

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

**Criminal Review Petition No.89/2025 in Criminal Petition
No.467 of 2023**

(Against the judgment dated 20.05.2025 passed by this Court in Criminal Petition
No.467 of 2023)

Zahir Zakir Jaffar

...Petitioner(s)

VERSUS

The State and another

...Respondent(s)

For the Petitioner(s)	:	Khawaja Haris Ahmed, Sr.ASC
For the State	:	Mr. Ghulam Sarwar Nihang, PG a/w Chand Bibi, DPG, Islamabad and Malik Muhammad Siddique, S.I.
For the Complainant	:	Mr. Nisar Asghar, ASC a/w Shah Khawar, ASC and Naveed Anjum, Advocate
Assisted By	:	Ms. Tayyaba Munir, Law Clerk
Date of hearing	:	04.06.2026

JUDGEMENT

ISHTIAQ IBRAHIM, J.- The petitioner, Zahir Zakir Jaffar, was tried for the offences of rape and the murder of Noor Mukadam (deceased) and, upon conclusion of the trial, was convicted and sentenced to death as *Ta'zir* under section 302 (b) PPC by the learned Trial Court. Through the same judgment he was also convicted and sentenced under sections 364, 342 and 376(1) PPC. The convictions and sentences awarded to the petitioner were subsequently maintained by the learned Islamabad High Court, Islamabad, while dismissing appeal of the petitioner. Feeling aggrieved, the petitioner approached this Court through Criminal Petition No. 467 of 2023 seeking leave to appeal against the judgment of the High Court. The said petition was heard and

decided by this Court vide judgment dated 20.05.2025, whereby the petition was converted into an appeal and disposed of in the term that the conviction and sentence of death awarded to the petitioner under section 302(b) PPC were maintained. The conviction of petitioner under section 376(1) was maintained, however, his death sentence was converted to that of imprisonment for life. Conviction and sentence of the petitioner under section 364 PPC were set aside, however, his conviction and sentence under section 342 PPC were maintained.

2. The petitioner has now invoked the review jurisdiction of this Court through the instant review petition, seeking review of the judgment dated 20.05.2025 passed by this Court. The petition is founded upon various grounds elaborately set forth therein, with the prayer that the judgment under review suffers from errors warranting interference by this Court in exercise of its jurisdiction of review.

3. At the very outset, learned counsel for the petitioner fairly stated that he will confine his submissions to the question of sentence and was not pressing the matter on the merits of conviction. He urged that, even if the conviction of the petitioner is maintained, the case does not warrant the extreme penalty of death and that the sentence awarded to the petitioner deserves to be reduced to imprisonment for life in view of the mitigating circumstances available on the record. Developing his submissions, learned counsel contended that the principal mitigating circumstance, which has not received due consideration, relates to the petitioner's mental health. According to him, the material available on the record clearly indicated that the petitioner had been suffering from serious mental illness, yet no meaningful judicial inquiry into his mental condition was undertaken at any stage of the proceedings. He submitted that the petitioner had specifically raised the plea of mental illness before the Trial Court by filing application under section 465, Cr.P.C., but the question whether he possessed sufficient mental capacity to understand the proceedings and effectively defend himself remained unaddressed. Learned counsel further argued that the plea of unsoundness of mind and diminished mental capacity was also raised before this Court during the hearing

of the criminal petition, both through oral submissions and by means of CMA bearing Diary No.12296 of 2025; however, the same was not specifically dealt with in the judgment under review. In support of the plea, learned counsel placed reliance upon a letter dated 14th January, 2022, issued by Dr. Philip Hopley, MRCPsych, Consultant in General Adult and Forensic Psychiatry, GMC, Harley Street, London, wherein it was stated that the petitioner had been examined on 21st April, 2015 and was found to be suffering from a drug-induced psychotic episode. According to the learned counsel, the issue of the petitioner's mental condition was of considerable significance not only with regard to the validity of the trial proceedings but also for determining the degree of his criminal culpability and the appropriate sentence to be awarded. Learned counsel maintained that the failure to properly examine and adjudicate upon the plea of mental illness has caused serious prejudice to the petitioner and has adversely affected his rights guaranteed under Articles 4, 9 and 10-A of the Constitution of the Islamic Republic of Pakistan. He further contended that the petitioner was also deprived of his right to be represented by counsel of his own choice, as throughout the trial he was represented by a counsel appointed at State expense without any meaningful inquiry into the reasons for his failure to engage private counsel and without obtaining his informed consent to such appointment. He further contended that the DNA and video forensic reports relied upon by the prosecution are inadmissible in evidence, as the respective experts who prepared the said reports were not produced before the Court. On the strength of the foregoing circumstances, learned counsel submitted that the case presents sufficient mitigating factors to warrant a lesser sentence. He, therefore, prayed that the judgment under review be revisited to the extent of sentence and that the death sentence awarded to the petitioner be converted into imprisonment for life.

4. Conversely, the learned Prosecutor General and the learned Deputy Prosecutor General, Islamabad, assisted by the learned counsel for the complainant, vehemently opposed the submissions of learned counsel for the petitioner and requested for dismissal of the review petition.

5. We have heard the learned counsel for the parties and the learned Law Officers representing the State and have perused the judgment under review.

6. Article 188 of the Constitution of the Islamic Republic of Pakistan, 1973, read with Part IV, Order XXVIII of the Supreme Court Rules, 2025, vests this Court with jurisdiction to review its judgments or orders. However, it is equally well-settled that the said jurisdiction is neither appellate in nature nor can it be exercised as a matter of course. A review is not, and cannot be permitted to be, an appeal in disguise. It does not provide a forum for rehearing of the case, for re-arguing matters already canvassed and decided, for reappraisal of evidence, re-evaluation of ocular testimony, or for reopening concluded questions of fact. In criminal matters, the jurisdiction of review is circumscribed within narrow contours and can be invoked only where an error apparent on the face of the record is demonstrated, or where interference is warranted in the interest of justice or to prevent abuse of the process of the Court. The error contemplated must be patent, manifest, and self-evident from the record itself; it must not require elaborate argumentation, detailed scrutiny of evidence, or a process of reasoning akin to appellate adjudication. Any attempt to invite the Court to reassess evidence or revisit findings of fact is clearly beyond the scope of review jurisdiction. This principle has been consistently reiterated by this Court in a long line of judgments, inter alia, *Ghulam Sarwar and others v The State* (1979 SCMR 43), *Yaqoob Khan and others v The State* (PLD 1996 SC 97), *Ayyaz Baig alias Bau Chuhanwala v The State* (2002 SCMR 380), *Naseer Ahmed v The State* (2006 SCMR 942), *Khan v The State* (2008 SCMR 880) and *Sikandar Hayat and another v The State* (PLD 2020 SC 559).

7. As regards the plea of mental illness of the petitioner, we have carefully examined the record and find no substance in the contention advanced by the learned counsel. It is noteworthy that the said plea did not find favour with the learned Trial Court, the

learned High Court, or this Court at the stage of deciding the criminal petition. A perusal of the statement of the petitioner recorded under section 342, Cr.P.C. reveals that he responded to the questions put to him in a coherent and detailed manner as a normal individual. Nothing contained therein suggests that he was unable to comprehend the nature of the proceedings, understand the questions put to him, or effectively participate in his defence. On the contrary, his answers reflect a clear understanding of the allegations levelled against him and the evidence brought on record by the prosecution. Not a single word was stated by the petitioner in his statement under section 342 Cr.P.C. The principal document relied upon by the learned counsel for the petitioner in support of the plea of mental illness of the petitioner is a letter issued by Dr. Philip Hopley, MRCPsych, Consultant Psychiatrist, Harley Street, London. The said letter shows that the petitioner was examined on 21st April, 2015 and was found to be suffering from a drug-induced psychotic episode. However, the same document further records that the petitioner was referred for psychological treatment and remained engaged in a course of therapy for approximately six months, after which he made a full recovery. It appears from the record that the occurrence in the present case took place on 20.07.2021, whereas the letter in question was issued subsequently bearing the date 14.01.2022. Apart from the aforesaid letter, no contemporaneous, continuous, or independent medical record has been produced by the defence to establish that the petitioner remained under psychiatric treatment, suffered from any mental disorder, or was experiencing any form of mental incapacity at or around the time of the occurrence or during the trial proceedings. The reliance upon a solitary document pertaining to a remote period of time, particularly one not proved through its author or any other competent witness, cannot by itself constitute sufficient proof of legal unsoundness of mind or diminished responsibility of the petitioner. It is equally important to note that no material was brought on the record before the learned Trial Court indicating that the petitioner was incapable of understanding the proceedings or instructing counsel. Neither his conduct during trial nor his interaction with the Court disclosed any such abnormality as would warrant invocation of the provisions of law relating to inquiry into mental incapacity and disability. The

learned Trial Court, after observing the petitioner throughout the proceedings, did not find any basis to entertain such a plea. The learned High Court, upon independent appraisal of the record, reached the same conclusion. In the absence of cogent, reliable, and contemporaneous medical evidence establishing mental incapacity at the relevant time, and having regard to the manner in which the petitioner participated in the proceedings and responded to the questions put to him under section 342, Cr.P.C., we are unable to conclude that he was suffering from any mental illness of such a nature as would impair his ability to understand the proceedings, instruct counsel, or defend himself. We are, therefore, not persuaded to hold that the plea of mental incapacity constitutes a mitigating circumstance warranting interference in the sentence awarded to him.

8. The ground regarding the alleged denial of a fair trial to the petitioner is concerned, the same is not borne out from the record. The record clearly shows that the petitioner was represented by counsel throughout the proceedings before the learned Trial Court, the learned High Court, and subsequently before this Court at the stage of hearing of his petition for leave to appeal. It is true that during the trial a counsel was appointed for the petitioner at State expense; however, this arrangement became necessary because the petitioner did not engage counsel of his own choice despite being afforded the opportunity to do so. It is noteworthy that the petitioner's co-accused, his parents, who were being tried jointly in the same case, had engaged private counsel at their own expense. In such circumstances, the mere fact that the petitioner was represented by a State-appointed counsel cannot, by itself, be construed as a denial of his constitutional right to a fair trial, particularly when there is nothing on record to suggest that the counsel so appointed lacked competence or failed to safeguard the petitioner's interests during the proceedings. Perusal of the record further reveals that the counsel appointed at State expense remained present throughout the proceedings and actively participated in the proceedings before the Trial Court along with another senior counsel who also joined the trial of the accused. All prosecution witnesses were thoroughly cross-examined on behalf of

the petitioner, and no specific instance has been pointed out showing that any prejudice was caused to the petitioner on account of the representation so provided. We also find no support in the record for the contention that the petitioner's demeanor or conduct during trial was such as to put the learned Trial Court on notice regarding any alleged mental incapacity requiring recourse to the relevant provisions of law. Neither the proceedings recorded by the Court nor any material suggests that the petitioner was unable to understand the nature of the proceedings or effectively communicate with his counsel. In these circumstances, the plea that the petitioner was denied a fair trial merely because he was represented by counsel appointed at State expense is devoid of substance. Rather, the record depicts that the petitioner was afforded full opportunity to defend himself and that all procedural safeguards contemplated by law were duly observed throughout the proceedings. Consequently, no violation of the petitioner's right to a fair trial and due process can be said to have been established.

9. The contention advanced by the learned counsel for the petitioner that the forensic report(s) relied upon by the prosecution was/were inadmissible in evidence on the ground that the "Forensic Scientist(s)" who prepared the same was/were not produced as witness(s), is without merit. No such objection was raised by the petitioner either when the forensic report(s) was/were tendered and exhibited in evidence before the Trial Court or at the stage of final arguments upon conclusion of the trial. It is true that at the time of trial, Section 510 Cr.P.C., as then in force, did not expressly include a "Forensic Scientist" amongst the experts whose report could be read in evidence without calling its maker as a witness. However, during the pendency of the petitioner's appeal, Section 510 Cr.P.C. was amended through the Code of Criminal Procedure (Amendment) Act, 2022, whereby "Forensic Scientist" was expressly included within the class of experts whose reports may, without calling the maker thereof as a witness, be used in evidence, but the petitioner did not raise any such objection before the Appellate Court. Section 510 Cr.P.C., before and after the amendment, is reproduced below for ready reference:

Before Amendment:

510. Report of Chemical Examiner, Serologist: Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or of the Chief Chemist of the Pakistan Security Printing Corporation Limited or any Serologist, fingerprint expert or fire-arm expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code:

Provided that the Court may, if it considers necessary in the interest of justice, summon and examine the person by whom such report has been made.

After amendment

510. Report of Chemical Examiner, Serologist etc.: Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government or of any Serologist, finger-print expert or fire-arm expert or the Chemist or the Pharmacist or **the Forensic Scientist** or Hand-writing expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may, **without calling him as a witness**, be used as evidence in any inquiry, trial or other proceeding under this Code:

Provided that the Court may, if it considers necessary in the interest of justice, summon and examine the person by whom such report has been made.

By virtue of the amendment in Section 510 Cr.P.C., “Forensic Scientist” was expressly brought within the class of experts whose reports may, without calling the maker thereof as a witness, be used in evidence. Plain reading of the amended Section 510 Cr.P.C. shows that it neither creates a new offence nor enhances the punishment for any offence, nor alters the essential ingredients required to establish an offence. Similarly, it imposes no additional burden upon the prosecution and takes away no substantive right or defence available to an accused. It only, concerns the mode of proof, the manner of taking evidence and the procedure governing the reception of expert reports, and is, in substance, procedural. Procedural provisions ordinarily operate retrospectively and apply to proceedings pending when they come into force, unless the legislature expressly provides otherwise or their application would impair an accrued or vested right, which is not the case herein. In *Adnan Afzal v. Capt. Sher Afzal* (PLD 1969 SC 187), a three-member Bench of this Court, held that matters relating to the remedy, mode

of trial, manner of taking evidence and forms of action fall within the domain of procedural law, therefore, operate retrospectively. The same principle was reaffirmed by this Court in the case of *Muhammad Afzal v. Karachi Electric Supply Corporation* (1999 SCMR 92), wherein it was held that changes relating to the remedy, mode of trial and manner of taking evidence are procedural in character and, therefore, ordinarily operate retrospectively. A similar controversy was considered by the August Supreme Court of Azad Jammu and Kashmir in the case of *State v. Muhammad Akram* (1987 PCr.LJ 1728). In that case, while considering the non-production of the Ballistic Expert as a witness, the Court noted that Section 510 Cr.P.C. applicable in Azad Jammu and Kashmir had been amended on 20.02.1984 so as to make the reports of Forensic Experts, Chemical Experts and other specified experts admissible without calling them as witnesses. The Court further held that a criminal appeal is a continuation of the trial and that, the amendment being procedural in nature, it would operate retrospectively. As per proviso attached to section 510 Cr.P.C. the Court may, if it considers necessary in the interest of justice, summon and examine the person by whom such report has been made. The petitioner has not submitted any application before the Trial Court or before the Appeal Court for summoning the Forensic Expert in the witness box to cross-examine him. Similarly, the Trial Court and Appellate Court did not consider it necessary to summon and examine the Forensic Scientist who had prepared the report(s). Had there been any necessity, the Trial Court or the Appellate Court, may have summoned the Forensic Scientist as witness. The criminal appeal of the petitioner remained pending when the Criminal Laws (Amendment) Act, 2022 came into force. An appeal being the continuation of the trial, the Appellate Court was competent to apply the procedural law prevailing at the time of adjudication of the appeal. In the absence of any express or implied legislative intent to exclude pending proceedings from the operation of the amended provision of section 510 Cr.P.C., and there being no vested or substantive right of the accused adversely affected thereby, we are of the considered view that the amendment introduced in Section 510 Cr.P.C. governs the pending appeal, notwithstanding that the trial had concluded before the amendment came into force.

No such objection was raised by the petitioner before this Court at the time of hearing of his Criminal Petition against the judgment of the Appellate Court. The petitioner, having failed to question the admissibility of the forensic reports at the appropriate stages, cannot seek to raise the issue for the first time, that too, in review proceedings. To entertain such an objection at this belated stage would, in substance, amount to reopening of an issue which had neither been raised nor canvassed when the matter was finally adjudicated, which is impermissible within the limited scope of review jurisdiction. The petitioner cannot be permitted to remedy his own omission by invoking the review jurisdiction of this Court. The well-known maxim *vigilantibus non dormientibus jura subveniunt*, the law assists those who are vigilant of their rights and not those who sleep over them, aptly applies to the circumstances of the present case.

10. Accordingly, we find no error apparent on the face of the record, nor any other ground warranting interference in the exercise of this Court's limited review jurisdiction. The other grounds advanced in the review petition, in essence, seek a reappraisal of matters already considered and adjudicated upon in the judgment under review, which is beyond the permissible scope of review proceedings. It may further be observed that the petitioner was found guilty of committing a most heinous and gruesome offence against a young woman whom he first raped and thereafter murdered. The record, as concurrently appreciated by the Learned Courts below and also affirmed by this Court, reveals a shocking degree of brutality in the commission of this crime. The circumstances attending the occurrence, the manner in which the offence was executed, and the conduct attributed to the petitioner do not disclose any mitigating circumstance capable of diminishing his culpability or warranting a lesser sentence. Despite strenuous efforts made by the learned counsel, no material has been brought to our notice which may justify extending the benefit of leniency to the petitioner. The aggravating features of the case overwhelmingly outweigh any circumstance urged in mitigation. We are, therefore, not persuaded that the case falls within any recognized exception warranting interference with the sentence awarded to the petitioner.

11. The scope of review jurisdiction is exceptionally narrow and limited. A review petition cannot be treated as an appeal in disguise, nor can it be used as a vehicle to re-open closed findings or re-examination of the case on merits. For the foregoing reasons, no ground for review within the contemplation of the law is made out. Accordingly, the present review petition, being devoid of merit, is hereby dismissed and leave is refused.

12. Before parting with this judgment, we find it important to address the grave and growing concern regarding the increasing instances of femicide. The structural architecture of this crime indicates that the termination of a woman's life is rarely an isolated, spontaneous event rather, it represents the lethal culmination of a systematic, gender-motivated continuum of violence. According to the Statistical Framework for Measuring the Gender-Related Killing of Women and Girls, jointly developed by the United Nations Office on Drugs and Crime (UNODC) and UN Women, the category of femicide having the largest number of victims is the intentional homicide perpetrated by current or former intimate partners. Global data compiled under this international framework reveals a harrowing reality that approximately 50,000 women and girls lost their lives in 2024 at the hands of an intimate partner or an immediate family member. Extensive criminological research and academic studies tracking the trend of intimate partner violence consistently show that lethal escalations are preceded by identifiable, risk-inherent behaviors such as coercive control, stalking, and psychological terror. The statistical data reproduced above dispels the conventional assumption that women enjoy the greatest degree of safety within domestic settings. On the contrary, it demonstrates that the private sphere, rather than serving as a sanctuary of security, is statistically the setting in which women are most vulnerable to violence and abuse. The Injunctions of Islam attach immense sanctity and protection to women. As an Islamic Republic, our constitutional duty mandates that instead of witnessing an escalation in cases of femicide, our society must exhibit exemplary behavior concerning the protection, honor, and

rights of women, treating any violation of their sanctity as a betrayal of both divine law and national values.

Judge

Judge

Judge

Islamabad the
4th June, 2026
Approved for Reporting
M.Siraj Afridi PS/ Tayyaba Munir Law Clerk