments must ensure that police officers receive appropriate training aimed at recognizing and overcoming gender and patriarchal biases. Law-enforcement agencies must,

accordingly, adopt a genuinely gender-sensitive approach to investigation, ensuring that every available piece of evidence is duly identified, preserved and brought on record, and that the privacy of the matrimonial home is not permitted to become a shield behind which perpetrators may evade accountability and if any lapse happens due to negligence or casual attitude of any investigating officer, then they must be held accountable.

11. To ensure prevention of domestic violence and homicide, the United Kingdom has adopted Domestic Homicide Reviews under the Domestic Violence, Crime and Victims Act, 2004, which are carried out to ensure that lessons are learnt when a person has been killed as a result of domestic violence and that every domestic homicidal death becomes an opportunity for policy maker and institutions to learn and improve. A similar mechanism may be adopted within our legal framework, whereby each domestic homicide is systematically reviewed to identify shortcomings in investigation, inter-agency coordination and institutional response. Such reviews would enable law-enforcement agencies to assess their lapses and determine what measures are required to prevent their recurrence. Such reviews would also assist lawmakers in identifying gaps in existing legislation and areas requiring legal reform or strengthening. In this manner, cases of domestic homicide would not merely end in prosecution, but would generate lessons capable of preventing future deaths.

12. We have also observed with grave concern another disturbing trend in cases involving violence against women. After taking the life of a woman, the perpetrator often does not stop there as an attempt is also made to assassinate her character and thereby justify the crime or pose as if taking her life was not a crime at all. A wife may be killed because the husband wishes to get rid of her, a sister may be killed for some unlawful design, or a woman may lose her life after years of abuse, only for the perpetrator thereafter to portray her as immoral or of bad character. In this manner, a woman is not allowed to live in peace during her lifetime, nor is she allowed dignity after her death. This tendency reflects a deeply rooted patriarchal mindset in which a woman's life, choices and dignity are regarded as having lesser value, and the perpetrator seeks to place the

blame upon the woman rather than confront his own criminal conduct. More troubling still, such prejudice can find its way into the criminal justice system itself, where the circumstances of a woman’s death may not receive the same seriousness and care in investigation that they deserve, as though her life was of lesser value and, therefore, did not warrant a proper and complete investigation as was observed in the case at hand. As Mustafa Zaidi so poignantly wrote:

میں کس کے ہاتھ پہ اپنا لہو تلاش کروں
تمام شہر نے پہنے ہوئے ہیں دستانے

According to the State of Human Rights Report 2025 of the Human Rights Commission of Pakistan (HRCP), the following table reflects the reported cases of gender-based violence against women across Pakistan.

	Islamabad	Punjab	KPK	Balochistan	Sindh
Domestic Violence	31	6572	272	183	337
Honor Killing	3	188	116	29	126
Rape	80	3281	224	23	447
Acid Crime	2	32	3	1	3
Murder	42	884	325	54	130

The figures, however, represent only the reported incidents, and the gravity of the situation is compounded by the fact that a substantial number of cases of violence against women remain unreported. No woman, vulnerable victim, or bereaved family should ever be left to wonder whether the hands tinted red with blood in domestic homicides will remain hidden behind the gloves of indifference, prejudice, or investigative failure, thereby frustrating the course of justice. No perpetrator should think that they can use a woman’s character as a justification for her killing, nor any investigation authority should treat death of a woman at hands of her relatives as a reason to investigate her case with anything less than the utmost seriousness. The protection of women, therefore, requires not only a change in social attitudes but also a corresponding change in the way their cases are investigated and adjudicated which requires a gender sensitive lens.

13. In view of the above discussion, we find no illegality, material irregularity, or jurisdictional infirmity in the impugned judgment. Consequently, leave to appeal is refused, and the petition is dismissed.

Judge

Judge

Islamabad

03.08.2026

(Farrukh SPS/Tayyaba Munir, Law Clerk)

Approved for Reporting