

## DOCUMENTARY EVIDENCE IN A CRIMINAL TRIAL

[Justice ® Dr. Munir Ahmad Mughal]

### ***Introduction***

On the criminal side the trial begins from the framing of the charge and ends at pronouncement of judgement. When charge is framed and read out to the accused and his plea recorded. If he pleads not guilty, the prosecution is asked to present its case by producing its evidence. The evidence is examination of the witnesses, the cross examination of the witnesses and sometimes even re-examination of the witnesses. Evidence is of two kinds oral and documentary. After closure of prosecution side, the plea of the accused is again recorded and he is given the chance to rebut the charge by bringing his evidence both oral and documentary and even to examine himself as his own witness. After that the arguments of the parties are heard and the judgment announced. This paper is restricted to discussion on the documentary evidence and the manner of bringing on record the documents in a criminal trial. The discussion has gained much importance for the reason that many modern devices have come to light that speak of the evidence generation by them. Admittedly, the law in Pakistan was made in the year 1898 namely, the Code of Criminal Procedure, 1898 and there has elapsed a period of near about 113 years, and very few amendments have been made since then. Are these sufficient or more are required? What is the role of the Prosecutor, be he the Complainant in a private complaint or the State case in this behalf, the accused, the PWs, DWs and the CWs? How a document is to come on the record and by which qualifications and acid tests and under which provision of the law? How the Superior courts have interpreted the various provisions of the relevant laws in this behalf have been quoted with full references to tell the researchers at all levels the application of the law of procedure and evidence on the Criminal side as a mechanism in protecting the substantive rights and thus giving access to justice.

### ***What is Evidence?***

Literally, the word evidence means something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact.

Technically, Article 2( c ) of the Qanun-i-Shahadat Order, 1984 which is the Interpretation clause of the said law says: “evidence” includes\_\_

- (i) all statements which the Court permits or requires to be made before it by the witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; and
- (ii) all documents produced for the inspection of the Court; such documents are called documentary evidence.

### ***What is the difference between evidence in civil cases and evidence in criminal cases?***

The rules of evidence are in general the same in civil and criminal proceedings, and bind alike State and citizen, prosecutor and accused, plaintiff and defendant, counsel and client. There are, however, some exceptions, e.g., the doctrine of estoppel applies to civil proceedings only,<sup>1</sup> the provisions relating to confessions (ss. 24-30), character of persons appearing before Courts (ss. 53-54), and incompetence of parties as witnesses (s. 120) are peculiar to criminal proceedings.

In a criminal case, a judge of fact must find for the party in whose favour there is a preponderance of proof, though the evidence is not entirely free from doubt. In a Criminal case no weight of preponderant evidence is sufficient short of that which excludes all reasonable doubt. Unbiased moral conviction is sufficient foundation for a verdict of guilty unless it is based on substantial facts leading to no other reasonable conclusions than that of guilt. In cases dependent on circumstantial evidence, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of his guilt. Circumstantial evidence not furnishing conclusive evidence against an accused, though forming a ground for grave suspicion against him cannot sustain a conviction. To justify the inference of guilt from circumstances, the inculcating facts must be shown to be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of guilt.<sup>2</sup>

No man can be convicted of an offence where the theory of his guilt is no more likely than the theory of his innocence.<sup>3</sup>

In a criminal trial the degree of probability of guilt has got to be very much higher—almost amounting to a certainty—than in a civil proceeding, and, if there is slightest reasonable or probable chance of innocence of an accused, the benefit of it must be given to him. But that is quite a different thing from contending that even where the

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<sup>1</sup> Best, 12<sup>th</sup> ed., s. 94, p. 81.

<sup>2</sup> (1905) 41 Cal. 601; 1941 All. 843 (FB).; [1953] 2 Patiala 187.

<sup>3</sup> (1912) 15 Bom. LR 315

burden of proof, say of proving an exception, is on the accused, the term proved should be differently and more liberally construed than when the burden of proof is on the prosecution. The Evidence Act, does not contemplate and does not lay down that the satisfaction which is required to be caused in the mind of a prudent man before acting on or accepting the prosecution story is to be of a different kind or degree from the satisfaction which is required when the accused has to discharge the burden which is cast upon him by law.<sup>4</sup>

The standard of proof required in election matters in proving corrupt practise is the same as that for a criminal offence.<sup>5</sup>

The Onus of proof never shifts to the accused, and they are under no obligation to prove their innocence or adduce evidence in their defence or make any statement.<sup>6</sup> In a civil case it is the duty of the parties to place before the Court s they think best, whereas in a criminal case it is the duty of the Court to bring all relevant evidence on record and to see that justice is done.<sup>7</sup>

In criminal trial, it is for the court to determine the question of the guilt of the accused and it must do this upon the evidence before it, independently of decisions in a civil litigation between the same parties. A judgment or decree is not admissible in evidence in all cases as a matter of course, and, generally speaking a judgment is only admissible to show its date and legal consequence.<sup>8</sup>

Following general rules have been suggested for the guidance of tribunals:-

- The onus of proving everything essential to the establishment of the charge against the accused lies on the prosecution.
- The evidence must be such as to exclude, to a moral certainty, every reasonable doubt of guilt of the accused.
- In matters of doubt it is safe to acquit than to condemn, since it is better that several guilty persons should escape than that one innocent person should suffer.
- There must be clear and unequivocal proof of the corpus delicti.
- The hypothesis of delinquency should be consistent with all the facts proved.<sup>9</sup>

### ***How a writing may be proved?***

A writing may be proved in any of the following ways:-

- (i) By calling and examining the writer himself;
- (ii) By the evidence of a person who saw the documents being written;
- (iii) By the evidence of a person acquainted with the handwriting of the writer;

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<sup>4</sup> (1951) Bom.L.R 938.

<sup>5</sup> AIR (1967) AP 155.

<sup>6</sup> (1936) 63 Cal. 929.

<sup>7</sup> (1920) 43 All. 283.

<sup>8</sup> [1921] 59 Cal 136.

<sup>9</sup> Best, 12<sup>th</sup> Edn. Ss 439, 440, 441-51 public policy. 372-382.

- (iv) By comparison of the disputed writing with the admitted writing of the writer; and
- (v) By expert evidence.<sup>10</sup>

### ***Certain important things about a document which must be known in the light of the Qanun-i-Shahadat Order, 1984***

- A document is a writing on a paper.
- Factum of a contract is one thing and the terms of a contract quite another.
- A document may be bilateral or unilateral.
- Contents of document is one thing and execution of document another.
- Where a transaction by law is required to be reduced in writing no parole evidence may be admitted to prove it.<sup>11</sup>

### ***What is the Best Evidence Rule?***

The best evidence rule requires that the best evidence of which the case in its nature is susceptible should always be presented. This rule does not demand that the greatest amount of evidence which can possibly be given of any fact should be offered, it is designed to prevent the introduction of such evidence as, from the nature of the case, allows room for supposing that better evidence is in the possession of the party, and to prevent fraud. For, when better evidence than that which is offered is withheld, it is only fair to presume that the party has some sinister motive for not producing it, which would be frustrated if it were offered. It is a cardinal rule of evidence, not one of technicality but of substance, which it is dangerous to depart from that where written documents exist, they shall be produced as being the best evidence of their own contents.<sup>12</sup>

- Article 102 of the Qanun-i-Shahadat Order, 1984 is based on the principle that the only proper evidence of the contents of a document is the document itself.<sup>13</sup>
- A document can be rebutted only by the documentary evidence.<sup>14</sup>
- Oral evidence led to contradict the contents of a document would be inadmissible in view of the provisions contained in Articles 102 and 103 of the Qanun-i-Shahadat Order, 1984.
- Article 102 deals with the exclusiveness of documentary evidence while article 103 deals with the conclusiveness of documentary evidence. In other words Article 102 deals with the proof of the matters mentioned in that Article while Article 103 deals with what may, in a sense, be called disproof of such matter.<sup>15</sup>

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<sup>10</sup> 1995 SCMR 246.

<sup>11</sup> AIR 1920 Sind 206 (DB).

<sup>12</sup> 1991 SCMR 2126.

<sup>13</sup> AIR 1949 Pat 170 ; 27 Pat 114 (DB).

<sup>14</sup> PLD 2007 Supreme Court (AJ&K) 63.

<sup>15</sup> PLD 1984 Quetta 56.

# Selected Rulings on Document

- Admissibility in Evidence: Scope – Report of BDS is not a public **Document**, hence, not admissible in evidence. [2009-PCr.LJ-Peshawar-604]
- **Admission of Execution of Document required by law to be attested - Effect:** Such admission would be sufficient proof of execution of such **Document** as against a party having made such admission. [PLD-2011-Lahore522] (CM)
- **Appreciation of Documentary Evidence:** Cogent **Documentary** evidence *is* not discussed in the judgment. Rather the judgment *is* totally silent in this regard which clearly proves that such cogent evidence remained unattended by the Court. [PLJ-2011-SC (AJ&K) 17]
- **Authentication of the first Document:** {1} Sections 33 and 35 of the Registration Act, 1908, did not cast any duty upon a Sub-Registrar to verify the authentication of the first **Document**, rather he had to satisfy himself as to the identity of the person who had executed the **Document**. Person who had executed the Sub-Power of Attorney in favour of the Bank had been identified by an Advocate and the execution had been witnessed by two persons. No probability of conviction of accused in the case - {1} Proceedings in appropriate cases could be quashed even after the framing of the charge, for dispensation of justice and prevention of mischief. {1} For stopping misuse of the process of law inherent powers of High Court u/s 561-A, CrPC could be invoked. {1} Proceedings if allowed to be continued against the accused would tantamount to abuse of process of law and even to miscarriage of justice. FIR and all the subsequent proceedings quashed. [2011-MLD-421] (Karachi)
- **Bald statements of accused -** Bald statements of accused u/s 342 would not be enough to dislodge the sufficient oral as well as **Documentary** evidence produced by prosecution to prove charge against accused. [NLR-2011-Criminal Multan 24]
- Bald statements of accused u/s 342 would not be enough to dislodge the sufficient oral as well as **Documentary** evidence produced by prosecution to prove charge against accused. [NLR-2011-Criminal Multan 24]
- **Benefit must go to the returned candidate:** Election of returned candidate *is* challenged alleging that returned candidate on the day of filing nomination papers *is* not Graduate possessing Bachelor Degree and that he *is* guilty of corrupt practice by making false declaration in respect of his educational qualifications, and by submitting, during course of scrutiny, a false affidavit and false certificates/**Documents** in respect of his educational qualification before the Returning Officer. Evidence on record had fully proved that returned candidate *is* Graduate at the time of filing nomination papers and nothing *is* on the record to rebut that position. Allegations of illegal or corrupt practice *are* to be proved as a charge in a **Criminal Trial**. Petitioner/objector had levelled allegations against the

returned candidate which must be proved with such standard as *is* required for proving a charge in a **Criminal Trial**, but he had failed to do that. If any doubt arises out of material placed on record, its benefit must go to the returned candidate. Election petition filed by petitioner/objector against returned candidate being without merits, *is* dismissed.<sup>16</sup>

- **Benefit of doubt:** Plea of the defence that preliminary investigation was conducted before lodging the FIR, got support from the fact that Investigating

Officer had admitted that except the FIR, all the rest of the **Documents** were in his handwriting. {1} *Investigating Officer could not offer any plausible explanation for not writing the FIR with his own hand, when he was not suffering from any infirmity or disability.* Ocular account had come in conflict with the medical evidence. Occurrence had neither taken place at the time, shown in the FIR, nor in the manner set up by the prosecution. Plea of counsel for the complainant and the State that because co-accused had been convicted earlier, appeal of accused would be dismissed, was not sustainable in law. {1} *Law had provided a right of fresh trial to each accused, surrendering subsequently and the court of law was bound to apply its independent judicial mind while making appraisal of evidence against him, uninfluenced by the previous conviction acquittal of co-accused.* If such plea was allowed to prevail, fresh trial of a subsequently arrested accused would become just a fancy trial defeating the object of law and principles of justice. Two real brothers had been charged, besides an absconder who too belonged to the same family. Tragedy appeared to be a job of a single person. {1} *Besides an unseen crime, a net had been thrown much wider due to consultation and deliberation made before the registration of the case.* PW who was remotely related to accused was abandoned being won over. Said witness had appeared as defence witness; his testimony would have been discarded, suspecting him favoring accused for ulterior consideration, however, his testimony got very strong support from that of the testimony of two important witnesses. Such evidence, in circumstances could not be lightly ignored. {1} *Lonely eye-witness, whose presence on the spot was not established had also made deliberate improvement.* {1} *Investigating Officer had also concealed established facts on record, their testimony could not be relied upon without strong corroboration, coming from unimpeachable source.* *Acquitted - Set free. (Peshawar) [2011-YLR-1014]*

- **Case Diaries:** It shall not be made accessible to the accused. It used by the Court to race out the various stages of investigation. Statements recorded u/s 161 is not privileged even if recorded in the body of the case diaries. Such statements are public **Documents**. [PLD-2003-Lahore-290]
- Certified copy of the **Document** could be received in legal proceedings as evidence u/s 4 of the Bankers' Books Evidence Act, 1891 and u/a 76, Qanun-e-Shahadat, 1984 copies of **Documents** made from the original by means of microfilming or other modern devices may be given of the existence, condition to contents of the **Document**. Non-production of the original cheque to substantiate

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<sup>16</sup>[2004-MLD-36] Abdul Latif Shah Vs. Ali Muhammad Khan [Ets]

- a plea, therefore, *is* not fatal towards the prosecution case, particularly when the evidence in question *is* not the only piece of evidence against the accused but *is* simply a link in the chain of the circumstantial evidence.<sup>17</sup>
- **Cognizance and trial – as used in S-190 CrPC :** There are two words used in section 190 CrPC one is cognizance and the other is ‘trial’. The Magistrate for the purpose of taking cognizance can examine the material before him. The recording of statements and taking evidence are two different things. The Magistrate, while taking cognizance, has to record some statements. And to scrutinize the allegation, which is permitted, keeping in view the gist and requirement of S-190, CrPC otherwise, the very purpose of Magistrate to have a check on the Police Report will fail. As far as the trial is concerned, the matter, after satisfaction of the Magistrate, is sent to the Sessions Judge, who records evidence with an opportunity to the parties to cross-examine the witnesses in detail and to place certain **Documents** as exhibits and to challenge them in accordance with law. [2008-MLD-1025]
  - **Cognizance of offences by Courts of Sessions - Joining persons as accused in the case: (1) Not Present at the Place of Occurrence – Documentary Proof:** Whatever **Documents** are brought on record or whatever names are disclosed by the petitioners in proof of the fact that they are not available at the time, place and date of incident had gone un-contested and un-rebutted. Presumption deducible from such **Documents** and the names disclosed for the time being, would be taken as correct and up to standard. (*Karachi*) [2011-MLD-1457] (1) **Power of Trial Court to summon any person:** Trial Court is bound / empowered to call / summon any person to join as co-accused during the trial and such power had to be exercised when there is ample material before the Court, connecting that person in commission of the alleged offence; and in realization of such a conclusion the Court had to rely on the testimony by the Investigation Agency; and not on extraneous grounds / materials which did not form record of investigation. (*Karachi*) [2011-MLD-1457]
  - Complainant fearing that certain relevant **Documents** would be withheld in case prosecution is conducted by Prosecuting Sub-Inspector-Prosecution on agreement of parties, ordered to be conducted by complainant's counsel with Prosecuting SubInspector's assistance. Medical witness, in whose respect the difference arose, however, ordered to be examined as Court witness. PPC Ss. 392, 363 & 342/109.<sup>18</sup>
  - Complaint could not be declared such a sacrosanct **Document**, wherein no change could be made, however its impact need to be examined before granting permission. {1} Substitution of a person and correction of names being entirely two different things could not be amalgamated. {1} Proposed amendment for correction of names of already nominated accused was neither deletion or addition nor insertion or substitution, but correction simplicitor having no bearing on merits of case. Issuance of process u/ss 202 & 204, CrPC, would depend upon availability or non-

<sup>17</sup>[2003-PCr.LJ-1212] Shuja-Ur-Rehman Vs. State [Fsc-Pakistan]

<sup>18</sup>[1971-PCr.LJ-849] State Vs. Ashiq [Karachi]

availability of sufficient incriminating material and would have nothing to do with correction of names of accused. Process had been issued against same accused persons, whose names were sought to be corrected. { 1 } Non-mentioning of correct names due to an inadvertent omission or lack of knowledge could be corrected, if same was not prejudicial or detrimental in any manner whatsoever to accused. Due to some omission, correct names of nominated accused persons could not be mentioned in complaint. No new person was being implicated through proposed amendment in the present case. Application accepted. [2010-SCMR-194]

- Constitution is a living and organic **Document**. While interpreting the Constitution expansive and dynamic approach and interpretation is to be adopted. [PLD-2011-Karachi-451] Redundancy cannot be attributed to any provision of the Constitution rather in case of any conflict in two provisions, the rule of harmonious interpretation is to be followed. [PLD-2008-SC-522]
- **Credible Document**: It would be a credible **Document** when it gets support from statement of complainant. [2008-SD-140]
- Criminal justice system stands on the three pillars; **Investigation; prosecution; and trial**. For effective and smooth functioning of the system, said three pillars should be appropriately balanced within their respective allotted sphere. Under the provisions contained in Chapter XIV of the Criminal Procedure Code, 1898, the Police would investigate offences. Job of investigation consisted 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 was made available. { 1 } Absolute and inflexible principle of law was that opinion of Investigating Officer qua guilt or innocence of accused was alien to his official domain. In case the Investigator would fail to collect sufficient evidence in support of the charge/allegation, he was required to prepare negative final report u/s 173 read with S 169, CrPC, and to lay it before the Area Magistrate and it was prerogative of the Area Magistrate to **agree** or **disagree** with the Police investigation. U/s 190(1)(b), CrPC the Trial Court would take cognizance of the offence and not of the offender. If the Trial Magistrate would find that sufficient evidence was available against accused, he was competent to take cognizance of the offence on submission of negative / cancellation report. Contrary to that if the evidence in support of the charge was sufficient, the Investigator would submit final report u/s 173 read with S-170, CrPC before the Court. After submission of challan in the court, the prosecutor was required to prosecute cause of the State by producing material falling within the definition of "**legal evidence**". { 1 } Function of the Trial Court was to form an opinion after perusing the Police report, all the **Documents** and statements filed by the prosecution as to whether or not sufficient grounds were available to proceed with the trial of the· challaned accused in order to determine the question of his guilt or innocence. Section 265-D, CrPC governing the subject had laid down that if sufficient ground was available to proceed with the trial, the Court would frame a charge against accused; on the other hand, if some material would not exist to connect the challaned accused with the alleged crime; and the Trial



Court considered that probability of accused being convicted of any offence or the charge was groundless, accused would be acquitted at any stage of the 249-A, CrPC (Lahore) [2010-PCr.LJ-182]

- **Cross-examination as to previous statements in writing - Procedure:** To prove the previous statement of the party / witness, relying on such previous statement, writing of other party / witness embodied in a **Document** should put that statement to him to give him opportunity to explain his position. Without complying with requirements of Art-140 of Qanun-e-Shahadat, 1984, such previous statement could not be used as legal evidence; and without complying the procedure laid down in said Art-140, if a **Document** was not confronted to a person, such **Document** could not be used as legal evidence. [PLD-2011Peshawar-208] (*Civil Revision*)
- **Determination of age of accused:** Five Senior Doctors of Medical Board after conducting the ossification test of the accused had unanimously found that he was 23 years of age. {1} *In the absence of **Documentary** evidence the best method to determine the age of someone in the present era was the ossification test/report of Radiologist, having been based on the result of highly technical and advanced equipment.* Accused had himself admitted the issuance of National Identity Card to him. {1} *Overwhelming evidence was available on record to show that the accused was not minor at the time of alleged occurrence and he could not be tried under the Juvenile Justice System Ordinance, 2000. Revision dismissed accordingly.* (Lahore) [2011-PCr.LJ-920] **Determination of age of accused:** Opinion of Medical Board though should be taken even in presence of unimpeachable **Documentary** evidence, but possibility of variance of one year on both sides, could not be ruled out of consideration. Opinion of Medical Board would provide only a clue about the age of accused, but it could not provide a conclusive age so as to be given preference over the **Documentary** evidence. {1} *Medical opinion regarding the age of an accused was to be believed where **Documentary** evidence was missing. Documents* relied upon by the petitioner/accused were not properly probed into by making a discrete inquiry or summoning the record from the concerned departments; it would be more appropriate, if the **Documents** produced by accused would be reexamined by conducting a discrete inquiry by the Trial Court to determine accused to be juvenile or otherwise. *Case remanded.* (Lahore) [2011-PCr.LJ-604]
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- illegality or infirmity. Revision petition was dismissed accordingly. (Lahore) [2011-PCr.LJ-920]
- **Discharge of accused - Prima facie case:** Prosecution has to prove offences beyond all reasonable doubts. Accused *is* charged under local and special laws. Trial Court discharged accused persons of offences under special law on the ground that there *is* no prima facie case against them. Perusal of charge-sheet and relevant **Documents** disclosed prima facie case under the said law. Discharge of accused of said offences at such stage *is* not proper.<sup>19</sup>
  - **Dispensing with inquiry.** Power of Authorised officer to decide necessity or otherwise of an enquiry. Discretion to be exercised on sound principles and judicious manner by discussing facts. Must record speaking order giving reasons for such decision. Summary procedure be adopted only in case where it is clear and apparent from **Documentary** or other evidence that specific charge is proved regarding which decision can be taken for specific penalty. Charge, evidence and specific penalty proposed to be awarded must be mentioned in show-cause notice. Police official charges of misconduct on basis of FIR registered against him on charges of theft. **Criminal Trial** yet under process. Authorised Officer, in circumstances, held, could not pre-judge alleged offence against official. Procedure of show-cause notice, in circumstances, held, not proper and consequential penalty vitiated.<sup>20</sup>
  - **Distinction – FIR and SS:** First information Report was a **Document** which was entered on the compliant of the informant into a book, maintained at the Police Station u/s 154 CrPC – FIR was signed thumb marked by the informant, while the supplementary statement was recorded u/s 161 CrPC and was not signed – FIR brings the law into motion, the police u/s 156 CrPC starts investigation of the case – Any statement or further statement of the first informant recorded during the investigation by the Police would neither be equated with FIR nor read as part of it; at the most it could be treated like a statement of a witness recorded u/s 161 CrPC [2008-MLD-1007-Lahore]
  - **Document** *is* never sent to any of the Handwriting Expert nor was any information sought whether the petitioner had ever signed **Document** (*Iqarname*). Allegedly the petitioner thumb-marked the stamp paper, out his thumb-impresion was not visible and was not comparable; no Investigating Officer ever tried to get compared the thumb-impresion on alleged **Document**. *FIR & subsequent investigation is just a nullity & abuse of process of law*. FIR Quashed. [2010-MLD-722]
  - **Document** not formally proved *cannot* be overlooked in deciding guilt of accused<sup>21</sup> or otherwise of the accused. [2008-YLR-1367]
  - **Document, proof of - Number of attesting witnesses - Pre-condition:** In order to bring case within the purview of Article 17 of Qanun-e-Shahadat, 1984, two ingredients must co-exist *firstly* there must be an instrument, *secondly*, it should pertain or relate to a matter either of a financial or future obligations. If such two

<sup>19</sup>[1994-SCMR-592] State Of Andhra Pradesh Vs. S. Eshar Singh [Sc]

<sup>20</sup> [1981-Plc-263]

<sup>21</sup>[PLD-1963- Baghdad-14] Ghulam Nabi Vs. State [Baghdad-Ul-Jadid]

conditions are met, it is mandated that the instrument must be attested in terms of Article 17 of Qanun-e-Shahadat, 1984. Agreement of sale or to sell immovable property being a written **Document** is an instrument within the meaning of law. [PLD-2011-SC-241]

- **Documentary Evidence - Active involvement:** But not a single **Document** had been produced by accused to prove his innocence. PW had produced more than 1500 **Documents** to prove active involvement of accused. Investigating Officer had also proved the charges leveled against the accused. *Sentence and fine maintained. (Karachi)* [2011-PCr.LJ-1690]
- **Documentary evidence:** Mere oral assertion is not sufficient to rebut **Documentary** evidence. [2011-SCMR-837]
- **Double Version -** Conviction recorded by the Trial Court is based on unsound reasoning, surmises and conjectures. Case being that of double version, benefit of the same should go to accused particularly when the version of accused is near to truth. No ocular testimony is available. Motive is too weak and not proved through **Documentary** evidence. *Set free. (Peshawar)* [2010-PCr.LJ-661]
- Effect. Criminal case registered against accused/respondents *is* resisted contending that as civil litigation between the parties *is* pending which had a direct connection with alleged subject-matter of FIR against accused/respondents, matter could not be gone ahead and that if petitioners/complainants *are* to succeed in establishing before Civil Courts that disputed power of attorney *is* a forged **Document**, only then criminal case could be proceeded with on a reference by Civil Court in that regard. Contention *is* repelled for pendency of civil suit could have a direct bearing on the authenticity or otherwise of the disputed power of attorney, but matter in relation to commission of an offence by accused/respondents still would remain current for its resolution in the later proceedings.<sup>22</sup>
- **Enhancement of Penalty:** (1) Eye-witnesses including the complainant had corroborated each other on every minor and major point remaining firm and consistent in their stand. (2) Ocular testimony did not suffer from any contradiction, discrepancy or improvement. (3) Relationship of PWs with the deceased, by itself, is no ground to discard their truthful, reliable and creditworthy statements, which had neither been misread nor mis-appreciated by the Trial Court. (4) Recovery of crime pistol from the possession of accused having been effected in consequence of his disclosure, non-association of private witnesses in recovery proceedings, is immaterial. (5) Medical evidence and undisputed motive had further supported the ocular evidence. (6) Conviction of accused is upheld in circumstanced. Accused had committed a premeditated, intentional and cold blooded murder of an innocent person. Trial Court had illegally entertained a **Document** without formal proof, exhibited the same in an illegal manner and treated as an extenuating circumstance in favour of accused for imposition of lesser sentence of imprisonment for life. {1} Normal penalty of death should follow on proof of prosecution case and the same

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<sup>22</sup>[1998-PCr.LJ-1157] S.M.Jahan Vs. Am, Lahore Cantt. (N) Etc. [Lahore]

*should not be altered to lesser punishment on flimsy grounds.* {1} *No mitigating circumstance appeared on record in favour of accused and he deserved no leniency.* Sentence of imprisonment for life of accused is enhanced to death accordingly. (Quetta) [2010-YLR-1006]

- **Entertainment of Application:** In spite of having adopting civil procedure, the petitioner had also chosen to take possession through Act, 2005. As petitioner had no **Documentary** evidence in her support which could establish that she was ever in possession of the property, her oral assertion could not be made basis for entertaining the application filed u/s 3 of Act, 2005. (Lahore) [2011-YLR-296]
- **Evidence to be used against accused:** If any piece of evidence is to be used against an accused, same must be brought on record and an opportunity be given to him to cross-examine the concerned witnesses in respect of the **Document**.<sup>23</sup>
- Evidence, both oral and **Documentary**, was available on record with respect to the allegation of removal of kidney of the complainant after her abduction. {1} *Prima facie case, thus, was made out against the accused and in the presence of such evidence powers to prevent abuse of law might not be exercised as to throttle the process of justice.* {2} *Mere availability of defence to a party would not call for exercise of such powers, that call for exercise of judicial discretion.* {3} *Prosecution evidence was not to be sifted at the outset.* {4} *Powers u/s 265-K, CrPC were similar and could be equated to the proceedings u/s 561-A, CrPC* Acquittal set aside - Order of Trial Court restored. [2010-SCMR-1785]
- **Evidentiary Value: Documentary** evidence in the shape of certificates issued by experts specifically medical experts, Chemical examiners and Forensic Experts when contradictory to oral testimony of related and interested witnesses, is to be believed and it always prevails upon the said ocular evidence produced by the interested parties. [PLD-2008-Karachi-182]
- **Expression "intent to defraud" appearing in section.** Implies Anti conduct coupled with an intention to "deceive" and thereby to "injure". Accused, a Union Council Secretary, alleged to have misappropriated sums entrusted to him for disbursing to a peon, after making forged acquittance rolls and putting his own thumb impression on them Peon, however, admitting to have received all sums due to him. Accused finding original acquittance rolls missing reconstructing same and putting his own thumbimpression on them instead of recipient's. Not a "false **Document**" within meaning of S-464, Penal Code. A mere irregularity or improper conduct calling for departmental action. Conviction of accused, held, not sustainable in circumstances.<sup>24</sup>
- **Fact specially within knowledge - Onus to prove:** If property was lying open within the view of accused or they knew placement of property then situation would be different in such situation, accused were required to explain their position in terms of Article 122 of Qanun-e-Shahadat, 1984, without such explanation their involvement in the case would be proved. Such knowledge of accused had not been proved through any evidence either oral or **Documentary**; therefore, they were not required to explain anything. Prosecution had simply proved presence of accused in the vehicle and {1} *mere presence of accused in*

<sup>23</sup>[1997-PCr.LJ-1377] Maqsoodan Bibi Vs. State [Fsc-Pakistan]

<sup>24</sup>[1971-PCr.LJ-988] Mushtaq Ahmad Vs. State [Lahore]

vehicle would not involve them in the case conspiracy or abatement of the offence was shown and proved, therefore, prosecution failed to prove the case against the accused. Acquitted [2010-SCMR-927] Property in question was neither lying open in the

car within the view of the accused, nor they knew about the placement of the same therein. Accused, therefore, was not even required to explain their position as required u/a 122 of Qanun-e-Shahadat, 1984, and they could not be held responsible and in joint possession of the narcotics with the Driver. Prosecution case against the accused was highly doubtful and they were acquitted accordingly. [2010-SCMR-841]

- Finding of fact may be interfered with where circumstances of the case vitiate finding or where finding of fact is based on no evidence or an important point of evidence has not been taken into consideration or a finding arrived at by misreading certain **Documents** and by relying upon certain passages in **Documents**, which do not refer to the property in dispute. [2007-SCMR-1953]
- FIR is the **Document** which is entered u/s 154 CrPC into book maintained at the police station on the application of the complaint. It brings the law into motion. The police u/s 154 CrPC starts investigation of the case. Any statement or further statement of the complainant recorded during investigation by the police would neither be equated with FIR nor read as part of it, therefore, subsequent supplementary statement is also considered as statement recorded u/s 161 CrPC which is not signed or thumb-marked. Khalid Javaid's Case 2003 SCMR 1419 rel. [2008-SCMR-6]
- **First Information Report (FIR).** FIR can be used to corroborate its maker when it appears to be a genuine **Document** written at the time and in the manner as it purports. [NLR-2011-Criminal Multan 24] Delay in recording FIR of a case of abduction for ransom and murder provides a basis to say that abductee / deceased did not disappear as alleged in the FIR. [(NLR) 2011-CrLJ-27] Promptly lodged FIR containing the names of eyewitnesses, names of accused with their specific roles and even the motive [2010-MLD-1127] had excluded the possibility of deliberation or false implication, [2010-MLD-1521] consultation [2010-MLD1127] or substitution of accused, which even otherwise was a rare phenomenon. [2009-YLR-764] Considerable delay in FIR – it could not be used as a corroborative piece of the evidence to the ocular account – benefit of doubt – acquitted. [2009-YLR-729] Delayed post-mortem of the dead body of the deceased had indicated that the FIR is recorded after preliminary investigation. Benefit of doubt – Acquitted. [2009-PCr.LJ-533] Promptly lodged FIR had excluded the possibility of deliberation, consultation and false implication [2009PCr.LJ-547] and leaving little room for concoction of false story. (*Lahore*) [2011MLD-82]
- **Fiscal matters:** Where fiscal matters are involved the person so alleging their claim in their favour on the basis of the **Document** which had created title, had to be proved through two witnesses. (*Lahore*) [2011-YLR-1377]
- For deciding the question of age of accused it is incumbent upon the Court to hold an inquiry, requisition the original record, summon and examine the authors of such record and **Documents** in order to determine the genuineness of the same and should obtain opinion of the Medical Experts which can lend valuable guidance to the Court in resolving the controversy. [PLD-2008-Lahore-26] Plea of being a

juvenile to be taken at the earliest opportunity. Otherwise an adverse inference can be drawn against him. [PLD-2008-Lahore-26]

- **Forged Document:** Criminal prosecution can be launched only by the Court before whom a forged **Document** is pending or can be launched by a person who has been defrauded as a result thereof and that, too, much prior to the production of that **Document** in the Court. [1999-MLD-2243]
- If an employee of bank while comparing signatures with specimen signature card committed an error or with gross negligence passed a **Document** or verified a signature it might be misconduct under the rules of the Organization for which employer might be justified in taking disciplinary action or imposing penalty on committing of such misconduct or negligence. Such verifying of signatures could not be held to have established that employee had cheated a customer of the bank or had committed an offence. Acquitted. (*Karachi*) [2011-YLR-105]
- If one party failed to perform his part of agreement, then other party alone could not be held guilty of non-performance of his part. [2008-YLR-2327] Whole **Document** must be read and considered in totality. [2008-MLD-1571]  
Substance of **Document** and not its form must be kept in mind while interpreting the same. [2009-CLC-731] Contents, substance and context of a **Document** would determine its nature, but not its title, label or heading alone. [2011-SCMR-1917]
- Initial burden to prove execution of **Document** is on the party which is relying on the **Document** – Once such onus is discharged, burden to prove factum of fraud or undu influence or genuineness of **Documents** shifts to party which alleges fraud. [2010-SCMR-1351]
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- Insofar as allegation of abduction or kidnapping is concerned it is irrelevant whether Section 12 is applicable or not so far as accusation of unnatural offence has been made which prosecution intended to prove through **Documentary** and oral evidence. [2009SD-456]
- Investigating Officer during cross-examination producing photostat copies of statements recorded u/s 161, CrPC of deceased and PWs. Investigating Officer showing his ignorance about original copies of same. Prosecutor not raising any objection at time of production of such copies but subsequently objecting on ground that same *are* photostat copies of statements which *are* not in his file and same have not been supplied by prosecution to accused. Trial Court overruling objection of prosecutor and allowing photostat copies of **Documents** to be placed on record without ascertaining whether original **Documents** *are* available or not. When primary evidence is available then secondary evidence, held, could not be produced. Neither defence nor prosecution established that statements, photostat copies of which *are* produced *are* recorded during investigation.

Witnesses denied their statements but Investigating Officer alleged that he recorded such statements. Sentence set aside and case remanded to Trial Court to determine whether such statements *are* recorded during investigation or not.<sup>25</sup>

- **Investigation, domain of Police – Civil & Criminal Proceedings - Quashing of FIR:** FIR had alleged that accused and his co-accused forged the agreement to sell and for that purpose not only committed the offence of forgery, but also used the forged **Document** as genuine. Mode of the occurrence detailed in the FIR, required investigation into the allegations, which was the exclusive domain of the Police. {1} *Proceedings of a civil suit and that of the criminal case could continue in parallel to each other under the law.* (Lahore) [2011-YLR-1401]
- It should always be the approach of Courts of law that multiplicity of litigation should be avoided for mere hyper technical reasons, and further while interpreting a **Document**, the Courts instead of giving effect to its substance, they should give effective and substantive relief's to parties in litigation. [NLR-2007-UC-50]
- **Last Possession -** {1} *If the ground of last possession, as taken by the petitioner, was considered to be the sole basis for granting interim custody of the vehicle, then all the accused involved in theft, robbery and dacoity cases, would claim "Superdari" of the recovered vehicles as a matter of right and would amount to vitiate the criminal proceedings initiated against such type of accused and would give a licence to them to commit such offences and frustrate the law.* {1} *Superdari of a vehicle could not be given to a person against whom allegation of theft had been made.* Respondent had established his ownership of the tractor trolley through **Documentary** evidence, which stood transferred in his name. {1} *Stay order granted to petitioner by civil court by itself had made it clear that it would not affect any judicial proceedings pending between the parties.* (Lahore) [2011-PCr.LJ-1729]
- **Marginal witnesses, non-production of - Effect:** Non-production of the marginal witnesses of the **Document**, was fatal where party could easily produce the marginal witnesses. (Lahore) [2010-MLD-1162] Civil Case
- Medico-Legal Certificate was issued by Medical Officer and Radiologist opined fracture on the person of injured. Authenticity of Medico-Legal Certificate was questioned and medical board was constituted at the instance of accused and medical board rendered its opinion. Both the **Documents** were authored by medical officers in discharge of their functions, genuineness of which could not be doubted. Accused would have ample opportunity to discredit the evidence on the touchstone of cross-examination. Supreme Court set aside the orders passed by all the courts below and allowed application for summoning of doctors. Appeal allowed. [2011-SCMR-713]
- **Mere filing – Following:** The whys and where forces lead me to an irresistible conclusion that the bone of contention between the parties whether case of illegal dispossession was made out or not was overlooked and ignored by the Trial Court and an incomprehensible (*beyond your understanding*) and patently (*clearly*) improbable order was passed without adverting to an imperative (*very important*)

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<sup>25</sup>[1986-PCr.LJ-2514] Abdul Hassan Vs. State [Karachi]

contemplation (*thought*) that {1} mere filing of a suit subsequent to the filing of complaint on the basis of a **Document** which has no legal foundation, would be of no significance to protect the illegal & unauthorized possession. [PLD-2011Karachi-405]

- **Modern Devices, Evidence of:** Evidence available on record through modern devices on techniques as computer can be allowed & used in the evidence u/a 164, Qanun-e-Shahadat Order, 1984. Similarly, audio, video recorded cassettes, CDs are admissible piece of evidence about information contained in the electronic **Documents**. [PLJ-2011-Sh.C. (AJ&K) 1]
- **No Documentary or Oral Evidence** – Dishonest Improvements – Benefit of Doubt – Acquitted - [2010-MLD-308]
- **Non-Compliance with Conditional order - Superdari of vehicle:** Order passed by the Magistrate to hand over the vehicle to the petitioner was a conditional order and petitioner had not complied with the said condition of submitting the original **Documents** of the vehicle; in the meanwhile the petitioner approached High Court and filed constitutional petition and thereafter had continuously sought adjournments from the Magistrate instead of submitting the original papers of the vehicle. Magistrate consigned the pending application as having become infructuous on account of the pendency of constitutional petition before High Court. Number of the vehicle given by the petitioner in his petition was different from that of the vehicle number given on superdari to respondent. Constitutional petition dismissed. (*Lahore*) [2011-PCr.LJ-1073]
- Non-production by prosecution of inconclusive **Document**. Held, did not prejudice accused.<sup>26</sup>
- **Not necessary for Court to send matter to handwriting expert in every case** – Court in case of ambiguity could refer matter to expert for opinion – Prerogative of Court either to send matter to handwriting expert or form an opinion after abre perusal of disputed material, such opinion could not be conclusive unless same found support from relevant **Documents**. (*Lahore*) [2011-CLD-1361]
- Oral evidence to the extent of its inconsistency with medical evidence could not be accepted. [2007-SCMR-1812] **Oral Evidence – Documentary Evidence:** Oral evidence cannot be given preference over **Documentary** evidence. [2010SCMR-473]
- **Oral Evidence:** Oral evidence could not be preferred over **Documentary** evidence. (*Lahore*) [2011-MLD-176] (January)
- **Ossification Test:** O-Test of accused for determining his juvenility can be ordered by Court as a last resort. The importance of ossification test is amplified by fact that **Documents** like birth certificate and school leaving certificate of accused are susceptible to interpolation, manipulation etc. In order to adopt a safe course, it is imperative to obtain opinion of medical experts. [2008-CrLJ-203]

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<sup>26</sup>[1968-PCr.LJ-1549] Bashir Ahmad Vs. State [Sc]



- **Person obtaining appointment in Police Department on basis of forged certificate of qualifications.** Challenged for **Criminal Trial** but acquitted. Dismissed after show-cause notice. Appeal before Tribunal withdrawn after coming to know that record of criminal case *is* summoned by Tribunal. Appeal dismissed as withdrawn. Question of securing employment on basis of forged **Documents**, held, of sufficient public importance. Government advised for action to check possibility of such forged **Documents**/certificates in circulation.<sup>27</sup>
- **Photocopy of Cheque:** What would be the value of that type of evidence, is to be decided by the trial Court after recording of evidence of both the sides – in the absence of any original **Document**, it is difficult to rebut the stand of respondent / accused that the cheque in dispute is tampered with and that at the time when the cheque is executed, S-489-F PPC is not in existence – Bail not Cancelled. [2008-PCr.LJ-1760]
- Plaintiff in civil suit, held, is a **Document** and can be referred to in Criminal Trial to show plaintiff's stand in that suit.<sup>28</sup> Men may tell lie but circumstances cannot. (*Lahore*) [2011-YLR-1614]
- **Plaintiffs claiming preferential right to have suit land allotted to them as tenants thereof - Proof:** Onus was on plaintiffs to establish that they were tenant of suit land. Two plaintiffs were brothers and other two were sons of first plaintiff, who in his evidence did not say a single word that any of his brothers were tenant of suit land. Oral version of first plaintiff was not corroborated by any **Documentary** or other oral evidence. Oral version of first plaintiff was denied by defendant. Held: plaintiffs failed to make out case in their favor. [2011-SCMR284]
- Plea that deceased has executed power of attorney during marz-ul-maut – Proof – Treatment of hospitalization of deceased at time of execution of power of attorney had not been proved by producing any independent witness or medical practitioner or **Documentary** evidence. Deceased had executed power of attorney 10 months before his death – Such plea was repelled. [2011-SCMR-153]
- **Power of Police to reinvestigate the case:** {1} *Police or Customs Authorities are not statutorily prohibited from investigating a case as many times as they chose; and could file a fresh challan in the court as a result of subsequent investigation or events.* {1} *Powers of Police to reinvestigate the case or submit subsequent challan, are unlimited; and no law existed which precluded the Police from reinvestigation of case.* {1} *Any **Document**, which the prosecution intended to rely upon, should be submitted before the court through proper and subsequent challan as envisaged u/s 173 of CrPC.* {1} *If the law required something to be done in a specific manner, it should be done as law required and departure was not permissible.* {1} *Police or any other Investigating Agency, had no unfettered power to place a **Document** on record in gross violation of the prescribed manner.* (*Quetta*) [2011-YLR-2169]
- **Powers, Jurisdiction and Role of Justice of Peace:** Role statutorily defined for a

<sup>27</sup> [1981-Plc-310]

<sup>28</sup>[1986-PCr.LJ-1705] Qamrul Islam Vs. State [Karachi]

Justice of Peace is to make arrest in circumstances mentioned in Ss. 54 and 55

CrPC and to had over custody of the arrested person to the officer incharge of the nearest Police Station; to call upon any member of the police force on duty to aid in arresting or preventing the escape of a person involved in commission of a cognizable offence; to call upon any member of the police force on duty to aid him in the prevention of crime, breach of the peace or disturbance of the public tranquility, and to issue a certificate of identification of a person to verify any

**Document** and to attest any **Document**. Ex-Officio JOP; had the powers to issue appropriate directions to the police authorities concerned on a complaint regarding non-registration of criminal case, transfer of investigation from one police official to another, and for neglect, failure or excess committed by a police authority in relation to its functions and duties – Justice of Peace or Ex-Officio JOP, is not a Court as envisaged u/s 6 of the CrPC or the relevant provision of the CPC. [PLD-2009-Lahore-235] Ex-Officio JOP may issue appropriate direction to the 4 police with regard to neglect, failure or excess committed by the police officer in relation to his functions and duties – with no stretch of imagination Ss.22-A & 22-B, CrPC authorize Justice of Peace to quash or cancel FIR in a case pending trial – Order of Quashment of FIR set aside. [2009-YLR-750]

- **Principle of Interpretation of statutes:** Intention of Legislature or author of a **Document**. To be gathered from its provision as a whole. Court not entitled to ascertain intention of author or Legislature, in absence of any ambiguity. Contention beneficial to subject to be given.<sup>29</sup>
- Principle of natural justice is sufficiently incorporated in Rule 5 (E&D) Rules, 1973, to the extent of providing civil servant with opportunity of showing cause in disciplinary matters but it cannot be stretched so as to turn it into a **Criminal Trial** as desired by civil servant. Failure of Authorised Officer to provide civil servant with copies of certain **Documents** in inquiry culminating in imposition of minor penalty *is* not enough to vitiate whole disciplinary proceedings. As for challenge to propriety and legality of impugned order, petitioner would be estopped by his conduct in that he had while explaining mitigating circumstances to Authorized Officer during personal hearing accepted an "inadvertent or advertent omission and had pleaded for a lenient view". Petition for leave to appeal had thus, no substance. Leave to appeal *is* refused in circumstances.<sup>30</sup>
- **Principles:** Constitution is a living organism and has to be interpreted to keep alive the traditions of past blended in the happening of present and keeping an eye on the future as well. Constitution must be interpreted keeping in view the entire canvas of national fabric, be it political, social, economic or religious. Constitution is to be interpreted liberally and saved from cosmetic circumscription and construction. Constitution is not a **Document** of past or present, so it is to be interpreted in a manner to meet the changing conditions of socio-religio and economic dynamics of the State. [2011-SCMR-1621]

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<sup>29</sup>[1981-PCr.LJ-19] State Vs. Ali Jan Shah [Sc-Aj&K]

<sup>30</sup>[1996-SCMR-835] Muhammad Anware Vs. Cs Nwfp = [1996-Plc-887]

- Privileged Document – concept – No immunity for accountability is available when the matter concerns the commission of a crime or fraud:** if the **Documents** are relevant to establish the commission of crime or fraud by the accused and are not made for legitimate purposes such as for the preparation of the defence of the accused which the interest of justice may require to be kept confidential, the **Documents** would not be privileged. There are no matters of fact, in the possession of officials, concerning solely the internal affairs of public business, civil or military, which ought to be privileged from disclosure when material is to be ascertained upon an issue in a Court of justice. In any community under a system of representative Government and removable officials, there can be no facts which require to be kept secret with that solidity which defies even inquiries of a Court of justice. “To cover with the veil of secrecy”, the common routine of business, is an abomination in the eyes of every intelligent man and every friend to his country”. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of partisan politics or personal self-interest. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption. Whether it is the relations of the Treasury to the Stock Exchange, or the dealings of the Interior Department with Government lands, the facts must constitutionally be demandable, sooner or later, on the floor of House. To concede to them a sacrosanct secrecy in a Court of justice is to attribute to them a character which for other purposes is never maintained, a character which appears to have been advanced only when it happens to have served the interests of some individual to obstruct investigation into facts which might fix him with a liability. No immunity from accountability is available particularly when the matter concerns the commission of a crime or fraud. [1994SCMR-2142]
- Prompt FIR - Value -** FIR which was lodged by the complainant without any loss of time, is a valued **Document** in the prosecution case. (*Lahore*) [2011YLR-1392]
- Proof of Identification of accused - Death of Investigating Officer - Secondary evidence:** Plea raised by accused was that Magistrate under whose supervision Test Identification Parade was held was not produced and even during trial accused persons were not identified. Accused raised the further plea that person who conducted entire investigation was reportedly dead and **Documents** prepared by him were not proved through secondary evidence. *Effect:* Leave to appeal *is* granted for reappraisal of entire evidence. [2011-SCMR-1349]
- Proving contents of a Document - Scope:** Contents of a **Document** could be proved through primary or secondary evidence as provided u/a 72 of Qanun-e-Shahadat, 1984. Contents of **Document** could only be proved through the secondary evidence, if the conditions mentioned u/a 76 of Qanun-e-Shahadat, 1984 were available. (*Lahore*) [2011-YLR-890]
- Purpose of Section 265-K CrPC :** Trial Court u/s 265-K CrPC had no doubt the jurisdiction to acquit an accused at any stage of the case, but a big rider is attached to the exercise of that discretion – Firstly both the parties had to be heard; and secondly the Court after considering the pros and cons of the controversy, should

come to the conclusion that there is no possibility of accused being convicted of any offence – legal effect of accepting of application u/s 265K CrPC, would be clean acquittal of accused and not enlarging him on interim bail, to secure attendance at the trial – Section 265-K, CrPC is an exception to the general rule relating to trial of cases under the Code – said provision had to be construed strictly. Trial Court is under an obligation to record reasons to justify the inference that in all probability the verdict of guilt would not be returned – Proceedings u/s 265-K CrPC are summary in nature – there had to be judicious exercise of discretion u/s 265-K CrPC and deriving a complainant to prove his case through oral or **Documentary** evidence, is not fair exercise of jurisdiction – Stifling the prosecution is not the purpose of S-265-K CrPC [2009-PCr.LJ-36] (FSC)

- **Quashing of Proceeding - Inherent Powers of High Court u/s 561-A, CrPC - Scope:** {1} Section 417, CrPC dealt with appeal against acquittal of accused on merits or other grounds such as exercising the powers u/s 249-A or S-265-K, CrPC but the same had nothing to do with maintainability, applicability of certain sections of law and jurisdictional questions which could only be decided u/ss 435, 439, 439-A or S-561-A, CrPC. {1} Acquittal meant judgment given by a judge or jury that someone was not guilty. {1} Section 561-A empowered the High Court to prevent abuse of process of court or otherwise secure ends of justice. {1} Where High Court arrived at conclusion that order passed by a Subordinate Court amounted to abuse of the process of Court, High Court could remedy the injustice by exercising inherent powers. {1} High Court u/s 561-A, CrPC had inherent powers to make such orders as might be necessary to give effect to any order or prevent abuse of process of any court or otherwise to secure ends of justice. {1} Inherent jurisdiction was the residual, automatic and ex-officio authority of the Court of Law to regularize proceedings and function with justice and good reason. {1} 'Inherent' jurisdiction enabled the court to fulfill its functions properly and effectively. {1} Inherent jurisdiction was part of procedural and not of substantial law and the same could be exercised in relation to matters not raised in pending litigation and in respect of persons not party to such Litigation. {1} High Court could exercise inherent power without any application from any side and upon any information brought to its notice. {1} Alleged offence having been committed before institution of suit and alleged **forged Document** having been used in civil court, criminal proceedings could only be instituted by the said court or the person who had been deprived as a result of the commission of offence before institution of the suit and production of **the Document** in the Court. {1} Bar on criminal prosecution in respect of matters pending in Civil Court would tantamount to providing complete immunity to persons committing fraud and forgery in judicial proceedings thus rendering Ss-195 and 476, CrPC redundant practically. {1} After receiving the complaint referred by the Magistrate, Additional Sessions Judge should have deemed the same to have been lodged by the Magistrate himself and should have decided the complaint on merits. {1} Cognizance of offence u/s 467, PPC was not barred by S-195(1)(c), CrPC. Impugned order set aside - Case remanded to ASJ for decision strictly on merit. (Peshawar) [2011-YLR-816]
- Rationale behind the provision of the copies of **Documents** in terms of S-265C, CrPC is to inform accused of the allegations / charges leveled against him, so that

he could be in a position to give answers to the questions that could be put to him during the course of framing of charge without which the very framing of charge would become irrelevant. Supply of the requisite material would enable accused to properly defend himself against the accusation made – Noncompliance of that provision of law could surely jeopardize his right to have copies of all the **Documents** mentioned in S-265-C, CrPC prior to the commencement of the trial and framing of the charge – such position would not change even if it was a complaint case – Omission to supply such **Documents** as per provision of S-265-C CrPC would vitiate the whole trial. [2009-YLR-1007]

- **Reconstruction of Record:** Petitioners are free to produce concerned **Documents**, if any in their possession. Petitioners having participated in the proceedings of the case cannot back out from their participation and claim to restart a proceeding a fresh. [2008-PCr.LJ-1084].
- **Registered** sale deed prior in time must be given due weight. [2010-SCMR-1871]
- **Relevancy and admissibility of certain Documents** received in evidence by Trial Court, challenged. Accused did not raise any objection as to admissibility of such **Documents** at time when same *are* marked and Exhibited in evidence. **Documents** having been received in evidence by previous Magistrate his successor, held, *is* not competent to **Review** and revise proceedings conducted by his predecessor. Revisional Court dismissing revision petition by giving sound and cogent reasons. Orders of Courts below not suffering from any defect of jurisdiction, *are* quite legal and proper. Question of admissibility of such **Documents** could be raised at time of final hearing. Interference in exercise of constitutional jurisdiction declined in circumstances.<sup>31</sup>
- **Report of Bomb Disposal Squad - Admissibility in Evidence – Scope:** Report of BDS is not a public **Document**, hence, not admissible in evidence. [2009PCr.LJ-Peshawar-604]
- **Report of misappropriation of cash lodged by PW**, based on audit report not prepared by witness himself. Cash neither checked physically nor any **Document** examined by witness. Witness failing to produce Departmental file showing accused's appointment as cashier. Evidence of such witness, held, of no use to prosecution. PPC S-409 and Prevention of Corruption Act (II of 1947), S-S(2).<sup>32</sup>
- **Requirements for Execution of Power of Attorney:** Section 2 and 4 of the Power of Attorney Act, 1882, provided that power of attorney had to be created by an instrument – article 95 of Qanun-e-Shahadat, 1984, required the Courts to presume every **Document** purporting to be a power of attorney which was executed before and authenticated by a Notary Public or any Court or representative of the Federal Government – Power of attorney had to be a written **Document** – Unless the power of attorney in the shape of written **Document** was filed before the court, neither any assumption of its existence could be made

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<sup>31</sup>[1986-PCr.LJ-2688] Hidayat Ali Khan Vs. Shafqat Ali Khan [Lahore]

<sup>32</sup>[1973-PCr.LJ-1015] Muhammad Rizvi Vs. State [Karachi]

- nor the Court would make any presumption as required u/a 95 of Qanun-e-Shahadat, 1984. [2009-MLD-538]
- **Retracted Judicial Confession:** Supported by other independent and convincing oral and **Documentary** evidence would prove case when no material contradiction or discrepancy has emerged in statements of PWs despite their lengthy cross-examination. [(NLR) 2008-CrLJ-658]
  - **Scope of Evidence for Prosecution -:** Section 265-F is quite comprehensive. Clause (7) of S-265-F, CrPC has granted a right even to accused to apply for summoning of witnesses & production of **Documents**. Balance has to be struck between the parties. [PLD-2011-FSC-114] (*February*)
  - **Scope of FIR: Stranger:** FIR is a foundation stone of a criminal case though it is not a piece of substantive evidence. FIR is always used for contradicting u/a 140 of QSO, 1984 and corroborating u/a 153 of QSO, 1984. when some infirmities or irregularities are found in an FIR, it certainly would affect the final determination of the case especially when it is lodged by a mere stranger and not by an eye-witness. [2008-PCr.LJ-613]
  - FIR is only a primary **Document**, which provides legal basis to police for proceeding further in accordance with law and for determination of relevant facts. Any material coming to knowledge of complainant in so far it is relevant to alleged offence may be placed before police during investigation. [2008-YLR-1891]
  - **Search Warrant** was a public **Document** and could have been proved by production of a certified copy as visualized by Art.88 of the Qanun-e-Shahadat, 1984. Inference, however, could be drawn that the Police Officer wanted permission to effect arrest of a number of persons in a house where the offence was alleged being committed. **General warrant** to apprehend more than one person was, however neither authorized by CrPC nor by Offence of Zina (EoH) Ordinance, 1979. All proceedings as a subsequent to submission of application were thus, void under clause (d) of sub Article (i) of Art.112 of the Qanun-e-Shahadat, 1984, the Court was authorized to take judicial notice of "the seal of all the Courts". [2010-PCr.LJ-231 (Syed Afzal Haider, J.) Shehnaz vs. State] –
  - **Secondary evidence** - Contents of a **Document** are required to be proved either by primary evidence is not produced before Court, then law requires that its secondary evidence can be produced which means copies of the original **Document**. For producing secondary evidence, Art. 75 requires that secondary evidence can be proved on satisfying conditions specified in Art. 76. [(NLR) 2011-AC-12]
  - **Stay of proceedings before Trial Court.** Accused had sought the stay of criminal proceedings against him before the Special Court till the determination by Civil Court the genuineness or otherwise of the receipt alleged to have been issued by him on which the complainant had relied. Supreme Court observed that the Trial Court itself *is* competent to look into the genuineness of the **Document** either by comparing the signatures of the accused with the signatures on the receipt or sending the same for Expert's opinion and that it *is* for the Trial Court to determine the question of the guilt or innocence of the accused upon the ocular and

**Documentary** evidence produced before it. Even otherwise Civil Court's judgment could not be admissible in a criminal proceeding to establish the truth of the facts upon which it is rendered. Courts below, thus, *are* right in not staying the criminal proceedings against the accused. Leave to appeal *is* refused accordingly.<sup>33</sup>

- **Sudden Fight - Lack of common intention** - Defence plea that the deceased and the witnesses had been injured by the neighbors, besides being highly improbable, is not substantiated. Was not known as to how the firing started and what exactly happened prior to the occurrence. Case, thus, is of sudden fight and S.34, PPC is not attracted due to lack of common intention. Accused had not caused any injury to the deceased and his conviction u/s 302(b)/34, PPC is set aside. Medical evidence had supported the injuries attributed to accused on the persons of eyewitnesses and his convictions and sentences under Ss. 324 and 337-A(ii), PPC were maintained. Appeal is disposed of accordingly. (Lahore) [2010-PCr.LJ-837] **Sudden fight** -Case of prosecution is that accused and deceased are fast friends and accused had no previous enmity. No premeditation existed on the part of accused to commit murder of the deceased. Case is of sudden fight as according to the motive set out in the FIR the deceased owed certain amount to accused and accused committed the murder after an altercation in a heat of passion. Punishment of death, in circumstances is not warranted. Sentence of death is modified and altered into imprisonment for life. (Lahore) [2010-PCr.LJ-1089] **Sudden Fight:** Case was of sudden fight and the injured witness had not attributed any injury to accused on his person. *Acquitted.* [2010-YLR-2390] In the background of case involving two versions of murder occurrence, where both complainant and accused parties have not approached Court with clean hands and have tried to suppress their own role and have made an attempt to highlight the role of the other side, Court cannot be deterred by incompleteness of the tale from drawing inferences that properly flow from evidence on record and circumstances of the case. Held: Circumstances of case suggested that case against accused was case of sudden fight without any premeditation and immediate cause of incident was not known. [NLR-2010-Criminal Lah 502] Both the parties were on a dispute over **demarcation of land** and the **watercourse** in dispute was dismantled by complainant side. No witness or any **Document** was placed on the record to substantiate motive. {1} Except mere assertion of the case witnesses; no evidence was on record on the point of motive. Prosecution though was not required to set a motive, but where it was specifically alleged, it would become obligatory for the prosecution to prove the same, but in the present case the motive remained unproved. {2} In view of admission by accused of his having caused injury to deceased, though in self-defence, the medical evidence of doctor would hardly lend any credible support to the prosecution to prove the aggression of accused. {3} Recovery of crime weapon i.e. the gun on the pointation of accused remained inconsequential as neither the crime empty nor the recovered weapon were sent to the Forensic Science Laboratory. {4} Facts that injuries on the person of one of accused persons were suppressed by the prosecution, dispute over demarcation of land remained admitted and the defence plea raised by accused had lead to conclude that in fact it was **sudden fight** having

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<sup>33</sup>[1995-SCMR-1621] Khuda Bakhsh Vs. State [Sc]

*erupted at the spur of the moment, where both the parties acted freely wherein one accused sustained injuries and one from complainant side lost his life.* Defence plea taken by accused appeared to be mere probable and nearer to reality. Accused though acted in self-defence, but he exercised his right of self-defence much more than what actually was required to ward off the immediate threat or attack to his life. While maintaining the conviction of accused u/s 302(b), PPC, out of abundant caution, death sentence awarded to accused was reduced to that of imprisonment for life. Remaining sentence of compensation & imprisonment in default thereof would remain intact. [2010-YLR-230]

- **Superdari - Temporary custody - Rent a Car - No rival claimant - Release of the vehicle on "Superdari"**: Proviso of S-74 of the Control of Narcotic Substances Act, 1997, did not prohibit the release of the vehicle involved in the trafficking of narcotics to its owner; who was not connected in any way with the commission of the crime or the accused and was unaware that his vehicle was being used for the crime. Record did not show that the petitioner was aware that his vehicle was used for the transportation of "Charas". **Documents** produced by the petitioner before the Courts below showed that his car was leased to a firm of "Rent a Car", which had rented it out to the accused. In the absence of any rebuttal by the prosecution of these **Documents**, findings of High Court that the same might have been fabricated, could not be agreed. No rival claimant of the vehicle came forward. Petitioner was entitled to the temporary custody of the vehicle, which was ordered to be released to him on Superdari. [2010-SCMR-1181]
- **Superdari of vehicle allegedly used for commission of offence**: {1} Court during any inquiry or trial, could make such order as it would think fit for the proper custody of property pending the conclusion of the inquiry or trial, when such property appeared to have been used for commission of any offence, or produced before any criminal court. {1} Court, in normal course, was to restore possession to the party from whose possession vehicle was recovered. {1} Stolen property, however, could not be given on superdari to a purchaser from thief. {1} Last owner was also entitled to superdari of the vehicle taken in possession by Police, particularly in the absence of any other lawful claimant of such vehicle. {1} Person producing original certificate of registration and other relevant **Documents** of the vehicle, prima facie revealing him to be its owner, was entitled for the custody of the vehicle during pendency of the case. {1} Petitioner who was in possession of original **Documents** of ownership, including the Registration Book of vehicle in question, was entitled for the custody of said vehicle, particularly when no other claimant had come forward before the court for such purpose. {1} No justification for the Police to keep custody of vehicle in question as there was no likelihood that the same would be misused, damaged and deteriorated. (Karachi) [2011-PCr.LJ-1513]
- **Supply of Documents**: Accused is entitled to have a copy of the FIR and the Police Report. [2003-YLR-3128] He is entitled as of right to get copies of the statements of all the witnesses recorded. [PLD-2003-Lah-290]
- **Theft of car - Superdari of the vehicle**: Three different reports of Forensic Science Laboratories had established that vehicle in question is a stolen property.



Neither the registration book bore the name of the petitioner nor could petitioner produce any **Documentary** evidence of transfer of ownership of vehicle in his favour. *C.P. dismissed. (Lahore)* [2010-YLR-2967]

- There is no concept of making inquiry before registration of FIR. [PLD-2011Quetta-32] FIR promptly lodged would carry a lot of weight and would exclude possibility of false implication of accused. [NLR-2010-Criminal-Lahore-168] FIR is an information regarding an occurrence to the Police authorities; & it could also be taken as a very good piece of initial evidence, which had to be backed up by the narration of the eye-witnesses. (*Gilfit-Baltistan Chief Court*) [2011-PCr.LJ227] (*February*) Delay in lodgment of FIR plays a very important role. The possibility of preparing & manipulating the case on account of delay cannot be ruled out. [(NLR) 2011-AC-39] Mere delay in lodging the FIR would not affect prosecution case unless it is not explained by prosecution through a plausible explanation. [(NLR) 2011-AC-39] FIR can be used to corroborate its maker when it appears to be a genuine **Document** written at the time & in the manner as it purports. [NLR-2011-Criminal Multan 24] Delay in recording FIR of a case of abduction for ransom & murder provides a basis to say that abductee / deceased did not disappear as alleged in the FIR. [(NLR) 2011-CrLJ-27]
- Though medico-legal certificate was part of the report yet the name of Medical Officer was not mentioned in the calendar of witnesses. Had he not forwarded the report u/s 173, with a blind eye, and have seen the list of the witnesses by comparing it with the **Documents**, the needful would have been done at the earliest possible opportunity. Should a complainant suffer for the fault of the prosecution, who was negligent in discharging duties and functions? Answer should be, readily in negative. [2011-SCMR-713] Javed Iqbal and Sardar Muhammad Aslam, JJ.- Ansar Mehmood vs. Abdul Khaliq.
- **Tortured & Pressurized to give Evidence:** Evidence of the hostile PWs that they had remained in police custody for 13/14 days and tortured and pressurized to give evidence against the accused and that they had signed **Documents** at the police station had gone unchallenged. Acquitted. (Karachi) [2010-PCr.LJ-1207] ○ **Unrebutted Documentary evidence could not be rebutted by the opinion made by the Medical Board, because in ossification test, Medical Board always gives the tentative Opinion.** [2010-YLR-1812]
- **Value of Expert opinion:** Handwriting expert after examining specimen signature could not give his definite opinion. Trial Court itself compared the signature of the defendant on disputed **Document** and on the **Documents** available in the Court file and came to the conclusion that the signatures were that of the respondent. **Validity:** Court is equipped with legal authority to compare the signatures of the parties itself. Such powers are available to Court even where report of handwriting expert is available on record. (*Lahore*) [2010-MLD-1162]
- When the Trial Court had sent for verification the **Documents** produced by accused persons in proof of their being Pakistani nationals; and when the same are declared to be genuine, in such a situation, instead of convicting accused persons

on the basis of surmises and conjectures and the bare statement of accused persons made by them while being in custody, they should have been straightaway acquitted. [2008-YLR-2821]

- **Words used in a statute - Scope:** No word used by lawmakers is either redundant or can be subtracted, substituted, added or read in a piece of legislation or a **Document**. [2010-SCMR-354]
- **Wrong and Incorrect Copies, supply of:** Accused, a revenue Patwari preparing wrong copies of **Document** and supplying their incorrect copies to complainant with a view to persuade him to part with money Complainant acting upon such **Documents** parting with money and investing considerable amount in developing land. *Sentence and fine maintained.*<sup>34</sup>

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<sup>34</sup>[1982-PCr.LJ-204] Sardar Muhammad Vs. State [Lahore]

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