LAHORE HIGH COURT, LAHORE

CITATOR OF CRIMINAL LAWS

FOREWORD

It is said that *'All laws must be on the sleeve of a judge'*. Law is not only confined to what is written in a statute book but also includes the interpretations made by the Courts. The legal *Precedent* carries great significance for understanding the true meaning and spirit of law. It enunciates principles, which explain, extend and limit the scope and applicability of laws. A judge can perform the onerous task of dispensing justice if he is not only well acquainted with laws but is also well conversant about the latest interpretation of such laws by the Superior Courts. District Judiciary is the first door for an aggrieved person to be knocked for justice. Being head of the institution, this was the purpose in my mind when I instructed Research Center of this Court to prepare this Book, *'Citator of Civil Law'* as a brief ready-reference for the Judges of District Judiciary. It will not only augment their skills and abilities to comprehend the given propositions in a better way but also enhance the quality of their work. The *Citator of Civil Law* is not however a substitute for recourse to the primary sources of law, the readers are actively encouraged to research the law with numerous citations of relevant statutory provisions and cases.

This book offers a comprehensive overview of different propositions of law, which the Judges of District Judiciary encounter on daily basis and it provides an enlightened insight into admirably clear, concise and powerful understanding of the given topics along with updated interpretation by the Superior Courts. It is my hope that judges of the District Judiciary will use this Citator in their day to day duties in court and find it useful. I look forward to judges providing their feedback for the production of future editions in due course as this publication is a process as opposed to a blueprint. I acknowledge the hard work of Lahore High Court Research Center in transforming my vision into reality in a manner of my complete satisfaction.

I appreciate the efforts of Muhammad Sher Abbas, Senior Research Officer, Shafqat Abbas, Muhammad Rizwan, Muhammad Kashif Iftikhar, Ahmad Zia Ch., Sher Hassan Pervez, Muhammad Kashif Pasha, Hamid-ul-RahmanNasir, Uzma Zahoor and Sumaira Jabbar (Research Officers) on completing this task in the shortest possible time. I am also thankful to Mian Ghulam Hussain, D&SJ (Retd.) who reviewed the book and made useful suggestions. I have a message of learning for my District Judiciary and I will urge them to have strong bond with knowledge and books. The Book in hand will surely be a step to materialize this aim.

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TABLE OF CONTENTS

PART-A

PART-B

1. REGISTRATION OF FIR

1.1. Relevant Provisions

- Section 154 of Code of Criminal Procedure, 1898
- Article 155 of Police Order, 2002

1.2. Registration of First Information Report

- Registration of FIR is mandatory for the police officer u/S. 154 Cr.P.C. in a cognizable offence **(1993 SCMR 550).** A suspect is not to be arrested straightaway upon registration of an F.I.R. or as a matter of course and, unless the situation on the grounds so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegation levelled by the complainant party against such suspect or regarding his involvement in the crime in issue**. (PLD 2007 SC 539, PLD 2005 Lahore 470)**

1.3. Registration of a case and investigation

- Police cannot refuse to register a case on the ground that they consider the version to be false. S.H.O. must in cognizable case register and investigate it. **(PLD 1975 Lahore 733 , PLJ 1975 Cr.C. (Lah.) 368)**
- Registration of F.I.R. cannot be directed by High Court in all cases as other remedy is available by way of complaint to a Magistrate **(PLJ 1977 Lahore 175)**

1.4. Powers of Magistrate

Registration and investigation of case can be ordered by a Magistrate when he does not take cognizance of the complaint and neither examines the complainant nor his witnesses**. (2012 PLR 792, PLD 1999 Lahore 417, 1979 SCMR 20)**

1.5. Registration of second FIR

- Second FIR is prohibited **(PLD 2018 SC 595)**
- Two FIRs about same incident made by two different persons at different places, one earlier in time than the other, held, the latter is to be considered an independent FIR and can be used in evidence by prosecution. **(AIR 1936 Pat. 11, AIR 1940 All. 291, PLD 1959 Lahore 1002)**
- Registration of second FIR with cross version refused by High Court as there is no provision in law for the registration of second FIR **(1994 P.Cr.LJ 295)**

  Second F.I.R. by accused giving different version is not to be registered, hence direction for registration of case refused**. (PLJ 1984 Cr.C 272)**

1.6. Multiple FIRs

All subsequent or divergent versions of the same occurrence or the persons involved therein are to be received, recorded and investigated by the investigating officer in the same "case" which is based upon the one and only FIR. (**PLD 2018 SC 595)**

1.7. Procedure to record cross version

SOPs of Police Department, issued after the judgment is reproduced in **2019 P.Cr.LJ N 37)**

1.8. Effect of Delay in lodging FIR

- Promptly made FIR eliminates possibility of fabrication **(1975 SCMR 442)**
- If there was any delay in lodging of FIR and commencement of investigation, it gave rise to a doubt, which, could not be extended to anyone else except to the accused **(PLD 2019 SC 64).**
- There is a delay of forty days in reporting the crime to the Police without any plausible explanation.....even in said statement there is no explanation whatsoever regarding the delay in reporting the matter to the Police.....Therefore, this inordinate delay in setting the machinery of

law in motion speaks volumes against the veracity of prosecution version (**2019 SCMR 274)**.

1.9. Effect where the delay explained:

- The delay was due to the injured being taken to the hospital, first, where doctor was not available. Injured taken to second hospital and FIR lodged afterwards is quite natural. Such a delay does not affect the prosecution case adversely. **(1976 SCMR 135)**
- Delay in FIR for a few hours in a case of Zina-bil-jabr where a girl of 12 is taken to hospital first, does not affect the prosecution case **(PLJ 1995 FSC 118)**
- In these circumstances, the delay in lodging the FIR has reasonably been explained by the prosecution. Even otherwise, the first priority of kith and kin of Khalil Ahmad (deceased) was to save his life and they tried to do so by first taking him to local hospital, wherefrom he was referred to a hospital at Hyderabad (**2020 SCMR 178)**

1.10. First Information Report prepared at the crime spot

F.I.R. lodged in a murder case at the crime spot without plausible reasons was considered to be suspicious and in such a case, the entire evidence was to be re-appraised with extra degree of care and caution **(2015 SCMR 423).**

1.11. Registration of case after preliminary investigation

Such FIR is not only illegal act but also creates a serious doubt. FIR loses its sanctity and credibility. Witnesses disbelieved. Appeal allowed **(PLJ 1996 Cr.C 314)**

1.12. Time and place not written in FIR

FIR not written at the time and place as shown and the investigation from the very beginning was dishonest. Motive alleged by the prosecution did not fit in the manner in which the deceased had been done to death. Recovery of

blood stained chhuri from the house of the accused after 10 days was doubtful. Accused acquitted **(1995 SCMR 1135)**

1.13. FIR must not be detailed

- Minute details are not expected or necessary in the F.I.R **(PLD 1977 SC 529).**
- F.I.R. is not expected to be detailed document **(PLJ 1983 SC 393, NLR 1983 Cr. 423).**

1.14. FIR by the accused

- Incriminating part of the FIR alone is not admissible, the rest of the statement can be considered **(1975 P.Cr.LJ 882)**
- FIR made by the accused himself is rightly excluded from consideration at the trial. **(PLD 1956 SC 420)**
- Accused reporting his own crime (Murder) to police, held, such statement in FIR is not admissible because of its confessional character. **(PLD 1965 SC 366, PLD 1961 Lahore 146)**

1.15. FIR made by co-accused

FIR made by co-accused cannot be used as evidence against the maker and also not to corroborate or contradict other witnesses. **PLD 1957 SC (Ind.)**

1.16. Evidentiary value and relevance of FIR

- It is held by august Supreme Court that the contents of FIR were not a substantive piece of evidence **(PLD 2016 SC 17).**
- **2014 SCMR 74:-**
  - F.I.R. was not a substantive piece of evidence but simply information about the occurrence, laid before the law enforcing agency to set the law into motion for the purpose of investigation.
  - F.I.R. could not be given weight as substantive piece of evidence for the simple reason that its contents were neither recorded on oath nor it could be subjected to the test of cross-examination through some

other prosecution witness, so as to be considered a substantive piece of evidence worth any credence.

- Further in case **PLD 2019 SC 64** it has been laid down that:
  - First Information Report lodged with a noticeable delay and after consultations and deliberations has lost its credibility.
  - First Information Report lodged after conducting an inquiry has lost its evidentiary value.

1.17. Exception to consider FIR as substantive piece of evidence

- F.I.R. could not be treated as substantive evidence unless its maker affirmed its contents on oath and passed through the test of cross-examination, but it could be looked into in terms of Art. 19 of the Qanun-e-Shahadat, 1984 as a relevant fact for having been said by a person who happened to see or hear something about the occurrence as a bystander or a passerby shortly before or after the occurrence inasmuch as it formed part of the same transaction **(2014 SCMR 749).**
- FIR not a piece of substantive evidence and cannot be used against the accused unless put to the maker for corroboration or contradiction **(1985 SCMR 838).**

1.18. Registration of FIR & Taking cognizance, a different phenomenon

Where cognizance of case is barred except on a complaint under the law, registration of FIR is not barred**; (2013 PSC Crl (SC PK) 24, 2006 SCMR 483 PLD 2012 SC 892)**

2. ARREST

2.1. Relevant provisions

Chapter-V of the Code of Criminal Procedure, 1898

Chap-26 of Police Rules, 1934

2.2. General principles

- Formal registration of a case is not a sine qua non for arrest of an accused and/or for investigation of a cognizable case. **(PLD 1974 Lahore 256)**
- Law does not permit police to detain persons against whom they have reasonable grounds to believe that they are criminally liable without formally showing their arrest in police custody and the arrest showing the same in police diary tantamount to illegal detention. **(PLD 1996 Lahore 398)**
- If the Police Officer takes action under sec. 54 of Criminal Procedure Code, then the arrested person must be produced before a Magistrate within a specified time. The Police Officer has no Jurisdiction to release after arrest except by following the procedure laid down under Sec. 169 Cr.P.C. **(PLD 1959 Lahore 665)**
- A person arrested on the basis of cognizable case registered against him cannot be re-arrested in another cognizable case registered against him during the period of such detention. **(NLR 1990 Cr.J 116)**
- It does not mean that Police Officer at his own sweet will would arrest anybody he likes although he can be peace loving citizen. **(2005 YLR 915)**
- Disregard of conditions laid down in sec.55(1) Cr.P.C. by the Police Officer would make the arrest and detention illegal and the Police would be exposed to prosecution **(1998 P.Cr.L.J 1035)**
- Detention of accused in police custody if challan not filed in terms of S.173, Cr.P.C. Police Officer as per S.344, Cr.P.C. is duty bound to furnish

justification of detention of accused in custody if challan under S.173, Cr.P.C. has not been filed and trial has not commenced, otherwise in absence of report of a police officer or challan, detention of the accused would be unjustified and against the provisions of law. (**PLD 2002 SC 590)**

- If an accused has been challaned and is facing trial before the Court and that Court had remanded the accused to judicial custody for being produced on the next date, the police cannot take away custody of that accused from the Jail without taking permission from the Court/Judge who has remanded the accused to judicial custody (**1993 P.Cr.LJ 221)**
- Recording of an F.I.R. do not mean that the S.H.O. or a police officer deputed by him was obliged to investigate the case or to go through the whole length of investigation of the case mentioned therein or that any accused person nominated therein must be arrested. (**PLD 2007 SC 539)**
- A suspect is not to be arrested straightaway upon registration of an F.I.R. or as a matter of course and, unless the situation on the grounds so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record. (**PLD 2018 SC 595, PLD 2005 Lahore 470, 2009 P Cr.LJ 387 [Karachi]).**
- Arrest by police--- Fake encounters condemned --Extra-judicial killing carried out by the police is highly condemnable as it adversely affects faith in the system and it not only violative of law but also a brutal and inhuman act on the part of the police---Such incidents also tend to shake the legal framework of the society which in turn loses its bust in the judicial system ---Police can use reasonable force to arrest a criminal but killing of a person after arrest is not only illegal but also highly inhuman---Such killings are sometimes made for hidden motives and fake encounters are indulged into to conceal the truth. **(PLD 1997 Lahore 135)**

- Criminal Procedure Code (Cr.P.C) Ss. 61, 62, 167, 173 & 344---Duties and obligations cast upon police functionaries and Magistrates under Ss. 61, 62, 167, 173 & 344, Cr.P.C. highlighted of which they do not seem to have been mindful which make the custody of the accused illegal --- Shortcomings in this regard enumerated. **(PLD 1996 Karachi 517)**

3. REMAND

3.1. Relevant provisions

- Physical remand under Section 167 and Judicial remand under section 344 of Cr.P.C
- High Court (Lahore) Rules and Orders Vol. III, Chap. 11, Rules 9 and 10 of Part A, and Rule 1 to 12 of Part B
- Appendix 25.56(1) of Police Rules 1934

3.2. Principles provided under Section 167

The principles provided in section 167, Cr. P.C. are, in fact, the guidelines for the Court before whom accused persons in criminal cases, are produced for physical remand. In addition to other requirements, it is a mandatory requirement within the view of section 167(3), Cr. P.C. that the Court authorizing under this section detention in the custody of the police shall record his reasons for so doing. (**2016 P.Cr.LJ 1773)**

3.3. Guideline in High Court Rules and Orders for granting physical remand of an accused

A remand to police custody ought only to be granted in cases of real necessity and when it is shown in the application that there is good reason to believe that the accused can point out property or otherwise assist the police in elucidating the case.

3.4. Principles for granting physical remand of an accused

1984 P.Cr.LJ 2588:

1) During first 15 days, the Magistrate may authorise the detention of the accused in judicial custody liberally but shall not authorise the detention in the custody of the police except an strong and exceptional grounds and that too, for the shortest possible period;
2) The Magistrate shall record reasons for the grant of remand.

3) The Magistrate shall forward a copy of his order passed under section 167, Cr.P.C. to the Sessions Judge concerned.
4) After the expiry of 15 days, the Magistrate shall require the police to submit complete or incomplete challan and in case, the challan is not submitted, he shall refuse further detention of the accused and shall release him on bail with or without surety.
5) After the expiry of 15 days, no remand shall be granted unless the application is moved by the police for the grant of remand/adjournment.
6) The application moved by the prosecution/police after the expiry of 15 days of the arrest of the accused, be treated as an application for adjournment under section 344, Cr.P.C.
7) Before granting remand, the Magistrate shall assure that evidence sufficient to raise suspicion that the accused has committed the offence has been collected by the police and that further evidence will be obtained after the remand is granted.
8) The Magistrate shall not grant remand/adjournment in the absence of the accused.
9) The Magistrate should avoid giving remand/adjournment at his residence.
10) The Magistrate shall give opportunity to the accused to raise objection, if any, to the grant of adjournment/remand.
11) The Magistrate shall record objection which may be raised by an accused person and shall give reasons for the rejection of the same.
12) The Magistrate shall examine police file before deciding the question of remand.
13) If no investigation was conducted after having obtained remand, the Magistrate shall refuse to grant further remand/adjournment.
14) The Magistrate shall not allow remand/adjournment after 2 months (which is a reasonable time) of the arrest of the accused unless it is unavoidable.

15) In case, complete challan is not submitted, the Magistrate shall commence trial on the strength of incomplete challan and examine the witnesses given in the list of witnesses.
16) If the challan is not submitted within 2 months, the Magistrate shall report the matter to the Sessions Judge of the district and also bring the default of the police to the notice of Superintendent of Police of the district.
17) The Magistrate shall not grant remand mechanically for the sake of co-operation with the prosecution/police.
18) The Magistrate shall always give reasons for the grant of remand and adjournment.

3.5. Successive remand

Similarly, section 167, Cr.P.C. does not visualize successive and repeated arrests of a person required in more than one cases. An accused required in more than one criminal cases when arrested will be deemed to have been arrested in all the cases registered against him. There is no legal bar for interrogating an accused person with regard to the allegations against him in another case. It is rather desirable that when a person required or accused in more than one cases or where more than one F.I.Rs. are registered against him is arrested and remanded to physical. custody, then he should be interrogated about the allegations against him in all the cases. Instead of acting strictly in accordance with law, the police since long is following the illegal practice of showing the arrest of the person in one case and on the expiry of remand it again arrests him in another case. It is commonly known that in selected case, police would arrest the accused on his release on bail in the first case. It is nowhere stated in the Criminal Procedure Code and Police Rules that a person required in more than one case when arrested will be deemed to have been arrested in one case and he cannot be arrested simultaneously in more than one case. Section 167, Cr.P.C. simply says that whenever a person is arrested or detained in custody, the Magistrate may authorise his detention in such custody for a term not

exceeding fifteen days in the whole. The section does not talk of ?case?, it talks of custody only. The longest period for which an accused can be ordered to be detained continuously in police custody by one or more such orders, is only fifteen days. So, the detention of the accused person required in more than one cases already registered against him, for more than fifteen days would be illegal. **(1992 P.Cr.LJ 131 Lahore)**

3.6. Application of mind; guiding principles

"This Court expects the presiding officers to perform their duties with their eyes and ears open as required under the law and pass orders after judicial application of mind and not in perfunctory and slipshod manner allowing room for mistakes because these mistakes whether they are inadvertent or not reflect upon the conduct of the Judge and can be considered as a minus point. We disapprove and deprecate such conduct of the presiding, officers and it should be discouraged in true sense as far as possible. **(PLD 2005 SC 86, 1995 SCMR 429)**

3.7. Accused not produced before Magistrate

Accused being injured was admitted in hospital but he was neither produced before the Magistrate for remand nor Magistrate was requested to visit hospital; detention is illegal; accused/detenue was granted protective bail. **(2013 MLD 1359)**

3.8. Judicial function

S. 167---Remand---Grant or refusal of physical remand by Magistrate is a judicial function. **(2005 P.Cr.LJ 1709 Lahore)**

3.9. Detention of accused in police custody if challan not filed in terms of S.173, Cr.P.C.

Effect---Police Officer as per S.344, Cr.P.C. is duty bound to furnish justification of detention of accused in custody if challan under S.173, Cr.P.C. has not been filed and trial has not commenced, otherwise in absence of

report of a police officer or challan, detention of the accused would be unjustified and against the provisions of law. (PLD **2002 SC 590)**

3.10. No private person can claim physical remand

Magistrate had sent the accused to the judicial lockup, as he was no more required for physical remand by the police---District Public Prosecutor nor any other representative of the State, had raised any objection while the accused was being sent to the judicial lockup---State had also not assailed order of judicial remand and the complainant alone had impugned the same in his private capacity---Section 167, Cr.P.C. was clear on the point that any person in his private capacity could not have applied for the police custody of the accused. **(2017 P.Cr.LJ 691 Karachi, 2016 P.Cr.LJ 1566 Lahore)**

3.11. Revisable Order

Complainant, therefore, had got the locus standi to file Revision Petition---Order passed by the Magistrate refusing to grant further physical remand of the accused in the case registered under S. 392, P. P. C. was a judicial function in view of subsections (3) & (4) of S.167, Cr. P. C. (**2005 YLR 805)**

4. INVESTIGATION

4.1. Relevant Provisions

- Sec 4 (l) & Chapter XIV (Sec 154 to 176) of the Code of Criminal Procedure, 1898
- High Court (Lahore) Rules and Orders Vol.III, Chap. 11, Part-A
  Volume 3, Chapter 25, of Police Rules 1934

4.2. Definition

Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf[1]. Investigation means collection of evidence helping to form an opinion by the Investigating Officer for submission of final report under section 173, Cr.P.C. before the Court of competent jurisdiction **(2015 P.Cr.LJ 1551)**.

4.3. Object of investigation

Investigation, therefore, means nothing more than collection of evidence (**PLD 2010 SC 1109).** A bare perusal of section 4(1) of the Cr.P.C. should have been sufficient to acquaint us with the fact that the investigation only meant collection of evidence and no more. (**PLD 2006 SC 316)** The purpose of investigation is always to bring truth on surface by collecting material **(2015 YLR 1015)**

4.4. Steps included in investigation

1999 P.Cr.LJ 1357:

i. Proceeding to the spot,

ii. Ascertainment of the facts and circumstances of the case,

iii. Discovery and arrest of the suspected offender,

[1] Sec 4 (l) of the Code

iv. Collection of evidence relating to the commission of the offence which may consist of:

- **a.** examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,
- **b.** the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and

v. formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge sheet under section 173.

4.5. Important rules regarding investigation

i. Right and legal duty of police to investigate cognizable case

The police are under a statutory duty under section 154 of the Code of Criminal Procedure and have a statutory right under section 156 of the Code of Criminal Procedure to investigate a cognizable offence. (**PLD 2009 SC 102)**.

ii. Delegation of power of investigation to a private person

To carry out investigation is a legal duty of the police or other authorized agencies. This power cannot be delegated to any private person or body (**2004 YLR 500 FSC)**.

iii. Non cognizable cases – investigation

A non-cognizable offence cannot be investigated by the police without the order of a Magistrate (**1997 P.Cr.LJ 1128**). However, where a non-cognizable offence is added with cognizable offence, no permission is required (**1998 P.Cr.LJ 1718).**

iv. Investigation before registration of FIR

The officer incharge of a police station has no right to undertake any pre-inquiry or pre-investigation but the course of investigation starts

only after lodgment of the F.I.R **(2013 MLD 885).** A police officer does not have authority to carry out an inquiry prior to registration of a case (**PLD 2013 Lahore 442)**

v. Conclusion of investigation on *'Nian'*

Conclusion of the investigation of criminal cases on *'Nian'* is illegal (**PLD 2012 Lahore 315)**.

vi. Interference in the investigation by Court

Investigation of a criminal case falls within the exclusive domain of the police and if on the one hand independence of the judiciary is a hallmark of a democratic dispensation then on the other hand independence of the investigating agency is equally important to the concept of rule of law. Undue interference in each other's' roles destroys the concept of separation of powers and works a long way towards defeating justice (**2019 SCMR 2029).** No power vests with any Court including a High Court to override the said legal provision and to direct the police, either not to submit the said report or to submit the said report in a particular manner i.e., against certain persons as the Court desires or only with regard to such offences as the Court wishes (**2011 SCMR 1430)**

vii. Investigation - all the material

After registration of the FIR the investigating officer is to embark upon an exercise to discover the actuality of the matter irrespective of the version of the incident narrated by the first informant through the FIR and in the process he is expected to collect information from any number of persons who appear to him "to be acquainted with the circumstances of the case" (**PLD 2018 SC 595)**

viii. Investigation by the complainant of the Case

There is no legal prohibition for a police officer to be a complainant if he is a witness to the commission of an offence and also to be an Investigating Officer so long as it does not, in any way, prejudice the accused person. The Court will have to appraise the evidence produced by the prosecution as a whole and will have to form the opinion after evaluating the same (**PLD 1997 SC 408**, **2018 P.Cr.LJ Note 220 Lahore**).

ix. Further investigation after commencement of trial

The report under section 173, Cr.P.C. had already reached the trial Court where the trial had already commenced and changing the investigation or ordering further investigation in the matter thereafter was an exercise unsustainable in law (**PLD 2007 SC 31, 2008 YLR 2687)**. Re-investigation or further investigation was permissible under law even after submission of Challan but before cognizance had taken place by Trial Court. (**PLD 2015 Lahore 630)**

x. Investigation cannot be changed after submission of challan (**2014 SCMR 1499)**

xi. Mode of inquiry and investigation in complaint case u/s 202 Cr.P.C.

Where a private complaint is filed in respect of a case exclusively triable by a Court of Session, the same is processed under Chapter XVI, where the Court of Session, after examining the complainant, can either inquire into the case itself or direct an inquiry or investigation to be made by a police officer, or such other person as it thinks fit, or direct an investigation to be made specifically by a Magistrate subordinate to it; for the purpose of ascertaining the truth or falsehood of the complaint, and, after considering the statement of the complainant and the result of

the investigation or inquiry, if any under section 202, Cr. P. C, there is in its judgment sufficient grounds for proceeding, it can summon such accused to face trial. Each of tile courses open under section 2ti2 is not mutually exclusive, but may be resorted to one after the other or even concurrently. In the inquiry conducted under section 202, ail accused has no locus standi as a party, though he may attend and watch proceedings, no right to be represented by a counsel, no right to cross-examine the witnesses of the complainant, no right to call evidence in his defence and no right to explain the circumstances appearing in the evidence against him.

However, in the investigation, conducted by a police officer or a Magistrate under section 202, he has the right of asserting and proving his evidence. In investigation, the case of all the parties would reopen fully, leaving all the parties to prove their respective cases by producing their witnesses and satisfying the Investigating Officer or Magistrate as regards the truth of their version. (**PLD 1986 Lahore 256; 2019 P.Cr.L J 665)**

xii. No injunction against criminal investigation. (**PLD 2003 Lahore 1)**

xiii. **Police in sole domain of the investigation** in respect of a cognizable case in which investigation process has begun and no other Authority including the High Court and the Chief Executive of the Province has power to intermeddle with it. (**1996 MLD 16)**

xiv. **Successive investigations**

Investigation in the case had been transferred from one agency to the other and from one officer to the next in a mechanical, arbitrary and capricious manner without application of mind---Further investigation ordered subsequent to the filing of complete challan in the Court was unnecessary and uncalled for as the same did not advance but retarded

the course of justice---Impugned order of the Police Officer withdrawing the order of further investigation in the case did not suffer from any legal infirmity. (**1999 P.Cr. L J 163)**

xv. **Direction by Court, submit report in a particular manner**

No power vested with any Court, including High Court to override the legal command and to direct Station House Officer either not to submit investigation report (challan) or to submit the report in a particular manner i.e. against only such persons as the Court desired or only with respect to such offences as the Court wished. (**PLD 2007 SC 31)**

xvi. **Preservation and transportation of samples in cases of sexual offences**

a. The Health Department shall ensure provision of SAECKs in sufficient quantities to all hospitals in the Punjab, including those at the District and Tehsil Headquarters. The Medical Officers shall without fail use these kits for collection of forensic evidence in all sexual assault cases. The Medical Officers shall adhere to the guidelines issued by PFSA for collection, preservation and transportation of samples. These guidelines are reproduced in the Appendix and shall form part of this order.

b. The Medical Officers shall particularly ensure that

c. They take detailed and accurate history of the incident from the sexual assault victim, including (but not limited to) the assault activity, time elapsed since the assault, and post-assault activities of the victim;

d. if medico-legal examination is conducted 5-7 days post-sexual assault incident, cervix samples are collected and submitted;

e. clothing of victim worn during the incident and possibly bearing semen/sperm stains are submitted for serology-DNA analysis.

f. reference standard samples in murder-sexual assault cases are collected and submitted to the PFSA.

g. The DNA samples should be despatched to the forensic laboratory without delay. **(Criminal Misc No. 5716-B/2020 Muhammad Ayaz Shamas V. State) 2020 LHC 1351-Add detail pls.)**

5. SPOT INSPECTION OF CRIME SCENE

5.1. Principles

- Job of investigation consists of spot inspection; ascertainment of facts and circumstances touching the offence under investigation; collection of evidence and apprehension of accused as and when sufficient evidence in support of the charge becomes available. (**2010 P.Cr.LJ 182)**
- No crime empty was recovered from the place of occurrence by the Investigating Officer at the time of spot inspection. Recovery of pistol on the disclosure of accused did not advance the prosecution case and same was inconsequential. **(2018 P.Cr.LJ N 111)**
- Evidentiary value of F. I. R. recorded after spot inspection and making some investigation--Held, defective and of no evidentiary value. **(1974 P.Cr.LJ 367)**
- Case having been registered after spot inspection, had become doubtful and the F.I.R. has lost its sanctity. (**1997 MLD 48)**
- Prosecution had brought nothing on the record to prove breaking of the door, as neither the broken latch nor the door was taken into possession nor there was any such reference in the inspection note. **(2017 MLD 360)**
  Names of eye-witnesses were not even mentioned in the inspection note prepared by the Investigating Officer upon his first visit to the spot. **(1999 YLR 2726)**

6. STATEMENT U/S 161 Cr.PC AT BELATED STAGE

6.1. Principle

- Even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses could not be safely relied upon. (**2017 SCMR 486)**
- Delay in recording the statement of a witness by police without furnishing any plausible explanation, is fatal to prosecution case and the statement of such witness is not to be relied upon. (**2010 SCMR 584)**
- Delay in recording the statements of eye-witnesses under S. 161 , Cr.P.C. was due to the negligence/lapse of the police officers who despite their availability had failed to record their statements. (**2002 SCMR 203)**
- Credibility of a witness is looked with serious suspicion if his statement under S.161 , Cr.P.C. is recorded with delay without offering any plausible explanation. (**1998 SCMR 570)**
- Late recording of a statement of a prosecution witness under S.161 , Cr.P.C. reduces its value to nil unless delay is plausibly explained. (**1996 SCMR 1553)**
- The identity of the culprits was not known and the Police was busy in obtaining clue as to their identity. Hence, the mere fact that these witnesses were examined on the next day, will not throw any doubt as to their presence at the time of occurrence. (**1968 SCMR 161)**
- Supplementary statement recorded by prosecution witness after more than a month of the occurrence. Such statement had no legal value and was inadmissible in evidence and could not be used to contradict the contents of the FIR. Supplementary statement recorded subsequently to the FIR could be viewed as improvements made to the witness's statement. (**PLD 2016 SC 951)**

- Accused was implicated on the basis of supplementary statement recorded sixteen days after registration of F.I.R. Evidence relied upon by prosecution against accused was extra judicial confession and statements of *Wajtakkar* witnesses. High Court had rightly opined that evidence relied upon by prosecution against accused was a weak type of evidence and evidentiary value of the same would be seen at the time of trial--- Investigation of the case had already been finalized and continued custody of accused in jail would not serve any beneficial purpose at such stage---Bail was allowed. (**2012 SCMR 184)**
- F.I.R. of the incident was lodged four days after the occurrence, without any plausible explanation, during which one prosecution witness played an active role. For the first time statement of only eye-witness of the occurrence was recorded before police ten days after the occurrence. Supreme Court extended benefit of doubt to both the accused persons and acquitted them of the charge levelled against them (**2011 SCMR 1215)**
- Statements under S.161 Cr.P.C. of prosecution witnesses were recorded after more than one month and 21 days. Police record showed that statements of prosecution witnesses were recorded on 30-10-2000, while deposing on oath, one prosecution witness had given the date of recording of his statement as 30-11-2000, creating such doubts in statements of prosecution witnesses with regard to their presence, at the time of alleged occurrence, recording of their statements and identification parade. Many other infirmities in their statement were also appearing due to which identification test had lost its verity--- Supreme Court set aside the conviction and sentence of accused awarded by High Court and acquitted him of the charge (**2009 SCMR 84)**

- Belated examination of a witness by police may not be fatal to prosecution but where delay is unexplained, accused has not been named in F.I.R. and circumstances justify that open F.I.R. and delay have purposely been manoeuvred to name accused later, such managed delay and gaps adversely affected prosecution case. **(2008 S C M R 1221)**
- Statements recorded by police after delay and without explanation are to be ruled out of consideration. **(1993 SCMR 550)**
- Examination of witnesses by police-Short delay (one day) in recording statement of eyewitnesses---Would not throw any doubt on their being present at time of occurrence, particularly where identity of culprits not known (Cornelius, C. J. contra). **(1968 SCMR 161)**

7. RECOVERY OF CRIME WEAPON

7.1. Principles

- Recovery of the weapon from the accused was legally inconsequential to connect him with the crime, as there was a negative report regarding the matching of the stated recovered crime empty from the spot. (**2019 SCMR 1068)**
- Although the casings/empties tallied with the weapon, however, these were dispatched on a date subsequent to arrest of accused and thus such piece of evidence lost its significance. (**2019 SCMR 1156)**
- Dispatch of casing/crime empty for forensic analysis, a day before accused's arrest was a suspect circumstance. (**2019 SCMR 1327)**
- According to the investigating officer it was a double storied house and recovery was effected from the ground floor where other family members also resided-Memorandum of recovery showed that the pistol was recovered from an open room lying under rough clothes, therefore, it would be unsafe to rely on such recovery for a conviction on a capital charge. (**2019 SCMR 956)**
- Recovery of weapon at the instance of the accused was inconsequential as no report of Forensic Science Laboratory qua the said weapon was available on record. (**2017 SCMR 2041)**
- Alleged recovery of knife from accused as well as the positive reports of Chemical Examiner and Serologist were inconsequential because said recovery was effected after more than one year and three months of the occurrence. (**2017 SCMR 1976)**
- Human prudence would not accept that the accused, after committing murder with a dagger, would choose to preserve it in his own shop rather

than throwing it away in any field, water canal, well or other place. **(2017 SCMR 486)**

- Alleged recovery of weapon from the custody of accused was legally inconsequential because admittedly the crime-empties had been sent to the Forensic Science Laboratory after arrest of accused and after recovery of the weapon from his custody. **(2017 SCMR 142).**
- Weapon used in commission of crime had allegedly been recovered from a place which was open and accessible to all and, thus, it was unsafe to place reliance upon such recovery. **(2016 SCMR 1605)**
- Memorandum of alleged recovery of the weapon signed by witness at police station instead of the place of recovery, as such, it was not believed. **(2016 SCMR 1233)**
- Mere recovery of Kalashnikov, when seven empties recovered from the spot were not matched was also in the circumstances inconsequential. **(2011 SCMR 646).**
- Recovery of weapon was also of no consequence as the same were never sent to any Expert to determine whether they were in working order or not. **(2009 SCMR 230).**
- In absence of recovery of any empty, the recovery of weapon cannot be used against accused**. (2008 SCMR 1228)**
- Recovery was made from jurisdiction of another police station but investigating officer did not go to that police station or make any entry so as to show his presence at relevant time within jurisdiction of that police station or took some help from that police station---Effect---Such act of investigating officer, created doubt about genuineness of recovery and no implicit reliance could be placed on such type of evidence. **(2011 SCMR 323)**

7.2. Joint Recovery

- Joint recovery of dead body on pointation of several accused-Such recovery was inadmissible in evidence. **(2016 SCMR 2123)**
- Joint recovery was not admissible in evidence. (**2019 YLR 1385, 2005 P.Cr.LJ 1135)**
- Record showed that a joint recovery of rope from accused and co-accused, since acquitted was shown to have been effected from the oven of the house-Said recovery having been disbelieved to the extent of other accused would not bear any significance in the eyes of law. (**2019 P.Cr.LJ 609)**
- Recovery from one room of one house and attributed to two co-accused persons had not to play any legal role against the accused from whom nothing was recovered. (**2000 YLR 80)**

8. BAIL

8.1. Relevant provisions

- Section 496 of Cr. P.C deals with bail in bailable offences.
- Section 497 deals with bail in non-bailable offences; and
- Section 498 deals with pre-arrest bail.
- High Court (Lahore) Rules and Orders Vol. III, Chap. 10
  Rule 26.21 of Chapter 26, Volume 3 of Police Rules 1934.

8.2. Bail in bailable offences

Under the mandatory provision of S.496 Cr.P.C., accused of bailable offence is entitled to bail as a matter of right without any application for bail (**1969 SCMR 151, 2009 P.Cr.LJ 1430, 2003 P.Cr.LJ 1302)** with no conditions attached to it. (**1990 MLD 293)** If the Court would find that offence was bailable, then the Court was required to release accused under S. 496, Cr. P.C. (**2005 YLR 2069)** Grant of bail in bailable offence, whether post arrest or pre-arrest, is a right of an accused, not a concession. (**PLD 1966 SC 1003, 2020 P.Cr.LJ Note 4)**

8.2.1. Bail cancellation in bailable offences

Bail cannot be cancelled in bailable offences on ground of tampering with prosecution, evidence alone. **(1982 P.Cr.LJ 839)**

8.2.2. Expression "admitted to bail" & "released on bail"

Expression "admitted to bail" used in S. 498, Cr.P.C. and words "shall be released on bail" occurring in S. 496, Cr.P.C. were synonymous and appeared to have been used interchangeably (**PLD 1966 SC 1003, 2020 P.Cr.LJ Note 4)**

8.2.3. If non-bailable offence deleted

Earlier order whereby the first bail application was rejected, would not come in the way of accused as at that point of time accused were charged with a

non-bailable offence, however, after deletion of non-bailable provision, accused were entitled to bail as of right under the provision of S.496, Cr.P.C. (**2010 YLR 1784)**

8.2.4. After conviction, it is discretion of Court

There can be no such general rule that a person convicted of a bailable offence is entitled as of right to be enlarged on bail during the pendency of his appeal against his conviction. Bail is always in the discretion of the Court and this discretion has of necessity, therefore, to be exercised upon the facts and circumstances of each case according to sound judicial principles. (**1969 SCMR 151, 1969 P.Cr.LJ 422)**

8.2.5. Exception to second proviso to S. 496

Obviously based on considerations that "prevention is better than cure" and "danger to public peace is snore serious even than murder". Person arrested under S. 107/151 on apprehension of breach of peace-Police Officer, held, not competent to release such person on bail on offer of sureties. (**PLD 1969 Lahore 209)**

8.3. Post arrest bail in non-bailable offences

PLD 2017 SC 733:

- Bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception.
- The Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts.

PLD 1995 SC 34:

- In bailable offences the grant of bail is a right and not favour.
- In non-bailable offences the grant of bail is not a right but concession/grace.

- The principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases, for example:
    - **a.** where there is likelihood of abscondence of the accused;
    - **b.** where there is apprehension of the accused tampering with the prosecution evidence;
    - **c.** where there is danger of the offence being repeated if the accused is released on bail; and
    - **d.** where the accused is a previous convict.

2010 SCMR 1861:

- It is settled proposition of law that the Courts have to consider following factors while deciding bail applications in cases of offences punishable with death, imprisonment for life or imprisonment for ten years:
    i. Benefit of reasonable doubt.
    ii. Identity of the accused
    iii. Role attributed to each of the accused and part allegedly played by the accused in the occurrence.
    iv. His presence at the spot.
    v. Question of vicarious liability.
    vi. Allegations mentioned in the F.I.R.
    vii. Statements of the prosecution witnesses recorded under section 161, Cr.P.C.
    viii. Other incriminating material collected by the prosecution.
    ix. Any plea raised by the accused.

8.4. Pre-arrest bail

2019 SCMR 1129:

- Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law.
- Petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide;
- It is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation.
- Grant of pre-arrest bail essentially requires considerations of mala fide, ulterior motive or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizens; these considerations are conspicuously missing in the present case.

8.5. Format of bail order

Supreme Court observed that in future, unless the necessities of the case warranted otherwise, the following shorter format for deciding an application for bail may be adopted by all the courts below:

i. Without reproducing the particulars and contents of the F.I.R. in detail an order should state directly and briefly the allegation levelled by the prosecution against the accused-petitioner. The details and particulars of the F.I.R. would already be available in the application for bail itself or the same could be gathered from a copy of the F.I.R. attached with such application.

ii. The details of the arguments addressed by the learned counsel for the parties may not be recorded in the order. It is to be presumed that the court concerned must have heard and attended to all the arguments addressed and the submissions made before it and if one was to look for such arguments the same may be found mentioned in the application for bail. It may be well to remember that an order granting or refusing bail was merely an interim order and the same was not to be equated with a judgment.

iii. The order should state the reasons for granting or refusing bail to the accused-petitioner as briefly and clearly as possible in the following format:

(a) -------

(b) -------

(c) -------

(d) -------

iv. The order should record the terms of bail, if applicable.(**PLD 2014 SC 458:**

8.6. Subsequent bail petition

All petitions must be placed before same Judge.... **(PLD 1986 SC 173 PLD 2014 SC 241: 2015 SCMR 41)**

8.7. No Ipso fact right of bail in challan case when private complaint is filed. (PLD 2015 SC 66)

8.8. Definition of Hardened, desperate and dangerous criminals (PLD 1990 SC 934):

- The word "harden" has been defined to mean, inter alia, (1) to render or make hard; to indurate, (2) to embolden, confirm, (3) to make callous or

unfeeling and (4) to make persistent or obdurate in a course of action or state of mind. The word "hardened" has also been defined to mean "made hard, indurated; rendered callous; hard-hearted; obdurately determined in a course".

- The meaning of the word “desperate” inters-alia, are in relation to person: driven to desperation hence reckless, violent, ready to risk or do anything.
- The word "dangerous", inter alia, means as fraught with danger or risk; perilous, hazardous, unsafe.

8.9. Trial not concluded despite direction of High Court or Supreme Court; accused not entitled to bail (PLD 2019 SC 112)

8.10. Abscondence; abuse of process (PLD 1981 SC 93 ; 2015 SCMR 1394)

8.11. Transfer of bail petition from one ASJ to another; he, however, can entrust fresh petitions in administrative capacity; only High Court is competent to transfer bail petitions. **(PLJ 2019 Cr. C 1647)**

8.12. Pre-arrest bail – principles

Following is the frame-work within which and the guidelines according to which, the jurisdiction vesting in the High Courts and the Courts of Session, is to be exercised:--

(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through amuse of law for ulterior motives;

(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged

against him and that there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motives, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;

(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive from law; and finally that,

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to hail before arrest, must, in the first instance, approach the court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose. **(PLD 2009 SC 427).**

8.13. Accused admitted to bail but subsequently declared a proclaimed offender

Accused admitted to bail but subsequently declared a proclaimed offender or non-bailable warrants for his arrest were issued then such declaration or issuance of non-bailable warrants ipso facto amounted to cancellation of such accused person's bail. (**2019 SCMR 1641)**

8.14. Bail on statutory ground

The adjournments sought by the prosecution are more than adjournments sought by the defence. Except this, there is nothing in the order sheets, which reflects that the evidence could not be recorded because of the reason attributable to the petitioner. The gravity of allegation, at one stage, has to yield to consideration of individual liberty and cannot be allowed to deny bail to an accused even in a case where despite he having completed almost 4 years and ten months in Jail, not a single prosecution witness is examined. **(2019 YLR 626)**

9. FORFEITURE OF BAIL BOND

9.1. Principles

- In dealing with cases of sureties who are in default, a balance has to be held between undue leniency, which might lead to abuse of the procedure and interference with the course of justice in a large number of cases, and on the other hand, undue severity, which might lead to unwillingness on the part of neighbors and friends to come forward and give bail for persons under accusation. Finally, in assessing to what extent the bond should be forfeited, the Court would have regard to such matters as to whether the sureties have any direct interest through financial or blood connection with the accused, whether they have connived at or procured the absence of the accused, and whether they have done their rest to secure his attendance. (**PLD 1963 SC 47)**
- The attitude of the accused on account of leniency exhibited by the Court in imposition of penalty on the sureties is encouraging the accused to misuse the concession of bail by their abscondence. (**1997 SCMR 1983)**
- The question, as to how much amount of a surety bond is to be forfeited in case an accused person jumps the bail bond, depends on the facts of each case. No general hard and fast rules can be laid down. (**PLD 1997 SC 267)**
- In the context of deteriorating law and order situation prevalent in the country, the Courts should be conscious of the hazards of release of accused persons who are dare devils like those in the present case to the knowledge of the sureties and then left them off at their own behest on forfeiture of mere 25 % of the amount of bond . (**PLD 1998 SC 50)**
- The petitioners are poor persons and they cannot pay full amount of the bond. In the circumstances, the petition converted into appeal and partly

allowed. The amount of surety bond reduced to Rs.75,000 each against the petitioners. **(2003 SCMR 929)**

- Non-appearance of an accused person on any date of hearing makes said accused person or the surety of such an accused person liable to pay the amount of bond. (**2004 SCMR 1541)**
- No lenient view should be taken and the entire amount of the bail bond should be recovered as an amount of penalty. The failure thereof and the reduction of amount of penalty to the tune of 1 /5th or 1 / 10th was simply ridiculous and encouraged the people to go into abscondence. (**2004 SCMR 211)**
- The present law and order situation prevailing in the country and the deterioration of the moral values in the society in the past 3/4 decades requires that provisions of section 514, Cr.P.C. should not only be adhered to strictly but in case of non-appearance of the accused, a surety should be held liable for forfeiture of full amount of its bonds for the reason that moral values of our society as were in the sixties are different today. (**PLD 2011 SC 116)**
- Imposition of fine upon sureties is to be regulated keeping in view the facts and circumstances of each case. Where the surety has made genuine efforts to produce the accused before the trial Court but could only do so after some time then a lenient view was to be taken. However, where he has failed in totality then the Courts have to be strict insofar as, imposition of fine is concerned. (**2011 SCMR 929)**

10. INQUEST REPORT

- Inquest report is not a substantive piece of evidence**.** Entries in the inquest report are not substantive evidence---Mere omission of the number of the case in the inquest report which may be either due to inadvertence or inefficiency of the Investigating Officer would neither discredit its authenticity nor would adversely affect the investigation. Rule 25.35 of Chap-XXV of the Police Rules, 1934, is directory in nature. (**2004 SCMR 1703)**
- Mention of crime empties in F.I.R. or inquest report not required---Law does not require that the crime empties found on the spot must be mentioned in the F.I.R. or inquest report. (**2001 SCMR 241)**
- Not incumbent upon police officer to give names of witnesses in inquest report. (**1968 P Cr.LJ 1844)**
- Time of occurrence shown in the FIR was 11.00 a.m., and inquest report showed time of death of deceased persons as 12:40 p.m., which created doubt as the occurrence only lasted for a few minutes. (**2017 SCMR 596)**
- In the relevant column of inquest report "brief history of crime", nothing was mentioned regarding facts of the case despite the claim of prosecution that matter was reported to police within three hours of the occurrence. Such circumstance alone cast serious doubts about the veracity of prosecution case against the accused and the claim of the eye-witnesses to have witnessed the occurrence. (**2020 SCMR 505)**
- Inquest Report was noticeably dated 7-8-2010, a month before the recovery of the dead body and nothing was on the record to show that the prosecution had moved the Trial Court or any Authority for the correction of the date---Said Report did not give any date or time of death---Accused was, therefore, entitled to the benefit of doubt. (**PLD 2018 SC 813)**

- Inquest report revealed that eyes of deceased were open, which made the presence of the witnesses of ocular account at the time of occurrence doubtful, because had they been present there they would have closed eyes of deceased who was their close relative. (**2017 SCMR 2002)**
- In the Inquest Report no time of death had been recorded which indicated that till preparation of the Inquest Report the FIR had not been registered. Post-mortem examination of the dead body of deceased had been conducted after nine hours of the incident which again was a factor pointing towards a possibility that time had been consumed by the local police and the complainant party in procuring and planting eye-witnesses and cooking up a story for the prosecution (**2017 SCMR 54)**
- High Court had fallen into error in holding that the F.I.R. was recorded after deliberations on the ground that in the inquest report the name of exact weapons were not mentioned although the same were described as firearm weapons and the names of the accused were also not given therein and they were simply termed as *Mulzaman*. Simply because of such omission on the part of investigating agency, it could not be said that the complainant's side got the F.I.R. recorded after complete deliberations. (**2004 SCMR 845)**

11. IDENTIFICATION PARADE

11.1. Relevant provisions

- Article 22 of Qanoon-E-Shahadat Order, 1984
- High Court (Lahore) Rules and Orders Vol. III, Chap. 11, Part-C
- Rule 26.32 of Chapter 26, Volume 3 of Police Rules 1934.

11.2. Principles

PLD 2019 SC 488:

- Memories fade and visions get blurred with passage of time. Thus, an identification test, where an unexplained and unreasonably long period has intervened between the occurrence and the identification proceedings, should be viewed with suspicion.
- An identification parade, to inspire confidence, must be held at the earliest possible opportunity after the occurrence.
- A test identification, where the possibility of the witness having seen the accused persons after their arrest cannot be ruled out, is worth nothing at all. It should be ensured that, after their arrest, the suspects are put to identification tests as early as possible.
- Such suspects should preferably, not be remanded to police custody in the first instance and should be kept in judicial custody till the identification proceedings are held. This is to avoid the possibility of overzealous I.Os. showing the suspects to the witnesses while they are in police custody.
- Even when these accused persons are, of necessity, to be taken to Courts for remand etc. they must be warned to cover their faces if they so choose so that no witness could see them.
- Identification parades should never be held at police station.

- The Magistrate, supervising the identification proceedings, must verify the period, if any, for which the accused persons have remained in police custody after their arrest and before the test identification and must incorporate this fact in his report about the proceedings.
- In order to guard against the possibility of a witness identifying an accused person by chance, the number of persons (dummies) to be intermingled with the accused persons should be as much as possible.
- But then there is also the need to ensure that the number of such persons is not increased to an extent which could have the effect of confusing the identifying witness.
- The superior Courts have, through their wisdom and long experience, prescribed that ordinarily the ratio between the accused persons and the dummies should be 1 to 9 or 10. This ratio must be followed unless there are some special justifiable circumstances warranting a deviation from it.
- If there are more accused persons than one who have to be subjected to test identification, then the rule of prudence laid down by the superior Courts is that separate identification parades should ordinarily be held in respect of each accused person.
- It must be ensured that before a witness has participated in the identification proceedings, he is stationed at a place from where he cannot observe the proceedings and that after his participation he is lodged at a place from where it is not possible for him to communicate with those who have yet to take their turn.
- It also has to be ensured that no one who is witnessing the proceedings, such as the members of the jail staff etc., is able to communicate with the identifying witnesses.
- The Magistrate conducting the proceedings must take an intelligent interest in the proceedings and not be just a silent spectator of the same

bearing in mind at all times that the life and liberty of someone depends only upon his vigilance and caution.

- The Magistrate is obliged to prepare a list of all the persons (dummies) who form part of the line-up at the parade along with their parentage, occupation and addresses.
- The Magistrate must faithfully record all the objections and statements, if any, made either by the accused persons or by the identifying witnesses before, during or after the proceedings.
- Where a witness correctly identifies an accused person, the Magistrate must ask the witness about the connection in which the witness has identified that person i.e. as a friend, as a foe or as a culprit of an offence etc. and then incorporate this statement in his report.
- Where a witness identifies a person wrongly, the Magistrate must so record in his report and should also state the number of persons wrongly picked by the witness.
- Magistrate is required to record in his report all the precautions taken by him for a fair conduct of the proceedings and
- Magistrate has to give a certificate at the end of his report in the form prescribed by CH.II.C. of Vol. III of Lahore High Court Rules and Orders.

11.3. 2019 SCMR 956:

Further principles to be kept in mind while conducting and appreciating identification parade of an accused.

Capacity and ability of the eye-witness to identify the accused--- "Estimator variables" negatively affecting the memory of a witness

Estimator variables" were factors related to the witness, like distance, lighting, or stress, over which the legal system had no control;

Non-exhaustive list of "estimator variables.. Stress; Weapon focus; Duration; Distance and lighting; Witness characteristics; Characteristics of perpetrator; Memory decay

Some more judgments

(PLD 1981 SC 142 Lal Pasand Case, 2011 SCMR 1189, 2017 SCMR 1189, 2012 SCMR 215, 2018 SCMR 372, 2017 SCMR 1543, 2016 SCMR 1766)

12. SITE PLAN

12.1. Site Plan not substantive document

- Site plan is not a substantive document to be used to contradict the ocular account and cannot be given preference over the direct evidence of eye-witnesses. (**2003 SCMR 522, PLD 1976 SC 234, PLD 1992 SC 211).**
- The site plan is not substantial piece of evidence in presence of reliable ocular version, as such, would be confirmatory evidence. **(1998 SCMR 1823)**
- Although site plan is not a substantive piece of evidence in terms of Article 22 of the Qanun-e-Shahadat Order, 1984 but it reflects the view of the crime scene and same can be used to contradict or disbelieve eye-witnesses.(**2018 P.Cr. LJ Note 111)**

12.2. Site plan reflective of circumstances helpful for Court

- But at the same time, site plan is not a piece of waste paper so it cannot be lightly ignored, when no inaccuracy is attributed because the site plan is prepared by draftsman, on pointation of the eye-witnesses. It, therefore, is referred to for determining the respective position of the assailant, deceased and the eye-witnesses and it also reveals the circumstances, which have been noticed by the Investigating Officer at the place of occurrence after his immediate arrival. **(1997 SCMR 89, 2003 P.Cr.LJ 1778, 2008 P.Cr.LJ 869)**
- The omission to indicate in site plan, position of witnesses at the time of occurrence, reflects on the possibility of witnesses not being present at the time of occurrence. **(1968 SCMR 161, 1978 P.Cr.LJ 24)**

12.3. Inaccuracy in site plan is not fatal to the prosecution

- Mere inaccuracy in site plan would not take away probative force of

testimony in the case. **(2005 SCMR 1568)**

- Site plan is not a substantive piece of evidence as, definitely, the Draftsman is not the eye-witness, so difference between the distances as contained in the F.I.R. and site plan is not fatal to the prosecution case **(2005 SCMR 829, 2011 YLR 2033)**

13. CANCELLATION REPORT

13.1. Relevant Provisions

- Section 173(3) of Code of Criminal Procedure, 1898
- High Court (Lahore) Rules and Orders Vol.III, Chap. 11
- Chapter 24.7, 25.57 of The Police Rules 1934

13.2. Meaning

Cancellation report is also called final report[2] and negative report **(1969 SCMR 271, 1970 SCMR 178, 1991 PCrLJ 663)**. In Code of Criminal Procedure 1898, this term has not been used.

13.3. Grounds for Cancellation of a Case

- As per **Chapter 24.7 of the Police Rules**, if upon investigation it is found by the Officer Incharge of Police Station that the case is:
  - Maliciously false, or
  - False owing to mistake of law or fact, or
  - Non-cognizable, or of civil nature,

PLD 2012 Kar 406:

- When the Magistrate concurs with the cancellation report, the Officer Incharge of Police Station on receipt of those Orders is required to cancel the FIR by drawing a red line across the page, noting the number and date of the Order **(24.7)**.

13.4. Important Rules regarding Cancellation Report

i. Power of cancellation is inherent u/s 173(3) Cr.P.C with the Magistrates **(PLD 1962 Lahore 405)**

ii. Investigation after cancellation of FIR

After the cancellation of F.I.R. through process of law, the F.I.R. ceased to exist on the relevant register maintained under the police rules. Submission

[2] Chapter 25.57 The Police Rules 1934

of second report under section 173, Cr.P.C. in the same F.I.R. which stood cancelled by the order of a competent Court was uncalled for and in total disregard of the law **(1995 P.Cr.LJ 440 Lahore, 2006 P.Cr.LJ 1771 Lahore)**

iii. Private Complaint after cancellation of FIR

A Magistrate in cancelling a registered criminal case is required to act judicially, in that, he has to act fairly, justly and honestly. The same Magistrate does not even after passing such an order render himself functus officio (**PLD1985 SC 62)**.

iv. Order for cancellation can be made prior to taking of cognizance (**PLD 1987 SC 103, 2003 YLR 245, PLD 1992 Lahore 412, 1991 P.Cr.LJ 62)**

v. The cancellation of case under section 173 is not permissible after the cognizance has been taken. But it could have been done before that stage (**PLD 1987 SC 103)**

vi. Cancellation of FIR by Magistrate on his own motion

Any Magistrate of the Ist, 2nd or 3rd class, may, of his own motion , in the course of trying any case reported by the Police as cognizable, pass such an order at any stage of the proceedings, before or at the time of delivering judgment, intimation of the order being given to the Police **(High Court Rues & Orders Vol III, Chap 11 part D point 4)**.

vii. Order for submission of challan, after disagreeing with cancellation report

Judicial Magistrate while disagreeing with the discharge report had travelled beyond the jurisdiction in directing the police to submit the challan against the accused. He was not supposed to direct arrest of the accused or submission of the challan or recording of evidence (**2010 P.Cr.LJ 261 Lahore)**

viii. Further steps on disagreeing with the cancellation report

a. Learned Ilaqa Magistrate may direct the Station House Officer to submit calendar of witnesses; along with copies of statements of witnesses recorded under section 161 or 164, Cr.P.C. and inspection notes prepared by the Investigating Officer on his first visit to the place of occurrence, which is to be supplied to the accused under the Criminal Procedure Code;

b. may direct the Investigating Agency under section 156(2) Cr.P.C, to further investigate the matter; or

c. after taking cognizance and disagreeing with the cancellation report, he may also issue process for summoning of the accused (**2014 YLR 113)**.

ix. Agreeing with cancellation report, an administrative Order

Concurring with a report submitted under section 173, Cr. P. C. the Magistrate does not function as a criminal Court. For that reason his order is not amenable to revisional jurisdiction under sections 435 to 439, Cr. P. C **(High Court Rules & Orders Vol III, Chap 11 part D point 2 & PLD 1985 SC 62)**

x. Order for summoning of accused, after disagreeing with the cancellation report, is judicial order against which revision is competent **(2014 YLR 113 Lahore, 2015 P.Cr. LJ 1103 Lahore)**

xi. The Magistrate is not required to listen to the complainant/accused of the case for decision on cancellation report. (**PLD1985 SC 62)**.

xii. Even in cases of offences triable exclusively by a Court of Session the matters of discharge of an accused person or cancellation of an F.I.R. continue to remain within the competence and jurisdiction of a Magistrate till a formal sending of the case by the Magistrate to the Court of Session for trial (**PLD**

1985 Lahore 71, 1989 P.Cr.LJ 909, PLD 2001 Lahore 271, PLD 2003 Karachi 433, 2014 P.Cr.LJ 1738)

xiii. Accused found to be innocent during investigation--Validity--Competent Court vested with jurisdiction either to accept or not to accept police report recommending discharge of accused or cancellation of case against him---Principles.(**2007 S C M R 393; Similar principle; (1997 SCMR 299)**

14. DISCHARGE

14.1. Relevant provisions

- Sec 63, 167, 169, 265-D, 494, 496 of Code of Criminal Procedure
- Volume-III Chapter 11-B, Paragraph No.VI of High Court Rules and Orders

14.2. Definition

The act by which a person in confinement, under some legal process, or held on an accusation of some crime or misdemeanor, is set at liberty[3]. In the words of Peshawar High Court, discharge means, "To release someone from custody, or allow someone to leave, or "to pay off" **(2011 Y L R 534)**

14.3. Important rules about discharge

i. Discharge of accused at the time of remand;

If the Magistrate finds that no case at all is made out against the accused, he is justified in not granting the remand and discharging the accused from the case. The power of discharging an accused from a case is, therefore, inherent in section 167 **(Volume-III Chapter 11-B, Paragraph No.VI, PLD 1987 Lahore 236).**

ii. Discharged where evidence insufficient

The defect in the investigation may not be a valid ground for discharge of an accused but insufficiency of evidence is definitely a strong ground to discharge a person from criminal charge **(2006 SCMR 827, PLD 1987 Lahore 236)**

iii. Administrative order:

The order of Discharge is an administrative order **(PLD 2001 Lahore 271, 2003 YLR 245, 2015 P.Cr.LJ 1416 Lahore)** but it should be passed after application of mind **(2006 SCMR 1920)** in case discharge order was passed by Magistrate mechanically without application of his independent mind to the facts of the case,

[3] Bouvier's Law Dictionary, Revised 6th Edition

... then High Court has ample jurisdiction to interfere and set aside such an order under section 561-A of Cr.P.C (**2006 SCMR 1920)**

iv. Discharge - acquittal

The release under the afore-referred provision is neither an acquittal nor does it terminate the investigation for all times to come. It is an administrative order and the person so discharged can be associated with the inquiry or investigation if the circumstances so warrant **(PLD 2002 Lahore 607 DB, 2003 YLR 421 Lahore, PLD 2001 Lahore 271)**

v. No restriction on the police to re-investigate

A discharged accused person can always be associated by the police with the investigation of the given criminal case at any subsequent stage during the investigation without obtaining any permission from the Magistrate discharging the said accused person as long as that accused person is not to be taken into custody during such' subsequent investigation **(PLD 2001 Lahore 271, 2015 P Cr. L J 626 Lhr, P L D 2002 Lahore 607 , 1994 P.Cr.LJ. 1806, 1984 ML D 1562 Lhr)**

vi. Discharged accused - plea of double jeopardy on re-investigated

Under section 403 of the Cr. P. C., it is only the acquittal of an accused person of an offence which bars the subsequent trial on the same facts and for the same offence, but the dismissal of a complaint or discharge of the accused is not an acquittal for the purpose of this section **(1976 P Cr. L. J 936,** ***PLD 2012 SC 179)***

vii. Discharged accused - re-arrest

In the cases where an accused person is released/discharged by the Magistrate under section 63 of Cr.P.C. the police of course cannot re-arrest the accused without order of the Magistrate. (**2015 P.Cr.LJ 626 Lahore, PLD 2001 Lah 271, 1994 PCrLJ 1806)**

viii. **Discharge before cognizance**

Discharge can only be made before taking cognizance of the case **(2004 P.Cr.LJ 301 DB, PLD 2001 Lahore 271)**

ix. **Discharge by Magistrate**

Magistrate is competent to discharge an accused in cases that are triable by Court of Sessions**. (2008 YLR 1669 Lahore, PLD 2001 Lahore 271, PLD 1986 Lahore 256)**

x. **Discharge of accused u/s 265-D Cr. P.C by Sessions Court:**
PLD 2005 SC 408:-

When no incriminating material to frame the charge is available;

xi. **Discharge by duty Magistrate**
(PLJ 2009 Lahore 354/2009 YLR 1078, 2004 MLD 1198 Lhr)

Duty Magistrate did not have jurisdiction to try respondent No.2, therefore, if he thought further detention was unnecessary, he could have forwarded accused to a Magistrate having jurisdiction to try. Therefore, in my opinion the impugned order has been passed by respondent No.1 without a jurisdiction and the same is void ab initio (**2005 P.Cr.LJ 1403 Lahore)**. Duty Magistrate had no jurisdiction to discharge and try the case or send it for trial; and he could only order accused to be forwarded to a Magistrate having such jurisdiction. (**2009 YLR 1078 Lahore)**

xii. **Through Prosecutor**

Request of discharge of accused by the police needs to be submitted to the Magistrate through the prosecutor **(Sec 9 (4) of the Punjab Criminal Prosecution Service Act 2006)**

xiii. The **name of the discharged accused to be mentioned** by the police in **column No.2 of its report u/s 173 Cr.PC**
(PLD 1967 SC 425, P L D 2014 Peshawar 116, PLD 2007 Lhr 65 Lhr, 1999 P.Cr.LJ. 469)

Arrested person can be released on execution of a bond, with or without sureties, by the Investigating Officer when he finds against the accused no sufficient evidence, no reasonable ground or no suspicion to justify for his forwarding to a Magistrate in custody. But it would be the duty of the Investigating Officer, to report all these facts, by placing the name of that accused in Column No.2 of the report under section 173 of the Cr.P.C (**PLD 2007 Lahore 65**)

xiv. Discharged accused, summoning for trial by the Court/Magistrate (1988 SCMR 1428, 1985 S C M R 1314, PLD 1988 Lhr 336 2002 P Cr. L J 340 Lhr)

The accused person whose name appears in column No.2 of the challan can be summoned by the trial Court directly to stand the trial and it is not necessary that first some evidence should be recorded (**1988 SCMR 1428)**

xv. Discharge by investigation officer

(PLD 2001 Lahore 271, 2018 MLD 1758 Baloch, 2018 YLR 2025 Pesh, 2019 PCr.LJ 154 DB Pesh, 2000 YLR 2857 Lhr, AIR 1958 SC 376, (2009) 4 SCC 446, (1979) 81 BOMLR 64)

The Investigating Officer of a criminal, case may discharge an accused person under section 63 of the Cr. P.C and release him from custody during the investigation on executing a personal bond regarding his appearance before the Investigating Officer or a Magistrate whenever required to do so during the investigation. (**PLD 2001 Lahore 271)**

15. CONFESSION

15.1. Relevant provisions

- Sections 164 and 364 of Code Of Criminal Procedure, 1898
- High Court (Lahore) Rules and Orders Vol.III, Chap. 13
- Police Rules, 1934, Rules 25.27. 25.28 and 25.29 of Chapter 25, Volume-III
- Article 37 to 43 and 91 of Qanoon-e-Shahadat Order, 1984

15.2. Guidelines in High Court Rules and Orders for recording confessional statement of accused person

Rule 4 of Chap-13, High Court Rules and Orders, Volume III provides following guideline for recording confession of accused persons.

a. Statements or confessions made in the course of an investigation can be recorded only by a Magistrate of the first class or of the second class who has been specially empowered by the Provincial Government.
b. Confessions must be recorded and signed in the manner provided in section 364.
c. Before recording any such confession, the Magistrate shall explain to the person making it that he is not bound to make a confession and that if he does so it may be used in evidence against him.
d. No Magistrate shall record any such confession unless upon questioning the person making it he has reason to believe that it was made voluntarily. Failure to question has been held to vitiate the confession.
e. The memorandum set forth in section 164 (3) must be appended at the foot of the record of the confession.
f. It is not necessary that the Magistrate receiving or recording a confession or statement should be Magistrate having jurisdiction in the case.

15.3. Principles for recording a confession

2016 SCMR 274:-

- Keeping in view the High Court Rules, laying down a binding procedure for taking required precautions and observing the requirements of the provision of section 364 read with section 164, Cr.P.C. by now it has become a trite law that before recording confession and that too in crimes entailing capital punishment, the Recording Magistrate has to essentially observe all these mandatory precautions.
- All signs of fear inculcated by the Investigating Agency in the mind of the accused are to be shed out.
- He is to be provided full assurance that in case he is not guilty or is not making a confession voluntarily then in that case, he would not be handed over back to the police.
- Thereafter, sufficient time for reflection is to be given after the first warning is administered. At the expiry of that time, Recording Magistrate has to administer the second warning and the accused shall be assured that now he was in the safe hands.
- All police officials whether in uniform or otherwise, including Naib Court attached to the Court must be kept outside the Court and beyond the view of the accused.
- After observing all these legal requirements if the accused person is willing to confess, then all required questions formulated by the High Court Rules should be put to him and the answers given, be recorded in the words spoken by him.
- The statement of accused be recorded by the Magistrate with his own hand and in case there is a genuine compelling reason then, a special note is to be given that the same was dictated to a responsible official of the Court like Stenographer or Reader and oath shall also be administered to such official

that he would correctly type or write the true and correct version, the accused stated and dictated by the Magistrate.

- In case, the accused is illiterate, the confession he makes, if recorded in another language i.e. Urdu or English then, after its completion, the same be read-over and explained to him in the language, the accused fully understand.
- Thereafter a certificate, as required under section 364, Cr.P.C. with regard to these proceedings be given by the Magistrate under his seal and signatures.
- The accused shall be sent to jail on judicial remand.
- During this process at no occasion he shall be handed over to any police official/officer whether he is Naib Court wearing police uniform, or any other police official/officer, because such careless dispensation would considerably diminish the voluntary nature of the confession, made by the accused.
- Confession should not be recorded on oath, otherwise it will render the confession inadmissible which cannot be safely relied upon keeping in view the principle of safe administration of justice.
- Such accused will not be handed over to the police after recording of confession.

16. EXTRA JUDICIAL CONFESSION

16.1. Extra judicial confession

PLD 2019 SC 64:-

- Evidence of extra-judicial confession is a fragile piece of evidence and utmost care and caution has to be exercised in placing reliance on such a confession.
- It is always looked at with doubt and suspicion due to the ease with which it may be concocted.
- The legal worth of the extra judicial confession is almost equal to naught, keeping in view the natural course of events, human behaviour, conduct and probabilities, in ordinary course.
- It could be taken as corroborative of the charge if it, in the first instance, rings true and then finds support from other evidence of unimpeachable character.
- Extra judicial confession before a *panchayat* is inadmissible

2016 SCMR 274:-

- Extra-judicial confession, if made before a person of influence and authority, expected to extend helping hand to the accused, which is also strongly corroborated, can only be considered as a piece of circumstantial evidence.

16.2. Joint extra judicial confession

- The extra-judicial confession allegedly made by the petitioner and his co-accused prima facie has the trappings of a joint confession which is inadmissible in evidence.(**2012 SCMR 387)**
- The alleged extra judicial confession is a joint confession, thus, its evidentiary worth may be next to nothing.(**2011 SCMR 1673)**

  Joint extra-judicial confession by both the accused, cannot be used against either of them. (**1993 SCMR 1378)**

16.3. Other relevant case laws

- Conviction can be based on extra judicial confession when it is corroborated by other reliable evidence---Extra judicial confession is regarded as weak type of evidence by itself, utmost care and caution has to be exercised in placing reliance on such confession.(**2011 SCMR 1233)**
- Offence carrying capital punishment---Conviction---Scope---Extra judicial confession was not sufficient for recording conviction on a capital charge unless it was strongly corroborated by tangible evidence coming from unimpeachable source. (**2015 SCMR 155).**
- Extra Judicial confession could be concocted easily therefore, it was always looked at with doubt and suspicion---Extra-judicial confession could be taken as corroborative of the charge if it, in the first instance, rang true and then found support from other evidence of unimpeachable character---If the other evidence lacked such attribute, such confession had to be excluded from consideration. (**2016 SCMR 1144)**

17. RETRACTED CONFESSION

17.1. Principles

PLD 2004 SC 250:-

a. Retracted confessions, whether judicial or extra-judicial, could legally be taken into consideration against the maker of those confessions.

b. The retracted confession unless it is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone.

c. The Court has to take into consideration not only the reasons given for making the confession or retracting but the attending facts and circumstances surrounding the same.

d. If the reasons given for retracting is probably false, absurd and incorrect the Court can accept such confession without corroboration.

e. The Court before convicting an accused person solely on the basis of his retracted confession must satisfy itself, that it is voluntary and true

f. Mere fact that there were some irregularities in recording of a confession, would not warrant disregarding of the same. **(2000 SCMR 785)**

- There is no rule of criminal administration of justice that the Court having found the retracted confession voluntary and true must also look for the corroboration and in absence of corroborative evidence conviction cannot be maintained. The retraction of a judicial or extra-judicial confession itself is not an infirmity to be considered sufficient to withhold the conviction because the evidentiary value of a confession is not

diminished by mere fact that it was retracted by the maker at the trial and thus the independent corroboration from other source direct or circumstantial, cannot be insisted in every case as a mandatory rule rather the rule of corroboration is applied as abundant caution and in a case depending entirely on the confessional statement of a person or only of the circumstantial evidence, this rule is applied more cautiously." **(PLD 2006 SC 30)**

17.2. Use of confessional statement for convicting accused

- The judicial confession if ring true and voluntary can be made the sole basis for the conviction of the makers thereof. However, if the same are retracted, even then its evidentiary value is not diminished if the same gets corroboration from other facts and circumstances of the case. **(2019 SCMR 1975, PLD 2019 SC 577, PLD 2009 Sc 709, PLD 2008 SC 115, 2007 SCMR 782, PLD 2006 SC 30, 2006 SCMR 1911, 2006 SCMR 1343, PLD 2005 SC 168, 2004 SCMR 477, 2002 SCMR 620, PLD 2002 SC 56, 2001 SCMR 1914, 1999 SCMR 1744, 1999 SCMR 2040, 1999 SCMR 1775, 1999 SCMR 950, PLD 1995 SC 336, 1993 SCMR 1574, 1992 SCMR 754, 1991 SCMR 942, 1971 SCMR 341)**
- Independent piece of direct or substantial evidence in corroboration of the retracted confession for basing conviction in order to ensure safe administration of justice, was not available on the record. **(2000 SCMR 683, 2000 SCMR 683)** Retracted confession should not be acted upon unless corroborated in material particulars (**2017 SCMR 986, 2012 SCMR 580, PLD 2003 SC 70, 2000 SCMR 683, 1995 SCMR 1359, 1993 SCMR 1822, 1992 SCMR 196, 1991 SCMR 1685, 1969 SCMR 442)**

18. JURISDICTION AND TERRITORIAL DIVISIONS

18.1. Relevant provisions

Sections 177 to 189 Cr.PC, 1898

18.2. Principles regarding territorial jurisdiction

- Ordinary place of inquiry and trial for the purpose of territorial jurisdiction would be the district where act is done or where consequences ensue. **(2019 P.Cr.LJ 1558)**
- Where person committed an offence beyond the limits of Pakistan and was later on found in Pakistan, there were two courses open, he can be tried in Pakistan under S.188, Cr.P.C., if a case falls within its purview, or he can be extradited, i.e. arrested and sent to the place where he committed the offence to take his trial there; permission from the Federal Government is mandatory for the trial of an offence committed beyond the limits of Pakistan. (**2013 PLD Islamabad 75)**
- Section 188, Cr.P.C. does not create any bar on registration of the case under S.154, Cr.P.C.-Police is competent to register a criminal case on receipt of information with regard to the commission of a cognizable offence and to conduct investigation into the offence, notwithstanding the place of occurrence beyond the territorial jurisdiction of Pakistan as sanction in terms of S. 188 can be produced after submission of challan. (**2011 YLR 2882)**
- Requirements of application of S.179, Cr.P.C. were that said section would apply when the act done and the consequences ensuing there from jointly constituted the offence; that such offence could be inquired into or tried by a Court within the limits of whose jurisdiction any such act had been done or any such consequence ensued; and that said section 179, Cr.P.C. would not

apply when the act or omission was a complete offence itself irrespective of any consequence, which had ensued. (**2007 P.Cr.LJ 1306)**

- Prerequisite of s.180, Cr.P.C. were that an act committed becomes an offence by reason of its relation to any other act which was also an offence or which would be an offence, if the doer was capable of committing an offence and that a charge of first offence could be tried or inquired by a court within the local limits or whose jurisdiction, either act was done. (**2007 P.Cr.LJ 1306)**
- Interpretation, scope and applicability of S.188, Cr.P.C has been given in detail. **(PLD 2006 Lahore 434)**
- Offence against applicant having actually taken place within territorial limits of the concerned District, Magistrate of the District would have jurisdiction to try case against accused and not Magistrate of other District Courts. Judicial Magistrate on both counts was not competent to take cognizance of the case. Proceedings before Judicial Magistrate amounting to abuse of process of Court, were quashed, in circumstances. **(2003 MLD 1**)
- The real and substantial test for determination whether several offences were so connected together as to form one transaction, depends upon whether they are related together in point of purpose, or as cause and effect or as principal and subsidiary acts so as to constitute one continuous action. (**1991 MLD 1973)**
- Scene of occurrence not in one district and offence consisted of several acts committed partly in one local area and partly in another. Such case, held, may be tried by Court having jurisdiction over any of such. local areas. (**1984 P.Cr.LJ 1373)**

19. MEDICAL RE-EXAMINATION

19.1. Relevant Provision

- Revamping of medico legal work; **(PLD 2003 statute 34)**
- Notification No SO (H&D) 6-1/90 dated 12-02-1990 (reproduced in **2017 MLD 1828)**
- Notification No SO (H&D) 6-1/90 dated 08-02-1992 (reproduced in **2017 MLD 1828)**
- Notification No. SO (H&D) 5-5/2002 dated 05-02-2003 (reproduced in (**2017 MLD 1828)**

19.2. Importance of medical re-examination

This Court is not oblivious of the fact that the constitution of the medical board for the purposes of re-examination of a witness is not an order which is to be passed in routine and that too blindly and mechanically. Sometime, such applications are moved to frustrate the process of law or to delay the procedure of investigation and trial. Similarly, at times it is noticed that either due to lack of knowledge or experience or on account of other considerations, the correct medical data is not brought on record. Similarly, this Court is also well aware of the fact that the evil of self-inflicted and fabricated injuries have also penetrated deep, into the criminal justice system. The Courts, by virtue of their very purpose of constitution, are obliged to be at their toes, while dealing with such like cases. (**2017 MLD 1828)**

19.3. Executive/Administrative order

Order dismissing the application for re-examination of injured was an administrative order for the reason that while passing such order no lis was pending before the Magistrate; that he was not functioning as

criminal Court; that he was not obligated to hear the parties before making such an order; that no conclusive decision was given and that no finality or irrevocability was attached to it. (**PLD 2020 Lahore 77, 2019 PLJ Lahore 271)**

19.4. Non Revisable

Order passed by Magistrate missed the necessary characteristics of being a judicial order---Revisional jurisdiction was not available to the Sessions Judge against the said order (**PLD 2020 Lahore 77, 2019 PLJ Lahore 271)**

19.5. Order not to be passed whimsically or gratuitously

Special Medical Board for re-examination of the injured person could not be ordered to be constituted whimsically or gratuitously (**2018 YLR Note 58)**

19.6. Time Limitation

- Government of Punjab, Health Department Notifications No. SO (H & D) 6-1/90 dated 12th February, 1990 provided, that order for the medical re-examination would be passed within three weeks of the first examination, however, as per subsequent Notification No. SO (H & D) 6-/90 dated 8th February, 1992 by the said department medical re-examination could be ordered beyond the period of three weeks. (**2017 MLD 1828)**
- It was never too late to hold an autopsy or to pass an order for disinterment for the purpose of re-examination of a corpse---When controversy between parties lay at the injury on occipital bone of deceased, the same could be discovered even after a decade (**2018 MLD 460)**
- Magistrate had ordered re-examination of the injured after a period of six months of his first examination, which was not much in quest of justice at such a belated stage. (**2009 P Cr. L J 1281)**

19.7. Constitutional Jurisdiction of High Court

Complainant had sought the reexamination of the accused in his case by the Police Surgeon, or by the Medical Board to be constituted by High Court on

the ground that said accused after having got prepared false and bogus medico-legal reports regarding himself by two Medical Officers (respondents) had got registered a cross-case against him--Permanent District Medical Boards for re-examination/re-post-mortem for second medical opinion already having been constituted by the Government in all the Districts of the Province, indulgence of High Court in exercise of- its Constitutional jurisdiction for proposed relief was uncalled for---Complainant (petitioner) could invoke the assistance of the District Magistrate concerned on the judicial side in this regard and due to the availability of such efficacious remedy the Constitutional petition was not maintainable which was dismissed in limine. **(PLD 1998 Lahore 223)**

19.8. Nature of corroboration provided by medical evidence:

Medical evidence may confirm the evidence with regard to the seat of the injury, nature of the injury, kind of weapon used in the occurrence but it would not connect the accused with the commission of crime. (**2019 P Cr. L J 141)**

20. PROCLAMATION IN CRIMINAL CASES

20.1. Relevant Provisions

Secs.87 to 89 and 512 of Cr.P.C.

20.2. Abscondence and Proclamation

The term abscond, with its derivatives, is not defined in the Code of Criminal Procedure, although it occurs in **sections 87, 90-A and 512 of the Code** and also in section 172 of the Penal Code. In this connection section 87(1) of the Code lays down that if any Court has reason to believe that any person, against whom a warrant has been issued by it, has 'absconded' or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring to appear at a specified place and time before it.

20.3. Aspects of abscondence

There are two aspects of abscondence: (1) putting the prosecution in disadvantageous position during the course of investigation and trial, (2) creating corroborative and circumstantial evidence against himself. In the first case through abscondence an accused person destroys, conceals or allows any valuable evidence to disappear, such as, recovery of weapon, blood-stained clothes, discovery of dead body, or place of incident reducing the value of identification test and so on so forth and in latter case by ascendance creates corroborative and circumstantial evidence which can be used against him during trial, if an order under section 87(3), Cr.P.C. is passed by the Court. Therefore, different yardstick is to be made to treat both the sets of accused persons. If an accused person absconds, through which valuable piece of evidence is lost or concealed or allowed to be destroyed then he is not entitled for any concession but if an innocent person became fugitive from law or absconds then if it is found that his case

falls within the provision of subsection (2) of section 497, Cr.P.C, (further enquiry into the guilt) then his case is to be considered differently. (**2003 YLR 1915)**

20.4. Opinion of abscondence must proceed proclamation

The proclamation can be issued only after the Court have reasons to believe, whether after taking evidence or not, that any person against whom a warrant has been issued by it has absconded or was concealing himself with a view to avoid the service of the warrant on him. In other words, the opinion thus formed by the Court that person wanted by it is an absconder must proceed before any such proclamation is issued against him. (**PLD 1978 SC 102).**

20.5. Attachment under Sections 87/88, Cr.P.C

- When an accused is absconding, the trial Court has to issue proclamation and attachment under sections 87/88, Cr.P.C. (**2018 SCMR 71).**
- Provisions contained in sections 87 to 89 Cr.P.C. were a complete code about the matters relating to the attachment anti-sale of the property belonging to a proclaimed person and the restoration thereof. (**2004 SCMR 1743).**
- Proper compliance has not been made with the provisions contained in sections 87 and 88 of Cr.P.C. Recall of an attachment order does not amount to review **1998 SCMR 289.**

20.6. Objections to attachment

Objections to the attachment of property under sections 87 and 88, Cr.P.C. could be made by any person claiming any right in that property against the proclaimed offender and when objections are allowed and attachment is withdrawn, no other person has got any right to challenge that order by way of revision petition. (**1992 P.Cr.LJ 360)**

20.7. Recording of evidence

When the Absconsion is established and proved on the record, then the trial Court can proceed with the matter under section 512, Cr.P.C. and record the evidence of all the witnesses which later on can be used against the accused in the circumstances provided in section 512(1), Cr.P.C. The basic difference between the two is that in the former case, only evidence in absentia is recorded under section 512(1), Cr.P.C. which can be used against the accused in the circumstances as provided in section 512(1), Cr.P.C. but the Court cannot record conviction after recording evidence in absentia under section 512, Cr.P.C. whereas in the latter case, it is full fledge trial of the accused in absentia. (**2018 SCMR 71)**

20.8. Absconder out of country

If a person is outside the country before the occurrence then he cannot be declared as absconder and proclamation under section 87, Cr.P.C. was held to be without jurisdiction. (**2005 P.Cr.LJ 1889)**

20.9. Incorrect Proclamation

If the proclamation is issued without mentioning the correct name, parentage and address of the accused, he cannot be deemed to be a proclaimed offender on his failure to appear in pursuance of the same. Even otherwise, mere absconsion is no ground to withhold the concessions of bail. **(2012 MLD 89)**

20.10. Procedure to send Challan

- If all the accused are shown absconders in the challan then the case be sent up to the Court of Session after completing the proceedings as provided under section 512 of the Code. After receipt of case, the Sessions Court may pass order for keeping the case on dormant file or pass appropriate order as it deems fit. (**2013 YLR 54)**

- If some of the accused are absconders and some are present, then before sending the case to the Court of Session the Magistrate should simply complete the proceedings under sections 87 and 88 of the Code within shortest possible time but not later than two months after taking cognizance. The Magistrate should ensure that when a case is sent up to the Court of Session it should be completed in all respect enabling the Court of Session to start the trial immediately (**2013 YLR 54)**
- Magistrate should complete the process u/s 512 Cr. P.C before sending the case to Sessions Court **(PLD 2010 SC 585).**

21. REPORT U/SEC 173 CR.P.C (CHALLAN)

21.1. Principle

- Court could not insist that a challan of a case must be submitted against any particular person **(2019 SCMR 2029).**
- Police opinion, even if conclusive in nature, was not binding on the Court and it may disagree with the same but after recording cogent reasons **(2016 SCMR 1325).**
- Only function of the Magistrate after the receipt of report under S. 173, Cr.P.C. was to transmit the challan to the Court of competent jurisdiction/Sessions Court **(2015 SCMR 825).**
- Re-investigation of case by police, after filing of final Challan in Trial Court---Not barred subject to some exceptions **(2014 SCMR 474).**
- Report submitted by the Investigating Officer under S.173, Cr.P.C. is not binding on the Court and the Court, therefore, notwithstanding the recommendation of the Investigating Officer regarding cancellation of case and discharge of the accused from it may decline to cancel the case and proceed to take cognizance as provided in 5.190, Cr.P.C. and summon the accused to face the trial **(1997 SCMR 299)**
- Report u/sec 173 Cr.P.C, which was an opinion of the members of JIT, could at the most be considered, as a report under S.173 Cr.P.C. Report under S.173 Cr.P.C. was inadmissible in evidence **(PLD 2018 SC 178).**
- A judicial Magistrate may cancel a criminal case regardless of the fact whether it is positive or negative one (challan) but subject to parameters laid down in **PLD 1985 Supreme Court 62**.
- The provisions of section 173 Cr.P.C. provide only that after the available material had been collected by the S.H.O. during the course of an investigation then the result of the same had to be reported to the Magistrate

competent to take cognizance under section 190, Cr.P.C. and thereafter it was for the competent Magistrate/Court to decide whether an accused person did or did not deserve to be tried (**PLD 2006 Supreme Court 316).**

- Trial should normally commence, if possible, on the basis of interim report under S.173, Cr.P.C. which must be submitted as per mandatory requirement of proviso to subsection (1) of S.173, Cr.P.C. If the commencement of the trial is to be postponed, then the Court must record reasons in writing, section 344, Cr.P.C. casts a heavy duty on the Court to commence the trial as early as possible and not to adjourn the case on flimsy grounds---Court is also duty bound to ensure submission of complete challan/find report under S.173, Cr.P.C. without any unnecessary delay. **(2009 SCMR 181)**
- Report of JIT---Evidentiary value---Said report, which was an opinion of the members of JIT, could at the most be considered, as a report under S.173 Cr.P.C.---Report under S.173 Cr.P.C. was inadmissible in evidence**. (PLD 2018 SC 178)**
- Investigating officer on the conclusion of the investigation was bound to prepare the final report either under s.169, Cr.P.C. showing that sufficient material was not available against the accused persons and placing their names in Column No.2 of the prescribed form or he was to prepare a report contemplated in S.170, Cr.P.C. showing sufficient material against the accused placing their names in Column No.3 of the said Form under S.173, Cr.P.C. and he was also bound to submit the report within fourteen days from the registration of the case **(1996 MLD 891).**
- Procedure as provided under S.173, Cr.P.C. for submission of challan, having not been followed, detention of accused after fourteen days , not being

permitted by law was also against mandate contained in Arts.9 & 10(2) of Constitution of Pakistan (1973) **(1999 P.Cr.LJ 1295).**

- It is the duty of the Police Officer to furnish justification for detention of accused in custody if challan under S.173, Cr.P.C. has not been filed and trial has not commenced, otherwise in absence of report of a Police Officer of challan, detention of the accused would be unjustified and against the provisions of law. (**2009 SCMR 141)**

22. ADMINISTRATIVE ORDERS

22.1. What are administrative Orders

Magistrate, under Criminal Procedure Code, 1898 is entrusted with diverse duties and in discharging the same he does not always conduct judicial proceedings or is always amenable to the revisional jurisdiction. Some of powers and duties of the Magistrate under Cr.P.C. are administrative, executive or ministerial and he discharges these duties not as a Court but as a persona designata. Mere name or designation of a Magistrate is not decisive of the question whether the order is judicial or administrative because at some times the Magistrate perform duties by applying judicial mind but these proceedings are administrative in nature and some time orders are judicial orders. (**PLD 2020 Lahore 77)** Administrative functions consist of those activities which are directed towards the regulation and supervision of public affairs and the initiation and maintenance of the public services. **(PLD 1985 SC 62)**

22.2. Traits of administrative order

PLD 2020 Lahore 77:-

Following are the traits of an "administrative order" of Magistrate

1. Administrative functions consist of those activities which are directed towards the regulation and supervision of public affairs and the initiation and maintenance of the public service;
2. An administrative order is potentially open to attack for any material error of law or fact in either direct or collateral proceedings;
3. It cannot constitute res-judicata;
4. It may always be rescinded by the body making it.

22.3. Instances of administrative order

- Order of constitution of Medical Board for re-examination of injured is administrative order. **(PLD 2020 Lahore 77, 2018 P.Cr. LJ Note 56)**
- Magistrate while scrutinizing report filed by investigating officer though did not act as judicial officer but did so in administrative capacity. Order passed should have attributes of judicial order inasmuch as same was to be based on cogent grounds and law. **(2020 P.Cr. LJ 130)**
- Order passed by a Magistrate regarding cancellation of case, or not concurring with the request for cancellation of case made by the Police, was administrative in nature **(2015 P.Cr.LJ 1103).** In matter of Cancellation of FIR, Magistrate acted in administrative capacity, while dealing with such reports under S.24-A of General Clauses Act, 1897, even any executive authority was supposed to give reasons while passing any order. **(2018 YLR 2239, P L D 2016 Lahore 495).** While dealing with cancellation report submitted by police, Magistrate acted in his administrative capacity and order passed by him while agreeing or concurring with cancellation report was an executive order---Magistrate, if had disagreed with cancellation report and directed police to file report under S.173, Cr.P.C. on prescribed form, directed submission of calendar of witnesses or directed investigation agency for further investigation into the matter, all such order would be the acts performed by Magistrate in his administrative capacity and could be questioned only though Constitutional jurisdiction of High Court---While dealing with cancellation report, when Magistrate disagreed with cancellation report and by the same had ordered summoning of accused persons to face trial, then his first step of disagreeing with cancellation report was administrative in nature and the same would merge in his simultaneous order regarding summoning of accused passed under S.204, Cr.P.C., which was squarely a judicial order. Due to merger of disagreeing

order of Magistrate into ultimate and simultaneous order of summoning of accused, the entire exercise by Magistrate would become judicial action. (**2014 YLR 113)**

- Order regarding discharge of an accused or cancellation of a case pending investigation etc., was not amenable to revision under Ss.435 & 439-A, Cr.P.C., for the reason that said order would necessarily constitute an administrative order and not judicial order. **(2016 P.Cr. LJ 1783, 2015 P.Cr. LJ 1416)**
- Magistrate could competently agree or disagree with opinion of police while exercising administrative jurisdiction on a report submitted before him within the meaning of S. 173, Cr.P.C. **(2018 MLD 1173, 2014 YLR 92)**
- Any order passed by the Justice of Peace, was not a judicial order, and was of administrative and ministerial in nature. **(PLD 2014 SC 753, 2016 P.Cr. LJ 172, 2015 P.Cr.LJ 1509, 2014 YLR 2628, 2015 P.Cr. LJ 1335)**
- Police submitted report under S. 169, Cr.P.C. before the Judicial Magistrate which was not agreed to by him is administrative order. **(2015 P.Cr. LJ 78)**

22.4. Order should be speaking one

Non-speaking orders were to be discouraged and Court was to give reasons for passing administrative as well as judicial order **(2015 P.Cr. LJ 78)**

22.5. Non revisable

Judicial order and not the administrative order was open to revision--- (**2016 P.Cr. LJ 1783, 2015 P.Cr. LJ 1416)**

23. DYING DECLARATION

23.1. Dying declaration

In legislative wisdom, dying declaration is an exception to general rule of direct evidence; it is admitted to the detriment of an accused without opportunity of cross-examination upon the declarant under the belief that a person, face to face with God, would tell nothing but the whole truth. Sanctimonious hypothesis notwithstanding before conviction is based upon such a declaration, prosecution must demonstrate beyond shadow of doubt that it comprises of the words of declarant alone without extraneous prompting or additions **(2019 SCMR 1008).**

23.2. Principles

2001 SCMR 1474:-

i. There is no specified forum before whom such declaration is required to be made.

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

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

iv. It should be influenced free.

v. In order to prove such declaration, the person by whom it was recorded should be examined.

vi. Such declaration becomes substantive evidence when it is proved that it was made by the deceased.

vii. Corroboration of a dying declaration is not a rule of law but requirement of prudence.

viii. Such declaration when proved by cogent evidence can be made a base for conviction.

23.3. Conviction upon dying declaration

A dying declaration is an exception to the hearsay rule and, thus, the same is to be scrutinized with due care and caution (**2016 SCMR 1233).** No doubt, conviction can be based on dying declaration alone, provided it is true and free from prompting from outside. To accept such statement, without considering the surrounding circumstances of the case, would not be safe administration of justice to convict accused merely on the basis of so-called dying declaration. **(2016 P.Cr.LJ Note 36)**

23.4. Recording of dying declaration

No specified forum for making dying declaration is required and it can be made before a private person; dying declaration is not legally required either to be read over to or to be signed by its maker;' dying declaration' should be influence free; in order to prove dying declaration the person by whom it was recorded should be examined; dying declaration becomes substantive evidence when it is proved to have been made by the deceased; corroboration of a dying, declaration is not a rule of law, but a requirement of prudence and such declaration when proved by cogent evidence can be made a base for conviction. **(2010 SCMR 55).**

23.5. Duty of Prosecution to prove dying declaration

The prosecution has proved the dying declaration which by itself is sufficient to maintain the conviction and sentence. **(2010 SCMR 55)**. The prosecution was required to have led evidence of the person who had heard the actual words of the deceased uttered before him but no such evidence was led before the Court **(2010 SCMR 385).**

23.6. Evidentiary value of dying declaration

- A dying declaration is a weaker type of evidence, which needs corroboration and that conviction can be based on the basis of such a declaration when fully corroborated by the other reliable evidence. Thus the

facts and circumstances of each case have to be kept in view and also the credibility, reliability and acceptability of such a declaration, by the Court (**2011 S C M R 646).**

- In the presence of other strong evidence, such a statement (dying declaration) could be considered a supportive piece of evidence **(2015 SCMR 10).**
- If the Court comes to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the identity of the assailants there is no need for further corroboration. But if it appears to be unreliable by itself, or suffers from some infirmity, then it cannot form the basis of a conviction without corroboration.(**PLD 1977 SC 612).**
- This may be seen that the dying declaration or a statement of a person without the test of cross-examination is a weak kind of evidence and its credibility certainly depends upon the authenticity of the record and the circumstances under which it is recorded, therefore, believing or disbelieving the evidence of dying declaration is a matter of judgment but it is dangerous to accept such statement without careful scrutiny of the evidence and the surrounding circumstances, to draw a correct conclusion regarding its truthfulness **(PLD 2006 SC 255)**
- It is a settled law that dying declaration like statement of interested witnesses requires close scrutiny and dying declaration when undoubtedly a statement of interested person had required corroboration **(2007 SCMR 1825)**

23.7. Without consultation & deliberation, capacity to make the statement

- Declarant was found by the medical officer well within capacity to share details of the incident, a narrative found by us as straightforward and

confidence inspiring besides being in harmony with ocular account and medical evidence. **(2019 SCMR 1308)**

- Had it been a prompted dying declaration or a declaration made after consultations and deliberations, the deceased must have mentioned her own relations as eye-witnesses. This strong inference not only suggests of the presence of the two witnesses but also gives a plausible strength to the dying declaration **(PLD 2003 SC 635).**
- Conviction can be based on a dying declaration and there was no particular form or forum for making such declaration under Article 46 of Qanun-e-Shahadat Order, 1984 and that its sanctity cannot be doubted. **(2011 SCMR 725)**
- Dying declaration made soon after the incident or at a time when the deceased expected death deserves great weight and cannot be discarded merely on the assumption that it was the result of consultation or deliberation **(PLD 2004 SC 367).**

24. EXHUMATION

24.1. Relevant provisions

Section 176 Cr.P.C

24.2. Nature of order

It is an executive order, as such, not open to revision **(PLD 2020 Lahore 77)**

24.3. Power of Magistrate

Under S. 176(2), Cr.P.C., the Magistrate had ample powers to disinter any dead body to ascertain the actual cause of death of the deceased person. **(2017 P.Cr.LJ 1341, PLD 2007 Lahore 176, PLD 2016 Lahore 518).**

24.4. Purpose of exhumation

- Purpose of an inquest is only to find out the cause of death of a person and not the person who had caused the death. **(PLD 1995 Lahore 433)**
- Investigation or inquiry under Ss.174 & 176, Cr.P.C. and exhumation of dead body could only be allowed if real cause of death was shrouded in mystery. **(PLD 2014 Balochistan 50)**
- Subsection (1) of S.176, Cr.P.C., made provision for conducting an inquiry into the cause of death, either instead of or in addition to the investigation held by the Police, if the case was covered by S.174, Cr.P.C. **(PLD 2016 Lahore 518)**

24.5. Respect to dead body

Islam accorded great respect to the dead body of a Muslim. Exhumation, without any justification, was a sin in Islam. Order of exhumation, must be based on detailed reasoning, logic and fairness. Request of police for exhumation was declined. **(2019 P Cr. L J 219 , 2017 P.Cr.LJ 694, 2017 P.Cr.LJ 1341).** Disinterment would be disrespect to deceased lady. Causing injury to *Momin* men and women without any justification was a great sin **(2015 YLR 2230).** Legal heirs of the deceased/dead body were

the trustees of her grave, who had to maintain not only the grave but also the respect and dignity of the dead body. (**2014 P.Cr.LJ 1030)**

24.6. Time for holding exhumation

- Medical jurisprudence did not provide any time limit for exhumation of dead body. It was never too late to hold an autopsy or to pass an order for disinterment for the purpose of re-examination of a corpse. (**2008 S C M R 1086, 2018 MLD 460, PLD 2017 Lahore 337, PLD 2007 Lahore 176, 2014 P.Cr.LJ 219)**
- When controversy between parties lay at the injury on occipital bone of deceased, the same could be discovered even after a decade. (**2018 MLD 460)**
- Asphyxial death due to strangulation invariably left its symptoms on hyoid bone detectable even at skeletonized stage and same was the case with the remains of poisonous contents even in decomposed viscera; arsenic was possibly detectable not only in hair but also in the soil where the dead body was buried, therefore, to deny a probe on this ground would render the provisions of law as nugatory. (**PLD 2017 Lahore 337)**

24.7. Time should be reasonable with plausible explanation

Widow of deceased kept mum for a long time (about two and half years) allegedly on the basis that although she had suspicion in her mind, but she was forbidden by the elders of the family to raise any voice. Such reasoning given by widow at a belated stage was not sufficient to accept her stance. (**PLD 2017 Lahore 435).** One year had passed since death of deceased, alleged marks on the body of deceased would not be detected due to decomposition. (**2015 YLR 2230)**

24.8. Locus Standi

- Subsection (2) of S.176 Cr.P.C. did not put any clog of locus standi to approach a Magistrate for exhumation of dead body; it could be carried out by Magistrate on his own. (**PLD 2017 Lahore 337)**
- Legal heirs of deceased had a right to get the suspicion removed. (**2006 SCMR 1468, PLD 2007 Lahore 176)**
- Petitioner, being the real sister of the deceased, had all the genuine cause to dispel the suspicion of unnatural death of her deceased brother. (**PLD 2016 Lahore 518, 1985 MLD 782)**
- Petitioner who was father of deceased expressing suspicion of murder of his deceased daughter at the hands of respondent **(2008 P.Cr.LJ 175)**
- Applicant who was son of the deceased had nourished suspicion that his mother had killed his father by administering poison to him. (**2003 P.Cr.LJ 2000)**
- Petitioner who was husband of deceased, had sought registration of F.I.R. for the alleged brutal and horrible murder of his wife at the hands of Police Officials. (**2010 MLD 231)**
- Real brother of deceased woman alleged cause of her death to be due to poison administered to her by her husband and others, and not by biting of snake.(**2010 P.Cr.LJ 4)**
- Application by mother under S.561-A, Cr.P.C. for disinterment/exhumation of alleged dead body of her son with contention that said dead body was not of her son.(**2011 P.Cr.LJ 1287)**
- Exhumation on the dead body could be ordered on the request or information of even a stranger, purpose of which was to set at motion the criminal machinery into the commission of a cognizable offence in order to start investigation to unearth the true facts. Not necessary that such order might be passed only on the request of the legal heir of the deceased. (**2006**

YLR 2953. PLD 2016 Lahore 518, 2010 MLD 1681, 2014 P.Cr.LJ 219)

24.9. Principles

- Registration of First Information Report was not a sine qua non to launch a probe into cause of a suspicious death. Existence of some positive proof was not required as relevant provision of law was meant to attend situation where cause of death was inferred other than being natural. (**PLD 2017 Lahore 337, PLD 2016 Lahore 518)**
- The Magistrate was supposed to examine the information or application prudently. (**2017 P Cr.LJ 1341)**
- Question of exhumation, had to be decided only keeping in view the circumstances relevant to cl.(1) or (b), or (c) of subsection (1) of S.174, Cr.P.C.; there should either be an indication that the information related to the commission of suicide or regarding the killing of a person by another person; or by an animal; or by machinery; or by an accident. Other aspect relevant for disinterment, was the existence of the circumstances raising a reasonable suspicion; that some other persons, had committed an offence in relation to the death of the deceased, required to be disinterred. (**PLD 2016 Lahore 518)**
- For exhumation of the grave and disinterment of the dead body, mere suspicion was sufficient to ascertain the actual cause of death of the deceased to exonerate any slightest doubt in the minds of the relatives of the deceased, which was their legal right to know. Application for exhumation and disinterment, however, should have been examined judiciously and respect to the deceased and the dead body should have been maintained in view of the injunctions of Islam. (**2017 P.Cr.LJ 1341)**

24.10. Request by investigating officer without any evidence

Investigating Officer, had not collected any evidence to show the death of the deceased to be a murder by someone by administering poison to her. Application for exhumation declined. (**2018 MLD 460)**

24.11. Procedure to entertain application

District Magistrate while allowing exhumation of dead body for fresh post-mortem examination without hearing the accused or the prosecution, had acted in defiance of the principles of natural justice, as he, while acting judicially in holding the enquiry, should have observed the norms of judicial proceedings and issued a notice of hearing to the accused and the prosecution. (**PLD 1995 Lahore 433, 2007 P.Cr.LJ 1351)**

24.12. Where cause of death already ascertained

Inquest report and the corpse of the deceased was sent for post-mortem, after which the Woman Medical Officer had issued her report mentioning therein the cause of death in detail; thus, there was no need or justification for conducting a fresh post-mortem. (**2017 P.Cr.LJ 1341, 2017 P.Cr.LJ 1341).** Power to exhume dead body as envisaged by Ss.174 & 176, Cr.P.C., could not be exercised merely on the whims of a person. Inquest held by police in the earlier instance and the postmortem examination report left nothing to speculate about cause of death, as it stood unequivocally established (**2016 P.Cr.LJ 211)**

24.13:Where first examination unconcluded regarding cause of death

First examination remained unconcluded as cause of death remained unknown. Mystery as to cause of death of deceased had to resolve... Process of knowing cause of death could not be left in the middle, and the same must have been taken to its logical end (**2016 P.Cr.LJ 756)**

25. PRINCIPLE OF ABUNDANT CAUTION

- Said doctrine was a silver lining in jurisprudence to ensure safe administration of criminal justice and application thereof did not necessarily imply destruction of entire volume of evidence, if otherwise found sufficient to sustain the centrality of the charge. (**2020 SCMR 664)**
- If direct evidence remained in the field with a test of its being natural and confidence inspiring then requirement of independent corroboration was only a rule of abundant caution and not a mandatory rule to be applied inversely in each case. (**2020 P.Cr.LJ 96, 2019 P.Cr.LJ 305, 2018 YLR Note 272)**
- While adopting the principle of abundant caution that the Court should let off 100 guilty but should not convict one innocent person, conviction and sentence recorded in the judgment of the Trial Court, was set at naught. **(2012 P.Cr. L J 482)**
- Rule of independent corroboration is not an absolute and mandatory rule to be applied in each case, rather it is a rule of abundant caution, which is applied in the cases in which direct evidence is not of the standard which alone can be considered sufficient for conviction. (**2011 Y L R 2361, 2008 YLR 2878, PLD 2007 SC 223, 2007 YLR 2013)**
- Rule of corroboration is a rule of abundant caution and not a mandatory rule to be applied invariably in each case---If the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance. **(2011 YLR 1811)**
- Acquittal of one of the co-accused seemingly out of abundant caution, did not adversely reflect upon the case qua the other accused persons---Said co-accused was assigned a general role and in his case crime empties were

dispatched subsequent to his arrest, which would not qualify to the required standard of proof so as to view presence of intention beyond reasonable doubt (**2019 SCMR 1368).**

- Acquittal of accused seemingly out of abundant caution, particularly having regard to his mute presence does not offend any principle of law; (**2019 SCMR 1309).**
- Acquittal of co-accused, tried for being in the community of intention, out of abundant caution, does not adversely impact upon prosecution's case. Responsibility for the crime, unambiguously, revolves around the appellant alone; (**2019 SCMR 1362)**
- For the sake of abundant extraordinary caution in the administration of justice, the Court, before awarding punishment, in a case of Hadd, was required to make further inquiry *(Tazkiyah al-shuhood)* about the witnesses as prescribed in s.8(b) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, ---Shariat petition was dismissed accordingly. (**PLD 2017 FSC 63)**
- When one accused is acquitted as abundant caution, co-accused cannot claim benefit thereof. (**2014 YLR 899)**
- Courts in the absence of any corroboration were expected to follow the rule of abundant care and caution in the matter of sentence (**2011 S C M R 9 0 5)**
- Confession of accused though recorded in accordance with law, yet after it had been retracted than as a matter of abundant caution and prudence the same cannot be relied upon without corroboration through some other reliable and cogent evidence. (**2010 YLR 3191)**
- Court had to sift the grain from the chaff and only one circumstance creating doubt in the mind of prudent man was sufficient to acquit accused by way of an abundant caution- **2008 P Cr. L J 596**

- Rule of corroboration, applicability of---Rule of corroboration, being rule of abundant caution, may not be necessarily applied in each case, but in a case in which direct evidence is not confidence-inspiring or is of doubtful character, Court must follow the rule of corroboration for safe administration of justice. (**2 0 0 7 S C M R 1 4 3 8)**
- Court in case of interested and inimical witnesses should look for independent corroboration, but this rule is not an inflexible rule of criminal administration of justice, rather the rule of corroboration is a rule of abundant caution which is to be necessarily followed to ensure the correctness of the allegation and if the direct evidence was confidence-inspiring there would be no need of corroboration. (**2006 SCMR 1147)**

26. HABEAS CORPUS

26.1. Relevant Provisions

- Section 491 Cr.P.C, Article 199 of Constitution of Pakistan
- High Court Rules & Orders; Volume-V Chap-4 Part 1(F) Rules framed u/s 491(2) Cr.P.C

26.2. General Principle

- Writ of habeas corpus, which is of ancient origin, as distinguished from other prerogative writs, is one of right and not mere discretion. No law authorizes a private individual to keep a person who is sui juris in his private custody. Any form of restraint on liberty is actionable both under Art. 199 of the Constitution and S.491, Cr.P.C. (**PLD 2009 SC 507**)
- Proceedings under S.491, Cr. P. C. by their nature were summary in character, and the entire evidence was not recorded to decide the main controversy between the parties (**2014 MLD 670, PLD 1997 SC 852)**
- High Court had jurisdiction to entertain a constitutional petition as a petition under S.491, Cr.P.C. However, the Court was under judicial obligation to examine the facts of the case before issuing direction (**PLD 2014 Sindh 386)**
- Court while invoking its jurisdiction under S.491, Cr. P. C., must act strictly within the ambit of said section and any direction beyond its provisions, would be illegal, and without jurisdiction... No condition could be imposed in habeas corpus petition. No authority was conferred upon the Court to pass any conditional or restricting order under S.491, Cr.P.C. (**2015 P.Cr. L J 875, PLD 2014 Sindh 598)**
- While forming Art.199(1)(b)(c) of the Constitution, legislature did not confine powers and jurisdiction of High Court but clothed the High Court with an authority to issue appropriate directions to any person or authority,

if there was denial to any of the Fundamental Rights (**PLD 2015 Sindh 244)**

- Refusal to exercise jurisdiction may be permissible only if the alternate remedy is adequate and equally efficacious. (**PLD 2009 SC 507**)

26.3. Supreme Court to exercise jurisdiction

In appropriate cases where there was a real and imminent danger of physical, emotional or any other harm coming to a minor, the Supreme Court would not be shy of exercising powers in its parental jurisdiction coupled with its Constitutional mandate. **(2018 SCMR 427)**

26.4. Locus Standi

Insofar as writs of mandamus, certiorari and prohibition were concerned, it was necessary that the right sought to be enforced should ordinarily be a personal or individual right of the individual petitioner. Said rule had been relaxed or modified in case of writs of habeas corpus and quo warranto (**PLD 2019 Lahore 565, PLD 2018 Islamabad 127, 2017 CLC 1195, 2015 CLC 265)**

26.5. Res-judicata

Earlier decision in a habeas corpus matter could not be permitted to operate as res judicata with respect to any such subsequent petition. (**PLD 2006 SC 533**, **PLD 2019 Lahore 281).** Detention if illegal, held, would be a continuing wrong and petition for release from illegal detention can be filed at any moment. (**PLD 1970 SC 397**)

26.6. Territorial Jurisdiction

Powers conferred upon High Court to issue writ of habeas Corpus could only be exercised within territorial jurisdiction of court and not otherwise. (**2019 MLD 1722)**.

26.7. Intra Court appeal against order under article 199 of habeas corpus

High Court could issue a writ of habeas corpus and no appeal would lie against an order passed under Art. 199(b)(i) of the Constitution. Intra court appeal being not maintainable was dismissed in limine. (**PLD 2016 Lahore 514, 2015 P.Cr. LJ 1597**)

26.8. Conversion of application filed under S. 491, Cr.P.C. into petition under Ss. 497 & 498

Conversion of application filed under S. 491, Cr.P.C. into petition under Ss. 497 & 498, Cr.P.C. was well supported by delegation of powers given by High Court to Sessions Court as provided under R. 3, Part-F, Chapter 4, Volume V of High Court (Lahore) Rules and Orders (**2016 YLR 307)**

26.9. Minor's custody

- High Court while exercising of its powers under S.491, Cr.P.C. has to exercise parental jurisdiction and is not precluded in any circumstance from giving due consideration to the welfare of the minors and to ensure that no harm or damage comes to them physically or emotionally. (**2019 YLR 2244)**
- High Court may, however, only regulate the interim custody of the children leaving the matter of final custody to be determined by the Guardian Court. (**PLD 2012 SC 758**, **2019 P.Cr.LJ 436, 2019 P.Cr.LJ 890, 2018 P.Cr.LJ 1122).** However, the habeas petition shall not preclude from asserting rights before a Guardian Court in accordance with law **(2019 SCMR 116).**
- Jurisdiction of a High Court under section 491, Cr.P.C. for recovery of minors, is to be exercised, sparingly and such exercise may be undertaken only in exceptional and extraordinary cases of real urgency. (**PLD 2012 SC 758**, **2019 MLD 1772)**.

- In the case of women and children the stranger has no right to file application under section 491, Cr.P.C. (**2016 P.Cr.LJ 1086)**
- Powers vested under S. 491, Cr.P.C. were co-extensive to that of Art. 199 of the Constitution regarding illegal custody of children. (**2014 P.Cr.LJ 907)**
- Habeas corpus petition was allowed by the High Court despite the existence of guardianship certificate in favour of paternal grandfather. **(2015 SCMR 731)**
- Pendency of the guardianship matter of minor before Family Court would not affect proceedings pending under 5.491, Cr.P.C. (**1998 SCMR 289)** Custody of minor, availability of another legal remedy is no bar. **(PLD 1997 SC 852)**

26.10. Army Officer

Since it was known that detenue (retired Army Officer) was in custody of military hence his production order could not be made (**PLD 2019 Islamabad 273).**

26.11. Police Custody

- Neither the detenu was required in any case, nor any investigation was pending against him. Detention of detenu was not shown in the police record. High Court, in circumstances, could not give the direction in the habeas corpus petition to take the detenu into custody after completing the formalities. **(1995 SCMR 1283)**
- Case under substantive law had been registered against detenu and challan had been presented against him--Appropriate course to follow for petitioner/detenu would be to resort to remedies. **(1998 SCMR 335)**

26.12. Family dispute

- High Court observed that it had become trend in the society, rather it had shaped into well thought practice that girls come out of their houses for couple of hours on any pretext; enter into marriage without the consent of their parents; file complaint alleging harassment; return back to their parental home and thereafter, the entire exercise was followed by petition under S.491, Cr.P.C. before the High Court which was managed with a view to use High Court as a stage of *"Rukhsati"*---Such indecent activity was nothing less than menace which required to be plugged as far as practicable as the same was not only destroying character of youth but also stigmatizing and diminishing moral values---No evidence had been cited by the petitioner for the purpose of proceedings under S.491, Cr.P.C. to lend support of his assertion about immediate and forcible abduction of his wife---Girl who was major and allegedly abducted but none of the locality got glimpse of the incident---Petitioner had alleged to have been informed about forcible abduction by his wife telephonically but no cellular or landline number had been given to establish the same---Wife of the petitioner was, admittedly, with her parents---Petitioner could resort Family Court for the restitution of conjugal rights---Petitioner had not made out a case for handing over custody of alleged abductee---High Court declined to exercise jurisdiction under S.491, Cr.P.C. to effect "Rukhsati"---Habeas Corpus petition was dismissed, in circumstances. **(2018 MLD 1386)**
- Matter in issue was dispute between family of alleged detenue. Petition was not maintainable under Art. 199 of the Constitution. (**2015 MLD 679)**
- Inappropriate and undesirable, if not illegal for the High Court to have determined the validity of marriage under S.491, Cr.P.C.
  (PLD 2004 SC 219)

- Sessions Judges have ample power to issue orders of production beyond limits if the detune was removed from their district. **(2011 PSC Crl (SC PK) 100)**

27. DISPUTE CONCERNING LAND

27.1. Relevant provisions

- Section 145 of Cr. P.C deals with procedure of inquiry and scope of powers of Magistrate.
- Section 146 of Cr. P.C provides power of Magistrate to attach subject of dispute.

27.2. Principles

2013 SCMR 357:-

- Magistrate has to take cognizance on an application/complaint by a party/or report by the police on his satisfaction of imminent danger of breach of peace, and if there is sufficient material, he may pass preliminary orders in terms of section 145(4), Cr.P.C.
- If the material is not sufficient requiring him to pass an interim order, he may hold inquiry as provided under section 145, Cr.P.C. by examining the parties and pass final order restoring possession to a party which was dispossessed two months prior to its wrongful dispossession under section 145(6), Cr.P.C.
- If after inquiry, the material brought on record is not sufficient to record a finding over possession, he may order attachment of the property in terms of section 146(1), Cr.P.C.
- The section 145, Cr.P.C. does not curtail the powers of the Magistrate to pass final order under section 145(6), Cr.P.C. after holding inquiry, in case of his failure to pass preliminary order under section 145(4), Cr.P.C. within two months.
- The only restriction imposed is that the party to whom possession is restored must have been dispossessed within two months of the complaint.

- The Magistrate while conducting inquiry is not competent to decide either title of the property or its right to possession. Section 145, Cr.P.C. only empowers the Magistrate to make enquiry to regulate possession of the property in dispute for the time being to avert apprehension of breach of peace.

27.3. Object etc of proceedings

PLD 2007 SC 189:-

- The prime object of the proceedings under section 145, Cr.P.C. is to prevent a breach of peace and to maintain status quo till the controversy is decided by the civil Court of competent jurisdiction.
- In case the dispossession of property is not coupled with apprehension of breach of peace then the parties concerned should approach the civil Court for the redressal of their grievances.
- There is no cavil with the proposition that the prime object of the proceedings under section 145, Cr.P.C. is to prevent a breach of peace and to maintain status quo till the controversy is decided by the civil Court of competent jurisdiction.
- The purpose of proceedings under section 145, Cr.P.C. is to meet an emergent situation in order to maintain peace and further to enable the parties to set the controversy at naught through civil court qua the title or claim of the property in dispute.

  It is mandatory requirement of section 145, Cr.P.C. that there must not only a dispute but it is essential that a dispute is likely to cause breach of peace (**PLD 1985 SC 294**), and in case the dispossession of property is not coupled with apprehension of breach of peace then the parties concerned should approach the civil court for the redressal of their grievances.

27.4. Question of title is not to be decided by Magistrate but by civil Court

Question of entitlement as such is not a matter of consideration before a Magistrate exercising jurisdiction under section 145, Cr.P.C. Such question is always decided by a civil Court while the Criminal Court is only supposed to determine the factum of actual physical possession on the crucial dates. **(2004 SCMR 667)**

28. JUSTICE OF THE PEACE

28.1. Relevant provisions

- Section 22-A of Cr.P.C provides powers of Justice of the Peace.
- Section 22-B of Cr.P.C provides duties of Justice of the Peace.
- Section 25 of Cr.P.C deals with the ex-officio Justice of the Peace.
  Section redrafted pursuant to case reported as PLD 2002 Lahore 619.

28.2. Nature, Object and Scope

- The only jurisdiction which could be exercised by an Ex-officio Justice of the Peace under section 22-A (6), Cr.P.C. is to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence. If it did, then to direct the concerned S.H.O. to record an F.I.R. without going into the veracity of the information in question. **(PLD 2007 SC 539, 2017 YLR 1548 DB Lahore)**
- The Ex-Officio Justice of Peace under no provision of law can direct or even observe with regard to the nature of the offence, the commission of the offence or addition or deletion of relevant provisions of Pakistan Penal Code as the same exclusively falls within the jurisdiction of Investigating Officer or of the trial Court at the time of framing of the charge. **(2011 YLR 131 Lahore)**
- The proceedings before an ex-officio Justice of the Peace under section 22-A (6), Cr.P.C. are essentially summary in character. He is not required to treat such proceedings as regular lis and no elaborate orders having semblance of a judgment are required to be passed. **(PLD 2005 Lahore 470)**
  It does not fall within the domain of ex-officio Justice of the peace to enter into arena of civil dispute between the private parties over the landed property involving intricate questions of fact relating to title and possession etc., over the subject property and his powers and duties, having been

specified in section 22-A and 22-B, Cr. P. C., are limited within the scope of the said provisions of law. **(2017 P.Cr.LJ 549 (DB)**

28.3. No direction regarding the manner of investigation or about the merits of the case

- It is the domain of the Investigating Officer to collect the evidence in a criminal case under section 156, 157 Cr.P.C and the Courts cannot interfere with it by suggesting the mode, means procedure or the result of such investigation.
- A Justice of the Peace can direct the police to do the needful in accordance with law but not to suggest the procedure or give direction, as mentioned above, to do a certain act. Any such direction given, during the investigation of a criminal case, is a plain departure from the settled provisions of law. **(PLJ 2010 Lahore 465)**

  Functions of Justice of peace do not include touching the merits of the case or giving certain directions, which are beyond his scope of powers and jurisdiction. **(2013 P.Cr.LJ 70)**

  Ex-officio Justice of Peace had rightly directed the District Police Officer to proceed with the matter in accordance with law as provided under S.154, Cr.P.C., which, though, meant for Incharge of the Police Station, was not expected to be invoked by the local police in view of the fact that the complaint was against SHO and other police officials. (**2019 M L D 7)**

28.4. Addition or deletion of offence

- It is the prerogative of trial Court at the time of framing of charge only that it could add or delete any offence, if it was made out from the facts. Additional Sessions Judge having powers of Justice of the Peace, had no authority to direct the police to add or delete any offence. **(2006 YLR 2772, 2011 YLR 131 Lahore)**

- The Justice of the Peace cannot direct or even observe with regard to the nature of the offence, commission of the offence or addition or deletion of relevant sections as the same exclusively falls within the jurisdiction of either Investigation Officer or of the trial Court at the time of framing charge. **(2007 P.Cr.LJ 124,PLD 2006 Lahore 460, PLD 2005 Lahore 470)**

28.5. Principles

PLD 2016 SC 581:-

- The functions of Justice of the Peace described in clauses (i), (ii) and (iii) of subsection 6 of Section 22-A are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind; and every *lis* before him demands discretion and judgment and therefore his functions so performed cannot be termed as executive, administerial or ministerial on any account.
- Such functions being complementary to those of the police do not amount to interference in the investigative domain of the latter and thus cannot be held to be violative of the judgments of Supreme Court.
- The powers of justice of the peace are complementary to the functions of the police.

28.6. Remedies against Police in case of non-compliance of order of Justice of the Peace

PLD 2005 Lahore 470:

There are, threefold remedies available against non-compliance of directions issued by an ex-officio Justice of the Peace under section 22-A (6), Cr.P.C.

- Firstly, upon a complaint received by him regarding non-compliance of his earlier direction an ex-officio Justice of n the Peace can issue a direction to the relevant police authority to register a criminal case against the delinquent police officer under Article 155(c) of the Police Order; 2002.

- Secondly, he can issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002 or under any other law relevant to such misconduct.
- Thirdly, the complaining person can approach this Court under Article 199 of the Constitution seeking issuance of an appropriate writ directing the defaulting police officer to do what the law requires him to do".

28.7. Proceedings u/s 476 of Cr.P.C during proceedings before Ex-Officio Justice of Peace

Section 476, Cr.P.C. is itself clear that it covers only those proceedings which are carried out in any Court and Ex-Officio Justice of Peace is not a court under this Section and any statement, report submitted before the Ex-Officio Justice of Peace cannot be considered that they will submit before the Court under the Criminal Procedure Code, 1898, hence when Ex-Officio Justice of Peace is not a court no proceedings under section 476, Cr.P.C. could be carried out if a party feels that any misinformation has been submitted before Ex-Officio Justice of Peace in the proceedings under Sections 22-A, 22-B, Cr.P.C. (**2020 MLD 1)**

28.8. Direction to other agencies for registration of case can be made (PLD 2013 Islamabad 26, 1981 SCMR 1101, 2008 YLR 1341, 2004 YLR 56, PLD 1999 Lahore 109.

29. SUPERDARI

29.1. Relevant provisions

- Section 516-A of Cr. P.C deals with disposal of case property on interim custody.
- Section 517 of Cr. P.C deals with disposal of case property at the time of final disposal.
- Section 523 of Cr. P.C deals with Superdari of property seized by police and reported to Magistrate
- Rules and Orders of the Lahore High Court, Volume III, Part E -- Custody of property sent in by the Police

29.2. Nature, object and scope of superdari and powers of Courts

- Main object of 'Superdari' is to save the property from further damage. **(2009 P.Cr.LJ.637)**
- When passing a superdari order, the Court should be satisfied that property about which superdari was claimed was case property in the circumstances under which it was seized and that applicant was entitled to its custody. **(NLR 1995 Cr.L.J. 274)**
- Granting of superdari of a property to a person pending an inquiry or a trial does not create any vested right in his favour qua that property. Superdari is only a temporary arrangement and the Court granting the superdari never loses its overall control of the property concerned. Superdar acts only as a trustee and, therefore, he can never claim that the court concerned cannot retake the property in question from him at any time. **(2000 YLR 3040)**
- Order under section 516-A, Cr.P.C is of interlocutory nature resorted to for the purpose of temporary arrangement so that the case property is saved from decay and is handed over to the person *ex facie* found entitled to its possession till final order is made under Sec. 517 Cr.P.C. **(2004 P.Cr.LJ 1)**

- Criminal Courts are not competent to determine question of title or ownership of the property which falls within the exclusive domain of the civil court of plenary jurisdiction. **(2004 P.Cr.LJ1)**
- There is no bar on filing successive application for grant of superdari. Earlier application of Superdari of vehicle which was rejected, was not a hindrance, because by then the petitioner was not in possession of the documents which he had supplied in the present application. **(2008 P.Cr.LJ1672)**

29.3. Issuance of Notice To State and to Rival Claimant

Whenever an order under S. 516-A Cr.P.C is passed for custody of property, a notice is not only required to be issued to prosecution but if ownership of property is established then a notice is also required to be issued to the owner of the property in appropriate cases and after hearing them property can be handed over to the person from whom it was secured or to its owner. **(PLD 2010 SC 623)**

29.4. Release of Property when accused is acquitted by Supreme Court

Where Supreme Court has not specifically given an order with regard to seized property but when appeal of petitioner has been allowed in toto, he is acquitted in unconditional terms and his conviction and sentence are set-aside. It logically implies that he is entitled to all reliefs consequent to his acquittal, including release of his property seized. Unless appellate Court exempts a particular relief in express terms, order of acquittal should entail all consequential effects thereof. A separate order for each and every consequence of acquittal is not necessary. The trial Court, acting on basis of order of acquittal recorded by Honorable Supreme Court could have released the property. **(1997 P.Cr.LJ 500)**

29.5. Use of vehicle for coming at or going away from the scene of occurrence

- Merely because the vehicle had allegedly been used by the accused person for travelling to the airport could not have been reason to treat the same as case property and thus, the same could not have been taken into custody by the investigating agency. **(2001 SCMR 1471)**
- If a vehicle is used by an offender for going to or running from a place where the offence is committed by him the vehicle so used by him; cannot be said to have been used for the commission of that offence and the vehicle cannot be taken into possession by the police as case property. (**1971 P.Cr.LJ 19**, **1986 P.Cr.LJ 945**, **PLD 1951 Baghdadul Jadeed 57**, **1994 P.Cr.LJ 1935**).
- The law is quite settled by now that a vehicle used only for coming to and going away from the place of occurrence cannot be treated as case-property. **(1999 MLD 1676, PLD 2006 Lahore 167, 2007 YLR 1256)**

29.6. Vehicle involved in accident or in rash and negligent driving

- Where death is caused by rash and negligent driving, the vehicle cannot be said to have been used by the accused for the commission of an offence. None of the owners of such vehicles had done anything to advance commission of an offence and they could not be held liable for what their drivers had done. Court was thus bound to release the vehicles to their respective owners for property custody. (**1995 P.Cr.LJ608, 1995 P.Cr.LJ608)**

29.7. Review Of Order

- The order of superdari is an interlocutory order, which could be varied by the trial Court or the revisional Court, if the circumstances so warranted. (**PLJ 2010 Lahore 9, 2005 YLR 3297)**

Section 516-A, Cr.P.C. cannot be interpreted in a manner which deprives the Court concerned of the necessary jurisdiction to reconsider the matter in the light of some fresh material coming before it so as to protect and advance the interest of justice. Section 516-A Cr.P.C. does not restrict the Magistrate to pass an order on a one-time basis while shutting any possibility of a reconsideration of the matter when a better claim to the property had come forward with a formal application in such regard. **(2000 YLR 3040).**

30. CHARGE

30.1. Definition

Charge is defined in sec 4 (c) of the Code as "Charge includes any head of charge when the charge contains more than one heads". But it is not a comprehensive definition. So charge may be defined as: "A formal accusation of an offense as a preliminary step to prosecution[4]. Charge is a precise formulation of the specific accusation made against a person. (**1984 P Cr. L J 402)** A charge-sheet in criminal administration of justice is the gist of whole case of prosecution which requires to show that which of the accused was implicated by which of the evidence collected against him (**2008 MLD 1709)**

30.2. Relevant Provisions

- Chapter XIX of Cr.PC. (Secs 221 to 240) contains general rules regarding framing of charge. Moreover 242 & 265-D of the Code are also related to charge
- Volume-III Chapter 1-D, Paragraphs No.1 and 2 of High Court Rules and Orders

30.3. Important Rules Regarding Framing of Charge

30.3.1. Criminal Trial commences from the framing of charge

Commencement of trial means the day when charge is framed under Chapter XIX Cr.P.C (**2015 P.Cr.LJ 1651)**. Charge is very start of trial (**2000 P.Cr.LJ 367 DB)**.

30.3.2. Object of framing of charge

(2008 YLR 717, 2006 YLR 359 DB, 2018 MLD 259 DB)

[4] Black's law dictionary, 11th edition Page 291

Object of framing of charge is to give notice to the accused about the material against him. The object and rational for laying down an exhaustive and elaborate procedure for framing of charge is that the accused should know the exact nature of the accusations made against him so that he may not be misled if any vagueness in the said accusations. Charge is always expected to contain all material particulars including time, place and specific name of the alleged offence, the manner in which the offence is committed (**2018 MLD 259 DB)**.

30.3.3. Evidence is produced by the prosecution to prove the charge

The settled principles of law are to the effect that whenever accused is charged for having committed an offence, a formal charge necessarily is to be framed against him, then he is to be afforded with an opportunity to explain the same by means of recording his plea in the words which may be used by him, and then in case of a plea of not guilty, evidence is necessarily to be recorded in support of the charge (**2007 P.Cr.LJ 1912)**

30.3.4. Material to be considered for framing of charge

(2012 P.Cr.LJ 91, 2004 MLD 1762)

As envisaged under section 265-D of the Criminal Procedure Code 1898 while framing the charge, trial court is bound to consider not only the F.I.R. and report under section 173, Cr.P.C. but all other documents and material filed by the prosecution, which would include the recovery memos, the site plans, the statements of witnesses under section 161, Cr.P.C. and 164, Cr.P.C., etc. to rule out any prejudice to the accused and to ensure just and fair trial on the basis of material placed by the prosecution before the Court. (**2012 P.Cr.LJ 91 DB)**.

30.3.5. Particulars of the charge[5]

(2019 P.Cr.LJ 1610, 2006 YLR 359 DB, 2000 P.Cr. LJ 367)

Section 222, Cr.P.C. provides that charge shall contain such particulars as to time and place of alleged offence and person (if any) against whom, or the thing (if any) in respect of which it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged (**2019 P.Cr.LJ 1610)**. Presence of accused at the time of framing of charge is mandatory. Charge cannot be framed and read out in the absence of accused. **(PLD 1986 Karachi 417).** Particulars of offence and charge framed against the accused must be explained him clearly so that he knew what is the charge against him which he has to face in trial to defend himself **(2004 MLD 1762).** The Magistrate must record the plea of the accused at the commencement of trial. Obtaining of signature and thumb impression of the accused on the plea is not a legal requirement. **(1992 MLD 2455).** Without framing of charge, the recording of evidence and the other proceedings would be nullity in the eye of law. **(2008 P.Cr.LJ 247).**

Word "charge" under section 4(c) of the Code of Criminal Procedure "includes any head of charge" the purpose of which is to tell the accused precisely and concisely as possible about the matter which the prosecution intends to prove against him in order to afford him an opportunity to defend himself. (**2015 P Cr. L J 547)**

30.3.6. No effect of defect in charge if accused not prejudiced[6]

(PLD 2006 SC 153, 2019 SCMR 542)

But trial will be vitiated if error prejudiced accused **(2000 P.Cr.LJ 367, 2006 YLR 359, 1994 MLD 1493)**

1. An omission or defect in charge which does not mislead or prejudice the right of the accused could not be regarded as material and made the basis to vitiate a trial on the ground of error or

[5] . **(**Sections 221 to 224 CrPC)
[6] . **(**Sec 225, AIR 1954 SC 657 relied in

omission in framing charge, it does not even make a case of remand (**2019 SCMR 542)**.

1. By now it is well-settled that if any person is misled in preparing the defence by absence of necessary particulars, as stated above, or there is a serious defect in the charge, retrial is the remedy (**2000 P.Cr.LJ 367)**.

30.3.7. Amendment/alteration of charge can be made at any time before pronouncement of judgment[7]

The learned trial Court is competent to amend the charge if circumstances so justify subject to one condition that it should have been done prior to the pronouncement of judgment in order to eliminate the possibility of any prejudice to the accused person (**2011 SCMR 1145)**

30.3.8. After amendment/alteration of charge court, on the request of parties, to recall witnesses already recorded (Sec 231 CrPC)

It is true that under section 231, Cr.P.C. the Court is bound to allow the prosecution and the accused to recall and examine any witness who may have been already examined but then the party has to make an application for the calling of any witness and their examination. Where the party does not do so, it cannot be subsequently complained that the examination contemplated by the section was not allowed (**1968 P.Cr.LJ 1901** relied in **2006 SCMR 56)**.

30.3.9. Generally for every distinct offence, there should be a separate charge and trial (Sec 233 Cr.P.C)

[7]. (Sec 227, 2011 SCMR 1145, 2011 YLR 995)

30.3.10. Different charges can be tried jointly in accordance with the provision of sec 234, 235, 236 and 239 CrPC[8]

Under section 233 of the Cr.P.C. for every distinct offence, there shall be a separate charge and every such charge shall be tried separately except those mentioned in sections 234, 235, 236 and 239 (**1990 S C M R 1360)**.

- It is not obligatory that all the charges should be specified. (**1990 SCMR 1360)**.
- There must be one continuous thread of a common purpose running through the acts to support a joinder of charges in respect thereof, and `transaction' means a group of facts so connected together as to involve certain ideas namely, unity, continuity and connection (**1990 SCMR 1360)**.

30.3.11. Accused persons may be joined in one trial as provided by Sec. 239

The petitioners having the common grievance against the deceased while acting in furtherance of their common intention, committed their murder one after the other at two different places in the same sequence by using the same weapons and thus the commonality of acts committed by the accused would form part of the same transaction and the joint trial would not be suffering from any - legal defect and consequently, the disposal of two separate cases through common judgment at the joint trial was not illegal. **(2003 SCMR 799)** There is no embargo in convicting and sentencing the accused for an offence other than that he was charged with, as provided under S.237, Cr.P.C. (**2006 SCMR 1170, 1991 SCMR 1268)**

[8] . (P L D 2003 Supreme Court 891, 1990 S C M R 1360, 2003 S C M R 799)

30.4. Admission of Charge

- Under Section 265-E, Cr.P.C. the Trial Court in a session case, had the discretion to record the plea of the accused and if he pleaded guilty to the charge, it may convict him in its discretion---Under S. 265-F, Cr.P.C., however, if the Trial Court did not convict the accused on his plea of guilt, it shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution. (**2017 SCMR 713)**
- Requirement of show-cause notice under S.243, Cr.P.C. was mandatory to avoid involuntary admission by the accused. **2008 P Cr. LJ 256**
- Denial of charge by the accused---Subsequent admission of guilt by the accused--Discretion of Court---Accused Was charged with the offence and the accused pleaded not guilty and claimed the trial---Accused before recording of prosecution evidence, volunteered that he was prepared to admit his guilt--Once again the Court asked question to the accused whether he committed the offence, and the accused admitted his guilt---Court on the basis of said admission, recorded conviction and sentence of the accused---Validity---Once the charge was framed and the accused pleaded not guilty thereafter the trig: would commence in its normal manner and admission of guilt recorded subsequent to plea of not guilty-at the time of framing of the charge would leave no discretion with the Court, but to record evidence (2001 MLD 1145)
- Accused not stating in clear terms that he admitted that he had committed the offence with which he was charged--Conviction, held, could not be recorded on such admission. (1985 MLD 1396)

31. SUMMONING OF ACCUSED

31.1. Relevant Provisions

Secs 190, 193 & 204, 351 of Cr. P.C

31.2. Magistrate not bound by police report under S. 173

Cognizance taken by Magistrate on basis of negative report against person (viz., where person was shown in column 2 of police challan). Case, nevertheless, falls under clause (b) and not clause (c) of S. 190(1)-Such accused cannot object to being tried by such Magistrate. (**PLD 1967 Lahore 176)**

31.2.1. Cognizance of offence taken by Magistrate on basis of negative report of police under S. 173-Cognizance under clause (b) and, not clause (c) of S. 190 (1)-Provision of S. 191 not attracted. (**1969 SCMR 271)**

31.2.2. Where cognizance of a case was taken by Court on basis of a negative report, under S.173, Cr.P.C., such cognizance, would be considered to have been taken on police report and not upon Court's own knowledge or suspicion--(**1989 P Cr. L J 903)**

31.3. Court shall give considerations to submission of Prosecutor

The Prosecutor shall submit, in writing, to the Magistrate or the Court, the result of his assessment as to the available evidence and applicability of offences against all or any of the accused as per facts and circumstances of the case and the Magistrate or the Court shall give due consideration to such submission. **(Section 9(7) of the Criminal Prosecution Service Act, 2006)**

31.4. S. 204---Summoning of accused placed in column No. 2 of challan

Court taking cognizance of offence on a police report, would take cognizance of whole case and not merely of a particular person charged in the report as an offender---Case against accused petitioners had been sent to the Court

and their names were placed in column No.2 of challan-Trial Court could summon said accused to face trial and there was no legal requirement that at the first in stance evidence should be recorded to ascertain as to whether prima facie case was made out against them (**2004 YLR 1828)**

31.5. Summoning the accused, determination of guilt or innocence

On the criteria of evaluating the evidence as to whether prosecution had been able to prove its case beyond reasonable doubt or not or whether accused ought to be acquitted by giving benefit of such doubt, which was beyond the scope of proceedings at the stage of issuance of process after making complaint as visualized under Ss. 202 to 204, Cr.P.C. (**2019 P Cr. L J 665 Lahore)**

31.5.1. Private complaint---'Material' that the Court could examine

Scope---Police file and police report---Report of Joint Investigation Team (JIT)---Section 202, Cr.P.C. bestowed vast powers upon the Court to ascertain the truth or falsehood of the complaint and in such respect it could direct any inquiry or investigation---Court was not bound by only the evidence of the complainant, and it could examine the police file, report under S. 173, Cr.P.C. or a JIT report, prepared in a state case (FIR) registered about the same occurrence---Court could also examine the members of JIT, investigating officer of the case or any other witness recorded during investigation of said case so that complete picture of the occurrence supported by relevant material was before him while passing an order under S. 204, Cr.P.C. (for summoning the accused). (**2019 P Cr. L J 665 Lahore)**

31.5.2. Material to be examined by the Court

Oral depositions, affidavits, site inspection notes, electronic and print media reports etc. collected or recorded by an Inquiry Commission in state case (FIR) registered about the same occurrence---During hearing of the

complaint case the court may inspect such material and on its own motion or at the request of the complainant. (**2019 P Cr. L J 665 Lahore)**

31.6. Summoning of accused placed in column No.2 of the challan

Trial Court can summon the accused placed in column No.2 of the challan to face the trial and there is no legal bar whatsoever that at the first in stance evidence should be recorded to ascertain as to whether prima facie case is made out against them. (**2014 P.Cr.LJ 84)**

31.6.1. Recording of some evidence before summoning the accused , whose name appeared in column No.2

Police submitted challan after placing the name of accused in column No.2 of FIR---Application of prosecution filed under S.193, Cr.P.C. for joining the petitioners as accused to face trial was accepted by the Trial Court--- Petitioners had filed revision petition against said order on the ground that Trial Court could not associate the petitioners as accused in the trial without giving notice and without recording evidence of complainant and eye-witnesses--- Revision dismissed. (**2017 MLD 1008 Karachi)**

31.7. Summoning of accused not placed in column No.2 of the challan

Not necessary that for the purpose of joining a person as accused , his name must appear in column No.2 of the charge sheet---Omission, deliberate or in advertent, on the part of the investigating officer to mention in his report name of a person concerned in the commission of an offence, cannot have the effect of depriving the Court of its power to join him as accused in the trial---Court would be free to apply its min d and take decision in dependently, of course, on the basis of material available before it. (**2008 PLD 280 Karachi)**

31.8. Summoning or re-investigation after conclusion of trial

Ss. 1, 351 & 156---Reinvestigation ordered by Court---Code of Criminal Procedure does not contain any provision to authorize the Trial Court to

order for reinvestigation or call a person to join in the proceedings after conclusion of the trial of accused, or to direct the prosecution to conduct investigation afresh against person who appears from the evidence to be connected with the offence. (**2001 P.Cr.LJ 660 Peshawar)**

31.9. Power to order arrest of accused not present before Court, Section 351:

Scope--- Section 351, Cr.P.C., though empowered a Court to get any person present in Court arrested without issuance of warrants but it did not mean that there was bar on the Courts to summon any person who was not before it---When the material before the Court was sufficient to connect the accused with the commission of the crime cognizance of which had already been taken, then even if such accused was not present in Court, he could be ordered to be arrested; (**2015 P.Cr.LJ 1 Special-Court-Islamabad)**

32. SUPPLY OF COPIES (Disclosure)

32.1. Relevant Provisions

- Section 241-A of Cr.P.C deals with supply of copies in Magisterial trial
- Section 265-C of Cr.P.C deals with supply of copies in Sessions trial
- High Court (Lahore) Rules and Orders Vol.III, Rule 4 of Chap. 12.

32.2. Object of supply of copies

1984 P Cr. L J 402:-

- The provisions of section 241-A, Cr. P. C. which requires that the copies shall be supplied, is an essential stage preparatory to the trial.
- The insertion of this provision is obviously meant to enable the accused to know and understand the prosecution case against him so that when he is examined in Court, he can take a plea upon; full knowledge and understanding of the prosecution case.

  The interval of 7 days is, therefore, significant because it is meant to give the accused sufficient time to study and understand the allegations against him and e to enable the accused to prepare the defence.

2007 SCMR 1631:

The very purpose of section 265-C, Cr.P.C. requiring obligatory supply of documents mentioned therein, well in advance, apparently with no purpose other than to enable the accused to laps the prosecution case and meet the charges, if framed, would lapse into unconscionable consequences.

(PLD 2003 LAHORE 290)

- Words "all the witnesses in subsection (1) of section 265-C did not mean prosecution witnesses and copies of statements of witnesses supporting the defence could also be ordered to be delivered to the accused.
- It is thus clear that the word "witnesses" appearing in section 265-C(1)(c) of the Cr.P.C. has not been used to convey restricted meanings. The term

"person" covers all witnesses who fall in the category of Articles 3 and 71 of the Qanun-eShahadat, 1984.

- It is the category of those persons who being acquainted with the circumstances of a case are to be termed as witnesses.

  It means clearly that the statements recorded under section 161 of the Cr.P.C. are not privileged even if recorded in the body of the case diaries. Those are public documents within the meaning of Article 49 of the Qanun-e-Shahadat, 1984 and are per se relevant under its Article 49.

32.3. Entitlement of accused to get the copies of statements

P L D 1996 Lahore 277:-

- The statements of the witnesses examined by the police officer during the course of investigation and recorded in the Zimnis in detail or in gist form are considered to be the statements recorded under section 161, Cr.P.C.
- Those statements may be in verbatim form or in the shape of question and answers.
- Even statements in the boiled form recorded in the body of the diary may be treated as statement under section 161(3), Cr.P.C. the accused has the right to demand the copies of those statements subject to the exceptions provided under section 162, Cr.P.C.

32.4. Supply of copies of evidence secured through modern devices (2016 Y L R 62)

- Section 265-C Cr.P.C is not confined to the supply of statements of witnesses alone but includes FIR, police report, the inspection note recorded by I.O and the note recorded by I.O on the recoveries made.
- The report submitted under Section 173 Cr.P.C refers to one red colour USB and four compact discs with description of part one and part two along with details of data which means that the prosecution has gathered and stored substantial evidence in support of their case.

- Much reliance has been made on the evidentiary value of CD and USB in the police report and prosecution rests on the recorded audio and video text of CD and USB also, therefore, in our view the copies of CD and USB should be supplied to the applicant/accused which is his statutory right so that he may know the prosecution case before he is sent up to stand for trial.
  (2016 M L D 25)
- Application of the petitioner regarding provision of contents of the memory card is well within the domain of law and it is covered by section 265-C Cr.P.C, the copy of which has to be supplied to the accused prior to the commencement of the trial, which is legal pre-requisite for the safe administration of criminal justice.
- The intent of the legislation is to provide an opportunity to the accused to defend himself. This aspect has been further broadened and has attained constitutional right after advent of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

32.5. Omission to supply copies- effects

It is a statutory right of an accused under Section 265-C(c) to be provided the statements of all witnesses recorded under Sections 161 and 164, Cr.P.C. and omission to comply with the said provisions of law, would vitiate the whole trial and that being so because the accused without having recourse to the record, would not be in a position to set up his defence. **(2017 Y L R 1999)**

32.6. Copies of statement recorded u/s 161 Cr. P.C.

If a private complaint is lodged alongside registration of FIR; accused can claim copies of such statement and it should be provided to the accused, if he requires. (**2005 YLR 933 Lahore)**

33. NON-PRODUCTION OF UNDER TRIAL PRISONERS & PROSECUTION WITNESSES

33.1. Principles

PLD 1995 Lahore 48:-

The following steps by the High Court were ordered to be immediately taken as remedial measures in respect of the non-production of under-trial prisoners, non-production of prosecution witnesses and Malkhanas:--

i. Non-production of under-trial prisoners: (PLD 1995 Lahore 48)

The Chief Secretary shall, with the assistance of the Home Secretary and the Inspector-General of Police, take stock of the available resources in the matter and the production of the under-trial prisoners before the concerned Courts of Law and shall then take steps to provide the necessary resources to the concerned quarters for the purpose. This would be a long term solution of the problem but as short term measures, ad hoc arrangements shall be made on emergent basis which might involve temporary hiring of vehicles and- providing man-power to each district police for escorting the accused persons to and from the Courts of Law. The possibility of requisitioning necessary man-power from the Punjab Constabulary could be explored.

ii. Non production of the prosecution witnesses: (PLD 1995 Lahore 48)

The District Superintendent of Police and through them, the S.H.Os. and the Prosecutors shall be directed to discard apathy in this connection. The S.H.Os shall be held personally responsible for the non-production of the prosecution witnesses which exercise shall be monitored by the Superintendents of Police who shall also have to face consequences if they cannot ensure efficiency in this connection on the part of their respective S.H.Os.

The trial Courts are directed that if on any date of hearing, the summonses or the warrants issued by them for the appearance of the witnesses remain unanswered, then they shall summon the concerned S.H.Os.; record their statements on Oath; identify the reasons for such a conduct and then take penal action against the delinquent official and if need be, make a reference to High Court for appropriate coercive and penal action against the officials responsible for malfeasance or misfeasance.

iii. Precautions before closing prosecution evidence

PLD 2011 Lahore 551

Before parting with the order, it is deemed appropriate to give guidelines to the trial Courts, through Member Inspection Team of this Court that if the PWs, do not appear and process serving agency fails to produce them then before closing prosecution evidence

a. The Presiding Officer shall verify if the summons/notices or the warrants of the prosecution witnesses are in fact issued and dispatched by Ahlmad of the Court.
b. If the government officials, cited as P.Ws. do not appear before the court, after accepting service through summons/notices, the Presiding Officer may adopt coercive measures such as attachment of salary and also proceed to attach property of the private P.Ws. under sections 87/88, Cr.P.C. after recording the statement of Process Server.
c. In case service upon the PWs. is not effected by the subordinate staff, then the summons/notices or warrants of arrest of P.Ws. may be entrusted to the officers of the rank of A.S.-I. or S.-I. of the Police Station concerned.
d. If the Process Server is negligent in effecting service upon P.Ws., Presiding Officer may proceed against him under the provisions of Police Order, 2002 and also refer the matter to the District Police Officer concerned for

initiating departmental proceedings under Efficiency and Discipline Rules and

e. The Presiding Officer may also refer the matter to the District and Sessions Judge, for taking upon the matter in the monthly meeting of the Criminal Justice Coordination Committee.

iv. Coercive measures to summon Investigating Officer

- Investigating Officer did not appear in the Court to support the prosecution case and it was incumbent upon the Court to procure his attendance by adopting coercive measures. **(2003 YLR 1390 Lahore)**
- Recording of the statements of the said police witnesses was quite essential for the purpose of fair trial which the Trial Court could do by adopting coercive measures, but it neither preferred to issue non-bailable warrants for their attendance, nor summoned the D. S. P. Circle or Incharge of the Police Station concerned. (**2002 YLR 1221 Lahore)**

34. MAGISTERIAL TRIAL

34.1. Relevant Provisions

- Section 241-249-A of Code of Criminal Procedure, 1898
- High Court Rules and Orders Volume III, Chapter-1, Part-D,E,F,G

34.2. Nature of Procedure

The provisions of sections 241-247 of Cr.P.C are mandatory in nature and have to be complied with in letter and spirit and any breach thereof would vitiate the trial. **(PLD 2006 SC (AJ&K) 43, 2005 YLR 2032).**

34.3. Supply of copies and documents to accused

Section 241-A enjoins upon the Court to supply copies of the statements of all the witnesses recorded under section 161 and 164 Cr.P.C and all the inspection notes recorded by the investigation officer. **(PLD 1988 SC 99).**

34.4. Waiver of right to copies

Compliance of the provision contained in section 241-A, Cr.P.C. is required to be made only when an accused person does not plead guilty and claims to be tried under Chapter XX of the Criminal Procedure Code that he is provided copies of material evidence that may be led by the prosecution. Failure of the Magistrate to give a gap of seven days to proceed further in the case is of no consequence in the circumstances of the present case, where appellant pleaded guilty in immediately on a framing of the charge. Even otherwise provision contained in section 241-A, Cr.P.C. is not of a mandatory nature and its non-compliance will be of no consequence unless it is shown that its breach has caused sufficient prejudice to an accused person in his trial. **(1991 P.Cr.LJ 749, 1981 P.Cr.LJ 176).** Provision in S. 241-A, Cr.P.C. deal with a private, right intended for personal benefit of accused and do not infringe in any way any matter of public policy. Accused is entitled to waive this right of getting copies of statements to avoid delay in

trial **(1986 P.Cr.LJ 1674)** Though provision is mandatory but accused can waive his right to copies if he pleads guilty**. (1991 P.Cr.LJ 749, 1981 P.Cr.LJ 176, 1986 P.Cr.LJ 1674)**

34.5. Complaint case & Challan case

After having taken cognizance Sessions Court was required to process both the cases in accordance with the provisions of S.193, Cr.P.C. read with S.204, Cr.P.C.---Till that stage both the cases would be dealt with independently---Accused summoned in the complaint case or in the challan case would be dealt with separately and supplied copies of required documents and then trial Court would proceed with the cases according to the law laid down by Supreme Court in as PLD 1966 Supreme Court 708. (**2008 MLD 728)**

34.6. Charge to be framed

Framing of charge means the commencement of trial of the accused. **(PLD 1996 Karachi 482).** Presence of accused at the time of framing of charge is mandatory. Charge cannot be framed and read out in the absence of accused. **(PLD 1986 Karachi 417).** Particulars of offence and charge framed against the accused must be explained him clearly so that he knew what is the charge against him which he has to face in trial to defend himself **(2004 MLD 1762).** The Magistrate must record the plea of the accused at the commencement of trial. Obtaining of signature and thumb impression of the accused on the plea is not a legal requirement. **(1992 MLD 2455).** Without framing of charge, the recording of evidence and the other proceedings would be nullity in the eye of law. **(2008 P.Cr.LJ 247).**

34.7. Admission of accused of truth of accusation (Confession)

Section 243 Cr.P.C provides that if an accused person voluntarily pleads guilty to the charge, the trial Court can accept and act upon the same and convict him without recording the prosecution evidence. **(1978 P.Cr.LJ 273)** Show cause notice to be given to accused before conviction is necessary

and if accused would show no sufficient cause that why he should not be convicted, the magistrate could convict him **(2008 MLD 358).** It is the discretion of the trial Court to accept the accused plea of guilt or not. He may refuse to accept the plea of guilt of accused and proceed with evidence. **(1992 P.Cr.LJ 594).** It is binding on Court to record confession immediately when it is made. **(1969 P.Cr.LJ 873).**

Section 243, Cr. P. C. empowers a Court to convict an accused person on the basis of his confession provided the confession is recorded, as nearly as possible, in his words and he fails to show sufficient cause against his conviction. The language of the section is not trammeled by any condition of fixation of time or stage when the confession is to be recorded. The words of the section do not indicate that it shall cease to have operation at any subsequent stage of the trial. It is correct that the provisions of section 243 shall come into operation immediately after the particulars of the offence have been put to an accused person and he makes an admission of his guilt, but this does not mean that the section is operative only up to this particular stage and after this it becomes dormant, with the result that the Magistrate shall have to go through the exercise of recording the evidence in spite of the fact that, the accused at some intermediary stage comes forward to make a clean breast of the whole matter. The object of the section is to permit a Court to convict a man on the basis of his confession without taking the trouble of recording evidence and it has been left to the trial Court to decide whether or not to record some evidence in support of the prosecution story to assure itself of the culpability of the accused or to determine the quantum of sentence. The intention of the Legislature will not be fully achieved if the operation of the section is restricted to the particular stage when the particulars of the offence are put to an accused person under section 242.

Wherever Legislature intends to fix a point of time, it does give an indication to that effect. (**PLD 1975 Lahore 304).**

34.8. Denial of Accusation

Bare perusal of provisions of sections 242, 243 and 244, Cr.P.C. clearly depicts that once a formal charge is framed and put to accused, which is denied by him under section 242, Cr.P.C. provisions of section 243, Cr.P.C. shall ipso facto become inoperative and Court has to proceed under section 244, Cr.P.C. by recording the prosecution evidence as well as that of the accused, if lead in defence. Therefore, confessional statement made after 2/3 dates of hearing when at the time of framing of charge, the appellant in explicit terms had denied the same, is of no legal effect in presence of sections 244, 265-D, 265-E and 265-F of the Criminal Procedure Code, 1898 **(2012 P.Cr.LJ 352).**

34.9. Want of prosecution

The private complaints can be dismissed for want of prosecution under Section 247 Cr.P.C. on the non-appearance of the complainant (2008 PCr.L.J 782). The object of this provision is to prevent the complainant from using delaying tactics and to abuse process of Court. Second proviso of section 247 Cr.P.C. does not apply where offence of which the accused is charged is either cognizable or non-compoundable **(1993 SCMR 1902).** There are some stances where the Magistrate would exercise his discretion by adjourning the case:

i. Complainant not informed of place of trial.[9]

ii. Case transferred from one file of one Magistrate to another without to complainant and he is present in the original court in ignorance of transfer.[10]

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[9] . **(1882 All W.N 229)**
[10] . **(AIR 1919 Cal.1)**

iii. Adjournments not made in the presence of parties.[11]

34.10. Withdrawal of complaint:

Section 248 Cr.P.C makes the complainant in charge of the private complaint. It does not apply to a person who sets the police in motion; the right of withdrawn of private complaint is confined to the complainant **(PLJ 1988 Lahore 907).** Withdrawal of complaint would result in acquittal of accused and it was mandatory upon the magistrate while permitting the withdrawal of complaint, to acquit the accused keeping in view the facts and circumstances **(2011 P.Cr.LJ 936).** Withdrawal of complaint under section 248 is not necessary for whole complaint, it may be partial **(AIR 1963 Patna 303).** Where a complaint case and police case for the same offence are pending, the complainant cannot withdraw the complaint, he may not in that case and the complaint would merge in the police case and the Court would decide the challan case on merits. Section 248 Cr.PC provides the right of withdrawal of private complaint to the complainant only as the complainant is allowed to withdraw his complaint, at any time before a final order is passed **(PLD 1965 AJ&K 43)** and it is held that section 248 will attract after commencement of trial **(PLD 2002 SC 687).**

34.11. Appeal against acquittal of accused in case of withdrawal

Second complaint could only be filed, if the proceedings were at initial stage requiring the complainant to establish genuineness of allegations set forth therein, so as to summon accused to face trial. Provisions of S.247, Cr.P.C. had clearly bestowed jurisdiction to the Trial Court to dismiss the complaint after summoning of accused at any date of hearing and in such circumstances the remedy available with the complainant was to file an appeal against acquittal under S.417(2), Cr.P.C., and not to file second complaint on the same subject-matter **(2012 P.Cr.LJ 581 Lah)**

[11] . **(8 Mad H.R.C. (App)**

34.12. Sine die adjournment

Section 249 Cr.P.C empowers Magistrate to sine die adjourn the proceedings of criminal cases where there are special circumstances which make it difficult or impossible to proceed with the case in normal course. Stoppage of proceedings under S. 249, Cr.P.C has effect of discharging accused until such time when on availability of requisite evidence case could be revived against him. Such stoppage amounts to termination of case for the time being **(PLD 2018 Quetta 39).**

i. The stopping of proceedings under section 249 Cr.P.C. do not by itself terminate the proceedings finally as the case is neither discharged nor acquittal recorded, proceedings in such situation are to be taken as pending. **(PLJ 1993 Cr.C 405).**

ii. The order under this section does not bar to initiate fresh proceedings against the accused with reference to the same matter **(1986 P.Cr.LJ 1812).**

iii. The order of Magistrate made under section 249 Cr.P.C to sine die adjourn the case proceedings is not an order of acquittal, therefore, no appeal lies against it but it is open to file revision to Sessions Judge. **(1983 Law Notes 1184)**

iv. Proceedings of case under this section can only be sine die adjourned in state cases, stopping of complaint is not applicable on cases initiated on private complaints**. (1983 P.Cr.LJ 1366)**

v. Proceedings stopped u/s 249 Cr.P.C. would be revived if complainant files application in this behalf. **(2002 P.Cr.LJ 159)**

34.13. Power of Magistrate to acquit accused any time

Legislature has introduced section 249-A Cr.P.C by an amendment, to ensure speedy trial of criminal case **(2004 P.Cr.LJ 1068).** Magistrate is empowered under section 249-A Cr.P.C to acquit the accused at any stage

after hearing the prosecution and accused, if he is of the view that charge framed against the accused is groundless or there is no probability of the conviction of the accused **(2004 P.Cr.LJ 1068).** The provision of section 249-A give right to accused to move an application at any stage of the case even before the framing of charge or recording of evidence or at any subsequent stage **(2012 P.Cr.LJ 999).** It is the duty of the court to apply his judicious mind on vital ingredients and to record the reasons he considers that the charge is groundless or that there is no probability of conviction of accused **(PLJ 2012 Cr.C 614).** When a Magistrate proposed an order to acquit the accused under section 249-A Cr.P.C, it is necessary to hear both parties **(2000 MLD 220).** When the prosecution is not afforded an opportunity to produce evidence to prove the guilt of accused, it could not be said that there is no probability of conviction of accused. **(2000 P.Cr.LJ 752).**

34.14. **Notice to Prosecution**: Court, while recording order under section 249-A, should afford an opportunity to prosecutor and in a complaint case to complainant as the case may be, to show cause why such an order (acquittal of accused under section 249-A Cr.P.C) be not recorded. Opinion of Court with regard to involvement of accused has to be formed in terms of requirements of section 249-A, Cr. P. C. and not outside that. **(PLD 1984 SC 428)**

35. PRIVATE COMPLAINT

35.1. Relevant Provisions

Secs. 200, 202, 203, 204 Cr.P.C.

35.2. List of witnesses and documents not to be appended with complaint

For proceedings under Ss. 200, 201 or 202, Cr.P.C, it was not a requirement that list of witnesses must be appended with the complaint or that all the documents must be mentioned or appended therewith. (**2019 P.Cr.LJ 665)**

35.3. Person Complained against has no right of participation

Chapter XVI of the Code sets forth the entire procedure from the stage of the filing of the complaint in the Court till the issuance of process or otherwise. It in fact relates to the preliminary proceedings under sections 200 and 202 of the Code and according to these provisions the person complained against has no right of participation, until a cognizance is taken into the matter and is summoned. (**PLD 2002 SC 687)**

35.4. Burden of proof upon complainant at preliminary enquiry

To take cognizance of an offence in a complaint case, burden of proof in preliminary enquiry for the issuance of process and or summons, as the case may be, was much lighter on the complainant and he was required to establish a prima facie case, whereas, the burden of proof placed on the prosecution during regular trial was much stringent and the prosecution was required to establish and prove the case beyond reasonable doubt. (**PLD 2016 SC 55)**

35.5. Yardstick for appreciation of evidence at preliminary enquiry

Appreciation of evidence at preliminary inquiry with the yardstick of Trial Court is not the purpose under S.202 Cr.P.C.-Trial Court has only to see if

prima facie case is made out or not that is why full dress rehearsal of trial is not possible. (**2010 SCMR 105)**

35.6. Issuance of Process

Possibility of accusation turning out to be false or frivolous at trial should not forbear the Court from issuing process, if material available, prima facie discloses case against accused. (**PLD 2007 SC 9)**

35.7. Powers of Sessions Judge while dealing with private complaint

- To sum up, the Sessions Judge can order the summoning of the accused without an enquiry at all as under section 202, Cr.P.C. **(1991 SCMR 2157)**
- He can order summoning the accused on the basis of the enquiry, if any, held by the Magistrate before dismissal under section 203, Cr.P.C. (**1991 SCMR 2157)**
- He can also postpone the summoning of the accused as under section 202 by recording reasons in that behalf and can order the Magistrate to hold enquiry as further enquiry, if some enquiry was held before dismissal under section 203, Cr.P.C. **(1991 SCMR 2157)**

35.8. Procedure where state case and private complaint are simultaneously pending

Where the same party lodging the FIR also institutes a private complaint containing the same allegations against the same set of accused persons then the trial Court is to hold a trial in the complaint case first and in the meanwhile the Challan case is to be kept dormant awaiting the fate of the trial in the complaint case. (**PLD 2016 SC 70)**

35.9. Correction in private complaint

Legally the terms "amendment" and "correction" are neither synonymous nor interchangeable because correction mainly relates to removal or rectification of errors, mistakes, inadvertent omissions, defects or faults

whereas the "amendment" connotes, addition, deletion, insertion and substitution having substantial bearing on the character of pleadings irrespective of its nature. The complaint cannot be declared such a sacrosanct document wherein no change can be made, however, impact whereof is to be examined before granting such permission. **(2010 SCMR 194)**

35.10. Limitation

No limitation is prescribed in criminal prosecutions but the longer a complaint is delayed the lesser becomes the chance of believing in its truth, particularly when it is based entirely upon oral evidence. (**2010 SCMR 1816) (Also see 34.10)**

36. SUMMARY TRIAL

36.1. Relevant Provisions

- Section 260-265 of Code of Criminal Procedure, 1898
- High Court Rules and Orders Volume III, Chapter-1, Part-E, Rule-8

36.2. Determine whether an offence triable summarily or not?

Such determination is to be made by the facts stated in the complaint as well as the sworn testimony of the Complainant[12].

36.3. Offences which can be tried summarily as per Code

Sec 260 of Cr.P.C empowers certain Magistrates to try summarily the offences specified therein. **(AIR 1950 Bom. 273)**

36.4. Scope of Summary Trial as provided

1994 SCMR 1103

- Every civil, criminal or revenue Court is empowered and has the discretion to take cognizance of the offence referred in section 195 (1) (b) or (c), which has been committed in or in relation to a proceeding before it and try the same in accordance with the procedure prescribed for summary trial in Chapter XXII, Cr.P.C.
- Such procedure can be adopted by the Court at its own discretion, which should be exercised judiciously and not arbitrarily, taking into consideration the facts and circumstances of the case.
- Such summary procedure is intended to prevent the abuse of the process of law and to punish the offender by a summary trial which is necessary to establish confidence in Court, authority of Court and process of law.

[12] Fanindra, 36 Calcutta 67, 12 Cawnpure Weekly Notes 1041, 8 Cr. L. J. 227, ` 1 I.C. 519.

36.5. Summons and Warrants in summary proceedings

Proceedings in summary trial as in ordinary trials should commence with the issue of summons and warrants for the appearance of the accused. **(15 Mad. 83)**

36.6. Framing of formal charge in summary trials

It is not obligatory to frame a formal charge, it is necessary to enable accused to understand what the matter is upon which he has to show cause and then meet the case put up against him. **(1993 P.Cr.LJ 547)**

36.7. Instances where a case is not be tried summarily

There are number of Instances where the cases cannot try summarily. Examples are given in below:

i. Cases which are hotly contested. **(AIR 1931 Mad. 233)**

ii. Serious cases, where a heavy sentence would be deserved in case of the conviction. **(AIR 1927 Sindh 257)**

iii. The cases where the result of the trial would have further consequences of a serious nature ought not to be tried summary way. **(AIR 1921 Bom. 370)**

iv. Cases against public servants in which the whole career of the accused would depend on the result of trial should not be tried summarily. (**1959 PLD 213 Karachi; AIR 1932 Lah. 188)**

v. In case where title of property is involved and it is contested, it would not be fair to hold summary trial because complicated question of title cannot be properly decided in a summary trial. **(PLJ 1983 AJ&K (SC) 1), 1981 P.Cr.LJ 194 SC AJ&K)**

vi. Where the accused is deaf and dumb.

vii. When a Magistrate takes cognizance of a case upon his own knowledge, as in such a case he is himself in the position of a prosecution.

36.8. Record in cases where there is no appeal

- In the summary trial, it is obligatory on trial Court to give summary of evidence and concise statement of reasons to show that there was, in fact, sufficient evidence to prove the ingredients of the offences of which the accused was convicted. **(PLJ 1980 AJ&K (SC) 1).**
- The substance of every deposition need not be recorded but only the substance of evidence as a whole need be given. **(AIR 1929 Oudh 151).**

36.9. Jurisdiction Value

Where the value prescribed under Section 260 (1) (e), Cr.P.C. exceeds, summary trial is altogether illegal. **(PLD 1956 Karachi 359)**

36.10. Recording of statement (plea) of accused under section 342 Cr.P.C:

- The accused must be asked to state his plea as in ordinary trial. The record should contain the plea of the accused and particulars as to his examination by the Court**. (ILR 1945 Karachi 439)**
- When accused pleads guilty under Section 243, Cr. P.C. the examination under Section 342, Cr. P.C. is not necessary but the admission of guilt should be recorded in the words of the accused as nearly as possible. (**ILR 15 Lah. 60)** (**ILR 15 Lahore 277**

36.11. Right of accused to cross examine

After the examination of the accused, he is entitled to recall prosecution witnesses for cross examination. **(PLD 1962 Peshawar 203)**

36.12. Judgment in case of conviction in summary trial

Where the finding of Magistrate is one of the convictions, the record must contain a brief statement (judgment) of the reason for conviction. **(PLD 1959 Karachi 150)**

36.13. Judgment is necessary in case of acquittal in summary trial

Only in case of conviction need a brief statement of the reasons be given: where there is not a conviction but an acquittal, the section do not require that reasons should be given. **(AIR 1942 Sind 52)**

36.14. Hearing of evidence & recording of evidence

Section 263 dispense with the recording of evidence; it do not dispense with the hearing of evidence. **(AIR 1938 Sind 70)**

36.15. Quantum of Sentence

Section 262(2) Cr.P.C prohibits the infliction, in summary trials, of a sentence of imprisonment for any term exceeding three months. Where an accused is convicted for a number of offences in a summary trial, a separate sentence must be passed in respect of each offence. Where he is sentenced to imprisonment for a term of three months in respect of each offence, the sentence must be ordered to run concurrently and not consecutively. **(PLJ 1989 Cr.C 270).**

36.16. What can vitiate the proceedings of summary trial?

i. If an accused is tried summarily, the record must disclose the fact that such officer is specifically empowered. Where the record in the case and copy of the judgment placed on record, did not disclose the fact that the Forest Magistrate specifically empowered to try cases summarily the summary trial is vitiated. **(PLJ 1980 AJ&K (SC) 1)**

ii. Mere mentioning of the section under which the accused is charged is not enough, If it is done, the trial will be vitiated only if prejudice is caused to the accused. **(AIR 1955 Sau 39)**

iii. It is imperative to record the statement of accused under section 342 Cr.P.C and where that is not done, the trial is vitiated. **(PLJ 1980 AJ&K (SC) 1)**

iv. Where the record of particulars of each case under section 263 Cr.P.C is not maintained in summary trial, the trial is vitiated. **(PLD 1963 Lah. 46)**

37. CONSOLIDATED, SEPARATE, OR SIMULTANEOUS TRIAL OF CHALLAN AND COMPLAINT OR CROSS CASES.

37.1. Guiding Principles

- **Where set of accused in complaint case is different from set of accused in state case**, then complaint case shall be taken up first for trial. The witnesses mentioned in the Police challan, if they were not already examined on behalf of the complainant, may be examined as Court witnesses under section 540-A of the Criminal Procedure Code, so that they can be cross-examined by both the parties. If that trial results in a conviction, it will be for the Public Prosecutor to consider whether or not he should withdraw from the prosecution, with the permission of the Court, under section 494 of the Code of Criminal Procedure, in the Police challan case. If the first case ends in an acquittal, he might still have to consider whether the Police version has not been so seriously damaged by what has been brought out in the first trial, as to justify withdrawal of the prosecution. **(PLD 1966 SC 708).**
- **counter-cases**. While it is the general practice to try the counter-cases side by side by the same Court till their conclusion and to pronounce judgment in each case simultaneously, it cannot be said that this is an absolute rule to be adhered to strictly in every case. The special facts and circumstances of a particular case may warrant a different procedure for the ends of justice. **(PLD 1971 SC 713)**
- There is **no necessity for a separate trial** of the two cases when, technically speaking, there were neither two sets of accused nor different versions nor any additional evidence to be examined by the complainant. **(PLD 1979 SC 53)**

- Propriety demands that whenever the facts or circumstances permit, cross-case, giving two different versions of the same incident and have two different sets of accused, should be tried by the same Court, together. (**PLD 1981 SC 522)**
- The same party lodging the FIR also institutes a private complaint containing the same allegations against the same set of accused persons then the trial court is to hold a trial in the complaint case first and in the meanwhile the Challan case is to be kept dormant awaiting the fate of the trial in the complaint case. (**PLD 2016 SC 70)**
- Rival parties---Case of cross-versions---Trial of such cases---Procedure---Different versions of same incident advanced by rival parties through cross-cases containing different sets of accused persons---Trial of such cross-cases was to be held simultaneously and side by side. **(PLD 2016 SC 70)**

38. SUMMONING OF PROSECUTION EVIDENCE

38.1. Relevant provisions

Ss. 94, 244, 265-F and 540 Cr. P.C

38.2. Hear the complainant

Words **"hear the complainant**" that words indicate that complainant must be heard personally or through counsel during trial before accused can be convicted, _held, not tenable--Words merely mean that he too shall be heard at trial like other witnesses-Meaning explained in context of Section/Chapter. (**1985 SCMR 1264)**

38.3. Power of Court

Summons issued for witnesses and witnesses not appearing in response thereto - Reasons must be examined and noted in order sheet and where necessary coercive steps should be taken for securing attendance of witnesses-Court not to feel so powerless in matter of securing attendance and should not lay entire responsibility on prosecutor alone. (**PLD 1984 SC 428)**

38.4. Closing of prosecution evidence without proper summoning

Closing of prosecution evidence without proper summoning procedure is wrong. Summoning of official witnesses through warrants; Court should wait for report on said warrants before proceeding further. (**2003 YLR 1933 Lahore) C**ourt must adopt coercive measures before closing of prosecution evidence **(PLD 2011 Lahore 551)**

38.5. Ascertaining from Public Prosecutor or from complainant names of the person likely to be acquainted with facts of the case

Under Ss. 244(2) & 265-F of Cr.P.C., Court, having ascertained, either from Public Prosecutor or from complainant, names of any person who was likely to be acquainted with facts of case and was able to give evidence for

prosecution, would summon such person to give evidence before it. (**2016 P.Cr.LJ 599 Lahore)**

38.6. Application for summoning of Rapt on basis of which F.I.R. was lodged

Petitioner/complainant after recording his statement, moved application for summoning Rapt on basis of which F.I.R. was recorded to show that FIR was recorded in time. High Court allowed the application of complainant. (**2004 MLD 1040 Lahore)**

38.7. Issue summons to any witness

Section 244 (2) casts an obligation on Magistrate to issue summons to any witness on application of either party unless such application considered to be vexatious or intended to cause delay or' opposed to ends -of justice (**PLD 1982 Lahore 500)**

38.8. Statement of accused before conclusion of prosecution evidence

S. 244-Recording statement of accused before conclusion of prosecution evidence -Whether an illegality-Court's power to hear accused-----To be exercised at any time when accused wants to be heard: (**PLD 1950 Lahore 247)**

38.9. Power & duty of Court to summon material witness

- Only two provisions which deal with examination and production of witnesses i.e. S.265-F and S.540---Section 265-F, Cr.P.C. is absolute prerogative of the parties i.e. prosecution and defence and their discretion to examine, withhold or give-up any witness or document---Such discretion cannot be questioned, but the Court can competently consider the consequences thereof---Section 540, Cr.P.C. is an exception---Normally, the exception to call a witness as a Court-witness would be available in certain situations where witness could not be otherwise brought before the Court

else the prerogative, provided by S.265-F, Cr.P.C., shall stand prejudiced. (**PLD 2020 Karachi 32)**

- Where any evidence is essential for just decision of case, it is obligatory upon the Court to allow its production and examination. (**2011 SCMR 713)**
- Section 540, Cr.P.C. has two parts; in the first part discretion lies with the Court to examine or not to examine any person as a witness, but according to its second part Court is bound to examine any person as a witness if his evidence appears to be essential for just decision of the case irrespective of the fact that any party had requested for it or not. **(2001 S C M R 308)**
- It is the duty of the Court to do complete justice between the parties and the carelessness or ignorance of one party or the other or the delay that may result in the conclusion of the case should not be a hindrance in achieving that object--Salutary principle of judicial proceedings in criminal cases is to find out the truth and to arrive at a correct conclusion and to see that an innocent person is not punished merely because of certain technical omission on his part or on the part of the Court. (**2001 SCMR 308).**

38.10. Trial Court cannot refuse production of documents

Where trial Court has held that only provision deals with additional evidence is section 540 Cr. P.C; the observation was declared wrong; however, trial Court can examine admissibility or relevancy. Section 94 Cr. P.C referred; (**2002 SCMR 468).**

38.11. Tendering of documents in evidence

Court can allow if law does not permit then complainant is at liberty to file application for summoning of custodian of document; (**2005 SCMR 1653)**

39. JAIL TRIAL/IN CAMERA TRIAL

39.1. Relevant Provisions

- Paragraph 3 of Chapter 1-A of the High Court Rules and Orders (Vol-III)
- Rule 5, Chapter 1-A of the Lahore High Court Rules & Orders, Volume III
- Se. 352 of the Criminal Procedure Code
- The National Judicial Policy, Revised Edition 2012
- Punjab Witness Protection Act, 2018

39.2. General Principle

The trial of the case is to be conducted in open Court where the concerned Court normally holds but in exceptional cases, a trial could be held in camera or at a place other than the normal court room. An open trial could also be held in prison if the circumstance of the cases so warranted. **(1987 MLD 2783)**

39.3. Trial in jail, an Exception to general rule

- If no prejudice was likely to be caused to any party, or wherein considered view of Judge, it was in public interest or for purpose of national integrity, which required secrecy or in the name of decency or morality, Court would be competent to hold trial even in Chambers and in camera. (**PLD 1999 Karachi 87)**
- The law permits the trial through video conferences **(PLD 2006 Karachi 629)**
- If any party wanted to record evidence through video conferences and the Government had not provided such facility then the party after bearing the expenses of such facility could request the Court for that. **(PLD 2006 Karachi 629)**
- In certain eventualities the holding of a particular trial in the Courthouse may not be possible or practical keeping in, view the security of the accused,

the danger of their rescue or the law and order situation. The District Magistrate or Home Secretary holding an opinion that the trial in Court-house will be against the interest of security of the accused or that there is some danger or law and order situation may place necessary facts to the notice of the Court concerned which alone under law is empowered to pass an order of holding trial in Jail or otherwise. (**1991 MLD 739**)

39.4. Practical application

- In appropriate cases evidence of rape victims should be recorded through video conferencing so that the victims, particularly juvenile victims, do not need to be present in Court. **(2013 SCMR 203)**
- Lahore High Court allowed family Courts to conduct proceedings through Skype/video link. Islamabad High Court has also, in a number of its decisions, permitted used of video technology for recording evidence. (**PLD 2017 Lahore 698, 2017 CLC 1718, PLD 2018 Islamabad 148, PLD 2019 Islamabad 453, PLD 2019 Islamabad 434)**
- In gang rape cases, where there is threat to the life of the victims and her family members, such practice can be adopted. Trials for rape should be conducted in camera and after regular court hours. (**2013 SCMR 203)**

39.5. Recording of evidence through video link

From the laws/case law following categories of witnesses can be permitted to give evidence through Video Link:

- Witnesses away from the Court[13]; **(PLD 2017 Lahore 698)**
- Official witnesses[14]
- Vulnerable witnesses[15];
    - Child witnesses;

[13] . Amitabh Bagchi v. EnaBagchi (Calcutta)2005 AIR (Calcutta) 11, UK's Access to Justice Act, 1999

[14] . (letter No.2045 dated 27.01.2017 by Lahore High Court, State of Punjab v. Mohinder Singh (P&H)(D.B.)2013(4) R.C.R.(Civil) 423,*)*

[15] Sec 16 of Youth Justice and Criminal Evidence Act 1999 (YJCEA)

- Persons suffering from mental disorder or sufficient impairment of intelligence;
- Having any physical disability.

- Intimidated witnesses[16];
  - Those suffering from fear or distress in relation to testifying in the case;
  - Victims of sexual offences;
  - Witnesses to certain offences involving guns and knives.
  - Witness suffering from illness[17];
- Victims of sexual Crime[18]; (2013 SCMR 203),
- Criminal proceedings relating to terrorism[19], sexual or any other serious offence;
- In the interests of the efficient or effective administration of justice[20].

39.6. Sanction from Government

Rule 3 of Part A of Chapter 1 of Volume III of the Rules and Orders of the Lahore High Court make reference to section 352 of the Criminal Procedure Code and provide that the discretion to exclude the public from the ordinary Court room vests in the Magistrate and if he for any reason wishes to exclude the public by holding Court in a building such as jail to which the public is not admitted, he shall obtain the sanction of the Government through the District Magistrate and should inform the High Court that the sanction has been accorded by the Government. (**1991 MLD 739 Lahore)**

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[16] Sec 17 of Youth Justice and Criminal Evidence Act 1999 (YJCEA)
[17] United States v. Gigante, (166 F.3d 75, 84 (2nd Cir. 1999))
[18] Punjab Witness Protection Act 2018)
[19] Punjab Witness Protection Act 2018
[20] Section 51 of UK's Criminal Justice Act 2003

39.7. Application to members of legal profession

No doubt under section 22 of the Legal Practitioners and Bar Councils Act, 1965, an advocate has a right to appear, plead and act in any Court or tribunal in Pakistan provided he has been briefed in a case on behalf of a party to the proceedings in any Court of law, but he cannot, as a matter of right, make his appearance in a Court to watch a proceeding in which he has not been duly instructed or engaged by any of the parties to that proceeding. Therefore, an order passed under section 352, Cr. P. Code either to hold the proceedings in camera or debarring the public in general from witnessing a proceeding in a Court shall equally apply to the members of the legal profession. (**PLD 1966 (WP) Lahore 562)**

40. RECORDING PLEA OF ACCUSED

40.1. Relevant provisions

Ss. 243 & 265-E Cr.PC

40.2. Voluntary

Court before relying on the plea of guilt for the purpose of basing conviction on the same should satisfy itself by putting questions to the accused if he was aware of the facts on which the charge was framed against him and that he had admitted his guilt voluntarily without any pressure or expectation of lenient sentence. (**1992 P.Cr. LJ 1575).**

40.3. In questions and answers form

Plea must be in questions and answers form and in the exact words of the accused in order to find out what the accused exactly meant by pleading guilty and in absence of that the Court cannot convict him on the basis of such plea. (**1992 P.Cr. LJ 1575).**

40.4. Show cause notice to accused

Accused could not have been convicted straightaway on pleading guilty and Trial Court was obliged to give him opportunity to show cause---(**1991 P.Cr.LJ 1709 [Lahore])** Trial Court, before awarding the sentence to accused, was under an obligation under S.243, Cr.P.C. to ask him after he had pleaded guilty and admitted the charge to show cause as to why he should not be convicted and sentenced---Requirement of show-cause notice under S.243, Cr.P.C. was mandatory to avoid involuntary admission by the accused. (**2008 P.Cr.LJ 256 Lahore)**

40.5. During Trial

Effect---Sections 242, 243 and 244, Cr.P.C. clearly depict that once a formal charge is framed and put to accused, which is denied by him under S.242, Cr.P.C., provisions of S. 243, Cr.P.C. shall ipso facto become inoperative and

Court has to proceed under S.244, Cr.P.C. by recording the prosecution evidence as well as that of the accused, if led in defence---Confessional statement made by accused after 2/3 dates of hearing after explicit denial of the charge at the time of framing the same, is of no legal effect in view of Ss. 244, 265-D, 265-E and 265-F, Cr.P.C. (**2012 P.Cr.LJ 352 Lahore)**

40.6. Discretion to convict

Under S. 265-E, Cr.P.C. the Trial Court in a session case, had the discretion to record the plea of the accused and if he pleaded guilty to the charge, it may convict him in its discretion ---Such discretion was to be exercised with extra care and caution, and ordinarily on such admission, awarding capital sentence of death should be avoided and to prove the guilt of an accused, evidence of the complainant or the prosecution had to be recorded, in the interest of safe administration of justice. (**2017 SCMR 713)**

Plea of guilt---Sentence---Scope---Court was not bound to pass conviction or sentence merely on confessional statement with reference to S. 265-E(2), Cr.P.C.---If the charge of an offence carried capital punishment of death or transportation of life, the Court was required to examine the prosecution evidence, even if the guilt was admitted by the accused in response to a charge. (**2019 P.Cr.LJ 1176 Islamabad).**

40.7. Great care and caution by Court

Scope---High Court observed that great care and caution were required in handing down a conviction leading to the sentence of death in cases where an accused pleaded guilty to a charge---Trial Court was to observe all the possible precautionary measures and provide sufficient opportunity to the accused taking the plea of guilty in order to be certain that it was voluntary and free from any influence whatsoever. (**2019 YLR 2006 Islamabad)**

40.8. Plea of guilt counsel in the absence of accused (his client)

Plea of guilt made by counsel of the accused---Accused cannot be convicted and sentenced on the basis of the plea of guilt made by his counsel in the absence of the accused. **(1995 MLD 1652 Lahore)**

40.9. If facts on record do not constitute an offence

If facts on record do not constitute an offence, accused cannot be convicted even if they plead guilty. (**1993 P.Cr.LJ 1606 Karachi)**

40.10. Signature or thumb-impression

Obtaining of signature or thumb-impression on the plea of accused is not a legal requirement. Signature or thumb-impression of the accused on such a plea, therefore, becomes necessary in token of having made such a statement and this consistent practice of obtaining signatures or thumb marks on such plea has hardened into one of law and is being followed consistently as a rule of prudence. (**1992 MLD 2455)**

41. RECORDING OF EVIDENCE

41.1. Relevant Provision

- Section 353-365 of Code of Criminal Procedure, 1898
- High Court Rules and Orders Volume III, Chapter-1, Part- E
- Article 3, 17, 46, 161 of Qanoon-e-Shahdat Order, 1984
  Section 5 of Oath Act, 1873

41.2. Presence of accused is mandatory

Evidence should be recorded in the presence of accused, his counsel or attorney **(1981 P.Cr.L.J 194).** Word "all evidence" is used in section 353 Cr.P.C which means that it includes the evidence of prosecution and defence as well. The intent of legislature to make presence of accused is compulsory is to provide the full fair trial opportunity as provided by article 10-A of the constitution of Pakistan **(2013 P.Cr.LJ 244).**

41.3. Object of recording evidence in presence of accused

The object of recording of evidence in the absence of the accused is to procure and preserve the evidence in connection with the offence so that when the accused appear or put to trial in court he may not be able to enjoy the abscondence and evidence may not lost due to laps of time (**2000 YLR 2330)**

41.4. Exemption of personal attendance of accused

PLD 1979 SC 53

- When Magistrate dispenses with personal attendance of accused and permits him to appear by his pleader under S. 205(1)
- When under given circumstances under S. 540-A a Judge or Magistrate dispenses with presence of accused in case of his being represented by a pleader

- When an accused absconds- Power to dispense with personal attendance of accused also implicit in, and spelt out of, closing line of S. 353 itself.
- Personal appearance is necessary for seeking exemption: **(PLD 2004 SC 160)**

41.5. Examination in Chief and Cross Examination

It is rule of law that the examination in chief and cross examination is to be recorded in the presence of the accused or his pleader. Mere cross examination of the witness in the presence of the accused is not sufficient. **(2012 P.Cr.LJ 1308).**

41.6. Manner of recording evidence

Section 354 provide that while recording of evidence in criminal trial, the manner of evidence as provided in section 355 to 361 is to be followed by the Court.

PLD 2003 Kar 629:

- The evidence taken under section 356 and 357 Cr.P.C by the Court must be in narration form as per section 359.
- The Judge should adhere, so far as possible to the words actually used either in the question or in answer given by the witness.
- A Judge may ask question himself to accused and record the question and answer of the witness as per article 15 of Qanoon-e-Shahadat Order, 1984.
- Sessions Judge or Magistrate, was required to take down the evidence in his own hand in the language as mentioned in Chap. XXV, Cr.P.C. and it was not incumbent upon the Judge or Magistrate to record evidence in audio cassette,
- Because of modern technology, a benefit could be taken from said technology to preserve evidence and proceedings of the Court in modern devices. Control of the gadget would be with the Presiding Officer who could pause or get it paused at any time while recording evidence that would stop

recording inadmissible evidence which would then not become the part of record and it would not violate provisions of Articles 131 & 133 of Qanune-Shahadat, 1984.

41.7. Dictation of Evidence

Presiding of the Court can dictate the evidence to the typist of the Court. The evidence taken down by the typist from the direct dictation of the Presiding Judge is properly recorded under section 357 Cr.P.C **(PLD 1958 SC 383).**

41.8. Language of Evidence

- As per note given in High Court Rules and Orders Volume III, Chapter-1, Part- E "Under the provisions of section 558, of the Code of Criminal Procedure, 1898 (V of 1898), the Provincial Government has declared that Urdu shall be deemed to be the language of the Criminal Courts in the Punjab."
- The evidence should be recorded in the language of the Court. If the witness or accused, as the case may be, do not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands **(2019 P.Cr. LJ 1086 Lahore).**
- The evidence of such a witness may be recorded through an expert under the provision of Article 59 of Qanun-e-Shahadat Order, 1984 in which among others a Court may form an opinion of specifically skilled persons "when a point of foreign law, or of science or art, or as to identity of handwriting or finger impression" is brought to its notice **(2008 P.Cr. LJ 1666).**

41.9. Memorandum of Evidence by Presiding Judge

Failure of Presiding Officer to keep memorandum of depositions is irregularity and is curable under S. 537 **(PLD 1958 SC 392).**

- As per note given in High Court Rules and Orders Volume III, Chapter-1, Part- E "Under the provisions of section 558, of the Code of Criminal Procedure, 1898 (V of 1898), the Provincial Government has declared that Urdu shall be deemed to be the language of the Criminal Courts in the Punjab."
- The evidence should be recorded in the language of the court. If the witness or accused, as the case may be does not understand the English language, the evidence or statement, as recorded, shall be interpreted to him in a language which he understands **(2019 P.Cr.LJ 1086 Lahore).**
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41.10. Interpretation of evidence

- The trial Court ought to have been vigilant by observing the provision of section 361, Cr.P.C **(2018 SCMR 495).**
- Section 361, Cr.P.C. is a mandatory provision, object of which is that the accused should be in a position to know personally the allegations and incriminating circumstances appearing against him so that he may defend himself effectively **(PLD 2006 Karachi 139).**

41.11. Interpretation to deaf and dumb

Ordinarily deaf and dumb person who is incapable of understanding the proceedings would understand the same in language of signs. It is not always necessary that only an expert or a close relation is capable of understanding those signs but keeping in view, individual deficiencies, it has

to be observed that those who are close relations of deaf and dumb and/or those who have seen them growing up in that state can communicate with them in their own language of signs and not through ordinary speech. It is also well-known that the trial Courts ordinarily do take adequate measures when such situation arises. And no general presumption can be raised that unless found otherwise the provisions contained in section 361, Cr. P. C. read with 364, Cr. P. C. regarding interpretation would be presumed to have been contravened **(PLD 1984 SC 54)**

Oath must be administered to interpreter or person who is translating the evidence of deaf and dumb section 543 Cr. P.C & article 59 QSO discussed. (**2019 SCMR 64)**

41.12. Confession

- Magistrate should strictly comply with required formalities given under section **364** Cr.P.C to ensure that confession of the accused is not made an account of any inducement or police pressure **(NLR 1989 Cr.L.J 35).**
- Confession may entail formidable consequences for an accused facing indictment and thus it was incumbent upon the Magistrate to ensure that the maker consciously comprehended the consequences of his choice. Magistrate himself, face to face, was to faithfully communicate to the accused all the relevant warnings as contemplated by S.364 of the Code of Criminal Procedure,1898, which was a surer way to establish that the confession was free from all taints. Supreme Court did not approve the practice of a printed form to administer warnings to the accused and obtaining his signatures on the same.

(PLD 2019 SC 595)

41.13. Admission cannot replace confession

The admission of the appellant cannot be a substitute for a true and voluntary confession, recorded after adopting a due process of law and it

cannot be made the sole basis of conviction on a capital charge **(2017 SCMR 713).**

41.14. Extra Judicial Confession

Extra-judicial confession, if made before a person of influence and authority, expected to extend helping hand to the accused, which is also strongly corroborated, can only be considered as a piece of circumstantial evidence. Such evidence is held to be the weakest type of evidence **(PLD 1991 SC 150).**

41.15. Demeanour of witnesses

- Section 363 Cr.P.C and Rule 13 of High Court Rules and Orders Volume III, Chapter-1, Part- E make it obligatory to note down the demeanour of witness by judge where necessary. Trial Court having opportunity to look to manner of witness, his agitation, doubts, variations of language and confidence, required under S. 363 to make a note if he finds something special about demeanour of witness about which he intends to say something in judgment and such note to be placed on record at end of evidence or as early as possible
- Note to such effect being absent, trial Judge, held, cannot be permitted to rely on his recollection at a later stage **(PLD 1980 Kar 96).**

41.16. Duty of Court to determine guilt or innocence of accused

Determination of guilt or innocence of the accused persons was the exclusive domain of only the Courts, of law established for the purpose and the said sovereign power of the Courts could never be permitted to be exercised by the employees of the police department or by anyone else for that matter **(2010 SCMR 660).**

41.17. Cross Examination Right of; Hostile Witness

- If a witness in examination-in-chief would make a statement adverse to the interest of the prosecution, the Court could on the request of prosecutor,

declare the witness hostile and permit him to exercise the right of cross examination of the witness **(2010 GBLR 560 Supreme-Appellate-Court-Gilgit)**

- Where the Court finds that certain facts disclosed by a hostile witness, taken in juxtaposition with the story as set up by the other witnesses, can safely be accepted as true or having the strong possibility of being reasonably possible and can safely be accepted as evidence aliunde to corroborate the version of the other witnesses, the same may be accepted. (**PLD 1982 Lahore 154)**
- A witness who is unfavourable is not necessarily hostile; for a hostile witness is one who from the manner in which he gives his evidence, shows that he is not desirous of telling the truth to the Court that the witness's answer to certain question is in direct conflict with evidence of other witnesses and is not and can never be a reason for allowing the witness to be treated as hostile and permitted to be cross-examined. However, section 154 of Evidence Act in no way fetters the discretion of the Court to permit leading questions to be put by a party to his own witnesses; the Court has unfettered discretion to allow the prosecutor to cross-examine the prosecution witnesses. (**1984 SCMR 560)**
- If a witness produced by the prosecution deviates from the true facts and the same are being suppressed in order to extend concession or due to some other ulterior motive, the Court can permit the party to cross-examine its own witness. Considering the rationale underlying section 150, the principle should be made applicable to the statement made during re-examination as well. It is possible that during the course of re-examination a witness while clarifying or elucidating a fact may suppress the truth or state something which appears to be palpably false or, self-contradictory or for some allied reasons then permission can be sought to cross-examine that witness. (**2001 MLD 307)**

41.18. Additional Evidence

Where the statement of a witness is found deficient due to failure of cross-examination or for some other reason, case is one of additional evidence under S.428, Cr.P.C. **(PLD 2001 SC 1)**

41.19. Evidence recorded by Reader

Recording of evidence of witness in Court by Reader in absence of Presiding Officer, and evidence so recorded not bearing signatures of Presiding Officer, would be an illegality, vitiating trial**. (2007 SCMR 540)**

41.20. Cross examination , a valuable right

Cross-examination of a witness is not just a formality but is a valuable right of accused and best method to ascertain forensic truth---Where defence counsel is not available at the relevant time, Court is under obligation to cross-examine the witnesses in order to ascertain the truth. (**2010 P.Cr.LJ 1253)**

41.21. No inference from suggestions of cross examination

Trial Court drew inferences from suggestions put to complainant during cross-examination, considering the same as positive suggestions and based conviction of accused, such was not relevant and legal approach for conviction of accused in any criminal case. (**2014 P.Cr.LJ 11)** Suggestions in cross-examination by the counsel of acquitted accused may be in nature of admissions of some incriminating fact or a guilt, same could not be construed as an admission of fact or a guilt, unless proved by some independent evidence, inasmuch as those may at the most be said to be the result of an inarticulate, or inappropriate art of cross-examination, and could not be given that much significance. (**2014 YLR 2116)**

41.22. Trial of Lunatic

Section 466, Cr.P.C. envisages that, during an inquiry or a trial, if the Court, has a reason to believe that the accused is of unsound mind and

consequently incapable of making his defence, the fact of unsoundness of mind of accused shall be inquired into and for this purpose the accused shall be caused to be examined by a civil surgeon of the district or any other Medical Officer, as the Provincial Government may direct---Medical Officer, after medical examination of such person shall reduce the examination into writing---During the pendency of such inquiry or trial, the court may deal the accused in terms of S. 466, Cr.P.C.---Consequential effect of the opinion of the Magistrate that the accused is of unsound mind and incapable of making his defence, a finding shall have to be recorded to such effect and the proceedings of trial postponed. **(2020 P.Cr. LJ 497)**

42. MODERN DEVICES EVIDENCE

42.1. Relevant provision

Court is authorized under Art. 164 of Qanun-e-Shahadat, 1984, to allow to produce evidence that may have become available because of modern devices or techniques in such cases as it may consider appropriate.

42.2. General principle

Evidence which had been collected by the prosecution through modern device, could not be disallowed. (**2008 MLD 1442)**

42.3. Mere producing of CCTV video as piece of evidence

- Mere producing of CCTV video as piece of evidence and its watching in open Court was not sufficient to be relied upon unless and until corroborated and proved to be genuine---As a proof of genuineness of such CCTV video, it was incumbent upon prosecution to examine the person who recorded the video to testify the same, -Investigating officer who received CCTV video stated in his evidence that he received it from a person who did not want to disclose his name or identity being a man of some surveillance---Investigating officer admitted that nothing was visible and identifiable in the video as such the CCTV was not reliable piece of evidence. (**2013 P.Cr.LJ 783 Karachi)**
- C.C.TV Footage; person who prepared such footage from CCTV must be produced. (**2016 PSC Criminal (SC PK) 783)**
- Record of Mobile Company and evidence of its representative was admissible in terms of Art.164 of Qanun-e-Shahadat, 1984 which had provided that Court could allow the production of any evidence that could have become available because of devices and techniques. (**2013 P.Cr.LJ 1082 Karachi)**

- Report of National Data base and Registration Authority with regard to scanning of thumb marks could be produced as evidence **(2014 CLC 878)**

42.4. Audio tape or video, proving of---Admissibility in evidence (**PLD 2019 SC 675)**

Requirements for admissibility of an audio tape or video in evidence before a Court of law and the mode and manner of proving the same before the court stated

i. No audio tape or video could be relied upon by a court until the same was proved to be genuine and not tampered with or doctored.

ii. A forensic report prepared by an analyst of the Provincial Forensic Science Agency in respect of an audio tape or video was per se admissible in evidence in view of the provisions of section 9(3) of the Punjab Forensic Science Agency Act, 2007.

iii. Under Article 164 of the Qanun-e-Shahadat Order, 1984 it laid in the discretion of a Court to allow any evidence becoming available through an audio tape or video to be produced.

iv. Even where a court allowed an audio tape or video to be produced in evidence, such audio tape or video had to be proved in accordance with the law of evidence.

v. Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, had to be produced so as to rule out any possibility of tampering with the record.

vi. An audio tape or video sought to be produced in evidence must be the actual record of the conversation as and when it was made or of the event as and when it took place.

vii. The person recording the conversation or event had to be produced.

viii. The person recording the conversation or event must produce the audio tape or video himself.

ix. The audio tape or video must be played in the Court.

x. An audio tape or video produced before a Court as evidence ought to be clearly audible or viewable.

xi. The person recording the conversation or event must identify the voice of the person speaking or the person seen or the voice or person seen may be identified by any other person who recognized such voice or person.

xii. Any other person present at the time of making of the conversation or taking place of the event may also testify in support of the conversation heard in the audio tape or the event shown in the video.

xiii. The voices recorded or the persons shown must be properly identified.

xiv. The evidence sought to be produced through an audio tape or video had to be relevant to the controversy and otherwise admissible.

xv. Safe custody of the audio tape or video after its preparation till production before the court must be proved.

xvi. The transcript of the audio tape or video must have been prepared under independent supervision and control.

xvii. The person recording an audio tape or video may be a person whose part of routine duties was recording of an audio tape or video and he should not be a person who has recorded the audio tape or video for the purpose of laying a trap to procure evidence.

xviii. The source of an audio tape or video becoming available had to be disclosed.

xix. The date of acquiring the audio tape or video by the person producing it before the Court ought to be disclosed by such person.

xx. An audio tape or video produced at a late stage of a judicial proceeding may be looked at with suspicion.

xxi. A formal application had to be filed before the court by the person desiring an audio tape or video to be brought on the record of the case as evidence.

42.5. Courts in matters relating to Offence of Zina (Enforcement of Hudood) Ordinance, 1979

Courts in matters relating to Offence of Zina had all the powers to permit reception of evidence including resort to DNA test, if demanded by the occasion; (**PLD 2010 FSC 215)**

42.6. Consent of accused

DNA test---Consent of accused, obtaining of---Scope---Consent of accused was not required for conducting DNA test or any blood test in order to ascertain truthfulness of the allegation; (**2013 SCMR 203)** Now section 53-A of Cr.PC states in the same fashion.

43. STATEMENT OF ACCUSED U/S 342 Cr.PC

43.1. Principles

(Ali Ahmed V The State Criminal Appeal No.154-L of 2013,and Criminal Petition No.366-L of 2013 decided by Hon'ble Supreme Court on 14-03-2019)

- Statement of an accused recorded under section 342, Cr.P.C, has no less probative value than any other "matter" which may be taken into consideration against him within the contemplation of the definition of "proved" given in Article 2(4) of the QSO.
- Once the prosecution evidence is disbelieved, rejected or excluded from consideration and the facts explained by the accused in his statement under section 342 Cr.P.C. are accepted entirely, the Court is then to examine the said facts to give due effect to the statement of the accused, under the law, whether in favour of or against the accused.
- The primary purpose of section 342 Cr.P.C. is to enable the accused to know and to explain and respond to the evidence brought against him by the prosecution. A direct dialogue is established between the Court and the accused by putting every important incriminating piece of evidence to the accused and granting him an opportunity to answer and explain.
- If the prosecution fails to prove its case against the accused, the Court can take into consideration the statement of the accused under section 342 Cr.P.C. whether in favour of or against the accused; but it must take into consideration that statement in its entirety and cannot select and place reliance on the inculpatory part of the statement only.
- In the last mentioned circumstance, the facts narrated by the accused in his statement under section 342 Cr.P.C. are to be accepted without requiring

their proof. The Court, however, should examine the said facts in order to give due effect to them under the law. The object of such examination is to determine whether or not the facts narrated by the accused constitute an offence under the law or fit into any exception of the offence provided under the law.

An admission or confession made in statement under section 342 Cr.P.C., which is improbable or unbelievable, or is not consistent with the overall facts and circumstances of a case do not have any probative value and thus it cannot be relied upon by the court for reaching a conclusion.

43.2. General guidelines

- Piece of evidence or a circumstance not put to an accused person at the time of recording his statement under S. 342 , Cr.P.C. could not be considered against him. (**2018 SCMR 344, 2017 SCMR 148, 2016 SCMR 267)**
- Incriminating evidence must be put to accused in his statement under S. 342 , Cr.P.C. otherwise the same could not be used against him. **(2018 SCMR 71)**
- Such statement had to be rejected or accepted in toto. **(2016 SCMR 2073)**
- Statement of an accused recorded under S. 342 , Cr.P.C. was more reliable, compared to the statement recorded under S. 164, Cr.P.C which is recorded when the accused is in police custody. **(2015 SCMR 423)**
- If the conviction of accused was to be based solely on his statement in Court, then such statement should be taken into consideration in its entirety and not merely the inculpatory part of it to the exclusion of the exculpatory, unless there was other reliable evidence which supplemented the prosecution case---In such a condition, the exculpatory part if proved to be false might be excluded. **(2014 SCMR 7)**

- Prosecution had failed to prove its case against accused beyond reasonable doubt, therefore, he should have been acquitted, even if he had taken a plea and admitted to killing the deceased. **(2013 SCMR 383)**
- Statement of accused recorded under S.342, Cr. P. C. has to be accepted or rejected as a whole when entire prosecution evidence stands disbelieved. **(2011 SCMR 34)**
- Inculpatory part of the statement of accused recorded under S.342, Cr.P.C. could not be utilized for recording or upholding convictions and sentences to accused. **(PLD 2011 SC 796)**
- Where the prosecution evidence stands rejected in its totality, the statement of the accused has to be accepted in totality and without scrutiny. **(1992 SCMR 2047)**
- If defence plea is not substantiated, no benefit accrues to the prosecution on that account and its duty to prove the case beyond doubt would not be diminished even if defence plea is not proved or is found to be palpably false. (**1993 S C M R 417)**
- The version of the appellant may appear unconvincing but on that ground alone the appellant cannot be convicted as the prosecution has to prove its case. (**1969 SCMR 612)**
- Entire statement of accused could have been accepted only if prosecution evidence had not supported the case but when prosecution evidence was relied upon then incriminating part of the statement of accused could be taken into consideration (**2010 SCMR 589)**

44. INCULPATORY STATEMENT

44.1. Principles for statement under Section 342 Cr.P.C

- If the prosecution succeeded to prove the guilt of accused then the inculpatory part of his statement recorded under S. 342, Cr.P.C. should be read in support of the prosecution. **(PLD 2011 SC 796, 2018 YLR 2592, 2008 YLR 1290, 1998 MLD 506) W**here the prosecution evidence is found to be reliable and the exculpatory part of the accused person's statement is established to be false and is to be excluded from consideration then the inculpatory part of the accused person's statement may be read in support of the evidence of the prosecution. **(2013 SCMR 383)**
- If the prosecution evidence was not worth reliance, then such statement should be taken into consideration in its entirety and not merely the inculpatory part of it to the exclusion of the exculpatory, unless there was other reliable evidence which supplemented the prosecution case---In such a condition, the exculpatory part if proved to be false might be excluded. **(2014 SCMR 7, PLD 1991 SC 520, PLD 1952 FC 1)**

44.2. Guiding principles for confessional inculpatory statement

- Confession has to be read as a whole and not by relying only on the inculpatory part of the statement. (**PLD 1995 SC 336)**
- The benefit of its exculpatory portion to be extended to accused **(1997 P.Cr.LJ 280)**
- The inculpatory part of a confession can be accepted and exculpatory part rejected if there is corroborative evidence to support the inculpatory part. (**PLD 1961 (WP) Karachi 240)**
- Retracted extra-judicial confession before the prosecution witnesses, in absence of corroboration, was not acceptable **(2008 SCMR 841).**

44.3. Benefit of doubt

Reasoning advanced by the Trial Court while recording guilt of accused, were based upon inculpatory part of statement of accused recorded in terms of S.342, Cr.P.C. Prosecution had failed to substantiate its case against accused to the hilt. Benefit of every doubt was to be extended in favour of accused **(2016 MLD 812, 2015 YLR 476, 1997 MLD 1154)**

44.4. Inculpatory confessional statement against co-accused

Inculpatory confession of an accused can lawfully and validly be used not only against its maker, but also against other accused persons. **(2002 YLR 2843)**

44.5. Inculpatory statement in FIR

Accused reporting his own crime (murder) to Police. Statement of accused in First Information Report not admissible on account of its inculpatory character. **(PLD 1965 SC 366, 1986 P.Cr.LJ 174)**

44.6. Inculpatory statement with plea of self defence

Principal accused had admitted occurrence and could not produce any witness in support of his version that he acted in self-defence. Inculpatory part of a statement could be read in support of prosecution's case. **(2016 SCMR 171).** Where the accused makes a statement to have committed an offence but simultaneously raises plea constituting a defence, the Court will not rely on the inculpatory portion alone and reject the exculpatory one. Where, however, prosecution has produced clear, cogent and reliable evidence, the exculpatory part may be rejected and conviction can be recorded on such evidence. (**PLD 1995 SC 343)**

44.7. Use of inculpatory statement

1. Bail dismissed (**2019 P.Cr.LJ Note 119, 2012 MLD 1894, 2009 P.Cr.LJ 75, 2005 YLR 1411, 2000 P.Cr.LJ 1000, 1999 P.Cr.LJ 1472, 1995 P.Cr.LJ 1319)**

2. Bail granted (**2008 MLD 1112, 1997 MLD 2266, 1989 P.Cr.L J 782)**
3. Conviction suspended under section 426 Cr. P.C. **2009 YLR 1670, 2014 SCM R 7, 2008 YLR 1870.**
4. Accused is convicted by taking into consideration inculpatory statement **2016 S CMR 171, 2013 SCMR 383, 2008 YLR 1290, 2007 YLR 261, PLD 1995 Supreme Court 336, 1998 P.Cr.LJ 619, 1998 P.Cr.LJ 1316, 1998 MLD 506, 1995 P.Cr. LJ 449, PLD 1995 Supreme Court 343, 1983 P.Cr.LJ 1402**
5. Accused is acquitted by rejecting his inculpatory statement (**2018 YLR 2592, 2017 P.Cr.LJ 1417, 2017 P.Cr.LJ 1377, 2016 MLD 812, 2016 YLR 769, 2016 P.Cr.LJ Note 35, 2015 YLR 476, 2014 P.Cr.LJ 669, , 2013 YLR 2090, 2013 MLD 1910, 2013 P.Cr.LJ 1650, PLD 2011 Supreme Court 796, 2008 SCMR 841, 1997 MLD 1154, PLD 1996 Karachi 316, 1994 P.Cr.LJ 314, 1994 P.Cr.LJ 144)**

45. STATEMENT UNDER SECTION 340(2) Cr.P.C

45.1. Purpose

- Purpose of examination of accused under S. 340(2) , Cr.P.C. was almost different from his examination under S. 342 Cr.P.C.--Statement of accused recorded under S. 340(2) Cr.P.C. was tendered to disprove the case set up by prosecution. (**2018 YLR 2535)**
- Under the Constitution and the law, there is an unqualified and unconditional protection against self-incrimination and the provisions of section 340(2) of the Code of Criminal Procedure, 1898 are designed merely to enable an accused to offer himself as a witness in disproof of the charge alone and not in support thereof; the exercise is to be carried out after administration of oath upon the accused with the option of cross-examination. (**P L D 2018 Lahore 28)**

45.2. Section 340(2) cannot be imported under section 164 or 342 Cr.P.C

- Express provisions of s.340(2) , Cr.P.C. for giving evidence on oath cannot be imported under s.164 or s.342, Cr.P.C. (**1999 P.Cr.LJ 1381), PLD 1995 Karachi 105).**
- Statement made by accused without oath under S.342, Cr.P.C. had been read by Trial Court as an evidence on oath under S.340(2) , Cr.P.C. in disproof of the charge which was not possible under the law. (**1991 P.Cr.LJ 350)**

45.3. Duty of Court

- The interpretation of section 340(2), Cr.P.C. has to be that it has no compulsive effect on the accused. All that the Court can do is to ask him whether he will like to make a statement on oath. It is his option and without prejudice to his case to make a statement or not to make a statement on

oath. No adverse inference can be drawn if he does not opt to make a statement. (**PLD 1991 SC 787)**

- Consistency with the paramount law, therefore, demands that subsection (2) of section 340 should be interpreted as only conferring a duty or a power on the Court to inform the accused that he has a right under the law to make a statement on oath and it is his option with no risk attaching it to either make that statement or not to make that statement. (**PLD 1991 SC 787)**

45.4. Refusal by Court to record statement under section 340(2)

- Accused was competent defence witness, and if he wanted to appear in defence as required under S.340(2) , Cr.P.C., then refusal of Trial Court, declining the mandatory provisions of law, to let him be his own witness, was illegal. (**2017 MLD 1611)**
- Accused having expressly shown his willingness in his examination under S.342, Cr.P.C. to produce evidence in defence had been deprived of such opportunity on account of the statement made by his newly engaged counsel allegedly without his sanction---Denial of said opportunity to accused amounted to denial of fair trial which was not a mere irregularity but an illegality not curable under S.537, Cr.P.C. (**1997 P.Cr.LJ 1434)**
- Failure on the part of the Trial Court to put a question to the accused persons as to their giving statements on oath under S.340(2), Cr.P.C. rendered the trial incomplete. (**PLD 1991 FSC 135)**

45.5. No adverse inference against accused

No adverse inference, though can be drawn against an accused person for not appearing in witness-box in disproof of allegations and charge, (**2001 SCMR 41)** but if he had taken a specific plea and burden to prove such plea was upon him, then he should appear in witness-box in support of this such plea. (**2007 P.Cr.LJ 1891)**. Provision of S.340(2) ,Cr.P.C. confer a duty or a power on the Court to inform the accused that he has a right

under the law to make a statement on oath and it is his option with no risk attaching it to either make that statement or not to make that statement--- View that on the strength of S.340(2) , Cr.P.C. accused can be compelled to make a statement on oath or that on his failure to do so he can be sent to prison or that adverse inference can be drawn against him is not correct. (**PLD 1991 SC 787, 1992 P.Cr.LJ 2059)**

45.6. Valuable Right of accused

Provisions of S.340(2) , Cr.P.C. being mandatory, failure to put question while recording statement under S.342, Cr.P.C. was an illegality. (**1990 P.Cr.LJ 107).** Rights under Ss.342 & 340(2) , Cr.P.C. were basic and valuable rights which accrue to an accused for explaining incriminating evidence standing against him as well as for defending himself in his capacity as a witness---Opportunity ought to be provided to the accused with respect to his examination under S.342, Cr.P.C. or for his appearing as his own witness under S.340(2) , Cr.P.C. so that he was left with no grievance of having not been heard personally. (**PLD 2003 Lahore 481).** Failure to provide opportunity to accused to examine himself on oath to disprove the charge causes serious prejudice to his case. (**1992 MLD 421)**

45.7. Guiding principles

- If it appeared that defence taken by the accused could be true, even in that eventuality accused was entitled to its benefit. (**2018 MLD 1654)**
- Statement of accused recorded under Ss. 342 & 340(2) , Cr.P.C. could not be used as evidence in the case to prove the guilt of the accused. (**2018 YLR 890)**
- Accused in his statement under S. 340(2) , Cr.P.C. stated that he was ready to state on Holy Quran that he was innocent---Held, that there was no legal sanctity behind such a statement by the accused. (**2015 SCMR 1326)**

- Inculpatory and exculpatory statement of accused---Accused could not be awarded punishment on the basis of their statements recorded under Ss.340(2) & 342, Cr.P.C., by accepting the inculpatory part of said statements, and by rejecting exculpatory part of the same statement. **(2013 P.Cr.LJ 1650)**
- Such statement if found reasonably possible from material on record, then accused can be given benefit of doubt and acquitted. **(2011 YLR 1435)**
- Failure to examine himself on oath under S.340(2) , Cr.P.C. showed that the accused had nothing to say in his defence. **(2006 SCMR 304)**
- Non-furnishing of any explanation by the accused about his involvement in the offence and non-examination on oath under S.340(2) , Cr.P.C. had further established his involvement in the case. **(2002 SCMR 1602)**
- During cross-examination of accused under S.340(2) , Cr. P.C., accused was asked a number of questions which were incriminatory in nature---Such questioning, held, was a clear breach of protection given to the accused under S.340(2) , Cr. P.C. and Court ought to have disallowed such questions and informed the accused that he was not required to answer any question tending to show that he had committed or been convicted for such offences other than the offence with which he was being tried or was of a bad character except in cases laid down in S.340(2) (c)(i)(ii)(iii). **(1991 P.Cr.LJ 635)**
- A defendant who chooses to testify waives his privilege against compulsory self-incrimination with respect to the testimony he gives, and that waiver is no less effective or complete because the defendant may have been motivated to take the witness stand in the first place only by reason of the strength of the lawful evidence adduced against him. **(PLD 1991 SC 787)**

46. DEFENCE EVIDENCE

46.1. General Rule

Prosecution was to stand on its own legs and it could not derive any benefit from the defence witnesses, if any. (**2017 YLR 1383).** Court should first discuss prosecution evidence before examining defence evidence -Discussing defence evidence prior to dealing with prosecution evidence is illegal. (**PLD 1968 Lahore 437)** Even if defence evidence was not found to be trust worthy, prosecution was still under obligation to prove its case through natural, straightforward, trustworthy and confidence inspiring evidence of unimpeachable character---Prosecution could not earn benefits from weaknesses of defence evidence ---Prosecution was bound to prove its case beyond any shadow of doubt and if any reasonable doubt had arisen from prosecution case, which pricked the judicial mind, benefit of the same was to be extended to accused not as a matter of grace or concession but as a matter of right. (**2016 YLR 787)**

46.2. Guidelines

- Defence evidence had to be put in juxta-position with the prosecution evidence and if the same would inspire confidence, benefit had to be given to accused who was always considered innocent till prove guilty. (**2013 YLR 1518)**
- Defence witnesses who did not appear during investigation in support of version of accused, their evidence during trial after a long time was not believable in circumstances. (**2015 P.Cr.LJ 1217).** In view of personal interest and the fact that defence witnesses disclosed their story for the first time at trial to contradict prosecution version, their testimony was not of much help to defence. (**2008 SCMR 102)**
- In a criminal case, it is the duty of the Court to review the entire evidence that has been produced by the prosecution and the defence. If, after an

examination of the whole evidence, the Court is of the opinion that there is a reasonable possibility that the defence put forward by the accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to the benefit of doubt, not as a matter of grace, but as of right, because the prosecution has not proved its case beyond reasonable doubt. (**1985 SCMR 510)**

47. WITNESSES

47.1. Chance Witness

- Chance witness, in legal parlance was a witness who claimed that he was present at the crime spot at the fateful time, albeit, his presence there was a sheer chance as in the ordinary course of business, he was not supposed to be present on the spot but at a place where he resided carried on business or ran day to day affairs.
- In rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to a prudent mind of his presence on the crime spot were put forth, when the occurrence took place.(**2019 YLR 2617)**
- Otherwise his testimony would fall within the category of suspect evidence and could not be accepted without a pinch of salt. **(2015 SCMR 1142)**
- Chance witness is one who has no plausible explanation for his presence near the place of occurrence and he had reached their by chance. **(2008 P.Cr.L.J.881)**
- If witness reasonably explains his presence at the spot and his narration of occurrence inspires confidence then he is not a chance witness and his testimony can be considered along with the other evidence. (**2017 SCMR 1543, 2010 SCMR 1791, 2010 P.Cr.LJ 11)**
- Presence of passerby cannot be rejected by describing him as mere chance witness unless he fails to give satisfactory explanation of their presence at or near the crime spot at the relevant time. **(2005 SCMR 1906)**
- Witnesses resident of neighborhood cannot be termed as chance witnesses. (**2018 SCMR 1001).**

- Witnesses of the ocular account were residents of some other houses and were not inmates of the house where the occurrence had taken place---Said eye-witnesses were, thus, chance witnesses (**2017 SCMR 622)**
- Complainant's house was at a distance of 3 acres from the place of occurrence whereas the house of one of the eye-witnesses was at the distance of 1-1/2 mile from the place of occurrence, therefore, their presence at the scene was a sheer chance because at such odd hour of the night (**2017 SCMR 344)**
- Last seen evidence could also be held to be of chance witnesses as it was not their case that it was their routine of passing through the same street regularly- (**2015 SCMR 155).**
- Two alleged witnesses who were attracted to the crime scene were permanent residents of another city. They were chance witnesses. (**2017 SCMR 2036).**
- Witnesses being brothers of deceased could not justify their presence at 5.30 a.m. with the deceased. They are chance witnesses. (**2018 SCMR 344)**

47.2. Child Witness

- Essential conditions for a child or for any person, to appear and testify as a witness, under Art.3 of the Qanun-e-Shahadat Order, 1984 was that the child or the person must have the capacity and intelligence of understanding the questions put to him, and also be able to rationally respond thereto---Such threshold was referred to as passing the "rationality test", and the practice that had developed with time was for the same to be carried out by the presiding Judge prior to recording the evidence of the child witness. (**PLD 2020 SC 146)**
- Section 118 of the Evidence Act (now Article 3 of Qanoon-e-Shahadat Order, 1984), as rightly pointed out by the High Court, makes all persons

competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving a rational answer to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. (**1968 SCMR 852, 2016 P.Cr.LJ 513)**

- Evidence of child witness is a delicate matter and normally it is not safe to rely upon it unless corroborated as rule of prudence. Great care is to be taken that in the evidence of child element of coaching is not involved. (**PLD 1995 SC 1)**
- The mere fact that the evidence of the only eye witness of a crime is that of a child of 10 years of age is not a ground for no relying upon it especially when the evidence was given without hesitation and without slightest suggestion of tutoring anything of the sort and there is corroboration of the evidence in so far as it narrates the actual facts or the child's subsequent conduct immediately afterwards. **(1982 SCMR 757)**
- The real tests are; how consistent the story is with itself; how it stands the test of cross-examination and how far it fits with the evidence and circumstances of the case. (**1982 SCMR 757)**
- Article 3 of Qanun-e-Shahadat Order, 1984 is a rule of caution. The question in each case, which a Court is to testify is whether a particular child who has appeared in the witness box is intelligent enough to be able to understand as to what evidence he is giving and he should be able to give rational answers to the questions. (**2015 YLR 17)**
- No particular age is given by the legislature which determines the question of competency of a witness. This only depends upon the capacity of the child to understand. (**2015 YLR 17)**

47.3. Deaf and Dumb Witness

47.3.1. True interpretation by interpreter Section 543 of the Code of Criminal Procedure ("the Code") requires that an interpreter "shall be bound to state the true interpretation of such evidence or statement". (**2019 S C M R 64)**

47.3.2. Principles

2019 P.Cr.LJ 1086

- There is no specific provision, either in Qanun-e-Shahadat Order, 1984 (hereinafter referred to as QSO, 1984) or in Cr.P.C. for catering the need of recording deposition of deaf and dumb witness.
- Evidence of deaf and dumb witness can still be recorded through necessary implication of Articles 3 and 59 of QSO, 1984 read with section 543, Cr.P.C.
- Article 59 of QSO, 1984, trial Court can call for the help of an expert having requisite expertise in specific field and through section 543, Cr.P.C. can record the evidence of a deaf and dumb witness by using such expert as interpreter.
- Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. **(2012 AIR (SCW) 3036)**
- Such a person though unable to speak, may convey himself through writing if literate or through signs and gesture if he is unable to read and write. **(2012 AIR (SCW) 3036)**
- To sum up, a deaf and dumb person is a competent witness. If in the opinion of the Court, oath can be administered to him/her, it should be so

done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. **(2012 AIR (SCW) 3036)**

- In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath." **(2012 AIR (SCW) 3036)**

47.4. Given Up Witness

2018 M L D 489

Where a witness was earlier given up but later an application was filed to summon that witness. Trial Court had dismissed the application but honorable Lahore High Court has held that:

- One must appreciate that section 540, Cr.P.C. empowers the trial Court to call or recall any witness "at any stage" of the trial. It does not provide any limitation with respect to time. As such, section 540, Cr.P.C. can be invoked at any stage of the proceedings in the aid of justice.
- Justice cannot be sacrificed at the altar of convenience.
- The main purpose of judicial proceedings is to find out the truth. Section 540, Cr.P.C. also seeks to achieve that object. It enables the Court to get to the truth and to arrive at the correct and just conclusion and thus obviates the possibility of miscarriage of justice.
- This power can be exercised even where a person is not cited as a witness in the challan case, or as the case may be, in the private complaint. The only condition is that he should be a material witness and his decision should be imperative for the just decision of the case.

- A witness notwithstanding being called and examined or recalled or. re-examined under S. 540, Cr. P. C:-Retains his character as a prosecution or defence witness, as case may be given up prosecution witness, examined under .S. 540, Cr. P. C., held, still a prosecution witness and can be confronted with his Police statement in terms of S. 162, Cr, P. C.-A witness, neither cited by prosecution nor by defence, held further, if summoned, - a 'Court witness' simpliciter.-[Witness]. (**1980 P.Cr.LJ 570 Lahore)**

47.5. Hostile Witness

Two conditions namely a hostile animus and the witness being not desirous of telling the truth, should weight in the matter of allowing the prayer for cross-examining a witness cited by a particular party.

- Requirement is not that the witness must be suppressing the truth or not desirous of making a truthful statement, but as to whether he has made a statement which may adversely affect the party producing him. **(2008 P.Cr.LJ 327)**
- Evidence of hostile witness remains admissible and conviction can be based on such testimony but for safe administration of criminal justice in such a case adequate and necessary corroboration is need of the hour without which no conviction can be recorded against an accused. **(2016 P.Cr.LJ 924)**
- Statement of a hostile witness cannot be brushed aside altogether and the same can be taken into consideration subject to availability of corroboration. Further held that Court is bound to consider and determine as to whether any part of such evidence was worth of belief if examined in the light of other incriminating material and evidence, which had come on record. **(PLD 2004 SC 334)**
- No doubt a witness who has been declared hostile would not become unworthy or reliance and his evidence cannot be brushed aside if found true

and credible but since said witness had spoken in two different voices and two different tones, his evidence has to be assessed with much care and caution. **(2004 P.Cr.L.J 1239)**

- A witness who is unfavourable is not necessarily hostile, for a hostile witness is one who from the manner in which he gives his evidence, shows that he is not desirous of telling the truth to the Court; that the witness's answer to certain question is in direct conflict with evidence of other witnesses and is not and can never be a reason for allowing the witness to be treated as hostile and permitted to be cross-examined. **(1984 SCMR 560)**
- When a **witness speaks in different voices**, it would be for the Court to decide in what voice he speaks the truth---Determining test in such cases is corroboration from independent source and conformity with the remaining evidence. (**1996 SCMR 678).**
- Witness changing positions three times during same trial-Such witness, held, unreliable casting doubt on prosecution story-Benefit of such doubt to go to accused (**PLD 1985 SC 233)**

47.6. Injured Witness

- As per settled principles laid down for appraisal of evidence, even the testimony of an injured witness is to be subjected to scrutiny, for making it basis of conviction. **(2020 P.Cr.LJ 45)**
- Presence of injured witnesses at the time and place of occurrence is established due to the injuries sustained by them but their evidence if does not inspire confidence due to the improvements made by them in the Court, it will cast serious doubt on their veracity making their testimony unreliable. **(2011 P.Cr.LJ 470)**
- Evidence of injured witness is not affirmative proof of his credibility and truth. **(2011 SCMR 527)**

- Injuries on a prosecution witness only indicate his presence at the spot but do not prove his credibility and truth. **(2007 SCMR 670)**
- Testimony of injured witness is to be considered reliable however, the same cannot be accepted with shut eyes. Where such testimony is blatantly contradictory and inconsistent with other evidence then the same has to be viewed with caution. **(2010 YLR 2400)**
- Sustaining of injuries by person, though would prove his presence at the place of occurrence, but mere receipt of injuries, would not be sufficient to stamp him as truthful witness, and to act upon his evidene on that score alone. Veracity in injured eye witness had to be tested on its own merits, keeping in view the facts and circumstances of the case. **(2016 YLR 2148)**
- Stamps of injuries on the person of the witness might have established his presence at the relevant time at a particular place of occurrence but the injuries itself were not the proof that whatever the witness was telling was truth. **(2020 YLR 176)**
- For an injured witness whose presence at the occurrence is not disputed it can safely be concluded that he had witnessed the incident. But the facts he narrates are not to be implicitly accepted merely because he is an injured witness. His testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution witness. **(1995 SCMR 127)**
- Presence of injured witnesses cannot be doubted at place of incident merely because they had injuries on their person does not stamp them to be truthful witnesses. (**2011 SCMR 323)**
- Statement of the injured witness, the sole eye-witness, was confidence inspiring---Being injured, presence of injured witness at the scene of occurrence could not be doubted; (**2019 SCMR 1309)**

47.7. Interested Witness

- An interested witness is one who has a motive to falsely implicate an accused or has some rancour or enmity against him. **(2010 SCMR 1090)**
- While appreciating the evidence of a witness considering him as an interested witness, the court must bear in mind that the term 'interested' postulated that the witness must have some direct interest in having the accused somehow or the other convicted for some other reason. **(2012 SCMR 1869)**
- Only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person. Even evidence of uninterested witness, not inimical to the accused, may be corrupted deliberately while evidence of inimical witness, if found consistent with the other evidence corroborating it, may be relied upon. **(2016 SCMR 274,PLD 1991 SC 447)**
- Mere relationship of eye-witness with the deceased was not always enough to declare such witness to be partisan or interested witness when his testimony was confidence inspiring and corroborated with the medical evidence as well as recoveries of crime weapon and motive also stood proved. **(2016 SCMR 2152, 2009 SCMR 825)**
- Statement of witness on account of being interested can only be discarded if it is proved that interested witness has ulterior motive on account of enmity or any other consideration. **(2011 SCMR 429)**
- Statement of interested witness cannot be taken into consideration without corroboration and even uncorroborated version can be relied upon if supported by surrounding circumstances **(2011 SCMR 429)**
- It was duty and obligation of court for corroboration of interested witnesses, to have first ascertained whether such witness had seen the occurrence and

was in a position to identify accused and whether he should be believed without corroboration. **(2010 SCMR 1791)**

(2010 SCMR 660)

a. it is a mistaken notion that reliance could never ever be placed on the uncorroborated testimony of interested witnesses;

b. looking for corroboration before placing reliance on interested testimony, was only a rule of caution prescribed by the Courts and not a rule of law commanded by the legislature;

c. that even the said was not an inflexible rule;

d. the crucial test for accepting or rejecting a piece of evidence was its intrinsic worth and not really the source from which the same emanated; and finally that

e. Corroboration, even if required for the satisfaction of the conscience of the Court, did not always have to come from independent sources of un-impeachable character but could be gathered even from the circumstances available on record.

Also PLD 1960 SC 387, PLD 1977 SC 462)

47.8. Sole Witness

- The contention that conviction could not be awarded on the basis of evidence furnished by sole witness in not sustainable in law. It is worth and truthfulness of ocular account furnished by witness which are to be taken into consideration while believing the same and relying for conviction. The prosecution has fully proved its case beyond any shadow of doubt.**(2008 SCMR 161, 2007 SCMR 91)**
- Conviction could be passed on the statement of sole witness, if court found the same confidence inspiring and truthful---When ocular account was strong and trustworthy, principle of independent corroboration would not apply. **(2018 PLD 139)**

- Confidence inspiring and trustworthy evidence of a sole witness can safely be relied upon for conviction. **(2012 P.Cr.LJ 1274)**
- Quality and not quantity of evidence is to be taken into consideration--- Conviction can be based on the testimony of sole natural and truthful witness. **(2011 MLD 1)**
- If solitary statement was confidence-inspiring and had come from an unimpeachable source and had intrinsic value, capital punishment, could be maintained on the basis of such statement. **(2006 YLR 1849)**
- Sole witness in the case being close relative of deceased was interested witness and having deposed inimically towards accused, his evidence required to be scrutinized with care and caution**. (2004 YLR 2417)**
- Statement of the injured witness, the sole eye-witness, was confidence inspiring---Being injured, presence of injured witness at the scene of occurrence could not be doubted; (**2019 SCMR 1309)**

47.9. Wajtakkar Witness

- *Wajtakkar* type of witness is always treated to be a chance witness and his presence can be accepted if he can establish his presence at the place of incident but in the absence of such explanation the prosecution is bound to place on record some strong evidence to corroborate his statement. **(2003 SCMR 1419, 1978 SCMR 114)**
- Without any ocular evidence no importance could be attached to the evidence of '*Vajtakkar*' which was otherwise weak and infirm. **(2003 SCMR 477)**
- It is an established principle of criminal jurisprudence that circumstantial evidence of *wajtakar* is a weak and infirm evidence and assumes no importance until and unless corroborated by some strong independent piece of evidence.**(2018 P.Cr.LJ Note 37)**

- *Wajtakkar* witness is actually a chance witness and evidence of such a witness is always accepted with great caution as such witnesses are introduced in such cases where the prosecution case is weak and lacunas have to be filled. (**2016 P.Cr.LJ 1645)**
- Chance witness could not be disbelieved because he happened to be present per chance unless the defence could show that he had either got some interest in the person of the deceased or complainant or such chance witness was hostile or inimical towards the accused which could prompt him for installing himself as false eye witness. **(2012 SCMR 1281)**

47.10. Withholding of best available/important evidence

In case titled as Muhammad Rafique and others case**, (2010 SCMR 385),** it is observed

- It is well-settled that if any party withholds the best piece of evidence then it can fairly be presumed that the party had some sinister motive behind it.
- The presumption under Article 129(g) of Qanun-e-Shahadat Order can fairly be drawn that if P.W. Amir Ali would have been examined, his evidence would have been unfavourable to the prosecution.
- Non-examination of third prosecution witness; Mere non-appearance of any eyewitness would not justify adverse inference to the case of prosecution on such account; (**2010 SCMR 949)**

48. RES GESTAE

48.1. Introduction

Res Gestae is a concept which as a matter of principle is employed in the English system of administration of criminal justice under the name of 'res gestae'. In our system of administration of justice, Article 19 of Qanun-e-Shahadat (P.O. No. 10 of 1984) corresponding to section 6, of the Evidence Act of 1872, is an enacted provision of law under which statement made immediately after the occurrence under the influence of occurrence in order to characterize it and connecting therewith would be admissible under this Article as 'res gestae' evidence." (**2018 P.Cr.LJ 841,2000 MLD 1290, 2000 P.Cr.LJ 769, 1993 P.Cr.LJ 704, PLD 1971 Lahore 929)**

48.2. Meaning

"Res-gestae (rays jes-tee. also jes-ti), n.pl. [Latin "things done"' The events at issue, or other events contemporaneous. with them..... "The Latin expression 'res gestae' or 'res gesta', literally 'things done' or 'things transacted', has long served as a catchword... "The res gestae embraces not only the actual facts of the transaction and the circumstances surrounding it, but the matters immediately antecedent to and having a direct casual connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence." State v. Fouquette, 221 P.2d 404, 416-17 (Nev. 1950)." (**2016 MLD 1468)**

48.3. Definition

The res gestae rule is that where a remark is made spontaneously and concurrently. It is defined as a matter incidental to main fact and explanatory of it, including acts and words which are so closely connected therewith as to constitute a part of transaction and without a knowledge of which main fact might not be properly understood. They are events

themselves speaking through instinctive words and acts of participants; circumstances, facts and declarations which grow out of main fact are contemporaneous with it and serve to illustrate its character. Res Gestae includes everything that may be fairly considered as an incident of even under consideration. It carries with it hinerently a degree of credibility and will be admissible because of its spontaneous nature. 'Res Gestae' means literally thing or things happened and, therefore, to be admissible as exception to hearsay rule, words spoken, thought expressed and gestures made must all be so closely connected to occurrence or event in both time and substance as to be a part of the happening. It is a spontaneous declaration made by a person immediately after an event and before the mind has an opportunity to conjure a false story. It represents an exception to the hearsay rule. (**2018 P.Cr.LJ 841, 2016 YLR Note 178), 2015 YLR 703, 2000 P.Cr.LJ 769, 2000 MLD 1290, PLD 1971 Lahore 929)**

48.4. Exception to rule of hearsay evidence

Under the principle of 'Res Gestae' if the victim informed someone immediately about the occurrence and had no time to meditate or make up things then the same was admissible in evidence as an exception to hearsay rule.

48.5. Admisible in evidence

Anything said immediately after the occurrence by .the people gathered cannot be termed as hearsay because the same is admissible as res gestae. (**1992 SCMR 1625)**

48.6. Guiding Principles

- Relevancy of facts forming part of same transaction--Statements, utterances and declarations in order to be admissible/relevant as "res gestae" should be contemporaneous with the occurrence/ incident with

issue, i.e., interval should not be such as to give time or opportunity for fabrication and they should not amount to be mere narrative or past occurrence---Declarations, statements and utterances which do not satisfy the said test are rejected as hearsay. **(PLD 2003 SC 368)**

- Res gestae-Statements made under immediate influence of a transaction in order to characterize it and explain circumstances, connected there with admissible under S. 6 provided there is no time for further thought and fabrication.[21] **(PLD 1971 Lahore 929)**
- Some facts or events which might be hearsay but related to the alleged incident were admissible in evidence under the principle of re-gestae. (**2019 YLR 2508)**
- Anything said soon after the occurrence by the people gathered there is admissible as **RES GESTAE**. (**2006 P Cr. L J 62)**
- Under Article 19 of QSO, 1984 the facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant and this rule is known as Res Gestae. (**1994 P.Cr.LJ 2102)**
- Even otherwise, contemporaneous utterances of the victim immediately after the occurrence were relevant facts as res gestae under the Qanun-e-Shahadat, 1984 and admissible evidence as held by the Honourable Supreme Court of Pakistan in the case of Riasat Ali v. The State **(PLD 1991 SC 397)**. Although an F.I.R. is not a substantive piece of evidence yet an F.I.R. which can be treated as a dying declaration or Res Gestae becomes relevant as well as admissible evidence. **(1999 YLR 1766)**
- There is yet another proposition which can be affirmed, that for identification purposes in a criminal trial the event with which the words sought to be proved must be so connected as to form part of the res

[21] A I R 1926 Pat. 58

gestae is the commission of the crime itself, the throwing of the stone, the striking of the blow, the setting fire to the building or whatever the criminal act may be (**PLD 1952 PC 119)**

49. FALSUS IN UNO FALSUS IN OMNIBUS

49.1. Principle

The rule falsus in uno, falsus in omnibus--Latin phrase--Meaning of "false in one thing, false in everything"--Held: A witness who lied about any material fact must be disbelieved as to all facts--Falsus in uno, falsus in omnibus is a Latin phrase meaning "false in one thing, false in everything"--The rule held that a witness who lied about any material fact must be disbelieved as to all facts because of the reason that the "presumption that the witness will declare the truth ceases as soon as it manifestly appears that he is capable of perjury" and that "Faith in a witness's testimony cannot be partial or fractional. ...The rule was first held not to apply to cases in Pakistan in case **(PLD 1951 Lahore 66)** --This view stems from notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that said witness will declare truth about any other aspect of case-Maxim has not been accepted by superior Courts in Pakistan--Supreme Court of Pakistan has dealt with rule in different cases till date--job of a Judge was to discover truth. ... Rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and same shall be given effect to, followed and applied by all Courts in country in its letter and spirit--It is also directed that a witness found by a Court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury. (**PLD 2019 SC 527).**

When the eye-witnesses had been disbelieved against some accused persons attributed effective roles then the same eye-witnesses could not be believed against the co-accused attributed a similar role unless such eye witnesses

received independent corroboration qua the co-accused. (**2018 SCMR 344).**

If the prosecution witnesses could involve one accused in a false case, then their statements qua the other accused could not be relied upon in the absence of very strong, independent and corroboratory evidence against them. (**2009 SCMR 230)**

50. LAST SEEN EVIDENCE

50.1. Principles

2017 SCMR 2026

i. There must be cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused and those reasons must be palpable and prima facie furnished by the Prosecution.

ii. The proximity of the crime scene plays a vital role because if within a short distance the deceased is done to death then, ordinarily the inference would be that he did not part ways or separated from the accused and onus in this regard would shift to the accused to furnish those circumstances under which, the deceased left him and parted ways in the course of transit.

iii. The timing of that the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.

iv. There must be some reasons and objects on account of which the deceased accompanied the accused for accomplishment of the same towards a particular destination, otherwise giving company by the deceased to the accused would become a question mark.

v. Additionally, there must be some motive on the part of the accused to kill the deceased otherwise the Prosecution has to furnish evidence that it was during the transit that something happened abnormal or unpleasant which motivated the accused in killing the deceased.

vi. The quick reporting of the matter without any undue delay is essential, otherwise the prosecution story would become doubtful for the reason that the story of last seen was tailored or designed falsely, involving accused person. Beside the above, circumstantial evidence of last seen must be

corroborated by independent evidence, coming from unimpeachable source because uncorroborated last seen evidence is a weak type of evidence in cases involving capital punishment.

vii. The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude all possible doubts, which may arise if it is not done in a proper and fair manner.

viii. The Court has also to seriously consider that whether the deceased was having any contributory role in the cause of his death inviting the trouble, if it was not a pre-planned and calculated murder.

The circumstance of the deceased being last seen in the company of the accused is not by itself sufficient to sustain the charge of murder. There must be evidence to link the accused with the murder of his companion, such as incriminating facts as recovery, strong motive and the proximate time when they were last seen together and the time when the deceased was killed. Last seen evidence as circumstantial evidence must be incompatible with the innocence of the accused and should be accepted with great caution. It must be scrutinized minutely so that no plausible conclusion should be drawn there from except guilt of the accused. (**PLD 2018 SC 813)**

50.2. Circumstantial evidence

- Evidence, chain of---Principles---All pieces of evidence should be so linked that it should give picture of complete chain, one corner of which should touch neck of deceased and the other corner to neck of accused---Failure of one link destroys entire chain. (**2008 SCMR 1103).**
- Medical evidence had supported the last seen and other circumstantial evidence--Multiple circumstances had corroborated the involvement of accused in killing the boy, who had taken him along on a bicycle, killed him thereafter and thrown into the river (**2011 SCMR 670).**

51. MOTIVE

51.1. Principles

- Once the prosecution alleged a Motive and failed to prove the same during the trial, the same could be taken as a mitigating circumstance while deciding the quantum of sentence of a convict. (**2017 SCMR 2048, 2017 SCMR 1884)**
- A vague Motive set up by the complainant, which could not be proved at trial, was mitigating circumstance to reduce the death sentence awarded to the accused (**2017 SCMR 1727)**
- Absence of direct Motive ---No direct Motive was alleged against the accused, therefore, taking it as a mitigating circumstance, the sentence of death awarded to him was altered to imprisonment for life. (**2017 SCMR 1797).**
- Where the prosecution asserted a Motive but failed to prove the same then such failure on part of the prosecution may react against sentence of death passed against a convict on the charge of murder. (**2018 SCMR 911).**
- **Motive was not directly related to the accused;** no animus; no reasons for substitution. (**1997 SCMR 89)**
- **Motive- double edged weapon**
  (2019 SCMR 652, 2020 MLD 136 Lhr).
  The motive is always a double-edged weapon. .....No doubt, previous enmity can be a reason for the appellant to commit the alleged crime, but it can equally be a reason for the complainant side to falsely implicate the appellant in this case for previous grouse (**2019 SCMR 652)**.
- **Absence of motive is not a ground for acquittal**
  The weakness or absence of motive is not a factor to be essentially considered for the purpose of acquittal (**2008 SCMR 1352)**

- **Conviction can be made when no motive is given by the prosecution**

  Absence of motive by itself would not put dent in proving the culpability of respondent in view of convincing ocular account finding support from medical evidence (**2013 YLR 2620 Lah)**.
- **Maximum punishment cannot be given in absence of motive**
- If the motive is missing in any criminal case, the same may reacts against the imposition of maximum penalty of death (**2019 P.Cr.LJ. 1531 Lah)**.
- **Failure to prove the motive is a 'mitigating circumstance**

  (2019 SCMR 2009, 2017 SCMR 2048, 2017 SCMR 1884, 2017 SCMR 1727, 2017 SCMR 1797, 2018 SCMR 911)

  Once the prosecution alleges a motive and fails to prove the same during the trial, the same can be taken as a mitigating circumstance while deciding the quantum of sentence of a convict. (**2017 SCMR 2048)**

52. NIGHT OCCURRENCE

52.1. Source of light

- Although, occurrence took place at night time yet the P.Ws have given the source of identification by stating that they identified the appellant at the spot in the light of electricity 'bulb'. Perusal of evidence of aforesaid P.Ws reveals that they remained consistent on all material points and there was no discrepancy in their evidence. They have given full details of occurrence leading to the murder of Muhammad Ishaq deceased at the hands of the appellant. Zulfiqar P.W-5 was cross-examined by learned defence counsel at length but defence failed to shatter the evidence of said eye-witness (**2019 YLR 59 Lhr)**.
- These three eye-witnesses stated in their statements that electric bulbs installed outside the shops in the bazar were on at the time of occurrence at the place of occurrence. So, sufficient light was available at the time of occurrence and there is no question of mis-identity of the accused (**2016 YLR 2036 Lhr)**.

52.2. Absence of source of light

- Admittedly, the occurrence took place in the dark hours of the night. It has not been disclosed as to how the witnesses were able to identify the culprits. As such the accused is entitled to benefit of doubt (**2009 S C M R 436)**
- Occurrence had taken place at night and identification of the petitioner as the accused in moonlight and torch light was questionable particularly when the torch mentioned in the F.I.R. had not been taken into possession by the police **(2002 SCMR 1289)**
- Identification in moonlit in the village side; villagers' eye sight is better than people living in urban areas; identification accepted. (**1977 SCMR 347)**

- Identification in twilight (light from sky after sunset) was believed by the Court. (**2014 SCMR 348)**
- Headlights of the Car were sufficient for identification when accused was know to witness (**2011 SCMR 1157, 2003 SCMR 98).**
- **Court can take judicial notice of time and date of occurrence u/A 111 & 112 of QSO, 1984;** Court took help from the website www.timeanddate.com to ascertain the actual time of sun setting during the days of occurrence; **(2018 YLR 550 Lahore DB)**
- **Identification of accused in low light**---Where complainant and accused parties were closely related to each other, the identification of a close relative (accused) even in low light was not a big deal. (**2019 SCMR 610)**
- Other relevant cases **(2019 SCMR 956, 1997 SCMR 174, 1968 SCMR 161, 2018 P.Cr.LJ 1104 Lahore, 2018 MLD 1072 Lahore).**

53. ACQUITTAL U/SEC 249-A & 265-K Cr.PC

53.1. Inherent power of criminal Court

Section 249-A was inserted by the Law Reforms Ordinance, 1972 and by this section statutory recognition to the inherent powers in a trial Court has been recognized, a power which was exercised only by the High Court under section 561-A, Cr.P.C. so far. (**1998 SCMR 1840)**

53.2. 249-A & 265-K co-extensive with section 561-A

Powers of trial Court under S. 249-A & S. 265-K, Cr.P.C. are co-extensive with similar powers of High Court under S. 561-A, Cr.P.C. and both can be resorted to... Proper course was to approach trial Court in first instance but there is nothing to bar High Court from entertaining, in appropriate case, an application under S. 561-A, Cr.P.C. directly **(1985 SCMR 257).** F.I.R., if required, should be quashed at pre-trial stage only when cognizance was not taken by the Court otherwise the matter should be left at the discretion of Trial Court (**2005 P.Cr.LJ 899)**.

53.3. At any stage

The use of the expression "at any stage" of the case is indicative enough of the intention that any such stage could be the very initial stage, after taking cognizance or it could be a middle stage after recording some proceedings and/or even, it could be later stage as well (**1993 SCMR 523, PLD 1997 SC 275).**

53.4. Grounds to acquit under section 249-A

From the bare reading of section 249-A it is clear that the Magistrate has powers to acquit the accused under section 249-A at any stage if after giving notice to the other party and hearing them, he considers charge to be groundless irrespective of whether charge has or has not been framed. The section recognizes the powers possessed by the criminal Courts to do right

and rid an accused from every groundless charge (**1998 SCMR 1840, PLD 2009 SC 102, PLD 2004 SC 364).**

53.5. Right of hearing while deciding petition

The intention of this section is very much clear that while exercising powers under this section the Court while acquitting an accused shall hear the Prosecutor, the accused and shall also take into consideration the overall facts/circumstances and the evidence brought on record **(2003 YLR 1208, 2013 P.Cr.LJ 1037 SC (AJ&K)**

53.6. Facts and circumstances of each case to be seen

- Although there is no bar for an accused person to file application under S.249-A, Cr.P.C. at any stage of the proceedings of the case, yet the facts and circumstances of the prosecution case will have to be kept in mind and considered in deciding the viability or feasibility of filing an application at any particular stage...Special or peculiar facts and circumstances of a prosecution case may not warrant filing of an application at a stage when the entire prosecution evidence had been recorded and the case fixed for recording of statement of the accused under S.342, Cr.P.C (**2005 S C M R 1544).**
- Acquittal of accused person on ground that no prosecution witness had been offered to the Trial Court for over one year---Performance on the part of the prosecution and the Police Agency and a disgraceful display of apathy, inefficiency and lack of interest on the part of these two departments was deprecated by the High Court--Directions were issued to Trial Courts and both Prosecution Agency and Police with regard to criminal trials and service of process there for-- Acquittal was set aside (**PLD 1994 Lahore 459).**
- Delay caused due to conduct of absconding co-accused - No serious efforts made to procure attendance of prosecution witness, nor coercive

processes issued against accused to secure their attendance; acquittal u/s 249-A set aside (**1983 P.Cr.LJ 367)**

- Trial Court after having made several futile efforts to procure the power of attorney allegedly forged by the accused had put an end to the trial by acquitting accused under S.249-A, Cr.P.C. which had remained pending for six long years; (**1992 SCMR 2328)**

53.7. Suo moto powers

To invoke jurisdiction under section 249-A, Cr.P.C. a formal application is not required and even the said jurisdiction can be invoked suo motu, when it is found that the charge against an accused is groundless and there is no probability of his conviction in any offence….Provision of section 249-A, Cr.P.C. is meant to decide a criminal case, without completion of trial, when it is found that charge is groundless and there is no probability of conviction of accused in any offence. **(2017 P Cr. L J Note 162)**

54. CONFLICT IN MEDICAL AND OCULAR EVIDENCE

54.1. Guiding Principles

- When there is conflict between ocular account and medical evidence, if ocular account is straight, fair and confidence inspiring, the weight has to be given to ocular account and it could prevail. (**2008 SCMR 1086**, **1990 SCMR 1272, PLD 2002 SC 62, PLD 2005 SC 288).**
- **How to address a situation** when there is conflict between medical & ocular evidence: (**PLD 1993 SC 895)**
- Medical evidence being in conflict with ocular evidence reliance on such ocular testimony was unsafe. (**2011 SCMR 474, 2019 SCMR 1150, 2019 SCMR 1045)**
- Once a single loophole was observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution case automatically went in favour of an accused. (**2019 SCMR 129)**
- Agony, disturbed mind and chaos which said witness must be undergoing simultaneously at the time of incident could not be ignored---Minor omissions made by complainant causing a conflict of medical evidence with ocular version were, therefore, inconsequential. (**2000 SCMR 152)**
- Casual discrepancies or conflicts appearing in medical evidence and ocular version are quite possible for variety of reasons -Momentary glance during turmoil when live shots are fired, witnesses make only tentative assessment about where such fire shots appear to have landed and it becomes highly improbable to mention their location with exactitude. (**1999 SCMR 1991, 1986 S C M R 1027).**

- Contents of stomach do not, by themselves, provide the necessary information for determination of time of death---State of digestion of the stomach is not a reliable test for fixing the hours of death. **(2005 S C M R 1568)**
- Complainant did neither specify shots fired upon deceased by accused in F.I.R., nor it was mentioned therein that deceased received fires at such and such part of his body---Sentence of death awarded by Trial Court was maintained by High Court- Supreme Court declined to interfere with the conviction and sentence awarded by both the Courts below. (**2008 S C M R 1228)**
- Accused contended that initially it was reported in the FIR that he had a knife in his hand which in evidence turned out to be a dagger; Medical evidence showed fourteen incised wounds on the body of the deceased inflicted by a sharp edged weapon, which could either be caused by a heavy knife or a dagger (**2018 SCMR 1001)**
- As head was not a stagnant part of body and deceased on whom firing had been made, might had been revolving his head to save the same, therefore, causing injuries on different parts of head could not be considered to hold that there was contradiction in ocular and medical evidence furnished by doctors. (**2011 SCMR 429)**
- Uncertain expression of the doctor on the probable distance could not be believed when the consistent and credible version of the prosecution witnesses is available on the distance and manner of commission of crime. **(2010 SCMR 166)**
- Medical evidence was always considered as confirmatory evidence and if there was **contradiction** in ocular and **medical** evidence, former would overweigh the latter as it was not the quantity but the quality of evidence which mattered.(**2005 SCMR 417)**

- **Conflict** of **medical** evidence with **ocular** account in respect of number and nature of injuries could be relevant to ascertain the role of an individual accused in occurrence but such was not a valid ground to disbelieve the eye-witnesses and exclude their evidence from consideration. (**PLD 2005 SC 484)**
- When the medical evidence was in conflict with the ocular account then, benefit of doubt at bail stage must go to the accused. Bail allowed. (**2017 SCMR 538)**
- **Eye-witnesses are not supposed to give photo picture** of each detail of injuries in such situation, therefore, conflict of ocular account with medical evidence like minor discrepancies relating to the seat of injuries would not negate the direct evidence and would have no adverse effect on the prosecution case. (**2003 SCMR 522).**
- Photographic narration of eye witnesses regarding injuries in a panic situation is not believable. (**2018 SCMR 840)**
- **Estimate of time of death:** Value of medical evidence depends upon competence and experience of doctor. (**1980 SCMR 979).**
- In a state of panic witness cannot distinguish between pistol and gun; (**2018 SCMR 258)**

55. DELAY IN POST MORTEM

55.1. Delay in post mortem - explained

If delay in post mortem explained, no inference against the prosecution **(2016 YLR Note 147 Lahore, 2016 P.Cr.LJ Note 15, 2014 YLR 967 Lahore, 2001 P.Cr.LJ 9 Lahore)**

- No unchaste benefit of said delay in post mortem examination of the deceased, seems to have been derived by the complainant..... Similarly, as explained in the FIR, the delay in post mortem examination of the deceased, which was conducted at 9 a.m. in the next morning has sufficiently been explained by PW.5 Nisar Ahmad as during his cross-examination **(2016 YLR Note 147 Lahore)**
- So far as delay in post-mortem examination of the deceased is concerned, it is not the fault of the complainant party. Record depicts that they have timely shifted the dead body to the hospital. It was the doctor, who did not conduct autopsy at night time due to lack of facilities in the hospital. This fact has been explained by Medical Officer in his Court statement that the dead body was lying in the hospital for whole night **(2016 P.Cr.LJ Note 15)**

55.2. Unexplained delay in post mortem examination

Unexplained delay in Post mortem examination of the deceased damages the prosecution case. **(2020 SCMR 192, 2019 SCMR 1978, 2019 SCMR 1068, 2018 SCMR 1549, 2011 SCMR 1190).**

- The unexplained delay of about ten hours in autopsy of Kabeer Ahmad (deceased) alone creates dent in the prosecution story so far as presence of eye-witnesses at the place of occurrence is concerned (**2020 SCM R 192)**.

- Postmortem examination of the dead body of Amjad deceased had been conducted after about 19 hours of the occurrence giving rise to an inference that time had been consumed by complainant party and the local police for deliberations and for spreading of the net wide so as to falsely implicate their adversaries (**2019 SCMR 1978**)
- The dead body was brought to the hospital at 9-45 a.m. and if, for some reason may be administrative or due to the lack of the Doctors/Staff, the postmortem was conducted later, it would not render the case of doubtful in nature, so as to ignore the strong ocular evidence, including the statement of injured lady (**2010 SCMR 1579)**
- **Post-mortem examination** of the dead body had been conducted with a **noticeable delay** and in the inquest report it had been mentioned that at the time of inspection of the dead body by the investigating officer the eyes of the deceased were open; ---Sentence of death passed against the accused was reduced to imprisonment for life in circumstances (**2018 SCMR 21)**

56. FSL RELATED ISSUES

56.1. Delay in sending FSL report

- The law is settled by now that the empties and weapons sent after the arrest of the appellant carries no evidentiary value. (**2018 SCMR 1051, 2017 SCMR 709, 2019 YLR 2403 Lahore, 2019 SCMR 2057, 2019 P.Cr.LJ 172, 2019 P.Cr.LJ 107, 2019 MLD 1532, 2008 SCMR 707, 2007 SCMR 525)**
- The crime-empty secured from the place of occurrence was sent to the Forensic Science Laboratory after recovery of the gun rendering such recovery to be legally unacceptable. **(2016 SCMR 1628, 2019 YLR 1131)**
- When no recovery memo was available on record and crime empties secured from place of occurrence by investigating officer were sent to Forensic Science Agency after arrest of accused such recovery was inconsequential. (**2019 P.Cr.LJ 1531)**
- Recent Judgments on the topic **(2019 MLD 1532, 2019 MLD 455 , 2019 YLRN 87 , 2019 YLRN 54 2018 YLR 1084**) are also hold the same stand point.

56.2. Conviction on positive FSL report

- Accused is assigned a general role and a positive forensic report based upon empties, dispatched subsequent to arrest, would not qualify to the required standard of proof so as to view his presence in the community of intention beyond reasonable doubt; the appellants assigned effective roles qua the deceased are placed in a vastly different position; they have been rightly convicted.(**2019 SCMR 1368)**
- These empties along with weapon recovered from the appellant were sent to the office of Forensic Science Laboratory and according to the report, said empties matched with the weapon recovered from the appellant. The

prosecution has proved its case against the appellant beyond any reasonable shadow of doubt. The appeal having no merit is accordingly dismissed. (**2016 SCMR 28)**

- **Effect of non-production of FSL report in Court:** It cannot be lost sight of that F.S.L. report was delayed, no explanation has been set forth by the prosecution for such delay. The evidence disbelieved against one of the accused cannot be believed against other for awarding conviction in peculiar circumstances. (**2007 YLR 2933)**
- Even the report of Forensic Science Laboratory regarding the status of pistol, recovered from the appellant along with crime empties though the same were sent to the Forensic Science Laboratory, was not produced by the prosecution. Mere recovery of pistol from the appellant alone is not sufficient to corroborate the ocular account, as such, the ocular account is not believable. (**2012 SCMR 440)**
- Statement of PW-5, LMO, shows that Shalwar of the victim was sent for forensic report but perusal of the record shows that the prosecution did not produce any report from Forensic Science Laboratory. .....This fact negates the entire story of the victim. (**2017 YLR 1270)**
- In absence of any positive report of FSL, the mere words of the Investigating Officer are not enough to hold that the recovery of crime weapon was effected and the empties were fired from the said Rifle. Under the peculiar circumstances of the case, we have no hesitation to hold that the prosecution has failed to establish the recovery of the crime weapon from the possession or on pointation of the appellant. (**2019 YLR 2603)**
- In absence of semen grouping as well as DNA test, no accused could be held guilty of commission of the offence of "zina". (**2019 P.Cr.LJ 1316, 2017 P.Cr.LJ 789, 2016 MLD 1219, 2013 P.Cr.LJ 772)**

- Report of ballistic expert is not sacrosanct and possibility of error is not ruled out. Where case is otherwise proved against accused by reliable evidence report loses its value (**2005 SCMR 1958)**

57. COMPOSITION

57.1. Relevant Provisions

- Section 345 Cr. P.C
- Section 309, 310, 338-E PPC
- Chap-1, Part-H, Rule-10-12 Volume-III High Court Rules & Orders

57.2. General Guidelines

Waiver or compounding of offence---Compromise with legal heirs---Effect---an accused person or convict was to be acquitted by the relevant Court which acquittal shall erase, efface, obliterate and wash away his alleged or already adjudged guilt in the matter apart from leading to setting aside of his sentence or punishment, if any---Obliteration and removal of the offence and its erasing and effacing from the record as a result of compounding had the effect of absolving the accused person or convict of the act, acquittal from the charge and clearance from the actual guilt (**PLD 2019 SC 43)**

57.3. Offences affecting human body

Acquittal or the effects of it in criminal law were necessarily relevant to guilt of a person and criminal jurisprudence and law did not envisage or contemplate removal of punishment while impliedly maintaining a person's guilt---All the offences affecting human body including murder and causing of hurt falling in Chap. XVI of the Pakistan Penal Code, 1860 were capable of being waived or compounded. (**PLD 2018 SC 703)**

57.4. Principles

Following are the principles relating to compounding of offences:

57.4.1. No compromise in non-compoundable offences but a ground for mitigation

In case of compounding of a coordinate compoundable offence, reduction of a sentence passed or to be passed for commission of a non-compoundable offence in the same case may be considered by the following Courts at the following stages of the case:

i. by the trial Court at the time of passing the sentence at the end of the trial; or

ii. if compounding of the coordinate compoundable offence took place at the appellate or revisional stage before a High Court or before the Supreme Court at the stage of petition for leave to appeal or appeal or review petition then a prayer for reduction of the sentence passed for commission of the non-compoundable offence may be made on that ground before the Court seized of the pending matter; or

iii. if the Supreme Court had already passed a final order or judgment in a petition for leave to appeal or an appeal and no review petition had been filed so far then reduction of the sentence passed for the non-compoundable offence may be sought on the ground of compounding of the coordinate compoundable offence through filing of a review petition before the Supreme Court; or

iv. if the remedy of filing of a review petition before the Supreme Court had already been exhausted then, there being no scope for filing of a second or subsequent review petition before the Supreme Court and a party to a case or anyone else interested in the matter being in no position to seek revisiting of an earlier order or judgment of the Supreme Court, the only remedy left for seeking reduction of the sentence passed for commission

of a non-compoundable offence on the ground of compounding of a coordinate compoundable offence was to file a mercy petition before the President who may, in his discretion, consider such aspect in the light of the judgments passed by the Supreme Court on the subject from time to time; or

v. if the remedy of a mercy petition before the President had already been exhausted before compounding of the coordinate compoundable offence had taken place then after acceptance of the compromise by the competent Court in respect of the coordinate compoundable offence the Superintendent of the relevant jail shall, upon an initiative of the convicted prisoner, forward a fresh mercy petition to the President on behalf of that convicted prisoner seeking fresh consideration of the matter by him in respect of the sentence passed against the convicted prisoner for commission of the non-compoundable offence in the light of compounding of the coordinate compoundable offence committed by him. When seized of such a fresh mercy petition the President may, in his discretion, consider the matter of the convicted prisoner's sentence passed for commission of the non-compoundable offence afresh in the light of the judgments passed by the Supreme Court on the subject from time to time. (**PLD 2019 SC 749)**

57.4.2. Partial compromise

Such a compromise was acceptable in a case of Qisas but the same was not acceptable in a case of Ta'zir. (**PLD 2019 SC 461)**

57.5. The offence of murder - compounding

Concept of devolving of the right of Qisas upon an heir of an heir/wali of the victim relevant to a case of Qisas was not applicable to cases of Ta'zir---In the absence of any devolving of the capacity to compound in a case of Ta'zir the capacity to compound possessed by an heir of the victim at the

time of murder of the victim stood exhausted upon the subsequent death of that heir. (**PLD 2019 SC 461)**

57.6. Patricide or matricide

Disentitle the accused from inheritance until the conviction is maintained; effect of compromise. (**PLD 2008 Peshawar 129)**

57.7. Debarring from inheritance

Accused being legal heir of deceased, compromise and question of debarring from inheritance; discussed. **(2007 P.Cr. L.J 247)**

58. JUDGMENT IN CRIMINAL LAW

58.1. Relevant Provisions

- Chapter XXVI (sections 366 to 373) of Cr.P.C deal with the subject of Judgment
- Lahore High Court Rules & Orders, VOL. III, CHAPTER 1-H

58.2. Definition and requirements

In the definition clauses of the Code of Criminal Procedure 1898, the word "Judgment" has not been specifically defined. "...Mere copying the contents of FIR, reproducing the entire evidence and recording conviction of an awarding sentence to or acquitting the accused does not satisfy the requirements of section 367.[22]

58.3. General Principle

58.3.1. Judgment to be signed

Failure of the Court to write and sign judgment before its announcement is not curable under S.537, Cr.P.C: **(1994 P.Cr.LJ 441 FST)**

58.3.2. No concept of Oral Judgment

There is no concept of reserving a judgment or oral announcement of the same without a properly written/signed judgment. (**2018 P L C (C.S.) Note 4).**

1998 SCMR 611

Oral order would not create any right in petitioners even if the same had been announced; only judgment in writing would be considered as judgment. Oral acquittal order without writing judgment; illegal. **(1972 SCMR 109)**

[22] . AIR 1945 NAG. 411

58.3.3. Each and every point of evidence to be discussed

If in impugned judgment due attention to the available evidence on record is not discussed or discussed and not dealt with each and every point, separately. Such judgment is not a judgment in its true sense. (**2017 CLC Note 165 Sindh)** Mere writing and signing of judgment without pronouncing it in open Court not "judgment" within meaning of S. 369-Such judgment do not operate as bar to further proceedings. (**PLD 1962 SC 97)**

58.3.4. First appellate Court

Recital of the judgment passed by the appellate Court must show that he made a sincere endeavour to make proper appraisement of merits of case put forward by the parties. Appellate Court is bound and obliged to render its independent findings on each point of determination. (**2016 CLC 1258 Lahore)**

58.3.5. Time period for pronouncement of Judgment

2015 SCMR 1550:

- The judgment thus has to be given by the trial Court within the prescribed period of 30 days, after the hearing of the case has been concluded. .....This reasonable time, should not be more than 45 days. I am enlarging the margin of 15 days (i.e. 30 days + 15 days) because the same Judges also act as Sessions Judges and have to conduct session trials and render decisions in criminal matters and other judicial work also.
- This rule and adherence to time, should equally apply to the judgments in relation to the revisional as also review jurisdiction of these Court(s) or where the Court(s) is exercising any other special jurisdiction in cases of civil nature before it.
- This rule should also extend to all the special courts (forums), tribunals either constituted under the Federal or the Provincial laws ..... (note:

however, if some time has been fixed by the law for the disposal of any matter before the special forum, such law should take precedence over this rule of reasonableness of time set out in this opinion)

- In the light of all that has been discussed and mentioned above, it is clear that unlike the cases before the Trial Court, the cases for which no specific period has been fixed by the statutory law for pronouncing the judgment, it is required of the learned Judges concerned of the District Judiciary that they should pronounce the judgments within the time enunciated by this opinion.

58.3.6. Nature of bail order

It may be well to remember that an order granting or refusing bail is merely an interim order and the same is not to be equated with a judgment. (**PLD 2014 SC 458)**

Certain orders are not judgment, therefore, no application of section 369 Cr. P.C; 2005 YLR 3297

58.3.7. Look at the Law:

1998 P.Cr.L.J 822 Lahore:

Trial Court should have charged and convicted the accused in some corresponding provision in force at relevant time.

58.3.8. Point for determination

2004 P.Cr.LJ 984:

Learned Federal Shariat Court remanded the case for re-writing the judgment holding as under:-

"Learned trial judge, without formulating the points for determination or appraising the prosecution evidence so as to assess that it was capable to bring home charge against the accused, has recorded conviction against the appellant by merely pointing out defects and weakness in the defense evidence".

58.3.9. Proper appreciation of evidence

2002 YLR 56Lahore

The case was remanded to the learned trial court for re-writing the judgment on grounds:-

- The learned trial Judge has not examined and scrutinizedthe,entire evidence brought on record and
- No reason whatsoever has been given in support of the conclusion arrived at and for convicting the accused/appellants.
- It is settled law that the judgment must contain reasons in support of the judgment and is to be passed by consciously applying the judicial mind and it should not be written in a slipshod manner.

58.3.10. Write Clearly and Lucidly:

1986 P.Cr.LJ 2344

"Since the judgment of the trial Court is not a lucid one and suffers from ambiguities, it is neither complete nor self-contained one, therefore, there is no option but to accept the appeals and set aside the convictions and sentence of the appellants and remand the case for re-writing a legal and proper judgment."

58.4. Illegality not curable

1980 P.Cr.LJ 822:

- Such a judgment is not a judgment in the eye of law as contemplated under section 367, Cr. P. C. Noncompliance with the mandatory provisions of this section is an illegality not curable under the provisions of section 537, Cr. P. C.

- If the Court is not persuaded to award death sentence and proceeds to award latter sentence, then under s.367(5), Criminal Procedure Code, 1898, Court has to give reasons. **(2012 SCMR 74)**
- Evidence recorded in one case and its carbon copies placed on the record of other case- illegal; separate judgment in each case (**1996 P.Cr.LJ 514)**
- Judgment must be written separately in cases arising out of same occurrence. (**1980 SCMR 435, PLD 2011 Lahore 583)**

58.5. Act which was not an offence at the time of commission

An accused could not be tried and punished for an offence, which at the time of commission of occurrence, was not made punishable, as retrospective effect to a penal provision could not be given. **2020 P Cr. L J Note 19**

59. ALTERNATIVE PUNISHMENT

59.1. Concept

It is defined that the "obligatory" punishment is that which the Court cannot avoid if the accused is found guilty while the discretionary punishments are those where the Court has option of choosing. The legislatures themselves have deliberately detailed the ways where from the Court can competently find as to which punishment is obligatory and which one is "discretionary". Here by use of phrase "or with fine" and "or with both", it has been made quite clear that first, provided punishment of imprisonment, is not obligatory rather things have been left open at the discretion of the Court to choose the alternative punishment of "fine" and even can award both punishments of imprisonment as well as fine. **(PLD 2019 Sindh 585)**

59.2. Which alternative punishment to be awarded?

Any one of the two alternative sentences provided for therein was to be passed "having regard to the facts and circumstances of the case". **(PLD 2013 SC 793).**

59.3. Alternative punishment - case of murder

- **PLD 1970 SC 447**:

> "In the administration of criminal justice, Courts have a wide discretion in awarding sentence, which has to be exercised judiciously according to the circumstances of each case. For murder offence, this discretion is restricted to the choice of alternative sentences of death or life imprisonment/death being the normal sentence unless mitigating circumstances exist to justify the awarding of the lesser sentence...."

- Once the legislature had provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty was the normal penalty and should ordinarily be awarded. If the intent of the legislature was to take away the discretion of the court, then it would have omitted from S. 302(b), P.P.C. the alternative sentence of life imprisonment. Sentence of death and life imprisonment were alternative to one another, however, awarding one or the other sentence essentially depended upon the facts and circumstances of each case. **(2014 SCMR 1034, PLD 2013 SC 793)**
- Once doubts about the genuineness of the prosecution story lurked into the mind of a judge, the only permissible course would be to acquit the accused and not go for the alternative sentence of life imprisonment. **(2018 SCMR 911)**
- If Court would entertain some doubt, not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment.**(2017 P.Cr.LJ Note 29)**

59.4. Alternative punishment - default in payment of fine

Imprisonment on account of failure to pay the fine was an alternative sentence. Since the original sentence of fine had to be paid separately and consecutively, the substitutive sentence of imprisonment could not be allowed to run concurrently. **(2011 YLR 1765)**

59.5. Alternative Punishment- bail

Where there was alternative provision of imposition of fine, bail should be granted as of right **(2016 MLD 737, 2015 P.Cr.LJ 563).** Where alternate sentence of fine was provided, the offence would not fall within the prohibitory clause of S. 497(1), Cr.P.C. stricto sensu. **(PLD 2014 Lahore 567)** because if at the trial, he was sentenced with fine only. Period as under trial prisoner due to refusal of bail, would amount to a case of double

jeopardy. **(2017 MLD 1076)**. However, offence providing an alternative sentence of fine only or imprisonment exceeding 10 years' R.I. will fall within the ambit of prohibition contained in S.497(1), Cr.P.C. **(2005 P.Cr.L J 1265).** Similarly, where, at bail stage, offence in question provided alternative punishments, the lesser of the two punishments was to be taken into consideration in applying the prohibitory clause under S. 497 (1), Cr.P.C. **(2016 MLD 1103, 2014 YLR 1723, 2006 YLR 3172, 2004 YLR 68, 1984 P.Cr.LJ 2340, 2007 YLR 1709)**

60. SENTENCE

60.1. Relevant Provisions

- Punjab Sentencing Act, 2019
- Section 53 PPC
- Section 367 & 368 of Cr. P.C
- Chap-19, Part-A Volume-III, High Court Rules & Orders

60.2. Guiding Principles

- Sentencing is not totally discretionary. It is structured by the case-law, by the circumstances and also by the perception. While the social and economic conditions and ground realities help us in appreciating criminology. A Judge is considered to be an expert in this area and not an arbiter who acts capriciously and beyond proportions. Balances were to be kept even in the matter of crime and punishment. **(2004 P.Cr.LJ 743 DB)**
- Youth of accused alone does not constitute such an extenuating circumstance as would justify imposition of lesser penalty prescribed by law. **(PLD 2010 SC 1080)**
- A hired offender was not entitled to any leniency or sympathy in the matter of quantum of punishment and such people deserved to be dealt with an iron hand and deserved the same kind of treatment which would be warranted in the case of any other criminal, if not stricter and harsher treatment. **(PLD 2009 SC 383)**
- Concept of major or minor penalty in service laws would be to determine quantum of punishment in the light of nature and gravity of charge. **(2008 SCMR 214)**

60.3. Women and Child, previous convict

As regards a previous convict, a woman and a child the following principles may be followed while sentencing them:

- A previous convict is to be awarded 1/3'd more sentence of imprisonment, fine and sentence in default of payment of fine than the normal sentence prescribed above.
- If the sentence of imprisonment against a previous convict calculated on the basis of the above principle exceeds the maximum sentence of imprisonment prescribed by the law, then the convict is to be awarded the maximum sentence of imprisonment prescribed by the law and the fine to be imposed upon him and the sentence of imprisonment in default of payment of fine are to be double the fine and double the sentence of imprisonment in default of payment of fine prescribed as the normal sentence.
- A woman and a child, because of their gender and tender age, are to be awarded 1/3rd less sentence of imprisonment, fine and sentence in default of payment of fine than the normal sentence prescribed above.
- The sentence of imprisonment to be passed against a woman or a child is to be a sentence of simple imprisonment and the sentence of death may not be passed against them.

  If a woman or a child is a previous convict, then the sentence to be awarded is to be the same as for a male previous convict except that the sentence of imprisonment for a woman or a child is to be a sentence of simple imprisonment and the sentence of death may not be passed against them. **(PLD 2009 Lahore 362)**

60.4. Aggregate of punishments

Aggregate of punishments of imprisonment for several offences at one trial were deemed to be a single sentence. Therefore, there could not be more than a life sentence at one trial. **(2007 SCMR 548)**

60.5. General principle regarding concurrent and consecutive sentence

It is left to the discretion of the trial Court to order the concurrent running of the sentences of imprisonment in separate cases. Unless such discretion is

exercised in favour of the convict the sentences shall run consecutively. **(2007 S C M R 1424)**

60.6. Separate sentence for each offence

In terms of section 367, Cr.P.C. it was mandatory for the Court to record separate conviction and sentence for each offence. **(2016 SCMR 1190)**

60.7. Mitigating factors are to be considered while awarding sentence

Grave & sudden provocation

(2006 SCMR 1139, 2013 SCMR 383, 2004 SCMR 720, PLD 2017 SC 165, 2014 SCMR 1178, 2007 SCMR 1375, 2007 SCMR 1896)

Two Murders under the impulse of grave and sudden provocation and on account of *'ghairat'* when saw the deceased in compromising position. Sentence was converted to u/s 302 (C) for 20 years. (**PLD 2018 SC 840)**

60.8. Spur of the moment; Mitigation

(2017 SCMR 148, 2002 SCMR 1068, 1990 SCMR 290, 2016 YLR 735 Peshawar, 2012 YLR 2214 Lahore, 2010 YLR 2072 Lahore, 2010 MLD 860 Peshawar)

60.9. Single Fire Mitigation

(2017 SCMR 630, 2006 SCMR 1801, 2007 SCMR 994, 2011 YLR 1287 Lahore)

60.10. Joint role of firing, a mitigating factor

(2009 SCMR 1273, 2012 SCMR 101, 2018 SCMR 21, 2019 SCMR 652)

61. CONSECUTIVE AND CONCURRENT SENTENCE

61.1. Relevant provisions

Section 35 & 397 CrPC

61.2. General rule

Consecutive sentences, in terms of S.397, Cr.P.C. was a general rule while concurrent sentence was an exception and was to be awarded in the exercise of discretion by the Court depending on the facts and circumstances of each case-Court, while exercising such discretion, might inter alia look into the conduct of the convict, heinousness of the crime and injury to the individual and society. **(2013 SCMR 16)**

61.3. Earlier conviction not in notice of Court

In case earlier conviction was not brought to the notice of the Court at the time of handing down the subsequent conviction and sentence, the Trial or Appellate/Revisional Court could exercise such jurisdiction, even after the sentence of imprisonment in subsequent trial was announced, in exercise of its inherent jurisdiction under S. 561-A read with S. 397, Cr.P.C, unless, the trial, or superior Courts of appeal had specifically and consciously ordered the sentences either in same trial or in subsequent trial to run consecutively.**(2018 SCMR 418)**

61.4. Discretionary powers, exercise of

Discretionary power vested in the Court to direct that the awarded sentences shall run consecutively or concurrently was to be exercised in the light of the facts and circumstances of each case, keeping in view the scope of S.35, Cr.P.C., the nature and manner of occurrence and the gravity of the offence. **(PLD 2016 SC 65)**

61.5. Restrictions in one trial

- Proviso (a) to S.35, Cr.P.C. prohibited the giving of consecutive sentence in one trial beyond the period of 14 years. (**PLD 2009 SC 460)**
- If sentences awarded to accused in lieu of fine were to run consecutively, they would exceed more than 1/4 of the maximum sentence provided under S.420, P.P.C., which would be violative of S.71, P.P.C.-Supreme Court directed that sentences awarded in lieu of payment of fine would run concurrently---Petition was disposed of. (**2008 SCMR 111)**
- Aggregate of punishments of imprisonment for several offences at one trial was deemed to be a single sentence, under S.35, Cr.P.C. and there could not be more than one life sentence at one trial. (**2007 SCMR 548)**
- Sentences of imprisonment of a person convicted for offences in different cases, as provided by S.397, Cr.P.C. were to run consecutively but discretion was left with the Trial Court to order the concurrent running of the sentences of imprisonment in separate cases. (**2007 SCMR 1424)**
- Courts generally took charitable view in the matter of sentences affecting deprivation of life or liberty of a person and exercise enabling power under Ss. 35 & 397, Cr.P.C., respectively to order concurrent running of sentence in one trial and so also consolidate earlier sentence while handing down sentence of imprisonment in subsequent trial. (**2019 P.Cr.LJ 1736)**

62. DIYAT

62.1. Relevant Provisions

Section 299(e), 323, 331 of Pakistan Penal Code, 1860

62.2. Guiding Principles

- Imposition of six months' R.I. in default of *Diyat* payment contrary to said provisions. Subsection 2 of section 331, P.P.C. prescribes the consequence of non-payment of *Diyat* that "where a convict fails to pay *Diyat* or any part thereof within the period specified in subsection (1), the convict may be kept in jail and dealt with in the same manner as if sentenced to simple imprisonment until the *Diyat* is paid in full or may be released on bail if he furnishes security (or surety) equivalent to the amount of *Diyat* to the satisfaction of the Court [or may be released on parole as may be prescribed in the rules. (**2010 SCMR 748)**
- Concept of *Badal-i-Sulh* is totally different from the concept of *Diyat* inasmuch as the provisions of subsection (5) of section 310, P.P.C. and the Explanation attached therewith show that *Badl-i-Sulh* is to be "mutually agreed" between the parties as a term of *Sulh* between them whereas under section 53, P.P.C. C *Diyat* is a punishment and the provisions of section 299(e), P.P.C. and section 323, P.P.C. manifest that the amount of *Diyat* is to be fixed by the Court. **(PLD 2010 SC 695)**
- Compromise in between the legal heirs of the deceased and the convict is a type of a contract that if the legal heirs of the deceased make a statement before the Court of law pardoning the convict they will get *Badl-e-Sulah* in the shape of Diyat amount and if they forgive the convict in the name of Almighty Allah they will get reward thereof from the Allah Almighty. In case there are some minor legal heirs of the deceased, their natural guardian i.e. mother or father, as the case may, do forgive the convict but their interest is

to be safeguarded by paying them their due share as *Diya*t amount according to the rate of *Diyat* prevailing at the time of arriving at of the compromise between the parties as contract could not have retrospective effect. (**PLD 2012 SC 769)**

- Amount of *Diyat* would be determined according to prevailing rate of *Diyat* at the time when compromise was effected because it was the accused who actually requested victim party to favour him and if, as a result, such favour was extended then payment of compensation should be determined and made at the rate prevailing at the time when compromise was effected and executed by the Court., (**2012 SCMR 437)**
- A combined reading of section 431 of the Code of Criminal Procedure, 1898 with section 331 of the Code, unambiguously ensure continuation of appeal by an offender liable to payment of *Diyat* even after his death. (**2019 SCMR 1144)**
- *Diyat* is amongst the punishments provided under the Code and according to clause (e) of section 299 thereof, it is compensation payable to the legal heirs of the victim, value whereof, is equivalent to 30,630 grams of Silver to be determined on yearly basis. Section 331 of the Code provides that an offender burdened with payment of *Diyat*, in the event of default, shall remain lodged in prison until it is paid in full or through instalments settled against security, however, under subsection (3) thereof, in the event of his death, it shall be recoverable from his estate. (**2019 SCMR 1144).**

62.3. One *Diyat* for all Accused

In the absence of any specific provision in P.P.C. for the payment of *Diyat* by each of the offenders, in case of involvement of more than one offenders in the commission of Qatl-i-amd, the law as contained in Holy Qur'an and Sunnah shall be applied; Since in the present case five persons were named

in the F.I.R therefore, applicant was required to pay 1/5th of the total *Diyat* of the deceased (**PLD 2003 Karachi 277).**

62.4. Rate of *Diyat* at the time judgment is passed

Object and purpose of recovery of *Diyat* amount, was that the victim should be compensated according to the rate which was prevailing at the time of pronouncement of judgment.(**2016 YLR 2085)**

63. DOUBLE JEOPARDY

63.1. Relevant Provisions

- Article 13 of Constitution of Islamic Republic of Pakistan, 1973
- Section 403 of Code of Criminal Procedure, 1898
  Section 26 of General Clauses Act, 1897

63.2. Basic Concept

- This principle is based on Latin maxim **"*nemo debt bis vexari pro una et eadem causa*"** (no person should be twice disturbed for the same cause).

  This maxim led to the development of two common law principles of equity namely, *autre fois acquit* (acquitted formerly) and *autre fois convict* (convicted formerly) **(PLD 2014 Lahore 148 [DB])**

63.3. Principles

- Principles of *autre fois acquit* and *autre fois convict* contained in A. 403 (1), Cr.P.C. forbid a new trial after conviction or acquittal on the basis of the same facts had attained finality. **(PLD 2013 SC 793)**
- An ultimate acquittal in a criminal case exonerates the accused person completely for all future purposes the criminal charge against him as is evident from the concept of *autre fois acquit* embodied in Sec. 403 Cr.P.C. and the protection guaranteed by Art. 13(a) of the Constitution and according to humble understanding of Islamic Jurisprudence. **(PLD 2010 SC 695)**
- Under the law nobody can be punished twice for the same offence on the basis of maxim "*Nemo debet vexari*" which means that no person can be tried for the second for an offence with which he was previously charged. This principle is fundamentally embodied in sub-section (1) of Sec. 403

Cr.P.C., Sec. 26 General Clauses Act, 1897 and Art. 13(a) of the Constitution. **(2006 P.Cr.L.J.111)**

- Article 13 of the Constitution provides that no person would be prosecuted or punished for the same offence more than once which had also been provided under Sec.403, Cr.P.C. **(2012 MLD 503)**
- A plea *autre fois acquit* which is recognized under Sec. 403 arises where a person is tried again for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made under Sec. 236 or for which he might have been convicted under Sec. 237. **(AIR 1965 SC 83)**

63.4. Non-Applicability of Principle

63.4.1. Disciplinary Action Taken By Department And Criminal Prosecution (2018 SCMR 733)

- Disciplinary action taken by a department and criminal prosecution are quite distinct from each other and can proceed simultaneously or one after the other and such separate actions do not attract the principle of double jeopardy.
- Disciplinary proceedings are meant solely for maintaining and ensuring purity of service whereas criminal prosecution is meant to punish a person for the offence committed by him and that in a proper case departmental and criminal proceedings can proceed simultaneously or one after the other.[23] **(1985 SCMR 1062), (PLD 1985 SC 134), (1987 SCMR 745), (PLD 1987 SC 195), (1988 SCMR 1792), (1989 SCMR 1139), (1989 SCMR 1178), (1989 SCMR 1427), (1989 SCMR 316), (1989 SCMR 333), (1989 SCMR 1219), (1990 SCMR 1143), (2005 SCMR 948), (2005 SCMR 1901), (2011 SCMR 484) (2011 SCMR 534). (2018 SCMR 733)**

[23] . (AIR 1979 SC 75)

63.4.2. Distinct and separate offence

Section 403(2), Cr.P.C. provides "a person acquitted or convicted for any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him in the former trial under section 235, subsection (1)". Thus the offences in both the References clearly appear to be distinct and separate, which aspect of the case is also reflected from a bare reading of the charges framed against the appellant in the two References. In our view, therefore, the provisions of Section 403(2), Cr.P.C. are fully attracted to the case in hand. (**PLD 2016 SC 763)**

63.4.3. Offences under different Enactments

The facts of the instant case, viewed from any angle are suggestive of the fact that the petitioner committed offences under two different enactments though by commission of act and omission in one go and do not at all fall within the ambit of same offence. (**2014 SCMR 1376)**

63.4.4. Withdrawal or Dismissal Of Complaints on Technical Ground

- The dismissal of complaint for non-prosecution u/s 247 Cr.P.C and the dismissal of complaint allowing withdrawal of complaint on some technical ground under section 248 Cr.P.C, at a premature (preliminary) stage, without touching the merits of the case do not bar filing of fresh complaint. The bar is applicable to cases where the trial has commenced. The provisions of section 403 of the Code and Article 13 of the Constitution are not attracted to the cases where the accused were neither “tried” earlier nor were convicted or acquitted.**(PLD 2002 SC 687).**
- Protection against double jeopardy embodied in S. 403 Cr.P.C do not apply in the case of third complaint when earlier two complaints were dismissed on technical grounds without recording any evidence and without deciding them on merits." **(2002 YLR 401)**

- As per explanation to section 403 of Cr.P.C dismissal of the complaint, or its withdrawal do not attract section 403, Cr.P.C. and the accused can be tried in the challan case after dismissal of a complaint on withdrawal because acquittal merely on technical ground and not on merits, does not debar the subsequent trial in the challan case. **(2008 P.Cr.LJ 858 [Lahore])**

63.4.5. When accused is acquitted u/s 248 of Cr.P.C after withdrawal of complaint by the complainant, he cannot be tried in state case:

When complainant has withdrawn his private complaint after recording of the prosecution evidence and learned Magistrate has acquitted accused in view of section 248 of Cr.P.C. now after earning acquittal in view of section 248 of Cr.P.C. cannot be tried in State case in view of section 403 of Cr.P.C. being double jeopardy, person cannot be tried a second time for the same offence in presence of the acquittal as acquittal bars the retrial of the acquitted accused in accordance of the provision of subsection (1) of section 403 Cr.P.C. The same principle has been elevated to the status of a Constitutional right in Article 13 of the Constitution of Pakistan 1973. **2014 MLD 1413**

64. FINE & COMPENSATION AND ITS RECOVERY

64.1. Relevant provisions

Secs: 250, 522-A (2), 544-A, 545, 546 of Cr.P.C.

64.2. Principles

Provision of S.544 -A, Cr.P.C., was mandatory in nature, and compensation under said section could not be withheld unless there were strong reasons for refusal thereof, which must be specifically highlighted---Nothing was available on record, if the deceased was convicted in any criminal case---Mere registration of criminal cases against accused, had not given any licence to anyone to take law into his own hands, and commit his murder---When it was proved on the record, that death of the deceased was at the hands of accused and he was convicted and sentenced, grant of compensation under S.544 -A, Cr.P.C. was obligatory. Compensation under S.544 -A, Cr. P.C. was mandatory, unless Court gave reasons to the contrary. (**2002 P.Cr.LJ 1374**)

64.3. Pre-requisites of awarding compensation

A plain reading of the provision mentioned above, suggests certain pre-requisites, to be followed by a Magistrate, which can be summed as under:-

i. There should be acquittal of an accused;
ii. The Magistrate should be of the opinion that the accusation/charge was false, frivolous or vexatious;
iii. The complainant should be called to show cause that why he should not pay compensation to acquitted accused(s);
iv. The Magistrate should record, any cause made by the complainant;
v. The Magistrate should consider the cause and then record an opinion that cause is unjustified and the accusation/charge was false. (**2019 P.Cr.LJ 894)**

64.4. Compensation recoverable as arrears of land revenue

Amount of compensation being recoverable as arrears of land revenue, default in its payment shall entail only six months' simple imprisonment. (**PLD 2001 Peshawar 112)**

64.5. Double Jeopardy - in case of compensation

Compensation under S.544 -A, Cr.P.C. being in addition to any sentence awarded to accused for the commission of an offence, doctrine of double jeopardy is not attracted. (**2001 P.Cr.LJ 1530)**

64.6. Fine and compensation

Trial Court while awarding conviction and sentence, passed joint order regarding fine as well as compensation ---Fine was a punishment while amount under S. 544 -A, Cr. P. C. was a compensation and both entailed different consequences and different mode of recoveries in case of default and both matters flowed altogether from two separate sections of law. (**1999 YLR 2393)**

64.7. Imprisonment in default of payment of compensation.

While awarding of compensation related to penal actions against the complainant, Court ought to have passed order of imprisonment in default of payment of compensation. (**2009 P.Cr.LJ 1165)**

64.8. Acquittal and compensation

Order of acquittal and order for payment of compensation by complainant were two separate orders although out of the same proceedings but were appealable through separate appeals before different forums---Proceedings of one appeal should not affect the other appeal---If against an order/judgment two remedies were provided under law, then the person concerned to avail the remedies, could approach proper forums which were to decide matters, independently, without being influenced or prejudiced by proceedings pending before other forum. (**2018 P.Cr.LJ 558**). Accused

acquitted in pursuance of. S.249-A, Cr.P.C. but trial Court giving no findings as to whether complaint was both "false and vexatious"--Order allowing compensation to accused set aside, in circumstances. (**1984 P.Cr.LJ 2872**)

64.9. Show cause notice before awarding compensation

After passing acquittal of the accused person, if the Magistrate found that criminal proceedings initiated on the complaint or information is false and frivolous or vexatious, then he will have to give show-cause notice to the complainant or informant asking him why he should not pay compensation to each accused under section 250(2), Cr.P.C. Magistrate is bound to consider the reply of the show cause and he shall record and consider the reply/cause of the informant or complainant. After considering the reply/cause, if he is satisfied that the accusation was false, frivolous or vexatious, then he may award compensation upto Rs.25,000. (**2009 P.Cr.LJ 1165).** No show-cause notice was issued before imposing fine on the complainant---Issuance of show-cause notice under S.250 , Cr.P.C., was mandatory and not directory---No one should be condemned unheard---Complainant was not given any show-cause notice before passing order for compensation , Trial Court had violated the provisions of S.250 , Cr.P.C. (**2014 YLR 1523)**

64.10. Practical application

- In case payment of fine High Court directed that the amount would be paid to victim through her mother as compensation under S.545 Cr.P.C. (**PLD 2015 Lahore 512)**
- Power to grant compensation to (legal) heirs of person killed under S.544 -A, Cr.P.C., was available with the Anti-Terrorism Court. (**2018 YLRN 244)**
- Court imposed fine which shall be paid to victim of rape as compensation. (**2017 YLR 2031)**

- Under S.544 -A, Cr.P.C. words 'hurt', 'injury', 'mental anguish' and 'psychological damage caused to victim' are key words qualifying victims of rape and sodomy entitled for compensation under S.544 -A, Cr.P.C. (**PLD 2015 Lahore 512)**
- In case no order for payment of compensation to victim of crime has been passed by Trial Court, victim can invoke provisions under Ss.435, 439 & 439-A, Cr.P.C. before appellate forums as well as before High Court under S.561-A, Cr.P.C. for award of compensation under S.544 -A, Cr.P.C. (**PLD 2015 Lahore 512)**
- "Arsh" under the P.P.C. is not the same thing as the compensation under S.544 -A, Cr.P.C. **(2003 SCMR 496**)
- Award of two years R.I. to the accused, in default of payment of compensation was patently illegal being against the statute as S.544 –A (2), Cr.P.C. unequivocally provided a sentence of imprisonment for a period not exceeding six months in such circumstances. (**2002 SCMR 93**)
- Term "anguish" used in 5.544 -A, Cr.P.C. essentially refers, in literal sense, to extreme pain, distress of mind, severe misery or mental suffering but no evidence had been placed on record through the passengers on the point--- Essential requirements of S.544 -A, Cr.P.C. being lacking in -the case, such compensation to the passengers of the aircraft was t not justifiable. (**PLD 2002 Karachi 152)**
- Where an offender has been ordered to pay Diyat the purpose of S. 544 -A, Cr.P.C. stands accomplished and no order for payment of compensation to the heirs of deceased is called for. (**PLD 2000 Lahore 442)**
- Where both the deceased were killed as they were indulged in an immoral activity, legal heirs of such deceased were not entitled to any compensation as required under S. 544 -A, Cr. P.C. (**2000 YLR 781**). Deceased unchaste, immoral woman, indulging in adultery-

Held, compensation could not be allowed to her heirs. (**1985 P.Cr.LJ 1628)**

65. LEGAL ASSISTANCE/LEGAL AID/LEGAL REPRESENTATION

65.1. Relevant provision

- Section 340 Cr.P.C.,
- Section-3 Juvenile Justice System Act, 2018
- Legal Aid Agency Act, 2018
- High Court Rules & Orders, Chap-IV Part-E Volume-V
- Chap-24 Part-C Volume-III, High Court Rules & Orders
- Chap-25 Part-E; volume-III High Court Rules & Orders
- Notification dated 03.08.2016 of Public Prosecution Department in pauper accused cases.

65.2. Right of accused to be defended by counsel of his own choice

Accused is required to be defended by a counsel of his choice as a matter of right, especially in cases of capital punishment---Law protects such right of accused as a duty cast upon the State to bear the expenses of the counsel, if the accused is unable to engage a counsel of his choice due to financial restraints. (**2011 P.Cr.LJ 812).**

65.3. Article 10-A of the Constitution

Article 10-A, of the Constitution has provided the right of a fair trial and due process to accused which included his right to be represented by a counsel of his own choice or at least a counsel in order to protect his rights especially when the offence was of a capital nature. (**2019 MLD 1713 Karachi)**

65.4. Art. 10A---Right to fair trial---Scope---**Disclosure of detention of accused to his family members**

In all criminal cases, the Courts must ensure that the prosecution had duly informed the close family members of the accused under detention about his involvement in a criminal case so that he may be able to communicate with them and seek their assistance in hiring a counsel of his choice with whom

he could communicate in order to seek legal assistance. (**2017 SCMR 1249)**

65.5. Engagement of a particular counsel

Though the accused had no choice claiming engagement of a particular counsel at State expenses, yet he should be given the choice to select one of the counsel out of the list of defence counsel maintained by the court--- Present accused should be given time to engage a counsel privately of their own choice, failing which Trial Court would provide them defence counsel at State expenses of their choice out of the list maintained by the Court. (**2011 SCMR 735).**

65.6. S. 340---**Right of accused to be defended by counsel**

Trial Court was legally obliged to ensure that the accused had counsel of his choice or one appointed at State expense, in the cases involving capital punishment, if he could not afford. (**2018 MLD 1025 Karachi)**

65.7. Section-3 of Juvenile Justice System Act,2018

Section-3 of Juvenile Justice System Act,2018 requires that every juvenile or a child who is victim of an offence shall have the right of legal assistance at expense of the State. A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty-four hours of taking him into custody.

65.8. Pre Conditions to appoint counsel

According to Notification of Public Prosecution Department, Court must declare the accused pauper before asking him to choose a counsel from the list provided by the DPP; every effort should be made to appoint a counsel in maximum two cases at one time.

66. CONTEMPT OF COURT

66.1. Relevant Provisions

- Sections 195, 476, 476-A, 480, 481, 482 Cr. P.C
- Section 228 PPC
- Chap-8, Part-A, Volume-III, High Court Rules & Orders

66.2. General Principle

Intentional insult or interruption caused to public servant sitting in judicial proceedings--- Court in whose presence an offence has been committed has option either to proceed for the offence under S.228, P.P.C. read with S.476, Cr.P.C. or to proceed against the offence under S.480 or 482, Cr.P.C. (**PLD 2003 SC 19)**

66.3. Opportunity to Condemner

Contempt of Court-Words "if any" occurring in subsection (1) of S: 481,Cr. P.C.-Do not dispense with offer of opportunity to contemnor to explain his position-Contemnor issued show-cause notice and asked whether he (i) understood notice (ii) admitted offence-No statement of contemnor recorded nor question put if he wished to make statement in defence-Provision of subsection (1) of S. 481, Cr. P. C., held, not properly complied with-Order of conviction set aside-Section 537, Cr. P. C., held further, cannot cure such omission. (**1971 P.Cr.LJ 621 Lahore)**

66.4. Various forms of contempt

As provisions of Ss.480 and 482, Cr.P.C. fall under the Chapter heading "Proceedings in case of certain Offences affecting the Administration of Justice" various situations were visualized by the framers of the Code in enacting the various provisions contained in the said Chapter. If a Presiding Judge is of the view that the default/delinquency is of very casual nature he might also not take the same as more seriously than visualised under' section 480, Cr.P.C. And there and then before, rising of the Court, convict

and award the minor punishment provided in section 480, Cr.P.C. even though otherwise as in the present case (Section 228, P.P.C. entails maximum of 6 months' S.I. or fine upto Rs.1,000 or both) the offence might be punishable with graver sentence.

The next provision i.e. section 482, Cr.P.C. visualized slightly graver situation.' Where the Presiding Judge might consider the limited sentence under section 480, Cr.P.C. as inappropriate and a graver sentence might be justified and also that he should not involve himself in a prolonged regular trial as distinguished from the proceedings under section 480, Cr.P.C. he has the option to forward the case to a Magistrate.

Depending upon the nature of the delinquency of the person concerned the Presiding Judge has still another option of not forwarding the case to a Magistrate and thus abdicating his own authority to punish the delinquency, but at the same time he considers that the punishment limited under section 480, Cr.P.C. would be too lenient in the facts and circumstances of the case. He has here the option to act under section 476, Cr.P.C. But here he will have to go through the entire process of a trial instead of simplified proceedings permissible under section 480, Cr.P.C. while proceeding under section 476, Cr.P.C. the Court would have more powers vis-a-vis, the limit of punishment as compared to section 480, Cr.P.C. and section 482, Cr.P.C. **(1992 SCM R 1229)**

66.5. Nature and stage of judicial proceeding

Nature and state of judl proceedings in which Court interrupted or insulted and nature of such interruption or insult must be mentioned; Non-compliance with mandatory provision of S. 481(2), Cr. P. C.-Fatal to trial. **(1969 P.Cr.LJ 627 Karachi)**

67. PREVIOUS CONVICTIONS

67.1. Guiding Principles

- Section 75 of the PPC prescribes enhanced punishments for offenders with "previous conviction". Section 311 requires that the "past conduct of the offender" and "whether he has any previous convictions" be considered. Section 337-N of the PPC states that in cases of hurt the Court may in addition to the payment of arsh (compensation) also "award ta'zir (punishment) to an offender who is a previous convict" and or is a "habitual" criminal. Sections 221 (7), 265-I and 511 of the Code mention "previous conviction" and sections 348, 497 and 565 "previously convicted" offenders. Previous convictions are also relevant when considering sentencing, whether the maximum punishment be given or any lesser one is determined by taking into consideration the convict's conduct and previous convictions. **(PLD 2019 SC 43)**
- It is essential for the Court while convicting and sentencing an accused under section 75 P.P.C. to set out in its judgment the particulars of each previous conviction which is relied upon for the purpose of awarding sentence. Moreover, the mode to prove previous convictions as required under section 511, Cr.P.C. has not been applied properly. According to this provision of law it is mandatory to produce a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered. **(PLD 2008 SC 107)**
- Section 221(7), Cr.P.C. provided that to hold conviction, the fact, date and place of previous conviction had to be stated in the charge at any time before the sentence was passed whereas provisions of S. 265-I, Cr.P.C. showed that if a charge was framed against accused regarding his

previous conviction and said accused replied to the charge in affirmative, the Court could pass a sentence upon him in accordance with law but if he replied in negative, the Court could take evidence with regard to previous conviction as alleged in the charge, record finding thereon and then sentence the accused in accordance with law (**2020 P.Cr. L J 477)**

- Previous conviction of an accused in cases of similar kind can be taken into consideration for imposing enhanced punishment under the provisions of S.75, P.P.C. and in this connection either copies of judgments previously convicting the accused or a list of the same can be produced in evidence. (**1995 P.Cr.LJ 140)**
- Mere admission of accused, without proof by prosecution evidence of previous conviction, not enough. (**PLD 1958 (WP) Peshawar 6)**
- Section 511 of the Code of Criminal Procedure does not limit the modes of proving a previous conviction to the two modes mentioned in clauses (a) and (b) of the section but permits the use of any other mode provided by any law for the time being in force. It, however, prescribes an essential requirement to the effect that in addition to proving the previous conviction, evidence must be led to establish the identity of the accused person with the person previously convicted. **(PLD 1960 Lahore 416)**
- Previous conviction can only be proved in terms of S. **265-I,** Cr.P.C. **(2015 YLR 2711)**
- The only question which arose was that in the charge-sheet the previous conviction of the appellant had not been disclosed to him. However, this was not such an illegality or irregularity which could have caused any serious prejudice to the appellant for the reason that he was asked question in both of his depositions with oath and without oath and in both of them he had admitted his previous conviction. As such no serious prejudice had been caused to the appellant in defending himself. **(1996 P.Cr.LJ 1218)**

- Accused's admission of previous conviction dispenses with necessity of independent proof of same under S. 511, Criminal Procedure Code. **(1958 PLD 421)**
- No legal restriction existed on grant of bail to an accused due to his previous conviction for offence punishable with death or imprisonment for life if his case is covered under S. 497(2), Cr.P.C. **(2019 YLR 415)**

68. MERGER

68.1. General Principle

In criminal law the principle of merger is generally applicable on two areas:

i. Merger of injuries and

ii. Merger of offences**.**

68.2. Merger of injuries

- In order to comprehend the principle of merger of injuries, a combined examination of section 71, P.P.C. and its illustration (a) leads to conclusion that an assailant causing different kinds of hurts to a person falling within the ambit of different and separate penal provisions of law during the course of same transaction, cannot be convicted and sentenced for each and every hurt separately and simultaneously but will be liable for the major injury only. **(2009 YLR 1131)**
- The trial Magistrate and the learned Sessions judge have held the accused to be guilty of three offences viz: simple hurt, hurts by means of an instrument for cutting and grievous hurt by dangerous weapons. This is against the provisions of section 71 A. P. C. Several injuries were caused to the girl during the course of the whole beating. The accused cannot be held guilty of different offences for the various belows given by him. He is liable only to one punishment for the whole beating and could be punished only for an offence under section 326 A. P. C. His conviction for offences under sections 323 and 324 A. P. C. being illegal is quashed (**PLD 1952 AJK 8**).
- The first part deals with a continuous or continual series of similar acts each forming the same offence or offence of the same nature as the whole series; for instance, giving a man fifty strokes with a stick (see illustration (a) to section 71), stealing five articles from an owner, abducting a female from her

residence and taking her through several places in continuation etc. Illegally giving strokes with a stick is an offence punishable under Section 323, IPC; as soon as one stroke is given, hurt is caused and the offence is completed. When the next stroke is given, hurt is again caused, and another offence committed. The same is the case with the examples of offences under Sections 379 and 366, IPC There is nothing in the Code of Criminal Procedure to prevent the accused from being convicted under Section 323, IPC as many times as there are blows given by him. But when it comes to punishing him, the first part of Section 71, IPC provides that he cannot be punished with the punishment of more than one of the offences. So for practical purposes, the whole beating is treated as one offence under Section 323 IPC the whole act of stealing several articles is one offence under Section 379, IPC and the whole act of abducting the female to various places is one offence under section 366, IPC If he cannot be punished more than once for the several offences committed by him, it would be no use convicting him of the several offences; that is why in practice only one charge under Section 323 or 379 or 366, IPC is framed and only one conviction is recorded (**AIR 1953 All. 510*)***.

- **60 Cal. 643**, a person who was chased by 2 constables had fired at them several times but it seems to have been rightly assumed that the firing did not constitute more than one offence, though the point was not specifically raised or decided (**AIR 1952 SC 45*)***.
- It is quite vivid that the applicant while driving the offending vehicle negligently.....caused the death of four girls. The trial Court charged the applicant for offence under 304-A of the IPC on four counts ..... and convicted for said offence one year each for such an offence and which would be four years in total.....under Section 304-A IPC criminal negligence will be treated as one and all and he can be sentenced only once

for the maximum sentence prescribed in Section 304-A of the IPC but he cannot be punished for offence under Section 304-A of the IPC (i.e. four times), that would be against the spirit and ambit of first part of Section 71 of the IPC barring the punishment of the offender more than one of such offences. Thus, the imposition of sentence to the applicant by the trial court for offence under Section 304-A of the IPC for four times i.e. one year for each of the offence (total four years) is unsustainable and bad in law (**2015 (5) C.G.L.J 258**).

68.3. Merger of offences

In the given circumstances, the principle of merger is applicable, which is to the effect that in case of a compromise between the parties in a ' criminal case, the minor offence even if not compoundable merges into the compoundable major offence. The result would be that after acquittal of the appellant of the major offence of Qatl-e-amd in terms of compromise the minor offence of house trespass is deemed to have been compounded under the principle of merger. **(2010 YLR 758, PLD 2008 Lahore 450)**

69. PROCEEDINGS WHICH VITIATE THE TRIAL

69.1. Guiding Principle

- The provisions of section 537, Cr.P.C. provide that no finding, sentence or order passed by a Court of competent jurisdiction is to be reversed or altered in appeal or revision on account of any error, omission or irregularity in the mode of trial unless such error, omission or irregularity has in fact occasioned a failure of justice. **(PLD 2016 SC 70)**
- An explanation attached with section 537, Cr.P.C. clarifies that in determining whether any error, omission or irregularity in any proceedings under the Code of Criminal Procedure has occasioned a failure of justice, the Court shall have regard to the fact whether an objection in that regard could and should have been raised at an earlier stage in the proceedings. **(PLD 2016 SC 70)**
- Failure to specify the points for determination as required under section 367, Cr.P.C. is an omission which is not curable under section 537, Cr.P.C. and absence of decision on the points for determination and reasons in the judgment amounts to an illegality which prejudices the case of the accused. **(2004 SCMR 1)**
- In their statements under section 342, Cr.P.C. the accused specifically offered to make statements on oath in rebuttal to the complainant's case but the learned trial Magistrate failed to record their statements under section 340(2), Cr.P.C. The above illegalities were not curable under section 537, Cr.P.C. and vitiated the proceedings of trial against the accused. **(1988 P.Cr.LJ 1628)**
- The joint trial of offences committed with regard to victim Javed P.W. on 4-8-1993 and of offences committed on 6-8-1993 with regard to Jaffar victim on 6-8-1993 was an irregularity which was not curable and proceedings from

the stage of framing of charge in the joint trial stands vitiated and are of no legal consequence. **(1996 P.Cr.LJ 1011 (DB))**

- Merely affixing a stereotype stamp on the statement of the accused will by no means satisfy the essential requirements of law laid down in section 364, Cr.P.C., which is mandatory in its contents and effect. Failure to comply with these requirements is not curable under section 537, Cr.P.C. The non-compliance with provisions of section 364(2)(3), Cr.P.C. is not mere irregularity, which cannot be cured but is an illegality, which is not curable. **(2001 P.Cr.LJ 1945)**
- The provisions of sections 155 and 195, Cr.P.C. are since mandatory in nature, therefore, its non-compliance vitiates the entire proceedings. **(2013 P.Cr.LJ 18)**
- Provisions of section 353, Cr.P.C. are mandatory in nature and taking of the evidence of the prosecution witnesses in absence of the accused vitiated the trial. **(2013 P.Cr.LJ 499, PLD 2006 Karachi 388)**
- S.265-C Cr.P.C, non-supply of essential documents before framing of charge vitiates the trial**. (2019 MLD 2048, 2017 YLR 1999)**
- Non-compliance of the mandatory provisions of **S. 196, Cr.P.C.** couched in the negative language, had also vitiated the entire proceedings. **(2010 P.Cr.LJ 1809)**

70. RECOVERY OF FINE

70.1. Relevant Provisions

Section 70 PPC, 386, 547 Cr,PC.

70.2. Guiding Principles

- Further imprisonment in default of payment of fine is not necessary as the relevant provision contained in section 64 of the P. P. C. and section 386, Cr. P. Code, do not make it mandatory. (**PLD 1968 Lahore 1124)**
- Word "sentence" do not include term of imprisonment imposed in default of payment of fine-Person convicted by Additional District Magistrate and sentenced to 4 years' R. I. and fine of Rs. 500 and in default further R. I. of one month-Term of imprisonment in lieu of default in payment of fine cannot be added to sentence of 4 years' R. I. so as to make appeal against conviction direct to High Court competent. (**PLD 1969 Lahore 48)**
- For the purpose of section 70, P.P.C. the period of remission of sentence granted to a prisoner is not to be counted and it was not claimed that it should be counted. (**1989 SCMR 824)**
- The second question whether in view of the proviso to subsection (1) of section 386 Cr.P.C. warrant under the clauses (a) and (b) of the sub section could be issued against the appellant, it may be stated that section 386, Cr.P.C. relates to procedure of recovery of fine and it is a general rule relating to the construction of statutes that in the absence of express provision an adjective law cannot control the provisions of a substantive law. Therefore, the substantive law contained in section 70, P.P.C. is not to be affected. (**1989 SCMR 824)**
- According to the proviso if the convict has already suffered the imprisonment which has been imposed upon him in default of payment of fine, the Court will not issue a warrant for the levy of the fine. Admittedly,

the petitioner has already suffered the imprisonment which he was to undergo in the event he did not elect to pay the fines. In the circumstances, by virtue of the bar created by the proviso, the trial Court could not issue a warrant to the Collector for the realisation of the fines**. (1993 SCMR 1671)**

- If the petitioner does not own any property, the amount of the fine shall remain due against him, which could be recovered whenever he acquires the property in future. (**2012 P.Cr.LJ 1053 Balochistan)**
- It is clarified that by undergoing a sentence of imprisonment in default of payment of fine, a convict is not absolved of his liability to pay fine and the amount of fine can still be recovered from him despite undergoing the sentence of imprisonment in default of payment of fine because a sentence of imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine. (**2019 SCMR 1321).**

71. RIGHT OF APPEAL

71.1. Relevant provisions

- Sections 404 to 431 (Chapter XXXI) Cr.P.C 1898.
- Part VII of the Code of Criminal Procedure, 1898 is devoted to Appeal, Reference and Revision. It has two chapters. Chapter XXXI is exclusively on the subject of Appeals

71.2. Appeal is creation of statute

The appeal is competent only when provided for by law (**Section 404 Cr.P.C**). Appeal is purely a creature of statute and unless a right of appeal is clearly and expressly given by the statute, it does not exist nor is there any scope for inferring such right by implication. (**PLD 2006 Lahore 147, PLD 2004 Kar 348)**

71.3. Appeal Continuation of original matter

Appeal being a continuation of original matter, appellate forum enjoys same authority and ample discretion to specify nature of sentence by declaring the same to run concurrently. (**PLD 1966 Lahore 684)**

71.4. In following cases appeal lies

Appeal from order rejecting application for restoration of attached property. Appeal from order requiring security for keeping the peace or for good behavior. Appeal from order refusing to accept or rejecting a surety (**Sections 405 to 406-A**).

71.5. In following cases appeal do not lie

- No appeal in case of plead guilty (**Section 412 Cr.P.C**).
- No appeal in petty cases (**Section 413 CrPC**).
- No appeal in certain summary convictions (**Sections 414 &414-A Cr.P.C**).
- There is special right of appeal in certain cases (**Section 415-A Cr.P.C** .

71.6. Who can file Appeal

- Appeal can be filed by Public Prosecutor in cases of acquittal to High Court on direction of Provincial Government (**Section 417 Cr.P.C**) in any case; (means state case or complaint case) PLD 1979 Pesh 174

  An aggrieved person may file appeal to High Court. Appeal is admissible on matters of facts and law (**418 Cr.P.C**).

71.7. Mode of filling appeal

- Appeal shall be filed by moving a petition with a copy of judgment appealed against (**Section 419 Cr.P.C**).

  If the appellant is in jail, he may forward the appeal through incharge jail (**Section 420 Cr.PC**).

71.8. Summary dismissal of appeal

- The Court may reject appeal summarily after hearing the appellant (**Section 421 Cr.P.C**). Rule laid down by Supreme Court in **P L D 1956 SC 111** to the effect that summary dismissal of appeal without calling for record was inadvisable, concerns the propriety and procedure of handling State appeal is against acquittal generally. Such rule of propriety, procedure, and caution, held, could not be held to be universal, inviolable and absolute--In exceptional cases and for reasons recorded or otherwise discernible a departure, or an exception could be made. (**1988 SCMR 847)**. But appeals have to be decided in the light of the relevant statutory provisions. At appellate stage whole original case stands reopened for its hearing and decision in accordance with law. Appeals cannot be decided summarily without analytically discussing the evidence on record, as the same have to be disposed of according to evidence. (**2011 SCMR 1417)**

71.9. Dismissal in default not permissible

Dismissal of a criminal appeal is not permissible for default in appearance, if the same had not been dismissed summarily under S.421 Cr.P.C. (**1991**

P.Cr.LJ 1430). Criminal appeal, once admitted for hearing, must be decided on merits and cannot be dismissed for non-prosecution. (**PLD 1970 SC 177)**

71.10. Summon record

It was mandatory for the Appellate Court to summon the record for its perusal. Hearing of the appellant or his counsel may be necessary provided they were present before the Court but if they avoid to come to address arguments, Court may proceed with the matter for its decision on merits in accordance with law. **(1997 SCMR 274)**

71.11. The procedure and powers of appellate Court

The procedure and powers of appellate Court are mentioned in sections **422 & 423 Cr.PC.**

71.12. Suspension of sentence

Pending appeal, the Appellate Court may suspend the sentence (**Section 426 Cr.P.C**). But such power of suspension of sentence and grant of bail is not wider than that under S.497, Cr.P.C **(PLD 2006 SC 48).** When appeal against conviction is pending for a long period without any fault of the accused, his sentence has to be suspended. (**PLD 2009 SC 388).** Convict having undergone half of his sentence could seek suspension of sentence. In case of dismissal of appeal, provisions of S.426(3), Cr. P.C. would come in operation and period of suspension of sentence would stand excluded and convict would have to undergo sentence awarded to him by Court. (**2007 SCMR 1844).**

71.12.1. Section 426 (1) in contrast with Section 497.

Provisions under S.426(1), Cr.P.C. are analogous to the one contained in S.497, Cr. P.C. as in both the cases the sentence or detention is to be suspended pending hearing of appeal/trial and the convict or the detenu is to be released on bail with the only difference that in the former case the

person is a convict who has been already found guilty while in the latter case he has been charged only to face trial and is still to be proved guilty. (**2012 SCMR 997, PLD 2007 SC 564).**

71.13. Arrest of accused in appeal against acquittal

The accused may be arrested in appeal against acquittal (**Section 427 Cr.P.C**).

71.14. Additional Evidence

71.14.1. Statutory Provision

Appellate Court may take further evidence or direct it to be taken (**Section 375 & 428 Cr.P.C**).

71.14.2. General Principle to take additional evidence at appellate stage PLD 2019 SC 675:

Under S.428, Cr.P.C an appellate Court could take additional evidence on its own or upon an application of a party to the appeal, i.e. the appellant, the State or the complainant but in both such cases the appellate Court had to record its reasons why it thought that taking of additional evidence was necessary.

71.14.3. Mode of taking additional evidence

Where the Appellate Court considers additional evidence to be necessary, after recording its reasons, the appellate Court may take such evidence itself or direct the same to be taken by trial Court. (**PLD 2001 SC 384)**

71.14.4. Grounds for dismissing application for additional evidence

Court could not summarily dismiss an application for additional evidence in terms of S.540, Cr. P.C by merely holding that either said witness was not mentioned in the challan or that it was belated or that it might fill up lacunas in the prosecution case, unless the totality of material placed before the Court was considered to find out whether examination of the said witness was essential for a just decision of the case. (**PLD 2013 SC 160)**

71.14.5. Decision on basis of pre-existing evidence and additional evidence

The appellate Court shall then proceed to decide the appeal on the basis of the pre-existing evidence as well as the additional evidence lawfully becoming a part of the record. **(PLD 2019 SC 675)**

71.14.6. Restrictions while allowing additional evidence

- Court has wide powers to call or recall any witness but such powers are not to be exercised to fill in lacuna left by any party. (**2011 SCMR 474, 2001 PLD 384).**
- Power under Section.428, Cr.P.C. has not to be utilized to cure inherent infirmities and it should not be an invitation for perjured evidence. Court has to keep the interest of justice in view and its actions should not cause annoyance to persons connected with the case. (**2009 P.Cr.LJ 199)**
- Appellate Court can exercise such powers only where the additional evidence was either not available at the trial or the party concerned was prevented from producing it either by circumstances beyond its control or by reason of misunderstanding or mistake. (**PLD 2001 SC 384)**
- Court has to exercise such powers judiciously for just decision of case keeping in view circumstances of each and every case. (**2011 SCMR 474)**
- Court generally does not allow to raise such plea for first time before Supreme Court with sole object to create doubts about judgments of Courts below. (**2011 SCMR 474)**

71.14.7. Acquittal under section 249-A Cr.P.C

Acquittal under S.249-A, Cr.P.C. is quite different from acquittal after trial under S.245, Cr.P.C: --Benevolent principles which govern appeals against acquittal under S.245, Cr.P.C. cannot be applied to an appeal against acquittal under S.249-A, Cr.P.C. **(PLD 1991 Kar 301)**

71.14.8. Court can summon any person

Court enjoys full powers to summon and examine any person as witness, at any stage of trial, and it is imperative for the Court within the terms of S.540, Cr. P.C. to summon and examine a person when evidence of such person appears to the Court essential to come to just decision of the case--- Court can also examine any person in attendance though not called as witness---Underlying object always is to reach the truth. **(2007 SCMR 1631)**

71.15. Presumption of double innocence

When guilt of accused was proved from overwhelming ocular evidence of truthful witnesses, mere acquittal of accused by the Trial Court or the Appellate Court would not add any glory to his role, and in such circumstances, the presumption of double innocence would not apply **(2014 SCMR 749).** High Court should have considered the factual as well as legal aspects of the case before applying the said principle in favour of accused. **(2013 SCMR 565).**

71.16. Restriction on altered conviction

Powers of appellate Court are very wide under S. 423 , Cr.P.C. but are subject to the condition that altered conviction should not be such which could not have been recorded by Trial Court. **(2007 SCMR 445)**

71.17. Revisional Court

Not Appellate Court but only Revisional Court could enhance sentence. **(PLD 2007 SC 405)**

71.18. Proper weight to evidence

Appellate Court should and will always give proper weight and consideration to the views of the Trial Court as to credibility of the witnesses; the presumption of innocence in favour of the accused, a presumption certainly not weakened by his acquittal at the trial; the right of the accused to the

benefit of any doubt; and the slowness of an Appellate Court in disturbing a finding of fact arrived at by a Judge, who had the advantage of seeing the witnesses. (**PLD 2010 SC 632)**

71.19. Appeal against acquittal

Principles regarding interference by appellate Court have been discussed in detail in (**2010 SCMR 491, 2009 SCMR 288, PLD 2008 SC 298)** Scope of interference in appeal against acquittal is most narrow and limited. (**PLD 2011 SC 554).** Interference in appeal against acquittal was a rare phenomenon. (**2013 SCMR 1602, 2006 SCMR 1550).** Mere fact that there can be a contrary view on re-appraisement of the evidence by the Court hearing the acquittal appeal, simpliciter would not be sufficient to justify interference with the acquittal judgment. (**PLD 1997 SC 408, 2010 SCMR 222),** (**2010 SCMR 1604).** Courts do not interfere unless the impugned order of acquittal is based on misreading and non-appraisal of evidence or arbitrary, capricious and fanciful and against the record. (**PLD 2009 SC 53, 2004 SCMR 425, 2009 SCMR 985, PLD 2006 SC 538).** Weight is to be given to the finding of trial Court if conclusion drawn is based on fair reading of evidence and is not perverse or wholly unreasonable. If appreciation of evidence has caused failure of justice, the order of acquittal must be set aside. (**PLD 2006 SC 465).** The superior Court thus interferes in order of acquittal on overwhelming proof resulting in conclusive and irresistible different conclusion, that conclusion recorded by the Court below was such that no reasonable person would conceivably reach the same; and that too with a view only to avoid grave miscarriage of justice. (**PLD 1999 SC 1063).** Salutary principle applicable to an appeal under S.417, Cr.P.C. by the State is that the High Court should give due weight to the opinion of the trial Judge. (**1996 SCMR 678)**

71.20. Appeal by fugitive

- Provision of S.412, Cr. P.C. which bars an appeal except as to the extent or legality of sentence is attracted when the accused is convicted on his plea of guilty in exercise of the discretion of the Court under S.265-E(2). (**1991 P.Cr.LJ 22)**
- Supreme Court directed to give benefit of the judgment to other accused, who did not prefer appeal for the reason that his sentence was less and he had served out the same. (**2011 SCMR 323)**
- Runaway convict may be acquitted of the charge on acceptance of his appeal, if he is found entitled to acquittal on merits of the case. (**1972 SCMR 1994, 2017 P.Cr.LJ N 253)**

71.21. Appeal of accused, a fugitive from justice dismissed even though appeal of his co-accused accepted. (**1982 SCMR 623)**

Appeal of absconding co-accused was dismissed, however, allowed for resurrection of appeal as and when he surrenders. (**2015 SCMR 1002)**

Sentence of fine on deceased accused: Since the accused was dead his appeal stood abated, but not his sentence of fine and the amount of compensation awarded to the heirs of the deceased which would remain intact on the basis of principles laid down under S.431, Cr.P.C., and the same were recoverable from him as a charge on the estate if any left by him. (**2001 P.Cr.LJ 820).** Ordinarily, a criminal appeal would abate on the death of appellant/accused, but S.431, Cr.P.C. had provided an exception to that general rule-Under S.431, Cr.P.C. an appeal against sentence of fine would not abate by reason of death of accused, because it was not a matter, which would affect his person, but would affect his estate. Section 431 of the Code of Criminal Procedure, 1898 with section 331 of the Code, unambiguously ensure continuation of appeal by an offender liable to

payment of Diyat even after his death, thus, there was no occasion for the learned Judges in the High Court to short-circuit the proceedings without adjudication on merit. (**2019 SCMR 1144)**

71.22. Limitation

- Limitation period for filing different categories of appeals against acquittal have been stated. (**2014 SCMR 671)**
- The correct legal position is that for filing an appeal under section 417(1) by the State/Provincial Government the period of limitation is six months as prescribed by Article 157 of the Act of 1908. (**2014 SCMR 671)**

71.23. If conviction not challenged by accused

Decision on criminal appeal should be on merits despite the conviction having not been challenged by the accused. Appellate Court has to ascertain if the evidence on record is sufficient to uphold the finding of conviction. (**2005 YLR 1229).** Plea of reduction in sentence does not constitute a bar for the Appellate Court from interfering where the findings rendered by the Trial Court are based on erroneous or speculative presumptions or non-reading or misreading of evidence, violation settled judicial principles concerning administration of justice and reviewing the entire case to draw, its own conclusion. (**2002 SCMR 1239)**

71.24. Undergoing sentence in default of payment of compensation does not absolve the duty to pay; it can be recovered as arrears of land revenue: (**PLD 2004 SC 89)**

72. REVISION

72.1. Relevant Provisions

- Chapter XXXII (Sec 435 to 442) of the Code of Criminal Procedure
- Chapter 25 of the High Court Rules and Orders

72.2. Important Rules Regarding Criminal Revision

72.2.1. Revision can be exercised suo motu

The intention of the law to confer suo motu powers of revision on the High Court is to ensure that the Courts subordinate to it act strictly within the legal bounds and do not transgress their jurisdiction and the findings, sentence or orders, recorded or passed by them are just and legal(**2000 SCMR 735)**

72.2.2. Revision not a power but a duty

So far as the power of the High Court under section 439, Cr.P.C. are concerned, it may be stated that it is not a power only but a duty whenever facts for its jurisdiction are brought to the notice of the Court, or otherwise come to its knowledge because the revisional jurisdiction is in the nature of corrective jurisdiction (**2000 SCMR 735)**.

72.2.3. No revision against administrative order

In so concurring with a report submitted under section 173, Cr. P. C. he does not function as a criminal Court. For that reason his order is not amenable to revisional jurisdiction under sections 435 to 439, Cr. P. C (**PLD 1985 SC 62)**.

72.2.4. Revision should be filed within reasonable period

Though no period is specified for filing a revision petition under the Criminal Procedure Code but it should be within reasonable period depends upon facts and circumstances of each case. **(2015 P.Cr.LJ 539)**.

72.2.5. Dismissal of Revision for non prosecution

(1982 SCMR 215, PLD 1976 Khi 1184, 1986 PCrLJ 901 Lhr, 1996 MLD 1339 Lhr, 1997 PCrLJ 685 Khi, 2000 PCrLJ SC (AJ & K) 984).

Thus there is no express provision in the Cr. P. C. for dismissal of the revision petition for non-prosecution. There is, however, nothing to suggest that such an order cannot be passed when the party who filed the petition, fails to prosecute his remedy and the party and the counsel remain absent on the date of hearing of the petition (**PLD 1976 Karachi 1184)**.

72.2.6. Revision - on question of fact

The revisional jurisdiction of the High Court under section 439 is indeed wide and is not confined merely to errors of law. In the exercise of its revisional jurisdiction the High Court can even, in appropriate cases, disturb findings of fact, as, for example, where there subordinate Court has wrongly placed the onus of proof or not applied the correct principles relating to the appraisement of; evidence or an important place of evidence has been ignored. (**PLD 1963 SC 237)**.

72.2.7. No order to the prejudice of accused without hearing the accused (439 (2) CrPC).

Section 439 empowers a High Court to roger alia enhance the sentence imposed by the Court below, but it is provided in subsection (2) that no order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence (**1976 SCMR 195)**.

72.2.8. Powers of Revisional Court

- The plain reading of the above said section shows that a revisional Court can maintain; alter or rescind the sentence awarded by the lower Courts. **(1995 SCMR 1679)**
- The discretion of the High Court to interfere with the orders passed by the subordinate Courts is unfettered, however, this power is to be exercised sparingly and only when grave injustice is likely to be done where there has been clear miscarriage of justice .....or order is illegal or perverse or it appears that grave injustice has been done by the impugned order. **(1999 P.Cr.LJ 1850)**
- Needless to mention that revisional powers under section 439, Cr.P.C. are discretionary. The expression "may in its discretion" clearly manifests the intention of the legislation in this regard. While exercising powers under sections 435 and 439, Cr.P.C. the High Court and the Sessions Court besides considering legality of an impugned order may also look into the propriety of any sentence as well as by going into the evidence and regularity of the proceedings of an inferior court. **(2012 P.Cr.LJ 124 DB)**
- The Magistrate First Class with Section 30 Powers, who tried the petitioner had powers to award the sentence upto seven years' R.I. The High Court was consequently within its a power to enhance the sentence upto seven years' R.I. (although an offence under section 304-A, P.P. C. carries a sentence of imprisonment which may extend to ten years' R.I. **(1988 SCMR 472)**
- From bare reading of subsection (4) of section 439 of the Cr.P.C. it is apparent in unequivocal terms that it has prohibited the High Court to convert a finding of acquittal into one of conviction (**2009 SCMR 569**).

72.2.9. Order of Revisional Court and Writ. Writ petition was not maintainable in the High Court against the order passed by the learned Additional Sessions Judge in criminal revision (**2010 SCMR 105)**

72.2.10. No Second revision (Sec 439 (4 (b))

Under the provisions of section 439(4)(b), Cr.P.C., a second revision to the High Court is not competent. The petitioners have knocked wrong door of this Court **(2008 YLR 1395)**.

72.2.11. No Revision when appeal is competent (Sec 439 (4) (5))

In Sec 439 (5) Cr.PC it has been stated in unambiguous terms that the powers of revision before High Court are not available in a case where appeal lies **(2007 YLR 3225 DB).**

72.2.12. Accused can pray for acquittal in revision for enhancement of sentence (439 (6) Cr. PC)

When a show cause notice for enhancement of the sentence is served on the appellant, it gives him a fresh right to defend himself by challenging his conviction and bring under discussion the whole evidence produced in the case **(PLD 1978 SC (AJ&K) 64).**