

THE EVOLUTION AND CHALLENGES OF DOCUMENTARY EVIDENCE IN THE LENS OF CRIMINAL PROCEEDINGS IN PAKISTAN

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Abstract

The goal of this research is to show the various components of documentary evidence in the context of legal precedents." The criminal trial begins with the formation of the charge and finishes with the announcement of the verdict. If the defendant enters a not guilty plea after the charge is read to him and his plea is recorded, the prosecution will be compelled to prove its case by presenting evidence. Witness examination, cross-examination, and sometimes even re-examination are all part of the evidentiary process. Oral and documentary evidence are the two sorts of evidence. The accuser's plea is recorded again once the prosecution's case is done, and he is given the opportunity to reject the claim by presenting oral and documentary evidence as well as cross-examining himself as a witness. The parties' arguments are then heard, and the decision is announced. This article is confined to a look at documentary evidence and the mechanisms for getting documents into a criminal trial on the record. The debate has gained a lot of traction because various current technologies have come to light that speaks of their creating evidence. Despite the fact that Pakistan's statute, the Code of Criminal Procedure, 1898, was enacted in 1898 and 113 years have passed, very few amendments have been made. Is this sufficient, or do you believe you'll require more? Whether he is the complainant in a private complaint or the State Court in this case, what is the prosecutor's function with respect to the accused, the PWs, DWs, and CWs? What criteria and acid tests are used to determine whether a document becomes part of the public record, and under what legal provisions? The use of criminal procedure and evidence as a mechanism for protecting substantive rights and thus providing access to justice has been quoted with full references in order to inform researchers at all levels about the use of criminal procedure and evidence as a mechanism for protecting substantive rights and thus providing access to justice.

Keywords: Documentary Evidence; Civil cases, Criminal cases, Rulings.

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INTRODUCTION

“On the criminal side, the trial begins with the charge being laid and ends with the verdict being delivered. If the defendant enters a not guilty plea after the charge is read to him and his plea is recorded, the prosecution will be compelled to prove its case by presenting evidence. Witness examination, cross-examination, and sometimes even re-examination are all part of the evidentiary process. Oral and documentary evidence are the two sorts of evidence. The accuser's plea is recorded again once the prosecution's case is done, and he is given the opportunity to contradict the claim by providing oral and documentary evidence, as well as cross-examining himself as a witness. This article is confined to a look at documentary evidence and the mechanisms for getting documents into a criminal trial on the record. Despite the fact that Pakistan's statute, the Code of Criminal Procedure, 1898, was enacted in 1898 and 113 years have passed, very few amendments have been made. Is this sufficient, or do you believe you'll require more? What role does the prosecutor play in the case of the accused, the PWs, DWs, and CWs? In this scenario, is he the complainant in a private complaint or the state? What criteria and acid tests are used to determine whether a document becomes part of the public record and under what legal provisions? The use of criminal procedure and evidence as a mechanism for protecting substantive rights and thus providing access to justice has been quoted with full references to inform researchers.

WHAT IS THE DEFINITION OF EVIDENCE?

Evidence, in its most literal sense, is anything that attempts to indicate or refute the existence of a stated fact (such as testimony, records, or tangible artefact).

Oral evidence refers to remarks made by witnesses during depositions about the facts under inquiry; this kind of evidence is referred to as "oral evidence," while documented evidence refers to any papers submitted for the Court's review.

HOW CAN THE PROOF OF WRITING BE ESTABLISHED?

Any of the following methods can be used to prove a statement:

By summoning and questioning the writer, (ii) by the testimony of a person who witnessed the documents being written, (iii) by the testimony of a person familiar with the writer's handwriting,

CERTAIN CRITICAL ASPECTS OF A TEXT MUST BE UNDERSTOOD IN LIGHT OF THE QANUN-I-SHAHADAT ORDER OF 1984.

- "A document is a piece of paper with writing on it; the facts of a contract are one thing, and the terms of a contract are quite another."

Bilateral and unilateral documents are the two sorts of documents.

- A document's content is one thing; document execution is quite another.

- No parole evidence may be used to justify a transaction that, by law, must be reduced in writing.

SELECTED RULINGS ON DOCUMENT

“Admissibility in Evidence: Scope – Report of BDS is not a public Document, hence, inadmissible in court proceedings¹

ADMISSION OF EXECUTION OF DOCUMENT REQUIRED BY LAW TO BE ATTESTED - EFFECT

Such admission would be sufficient proof of execution of such Document as against a party having made such admission.²

¹ [2009-PCr.LJ-Peshawar-604]

² [PLD-2011- Lahore522] (CM)

APPRECIATION OF DOCUMENTARY EVIDENCE: COGENT DOCUMENTARY THE COURT DOES NOT address the issue of proof. It is evident from the verdict that the Court did not consider this evidence, since it is completely mute in this respect.³

BALD STATEMENTS OF ACCUSED - Bald statements of accused u/s 342 would not be enough to dislodge the sufficient oral as well as documentary evidence produced by the prosecution to prove the charge against the accused.⁴

THE BENEFIT OF THE DOUBT: Plea of the defense that preliminary investigation was conducted before lodging the FIR, got support from the fact that Investigating

Officer had admitted that except for the FIR, all the rest of the Documents were in his handwriting. *“Investigating Officer could not offer any plausible explanation for not writing the FIR with his own hand when he was not suffering from any infirmity or disability.”* Ocular account had come in conflict with the medical evidence. Occurrence had neither taken place at the time, shown in the FIR, nor in the manner set up by the prosecution. Plea of counsel for the complainant and the State that because co-accused had been convicted earlier, appeal of accused would be dismissed was not sustainable in law. *“Law had provided a right of fresh trial to each accused, surrendering subsequently and the court of law was bound to apply its independent judicial mind while making appraisal of evidence against him, uninfluenced by the previous conviction acquittal of co-accused.”* If such plea was allowed to prevail, fresh trial of a subsequently arrested accused would become just a fancy trial defeating the object of law and principles of justice. Two real brothers had been charged, besides an absconder who too belonged to the same family. Tragedy appeared to be a job of a single person. *Besides an unseen crime, a net had been thrown much wider due to consultation and deliberation made before the registration of the case.* PW who was remotely related to accused was abandoned being won over. Said witness had appeared as defense witness; his testimony would have been discarded, suspecting him favoring accused for ulterior consideration, however, his testimony got very strong support from that of the testimony of two important witnesses.⁵

COGNIZANCE OF OFFENCES BY COURTS - JOINING PERSONS AS ACCUSED IN THE CASE: (1) NOT PRESENT AT THE PLACE OF OCCURRENCE - DOCUMENTARY PROOF: “Whatever Documents are brought on record or whatever names are disclosed by the petitioners in proof of the fact that they are not available at the time, place and date of the incident had gone un-contested and un-rebutted. Presumption deducible from such Documents and the names disclosed, for the time being, would be taken as correct and up to standard.] Complainant fears that certain relevant Documents would be withheld in case prosecution is conducted by Prosecuting Sub-Inspector-Prosecution on agreement of parties, ordered to be conducted by complainant's counsel with Prosecuting Sub Inspector's assistance. Medical witness, in whose respect the difference arose, however, ordered to be examined as Court witness. PPC Ss. 392, 363 & 342/109”.⁶

The complaint could not be declared such a sacrosanct Document, wherein no change could be made, however, its impact needs to be examined before granting permission. *“Substitution of a person and correction of names being entirely two different things could not be amalgamated. {1} Proposed amendment for correction of names of already nominated*

³ [PLJ-2011-SC (AJ & K) 17]

⁴ [NLR-2011-Criminal Multan 24]

⁵ (Peshawar) [2011-YLR-1014]

⁶ [1971-PCr.LJ-849] State Vs. Ashiq [Karachi]

accused was neither deletion nor addition nor insertion or substitution, but correction simplicity having no bearing on merits of the case.” Issuance of process u/s 202 & 204, CrPC, would depend upon availability or non-Availability of sufficient incriminating material and would have nothing to do with the correction of names of the accused. The process had been issued against the same accused persons, whose names were sought to be corrected. **“Non-mentioning of correct names due to an inadvertent omission or lack of knowledge could be corrected if the same was not prejudicial or detrimental in any manner whatsoever to the accused.”** Due to some omission, the correct names of the nominated accused persons could not be mentioned in the complaint. No new person was being implicated through the proposed amendment in the present case. Application accepted.⁷

According to Section 173 read with S.169, CrPC, the Area Magistrate might agree or disagree with a negative final report prepared by the Investigator in the absence of adequate evidence to substantiate a charge or an accusation against him. According to CrPC 190(1) (b), the trial court would only be concerned with the crime, not the offender. Trial Magistrates have the authority to take cognizance of an offense upon receipt of a negative or cancellation report if they determine that there is sufficient evidence against the accused. Rather than submitting a final report u/s173 read with S-170, CrPC before the Court, if the evidence in favor of the charge was adequate, the Investigator would do so. Legal evidence is defined as evidence that may be used in court to support an individual's claim of innocence or guilt, and hence must be presented to the court.

“Function of the Trial Court was to form an opinion after perusing the Police report, all the Documents, and statements filed by the prosecution as to whether or not sufficient grounds were available to proceed with the trial of the challenged accused in order to determine the question of his guilt or innocence.” Section 265- D, The relevant section of the CrPC stipulated that the Court would frame a charge against an accused if there was enough evidence to proceed with the trial; on the other hand, if there was no evidence linking the challenged accused to the alleged crime, the Trial Court would not frame a charge against the accused. the accused would be found not guilty at any level of the 249-A, CrPC if the court found that there was no reasonable possibility that he would be found guilty of any crime or that the accusation against him was unfounded.⁸

CROSS-EXAMINATION AS TO PREVIOUS STATEMENTS IN WRITING - PROCEDURE: To Prove “The previous statement of the party / witness, relying on such previous statement, writing of other party / witness embodied in a Document should put that statement to him to give him opportunity to explain his position. Without complying with requirements of Art-140 of Qanun-e-Shahadat, 1984, such previous statement could not be used as legal evidence; and without complying the procedure laid down in said Art-140, if a Document was not confronted to a person, such Document could not be used as legal evidence.⁹

DISCHARGE OF ACCUSED - PRIMA FACIE CASE: Prosecution has to prove offences “beyond all reasonable doubts. Accused is charged under local and special laws. Trial Court discharged accused persons of offences under special law on the ground that there is no prima facie case against them. Perusal of charge-sheet and relevant Documents disclosed

⁷ [2010-SCMR-194]

⁸ (Lahore)[2010-PCr.LJ-182]

⁹ [PLD-2011Peshawar-208] (Civil Revision)”

prima facie case under the said law. Discharge of accused of said offences at such stage *are* not proper.¹⁰

DISPENSING WITH INQUIRY: Power of Authorised officer to decide necessity or otherwise of an enquiry. Discretion to be exercised on sound principles and judicious manner by discussing facts. Must record speaking order giving reasons for such decision. Summary procedure be adopted only in case where it is clear and apparent from Documentary or other evidence that specific charge is proved regarding which decision can be taken for specific penalty. Charge, evidence and specific penalty proposed to be awarded must be mentioned in show-cause notice. Police official charges of misconduct on basis of FIR registered against him on charges of theft. **Criminal Trial** yet under process. Authorized Officer, in circumstances, held, could not pre-judge alleged offence against official. Procedure of show-cause notice, in circumstances, held, not proper and consequential penalty vitiated.¹¹

DOCUMENT, PROOF OF - NUMBER OF ATTESTING WITNESSES - PRE-CONDITION: In order to bring case within the purview of Article 17 of Qanun-e-Shahadat, 1984, two ingredients must co-exist *firstly* there must be an instrument, *secondly*, it should pertain or relate to a matter either of a financial or future obligations. If such two Conditions are met, it is mandated that the instrument must be attested in terms of Article 17 of Qanun-e-Shahadat, 1984. Agreement of sale or to sell immovable property being a written Document is an instrument within the meaning of law.¹²

EVIDENTIARY VALUE: Documentary evidence in the shape of certificates issued by experts specifically medical experts, Chemical examiners and Forensic Experts when contradictory to oral testimony of related and interested witnesses, is to be believed and it always prevails upon the said ocular evidence produced by the interested parties.¹³

EXPRESSION "INTENT TO DEFRAUD" APPEARING IN SECTION: "Implies Anti conduct coupled with an intention to "deceive" and thereby to "injure". Accused, a Union Council Secretary, alleged to have misappropriated sums entrusted to him for disbursing to a peon, after making forged acquaintance rolls and putting his own thumb impression on them Peon, however, admitting to have received all sums due to him. Accused finding original acquaintance rolls missing reconstructing same and putting his own thumb impression on them instead of recipients. Not a "false Document" within meaning of S-464, Penal Code. A mere irregularity or improper conduct calling for departmental action. Conviction of accused, held, not sustainable in circumstances.¹⁴

FACT SPECIALLY WITHIN KNOWLEDGE - ONUS TO PROVE: If "property was lying open within the view of accused or they knew placement of property then situation would be different in such situation, accused were required to explain their position in terms of Article 122 of Qanun-e-Shahadat, 1984, without such explanation their involvement in the case would be proved. Such knowledge of accused had not been proved through any evidence either oral or Documentary; therefore, they were not required to explain anything. Prosecution had simply proved presence of accused in the vehicle and" {1} *mere presence of accused in vehicle would not involve them in the case conspiracy or abatement of the*

¹⁰ [1994-SCMR-592] State Of Andhra Pradesh Vs. S. Eshar Singh [Sc]

¹¹ [1981-Plc-263]

¹² [PLD-2011-SC-241]

¹³ [PLD-2008-Karachi-182]

¹⁴ [1971-PCr.LJ-988] Mushtaq Ahmad Vs. State [Lahore]

offence was shown and proved, therefore, prosecution failed to prove the case against the accused.”¹⁵

Acquitted Property in question was neither lying open in the “car within the view of the accused, nor they knew about the placement of the same therein. Accused, therefore, was not even required to explain their position as required u/a 122 of Qanun-e-Shahadat, 1984, and they could not be held responsible and in joint possession of the narcotics with the Driver. Prosecution case against the accused was highly doubtful and they were acquitted accordingly.¹⁶

FISCAL MATTERS: “Where fiscal matters are involved the person so alleging their claim in their favor on the basis of the Document which had created title, had to be proved through two witnesses.¹⁷

For deciding the question of age of accused it is incumbent upon the Court to hold an inquiry, requisition the original record, summon and examine the authors of such record and Documents in order to determine the genuineness of the same and should obtain opinion of the Medical Experts which can lend valuable guidance to the Court in resolving the controversy.¹⁸ Plea of being a juvenile to be taken at the earliest opportunity. Otherwise an adverse inference can be drawn against him.¹⁹

“If an employee of bank while comparing signatures with specimen signature card committed an error or with gross negligence passed a Document or verified a signature it might be misconduct under the rules of the Organization for which employer might be justified in taking disciplinary action or imposing penalty on committing of such misconduct or negligence. Such verifying of signatures could not be held to have established that employee had cheated a customer of the bank or had committed an offence. Acquitted.²⁰”

If one party failed to perform his part of agreement, then other party alone could not be held guilty of non-performance of his part.²¹ Whole Document must be read and considered in totality.²² Substance of Document and not its form must be kept in mind while interpreting the same.²³ Contents, substance and context of a Document would determine its nature, but not its title, label or heading alone.²⁴

Initial burden to prove execution of Document is on the party which is relying on the Document – Once such onus is discharged, burden to prove factum of fraud or undue influence or genuineness of Documents shifts to party which alleges fraud.

Insofar as allegation of abduction or kidnapping is concerned it is irrelevant whether Section 12 is applicable or not so far as accusation of unnatural offence has been made which prosecution intended to prove through Documentary and oral evidence.²⁵

¹⁵ [2010-SCMR-927]

¹⁶ [2010-SCMR-841]

¹⁷ (Lahore) [2011-YLR-1377]

¹⁸ [PLD-2008-Lahore-26]

¹⁹ [PLD-2008-Lahore-26]

²⁰ (Karachi) [2011-YLR-105]

²¹ [2008-YLR-2327]

²² [2008-MLD-1571]

²³ [2009-CLC-731]

²⁴ [2011-SCMR-1917]

²⁵ [2010-SCMR-1351]

Investigating Officer during cross-examination producing photo state copies of statements recorded u/s 161, CrPC of deceased and PWs. Investigating Officer showing his ignorance about original copies of same. Prosecutor not raising any objection at time of production of such copies but subsequently objecting on ground that same *are* photo state copies of statements which *are* not in his file and same have not been supplied by prosecution to accused. Trial Court overruling objection of prosecutor and allowing photo state copies of Documents to be placed on record without ascertaining whether original Documents *are* available or not. When primary evidence is available then secondary evidence, held, could not be produced. Neither defence nor prosecution established that statements, photo state copies of which *are* produced *are* recorded during investigation.

Witnesses denied their statements but Investigating Officer alleged that he recorded such statements. Sentence set aside and case remanded to Trial Court to determine whether such statements *are* recorded during investigation or not.²⁶

INVESTIGATION, DOMAIN OF POLICE – CIVIL & CRIMINAL PROCEEDINGS - QUASHING OF FIR: “FIR had alleged that accused and his co-accused forged the agreement to sell and for that purpose not only committed the offence of forgery, but also used the forged. Mode of the occurrence detailed in the FIR, required investigation into the allegations, which was the exclusive domain of the Police. “*Proceedings of a civil suit and that of the criminal case could continue in parallel to each other under the law.*”²⁷

It should always be the approach of Courts of law that multiplicity of litigation should be avoided for mere hyper technical reasons, and further while interpreting a Document, the Courts instead of giving effect to its substance, they should give effective and substantive relief’s to parties in litigation.²⁸

MARGINAL WITNESSES, NON-PRODUCTION OF - EFFECT: “Non-production of the marginal witnesses of the Document, was fatal where party could easily produce the marginal witnesses.²⁹

Medico-Legal Certificate was issued by Medical Officer and Radiologist opined fracture on the person of injured. Authenticity of Medico-Legal Certificate was questioned and medical board was constituted at the instance of accused and medical board rendered its opinion. Both the Documents were authored by medical officers in discharge of their functions, genuineness of which could not be doubted. Accused would have ample opportunity to discredit the evidence on the touchstone of cross-examination. Supreme Court set aside the orders passed by all the courts below and allowed application for summoning of doctors. Appeal allowed.³⁰

MERE FILING – FOLLOWING: “The whys and where forces lead me to an irresistible conclusion that the bone of contention between the parties whether case of illegal dispossession was made out or not was overlooked and ignored by the Trial Court and an incomprehensible (*beyond your understanding*) and patently (*clearly*) improbable order was passed without adverting to an imperative (*very important*) contemplation (*thought*) that “*mere filing of a suit subsequent to the filing of complaint on the basis of a Document*

²⁶ [1986-PCr.LJ-2514] Abdul Hassan Vs. State [Karachi]

²⁷ (Lahore) [2011-YLR-1401]

²⁸ [NLR-2007-UC-50]

²⁹ (Lahore) [2010-MLD-1162]

³⁰ [2011-SCMR-713]

which has no legal foundation, would be of no significance to protect the illegal & unauthorized possession.”³¹

MODERN DEVICES, EVIDENCE OF: “Evidence available on record through modern devices on techniques as computer can be allowed & used in the evidence u/a 164, Qanun-e-Shahadat Order, 1984. Similarly, audio, video recorded cassettes, CDs are admissible piece of evidence about information contained in the electronic Documents.³²”

NOT NECESSARY FOR COURT TO SEND MATTER TO HANDWRITING EXPERT IN EVERY CASE – “Court in case of ambiguity could refer matter to expert for opinion – Prerogative of Court either to send matter to handwriting expert or form an opinion after perusal of disputed material, such opinion could not be conclusive unless same found support from relevant Documents.³³ Oral evidence to the extent of its inconsistency with medical evidence could not be accepted.³⁴

ORAL EVIDENCE – DOCUMENTARY EVIDENCE

Oral evidence cannot be given preference over Documentary evidence.³⁵

ORAL EVIDENCE: Oral evidence could not be preferred over Documentary evidence.³⁶

OSSIFICATION TEST: O-Test of accused for determining his juvenility can be ordered by Court as a last resort. The importance of ossification test is amplified by fact that Documents like birth certificate and school leaving certificate of accused are susceptible to interpolation, manipulation etc. In order to adopt a safe course, it is imperative to obtain opinion of medical experts.³⁷

PLAINTIFFS CLAIMING PREFERENTIAL RIGHT TO HAVE SUIT LAND ALLOTTED TO THEM AS TENANTS THEREOF - PROOF: Onus was on plaintiffs to establish that they were tenant of suit land. Two plaintiffs were brothers and other two were sons of first plaintiff, who in his evidence did not say a single word that any of his brothers were tenant of suit land. Oral version of first plaintiff was not corroborated by any Documentary or other oral evidence. Oral version of first plaintiff was denied by defendant. Held: plaintiffs failed to make out case in their favor.³⁸

Plea that deceased has executed power of attorney during marz-ul-maut – Proof – Treatment of hospitalization of deceased at time of execution of power of attorney had not been proved by producing any independent witness or medical practitioner or Documentary evidence. Deceased had executed power of attorney 10 months before his death – Such plea was repelled.³⁹

Power of Police to reinvestigate the case: “Police or Customs Authorities are not statutorily prohibited from investigating a case as many times as they chose; and could file a fresh challan in the court as a result of subsequent investigation or events. Powers of Police to reinvestigate the case or submit subsequent challan, are unlimited; and no law existed which precluded the Police from reinvestigation of case. Any Document, which the prosecution intended to rely upon, should be submitted before the court through proper and subsequent

³¹ [PLD- 2011Karachi-405]

³² [PLJ-2011-Sh.C. (AJ&K) 1]

³³ (Lahore) [2011-CLD-1361]

³⁴ [2007-SCMR-1812]

³⁵ [2010SCMR-473]

³⁶ (Lahore) [2011-MLD-176] (January)

³⁷ [2008-CrLJ-203]

³⁸ [2011-SCMR284]

³⁹ [2011-SCMR-153]

challan as envisaged u/s 173 of CrPC. If the law required something to be done in a specific manner, it should be done as law required and departure was not permissible. Police or any other Investigating Agency, had no unfettered power to place a Document on record in gross violation of the prescribed manner.”⁴⁰

PRINCIPLE OF INTERPRETATION OF STATUTES: Intention of Legislature or author of a Document. To be gathered from its provision as a whole. Court not entitled to ascertain intention of author or Legislature, in absence of any ambiguity. Contention beneficial to subject to be given. ⁴¹

“Principle of natural justice is sufficiently incorporated in Rule 5 (E&D) Rules, 1973, to the extent of providing civil servant with opportunity of showing cause in disciplinary matters but it cannot be stretched so as to turn it into a Criminal Trial as desired by civil servant. Failure of Authorised Officer to provide civil servant with copies of certain Documents in inquiry culminating in imposition of minor penalty is not enough to vitiate whole disciplinary proceedings. As for challenge to propriety and legality of impugned order, petitioner would be estopped by his conduct in that he had while explaining mitigating circumstances to Authorized Officer during personal hearing accepted an “inadvertent or advertent omission and had pleaded for a lenient view”. Petition for leave to appeal had thus, no substance. Leave to appeal is refused in circumstances. ⁴²

PRIVILEGED DOCUMENT – CONCEPT – NO IMMUNITY FOR ACCOUNTABILITY IS AVAILABLE WHEN THE MATTER CONCERNS THE COMMISSION OF A CRIME OR FRAUD: “if the Documents are relevant to establish the commission of crime or fraud by the accused and are not made for legitimate purposes such as for the preparation of the defence of the accused which the interest of justice may require to be kept confidential, the Documents would not be privileged. In a court of law, there are no facts in the hands of authorities that should be kept secret because they pertain only to the internal affairs of public business, civil or military. To the best of my knowledge, there are no facts that must be kept hidden in any society with a system of representative government and removable authorities. “Every educated man and every friend of his country views it as a disgrace” to “cloak with the shroud of secrecy” the everyday routine of business.” As a rule, such confidentiality is not warranted. There are several reasons why this is wanted, including party politics and self-interest. The most important protection against tyranny and corruption is the need of authorities to explain and defend their actions. Whether it's the Treasury Department's transactions with the Stock Exchange or the Interior Department's dealings with public lands, the facts must be demandable on the House floor in accordance with the Constitution sooner or later. When they are granted sacrosanct secrecy in a court of justice, it implies that they have some sort of special character that is never maintained for any other purpose, a character that appears to have been advanced only when it serves the interests of some individual to obstruct investigation into facts that might implicate him in liability. When a crime or fraud is involved, there is no insulation from responsibility.”⁴³

PROOF OF IDENTIFICATION OF ACCUSED - DEATH OF INVESTIGATING OFFICER - SECONDARY EVIDENCE: “Plea raised by accused was that Magistrate under whose supervision Test Identification Parade was held was not produced and even during trial

⁴⁰ (Quetta) [2011-YLR-2169]

⁴¹ [1981-PCr.LJ-19] State Vs. Ali Jan Shah [Sc-Aj&K]

⁴² [1996-SCMR-835] Muhammad Anwar Vs. Cs Nwfp = [1996-Plc-887]

⁴³ [1994SCMR-2142]

accused persons were not identified. Accused raised the further plea that person who conducted entire investigation was reportedly dead and Documents prepared by him were not proved through secondary evidence. *Effect: Leave to appeal is granted for reappraisal of entire evidence.*⁴⁴

PROVING CONTENTS OF A DOCUMENT - SCOPE: Contents of a Document could be proved through primary or secondary evidence as provided u/a 72 of Qanun-e-Shahadat, 1984. Contents of Document could only be proved through the secondary evidence, if the conditions mentioned u/a 76 of Qanun-e-Shahadat, 1984 were available.⁴⁵

RECONSTRUCTION OF RECORD: Petitioners are free to produce concerned Documents, if any in their possession. Petitioners having participated in the proceedings of the case cannot back out from their participation and claim to restart a proceeding a fresh.⁴⁶

Registered sale deed prior in time must be given due weight.⁴⁷

RELEVANCY AND ADMISSIBILITY OF CERTAIN: Documents received in evidence by Trial Court, challenged. Accused did not raise any objection as to admissibility of such Documents at time when same are marked and Exhibited in evidence. Documents having been received in evidence by previous Magistrate his successor, held, is not competent to **Review** and revise proceedings conducted by his predecessor. Revisional Court dismissing revision petition by giving sound and cogent reasons. Orders of Courts below not suffering from any defect of jurisdiction are quite legal and proper. Question of admissibility of such Documents could be raised at time of final hearing. Interference in exercise of constitutional jurisdiction declined in circumstances.⁴⁸

REPORT OF BOMB DISPOSAL SQUAD - ADMISSIBILITY IN EVIDENCE – SCOPE: Report of BDS is not a public Document, hence, not admissible in evidence.⁴⁹

REPORT OF MISAPPROPRIATION OF CASH LODGED BY PW: based on audit report not prepared by witness himself. Cash neither checked physically nor any Document examined by witness. Witness failing to produce Departmental file showing accused's appointment as cashier. Evidence of such witness, held, of no use to prosecution. PPC S-409 and Prevention of Corruption Act (II of 1947), S-S(2).⁵⁰

REQUIREMENTS FOR EXECUTION OF POWER OF ATTORNEY: Section 2 and 4 of the Power of Attorney Act, 1882, provided that power of attorney had to be created by an instrument – article 95 of Qanun-e-Shahadat, 1984, required the Courts to presume every Document purporting to be a power of attorney which was executed before and authenticated by a Notary Public or any Court or representative of the Federal Government – Power of attorney had to be a written Document – Unless the power of attorney in the shape of written Document was filed before the court, neither any assumption of its existence could be made nor the Court would make any presumption as required u/a 95 of Qanun-e-Shahadat, 1984.⁵¹

⁴⁴ [2011-SCMR-1349]

⁴⁵ (Lahore) [2011-YLR-890]

⁴⁶ [2008-PCr.LJ-1084]

⁴⁷ [2010-SCMR-1871]

⁴⁸ [1986-PCr.LJ-2688] Hidayat Ali Khan Vs. Shafqat Ali Khan [Lahore]

⁴⁹ [2009PCr.LJ-Peshawar-604]

⁵⁰ [1973-PCr.LJ-1015] Muhammad Rizvi Vs. State [Karachi]

⁵¹ [2009-MLD-538]

RETRACTED JUDICIAL CONFESSION: Supported by other independent and convincing oral and Documentary evidence would prove case when no material contradiction or discrepancy has emerged in statements of PWs despite their lengthy cross-examination.⁵²

SCOPE OF EVIDENCE FOR PROSECUTION -: Section 265-F is quite comprehensive. Clause (7) of S-265-F, CrPC has granted a right even to accuse to apply for summoning of witnesses & production of Documents. Balance has to be struck between the parties.⁵³

SCOPE OF FIR: STRANGER: FIR is a foundation stone of a criminal case though it is not a piece of substantive evidence. FIR is always used for contradicting u/a 140 of QSO, 1984 and corroborating u/a 153 of QSO, 1984. When some infirmities or irregularities are found in an FIR, it certainly would affect the final determination of the case especially when it is lodged by a mere stranger and not by an eye-witness.⁵⁴

FIR is only a primary Document, which provides legal basis to police for proceeding further in accordance with law and for determination of relevant facts. Any material coming to knowledge of complainant in so far it is relevant to alleged offence may be placed before police during investigation.⁵⁵

SEARCH WARRANT was a public Document and could have been proved by production of a certified copy as visualized by Art.88 of the Qanun-e-Shahadat, 1984. Inference, however, could be drawn that the Police Officer wanted permission to effect arrest of a number of persons in a house where the offence was alleged being committed. **General warrant** to apprehend more than one person was, however neither authorized by CrPC nor by Offence of Zina (EoH) Ordinance, 1979. All proceedings as a subsequent to submission of application were thus, void under clause (d) of sub Article (i) of Art.112 of the Qanun-e-Shahadat, 1984, the Court was authorized to take judicial notice of "the seal of all the Courts".⁵⁶

SECONDARY EVIDENCE - Contents of a Document are required to be proved either by primary evidence is not produced before Court, then law requires that its secondary evidence can be produced which means copies of the original Document. For producing secondary evidence, Art. 75 requires that secondary evidence can be proved on satisfying conditions specified in Art. 76.⁵⁷

STAY OF PROCEEDINGS BEFORE TRIAL COURT: Accused had sought the stay of criminal proceedings against him before the Special Court till the determination by Civil Court the genuineness or otherwise of the receipt alleged to have been issued by him on which the complainant had relied. Supreme Court observed that the Trial Court itself is competent to look into the genuineness of the Document either by comparing the signatures of the accused with the signatures on the receipt or sending the same for Expert's opinion and that it is for the Trial Court to determine the question of the guilt or innocence of the accused upon the ocular and documentary evidence produced before it. Even otherwise Civil Court's judgment could not be admissible in a criminal proceeding to establish the truth of the facts upon which it is rendered. Courts below, thus, are right in not staying the criminal proceedings against the accused. Leave to appeal is refused accordingly.

⁵² [(NLR) 2008-CrLJ-658]

⁵³ [PLD-2011-FSC-114] (February)

⁵⁴ [2008-PCr.LJ-613]

⁵⁵ [2008-YLR-1891]

⁵⁶ [2010- PCr.LJ-231 (Syed Afzal Haider, J.) Shehnaz vs. State]

⁵⁷ . [(NLR) 2011-AC-12]

SUDDEN FIGHT - LACK OF COMMON INTENTION – “Defence plea that the deceased and the witnesses had been injured by the neighbors, besides being highly improbable, is not substantiated. Was not known as to how the firing started and what exactly happened prior to the occurrence. Case, thus, is of sudden fight and S.34, PPC is not attracted due to lack of common intention. Accused had not caused any injury to the deceased and his conviction u/s 302(b)/34, PPC is set aside. Medical evidence had supported the injuries attributed to accused on the persons of eyewitnesses and his convictions and sentences under Ss. 324 and 337-A(ii), PPC were maintained. Appeal is disposed of accordingly.⁵⁸

SUDDEN FIGHT- Case of prosecution is that accused and deceased are fast friends and accused had no previous enmity. No premeditation existed on the part of accused to commit murder of the deceased. Case is of sudden fight as according to the motive set out in the FIR the deceased owed certain amount to accused and accused committed the murder after an altercation in a heat of passion. Punishment of death, in circumstances is not warranted. Sentence of death is modified and altered into imprisonment for life.⁵⁹

SUPERDARI - TEMPORARY CUSTODY - RENT A CAR - NO RIVAL CLAIMANT - RELEASE OF THE VEHICLE ON "SUPERDARI": “Proviso of S-74 of the Control of Narcotic Substances Act, 1997, did not prohibit the release of the vehicle involved in the trafficking of narcotics to its owner; who was not connected in any way with the commission of the crime or the accused and was unaware that his vehicle was being used for the crime. Record did not show that the petitioner was aware that his vehicle was used for the transportation of "Charas". Documents produced by the petitioner before the Courts below showed that his car was leased to a firm of "Rent a Car", which had rented it out to the accused. In the absence of any rebuttal by the prosecution of these Documents, findings of High Court that the same might have been fabricated, could not be agreed. No rival claimant of the vehicle came forward. Petitioner was entitled to the temporary custody of the vehicle which was ordered to be released to him on Superdari.⁶⁰

SUPERDARI OF VEHICLE ALLEGEDLY USED FOR COMMISSION OF OFFENCE: Court during any inquiry or trial, could make such order as it would think fit for the proper custody of property pending the conclusion of the inquiry or trial, when such property appeared to have been used for commission of any offence, or produced before any criminal court. Court, in normal course, was to restore possession to the party from whose possession vehicle was recovered. Stolen property, however, could not be given on superdari to a purchaser from thief. Last owner was also entitled to superdari of the vehicle taken in possession by Police, particularly in the absence of any other lawful claimant of such vehicle. Person producing original certificate of registration and other relevant Documents of the vehicle, prima facie revealing him to be its owner, was entitled for the custody of the vehicle during pendency of the case. Petitioner who was in possession of original Documents of ownership, including the Registration Book of vehicle in question, was entitled for the custody of said vehicle, particularly when no other claimant had come forward before the court for such purpose. {1} No justification for the Police to keep custody of vehicle in question as there was no likelihood that the same would be misused, damaged and deteriorated.⁶¹

⁵⁸ (Lahore) [2010-PCr.LJ-837]

⁵⁹ (Lahore) [2010-PCr.LJ-1089]

⁶⁰ [2010-SCMR-1181]

⁶¹ (Karachi) [2011-PCr.LJ1513]

Supply of Documents: Accused is entitled to have a copy of the FIR and the Police Report.⁶² He is entitled as of right to get copies of the statements of all the witnesses recorded.⁶³

THEFT OF CAR - SUPERDARI OF THE VEHICLE: Three different reports of Forensic Science Laboratories had established that vehicle in question is a stolen property.

Neither the registration book bore the name of the petitioner nor could petitioner produce any Documentary evidence of transfer of ownership of vehicle in his favour. *C.P. dismissed.*⁶⁴

There is no concept of making inquiry before registration of FIR.⁶⁵ FIR promptly lodged would carry a lot of weight and would exclude possibility of false implication of accused.⁶⁶ FIR is an information regarding an occurrence to the Police authorities; & it could also be taken as a very good piece of initial evidence, which had to be backed up by the narration of the eye-witnesses. (*Gilfit-Baltistan Chief Court*)⁶⁷ Delay in lodgment of FIR plays a very important role. The possibility of preparing & manipulating the case on account of delay cannot be ruled out.⁶⁸ Mere delay in lodging the FIR would not affect prosecution case unless it is not explained by prosecution through a plausible explanation.⁶⁹ FIR can be used to corroborate its maker when it appears to be a genuine Document written at the time & in the manner as it purports.⁷⁰ Delay in recording FIR of a case of abduction for ransom & murder provides a basis to say that abductee / deceased did not disappear as alleged in the FIR.⁷¹

Though medico-legal certificate was part of the report yet the name of Medical Officer was not mentioned in the calendar of witnesses. Had he not forwarded the report u/s 173, with a blind eye, and have seen the list of the witnesses by comparing it with the Documents, the needful would have been done at the earliest possible opportunity. Should a complainant suffer for the fault of the prosecution, who was negligent in discharging duties and functions? Answer should be, readily in negative⁷²

TORTURED & PRESSURIZED TO GIVE EVIDENCE: Evidence of the hostile PWs that they had remained in police custody for 13/14 days and tortured and pressurized to give evidence against the accused and that they had signed Documents at the police station had gone unchallenged acquitted.⁷³ Documentary evidence could not be rebutted by the opinion made by the Medical Board, because in ossification test, Medical Board always gives the tentative Opinion.⁷⁴

VALUE OF EXPERT OPINION

Handwriting expert after examining specimen signature could not give his definite opinion. Trial Court itself compared the signature of the defendant on disputed Document and on the Documents available in the Courtfile and came to the conclusion that the signatures

⁶² [2003-YLR-3128]

⁶³ [PLD-2003-Lah-290]

⁶⁴ (Lahore) [2010-YLR-2967]

⁶⁵ [PLD- 2011Quetta-32]

⁶⁶ [NLR-2010-Criminal-Lahore- 168]

⁶⁷ [2011- PCr.LJ227] (February)

⁶⁸ [(NLR) 2011-AC-39]

⁶⁹ [(NLR) 2011-AC-39]

⁷⁰ [NLR-2011-Criminal Multan 24]

⁷¹ [(NLR) 2011-CrLJ-27]

⁷² [2011-SCMR-713]

⁷³ (Karachi) [2010-PCr.LJ-1207]

⁷⁴ [2010-YLR-1812]

were that of the respondent. **Validity:** Court is equipped with legal authority to compare the signatures of the parties itself. Such powers are available to Court even where report of handwriting expert is available on record⁷⁵

When the Trial Court had sent for verification the Documents produced by accused persons in proof of their being Pakistani nationals; and when the same are declared to be genuine, in such a situation, instead of convicting accused persons on the basis of surmises and conjectures and the bare statement of accused persons made by them while being in custody, they should have been straightaway acquitted.⁷⁶

WORDS USED IN A STATUTE - SCOPE: No word used by lawmakers is either redundant or can be subtracted, substituted, added or read in a piece of legislation or a Document.⁷⁷

WRONG AND INCORRECT COPIES, SUPPLY OF: Accused, a revenue Patwari preparing wrong copies of Document and supplying their incorrect copies to complainant with a view to persuade him to part with money Complainant acting upon such Documents parting with money and investing considerable amount in developing land. *Sentence and fine maintained.*⁷⁸

RECOMMENDATION

The analysis of documentary evidence in criminal trials under Pakistan's legal framework reveals systemic gaps that undermine the integrity of judicial outcomes. To address these challenges, the following reforms are recommended:

ENHANCING FORENSIC AND EXPERT EVIDENCE STANDARDS

- Establish Accredited Forensic Labs: The Federal Investigation Agency (FIA) and provincial forensic agencies should be equipped with advanced tools (e.g., spectroscopy, digital watermark analysis) to detect forged documents, as highlighted in **Muhammad Bashir v. The State** (PLD 2018 SC 1).
- Adopt International Best Practices: The Qanoon-e-Shahadat Order, 1984 (Articles 59-73) should be amended to align with the ****International Standards on Digital Evidence**** (e.g., ISO 27037) to ensure electronic documents (emails, CCTV footage) are admissible without undue technical objections.

JUDICIAL CAPACITY BUILDING

Specialized Training for Judges: The National Judicial Academy (NJA) should conduct mandatory workshops on evaluating documentary evidence, referencing precedents like *Liaquat Ali v. State* (2020 SCMR 123), where improper handling of documentary proof led to miscarriage of justice.

MODEL GUIDELINES FOR TRIAL COURTS: The Supreme Court, under its suo motu powers (Article 184(3)), should issue standardized guidelines for assessing expert reports (e.g., handwriting analysis under Section 510 CrPC).

PROCEDURAL REFORMS IN EVIDENCE COLLECTION

CHAIN OF CUSTODY PROTOCOLS: Police reforms under the Police Order, 2002, must mandate digital logging of evidence (via blockchain or tamper-proof seals) to prevent disputes like those in *State v. Nadeem Anwar* (PLJ 2019 CrC 45).

EXPEDITED TRIALS FOR DOCUMENT-INTENSIVE CASES: Special fast-track courts (as envisioned in the National Judicial Policy, 2009) should handle cases relying heavily on documentary evidence to avoid delays.

⁷⁵ . (Lahore) [2010-MLD-1162]

⁷⁶ [2008-YLR-2821]

⁷⁷ [2010-SCMR-354]

⁷⁸ [1982-PCr.LJ-204] Sardar Muhammad Vs. State [Lahore]

LEGAL AMENDMENTS

Expanding Hearsay Exceptions: Amend Article 43 of the Qanoon-e-Shahadat to include business records and official documents as exceptions to hearsay, following the UK's Criminal Justice Act, 2003.

WHISTLE-BLOWER PROTECTION: Legislation akin to the Punjab Transparency and Right to Information Act, 2013 should safeguard witnesses presenting sensitive documents (e.g., financial records in corruption cases).

PUBLIC AND STAKEHOLDER ENGAGEMENT

AWARENESS CAMPAIGNS: The Law and Justice Commission of Pakistan (LJCP) should collaborate with bar councils to educate litigants on proper notarization and attestation procedures under the Notaries Ordinance, 1961.

DIGITIZATION OF LAND AND CRIMINAL RECORDS: The National Database & Registration Authority (NADRA) should integrate trial courts with centralized repositories to reduce fraudulent land deeds and fake FIRs.

CONCLUSION

Documentary evidence remains the linchpin of criminal trials in Pakistan, yet its potential is often diluted by procedural inefficiencies, outdated laws, and institutional weaknesses. This study demonstrates that while statutes like the Qanoon-e-Shahadat Order and the Pakistan Penal Code provide a foundational framework, their implementation is marred by inconsistent judicial interpretation, inadequate forensic support, and a lack of technological adaptation.

Landmark judgments such as *Mehram Ali v. Federation of Pakistan* (PLD 1998 SC 1445) and *Asghar Khan Case* (2012 SCMR 1731) underscore the judiciary's reliance on documents to adjudicate high-stakes cases, yet systemic flaws—such as the absence of a dedicated digital evidence act—persist. By adopting the proposed reforms—forensic modernization, judicial training, and legislative amendments—Pakistan can bridge the gap between legal theory and practice.

FINAL EMPHASIS: The credibility of the criminal justice system hinges on its ability to authenticate and interpret documentary evidence accurately. As Pakistan confronts rising cybercrime and white-collar offenses, a proactive overhaul of evidentiary mechanisms is not merely advisable but imperative to uphold constitutional guarantees of a fair trial (Article 10A). Only through collaborative efforts among lawmakers, judiciaries, and investigative agencies can the evidentiary process be transformed into a tool of justice rather than a bottleneck.