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SUPREME COURT OF PAKISTAN

2021 S C M R 179

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Purported gifts and other tools used to deprive female family members, including daughters and widows, are contrary to law (Shariah in such cases), the Constitution and public policy

Qazi Faez Isa, J

The respondents are respectively the daughter and widow of Mansab Khan who is stated to have died in the year 2006. They were denied their inheritance in the estate of Mansab Khan because it was alleged that he had gifted his land to the sons of his brother Muhammad Aslam, namely, Farhan Aslam, Muhammad Akram and Kamran Aslam. The respondents were therefore constrained to file a suit seeking the properties inherited by them and challenged the gift. The suit was decreed on 26 May 2009, however, the Appellate Court set aside the judgment and decree and remanded the case back to the Trial Court. On remand, the suit was again decreed by the learned Judge of the Trial Court on 23 December 2010; appeal against the same was dismissed and so too the civil revision by the learned Judge of the High Court through the impugned order dated 10 October 2018. It is against these three concurrent decisions that the instant petition has been filed.

9. The revenue authorities must also be extra vigilant when purported gifts are made to deprive daughters and widows from what would have constituted their shares in the inheritance of an estate. The concerned officers must fully satisfy themselves as to the identity of the purported donor/transferee and strict compliance must be ensured with the applicable laws, as repeatedly held by this Court, including in the cases of Islam-ud-Din v. Noor Jahan (2016 SCMR 986) and Khalida Azhar v. Viqar Rustan Bakhshi (2018 SCMR 30). Purported gifts and other tools used to deprive female family members, including daughters and widows, are contrary to law (shariah in such cases), the Constitution and public policy. In Abid Baig v. Zahid Sabir (2020 SCMR 601) this Court reiterated what it had held thirty years earlier in the case of Ghulam Ali v. Mst. Ghulam Sarwar Naqvi (PLD 1990 Supreme Court 1), as under:

We cannot be unmindful of the fact that often time's male members of a family deprive their female relatives of their legal entitlement to inheritance and in doing so shariah and law is violated. Vulnerable women are also sometimes compelled to relinquish their entitlement to inheritance in favor of their male relations. This Court in the case of Ghulam Ali had observed that 'relinquishment' by female members of the family was contrary to public policy and contrary to shariah. It would be useful to reproduce the following portion from the decision of this Court:

> *"Here in the light of the foregoing discussion on the Islamic point of*

view, the so-called "relinquishment" by a female of her inheritance as has taken place in this case, is undoubtedly opposed to "public policy" as understood in the Islamic sense with reference to Islamic jurisprudence. In addition, it may be mentioned that Islam visualized many modes of circulation of wealth of certain types under certain strict conditions. And when commenting on one of the many methods of achieving this object, almost all commentators on Islamic System agree with variance of degree only, that the strict enforcement of laws of inheritance is an important accepted method in Islam for achieving circulation of wealth. That being so, it is an additional object of public policy. In other words, the disputed relinquishment of right of inheritance, relied upon from the petitioner's side, even if proved against respondent, has to be found against public policy. Accordingly, the respondent's action in agreeing to the relinquishment (though denied by her) being against public policy the very act of agreement and contract constituting the relinquishment, was void."

10. For the aforesaid reasons, this petition is dismissed with costs throughout payable to the respondents by the petitioners Nos. 1, 2, 3 and 5 through the Trial/Executing Court. In case the impugned judgments have not been complied with and the respondents have still not received their shares in the inheritance of the late Mansab Khan, the Executing Court shall ensure that the execution proceedings are promptly attended to and concluded. Copies of this order to be sent to the respondents for information and to the learned Judge of the Trial/Executing Court for information and compliance.

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._742_l_2019.pdf

SUPREME COURT OF PAKISTAN

Muhammad Idress (In Crl. P.742-L/2019), Muhammad Akram (In Crl. P. 629-L/2019) VS The State, etc. (In Crl. P.742-L/2019), Muhammad Saleem (In Crl. P. 629-L/2019)

Date of hearing: 21.01.2021

Syed Mansoor Ali Shah, J

Police diary, its purpose and admissibility

3. Section 172(1) CrPc mandates every Police Officer making investigation of a case to maintain a diary (commonly known as ‘police dairy’ or ‘case dairy’) of proceedings conducted by him in the course of that investigation, by requiring him to enter in that dairy: (i) the time at which any information relating to the

offence under investigation reaches him on a particular day; (ii) the time at which he begins and closes his investigation on a particular day; (iii) the place or places visited by him on a particular day, concerning the investigation of the case; and (iv) a statement of the circumstances ascertained on a particular day through his investigation. The object to require recording of the said details in the police

dairy appears to be to enable the courts to check the method and manner of investigation undertaken by the investigating officer. Until the honesty, the capacity, the discretion and the judgment of the Police can be thoroughly trusted, it is necessary for the protection of the public against criminals, for the vindication of the law, and for the protection of those who are charged with having committed a criminal offence that the Magistrate or Judge before whom the case is for inquiry or for trial should have the means of ascertaining what was the information (true, false, or misleading) which was obtained from day to day by the Police Officer who was investigating the case, and what were the lines of investigation upon which such Police Officer acted. A properly kept police diary would afford such information, and such information would enable the Magistrate or Judge to determine whether persons referred to in the police diary, but not sent up as witnesses by the Police, should be summoned to give evidence in the interests of the prosecution or of the accused. It is important to remember that it is the duty of the Magistrate or of the Judge before whom a criminal case is, to ascertain the truth and to decide accordingly. It is axiomatic that a Police Officer, who is investigating a criminal case, receives all sorts of information: true, false or misleading. The formulation of opinion on the basis of investigation by the Police Officer can also range from correct and fair opinion to a premature, biased, influenced or incorrect opinion. It is to check these infirmities that may creep into police investigation that it is essential that the Magistrate or the Judge, who is to hold the scales of justice evenly between the State and the accused, should have some means of ascertaining the quality of information obtained by the Police Officer during the course of investigation every day

4. Section 172 (2) CrPc empowers a Criminal Court to send for the police diaries of a case under inquiry or trial in that Court and permits use of such diaries to aid it in such inquiry or trial, but the provisions thereof expressly prohibit the use of such dairies as evidence in the case. The expression “to aid it in such inquiry or trial” indicates that it can be used by the Court for the purpose of enabling itself to have a better understanding of the evidence brought on the record of the case by the prosecution. Inspection of the police diaries can reveal sources of further inquiry, viz, the pointation of some important witnesses that the court can summon, or how the evidence produced was collected to better understand the links between the evidence on the record. The Court can thus use the police dairies in the course of inquiry or trial for resolving obscurities in evidence through questioning the relevant witnesses or for bringing relevant facts on record to secure the ends of justice through legally admissible evidence, e.g., by summoning as witness those persons who are though referred to in the police diary but not sent up as witnesses by the investigating officer and whose testimony appears to be relevant in the inquiry or trial, or by calling production of some document that appears to be relevant to the matter under inquiry or trial. The Court, however, cannot take the facts and statements recorded in police dairies as material or

evidence for reaching a finding of fact: these diaries by themselves cannot be used either as substantive or corroborative evidence. It is important to underline that the police diary is itself not the evidence and therefore inadmissible for having no evidentiary value; it is, however, just a source to help understand the undiscovered or misunderstood aspects of the evidence existing on the record, if any, and introduce new dimensions to the case, leading to discovery and production of new evidence, if required to meet the ends of justice. Whatever the court infers from a police diary must translate into admissible evidence in accordance with law, and the court cannot simply rely on, and adjudicate upon the charge on the basis of, statements made in the police dairy. Therefore, reference by the High Court to the police file for reaching the conclusion that the accused Muhammed Saleem has been implicated in this case falsely was legally invalid and uncalled for.

2021 S C M R 01

Present: Mushir Alam, Yahya Afridi and Qazi Muhammad Amin Ahmed, JJ

Inspector General of Prison KPK, and others VS Habibullah

YAHYA AFRIDI, J

Whether the respondent convicted and sentenced under Anti-Terrorism Act, 1997 ("A.T.A.") and the Offences of Zina (Enforcement of Hudood) Ordinance, 1979 ("Ordinance") and presently serving his sentence in Central Jail Haripur, is entitled to be awarded remissions in his sentence under the law or otherwise.

3. As far as the ATA is concerned, section 21-F supra bars the award of any remission in the sentence of a person convicted under the said enactment. It reads:

> "21-F. Remissions---Notwithstanding anything contained in any law or prison rules for the time being in force, no remission in any sentence shall be allowed to a person, who is convicted and sentenced for any offence under this Act."

4. A careful reading of the Ordinance, on the other hand, provides no such bar on the grant of remission in the sentence of a person convicted for any offence there under.

5. It must be appreciated that the respondent does not claim any remission for the period of his sentence, he has already served, for the convictions under the ATA. He only claims that remissions under the law may be allowed to him for the period he is serving his sentence for the conviction under the Ordinance, and that too for the period after serving his sentence for the conviction under the ATA.

6. The learned Additional Advocate-General, KPK when confronted with the above claim of the respondent, explained that the law provides remissions in sentences awarded to a convict under Article 45 of the Constitution, the enabling provisions of The Code of Criminal Procedure, 1898 (Act No V of 1898)

(CrPc.), and the relevant The Khyber Pakhtunkhwa Prisons Rules, 2018 (Rules). He further candidly admitted that the respondent after serving his sentence under ATA would be entitled to the permissible remissions under the Rules and not under Article 45 of the Constitution in his sentence he serves for the conviction under the Ordinance. In this regard, he explained that, in view of the judgment passed by this Court in case of Nazar Hussain v. The State (PLD 2020 SC 1021), the remissions under Article 45 of the Constitution could not be awarded to the respondent qua the sentence he serves for conviction under the Ordinance.

7. To have the latest position of the sentences and remissions earned by the respondent, a report from the Inspector General of Jails, Khyber Pakhtunkhwa ("report") was sought. The report, recorded the required information as under:

> "That the convict namely Habibullah son of Abdullah (presently confined in Central Prison Haripur) was sentenced in case FIR No. 58 dated 08.02.2003 by the order of Anti-Terrorism Court, Mardan in the following cases: -
>
> 1. Under section 452, P.P.C. read with section 6(b) of Anti-Terrorism Act (ATA) 1997 to 05 years' RI with fine of Rs.5,000/-
>
> 2. Under section 364-A, P.P.C. read with section 6(b), A.T.A. 1997 to 10 years' imprisonment RI.
>
> 3. under section 10(3) of the Offence of Zina (Enforcement of Hadood) Ordinance, 1979 to 20 years' RI. All the above sentences were ordered to run concurrently with the benefit of section 382-B, Cr.P.C. and got finality upto the Honorable Apex Court.

8. We agree with the contention of the worthy Additional Advocate-General, KPK that this Court in the case of Nazar Hussain (Supra), while endorsing the Government policy relating to "Grant of Remission to Convicts" of August 2009 has confirmed, inter alia, that remission granted under Article 45 of the Constitution would not be extended to convicts serving sentence under section 10 of the Ordinance. This being so, we note that the High Court in its impugned judgment has erred to the extent of the grant of remission to the respondent under Article 45 of the Constitution. In so for as the remissions permissible under the Rules, the respondent is entitled to be granted the same, but after serving his sentence for the conviction under the ATA.

9. Accordingly, for the reasons stated hereinabove, this petition is converted into appeal and partly allowed. The impugned judgment of the High Court is modified by allowing the remissions to the respondent permissible under the Rules, while denying him the remissions under 45 of the Constitution. In case the petitioner has served out his sentence given the remissions, so granted by this Court, he be released from the jail forthwith, if not

required to be detained in connection with any other case.

2021 S C M R 92

[Supreme Court of Pakistan (Shahriat Appellate Bench)]

Present: Mushir Alam, Chairman, Sardar Tariq Masood, Qazi Muhammad Amin Ahmed, JJ. Dr. Muhammad Al-Ghazali, Ad-hoc Member-I and

Dr. Muhammad Khalid Masud, Ad-hoc Member-II

Muhammad Hayat and others VS state

Test identification parade venue discussed. It can be not only jail premises rather can be conducted in a police station.

Qazi Muhammad Amin Ahmed, J

4…….The appellants were put to test identification parade under magisterial supervision on the same day, shortly after their arrest, wherein the witnesses correctly identified them as the ones who targeted the deceased during the robbery. During the process, each witness distinctly pointed each appellant for having targeted the deceased; their identification by the witnesses, without loss of time, rules out possibility of manipulation. Argument that police station was not an appropriate place for the holding test identification parade is entirely beside the mark inasmuch as the law does not designate any specific place to undertake the exercise; on the contrary, Rule 26.32 of the Police Rules, 1934, inter alia, provides as under:

(a) "The proceedings shall be conducted in the presence of a magistrate or gazetted police officer, or, if the case is of great urgency and no such officer is available, in the presence of two or more respectable witnesses not interested in the case, who should be asked to satisfy themselves that the identification has been conducted under conditions precluding collusion.

(b) Arrangement shall be made, whether the proceedings are being held inside jail or elsewhere, to ensure that the identifying witnesses shall be kept separate from each other and at such a distance from the place of identification and shall render it impossible for them to see the suspects or any of the persons concerned in the proceedings, until they are called up to make their identification."

(c) ……."

A combined reading of above Rules with Article 22 of the Qanun-e-Shahadat Order, 1984, does not restrict the prosecution to necessarily undertake the exercise of test identification parade within the jail precincts. Prosecution of offences and administration of justice are not dogmatic rituals to be followed relentlessly in disregard to the exigencies of situations, seldom identical or ideal. All that 'due process of law' requires is a transparent investigation and fair trial, in accord with statutory safeguards, available to an accused to effectively conduct his defense without being handicapped or

embarrassed. In the absence of any statutory restriction to the contrary, the objection does not hold water. On factual plane, learned counsel has not been able to point out even obliquely any collusion, conspiracy or consideration impelling the witnesses to hurriedly swap innocent proxies to the dismay of devastated families, enduring abiding trauma. Reference to omission of assailants' features in the crime report as a ground to discard the test identification parade is equally inconsequential; Part C of the Lahore High Court Rules and Orders Volume-III (adopted by the High Court of Balochistan) does not stipulate any such condition. In the natural course of events, in an extreme crisis situation, encountered all of a sudden, even by a prudent onlooker with average nerves, it would be rather unrealistic to expect meticulously comprehensive recollection of minute details of the episode or photographic description of awe-inspiring events or the assailants. The pleaded requirement is callously artificial and, thus, broad identification of the assailants, in the absence of any apparent malice or motive to substitute them with the actual offenders, is sufficient to qualify the requirement of Article 22 of the Order ibid. Darkness possibly impeding identity of the assailants, argued at length, fails to impress us as headlamps of three motorbikes, recovered during investigation, generated sufficient light to enable the witnesses to capture broad facial features of the assailants, encountered at close blank. Three Kalashnikovs, recovered upon appellants' disclosure, were forensically found wedded with the casings secured from the spot barring six with points of dissimilarity, a minor discrepancy insufficient to tremor the structure of the case resting upon sound foundations of ocular account through sources unimpeachable and free from taints. On an overall analysis of prosecution evidence, the only possible hypothesis is that of appellants' guilt.

Alternate plea of commutation of death penalty into imprisonment for life on the ground that simultaneous multiple fire shots by the assailants left no space to possibly determine fatalities distinctly, a circumstance according to the learned counsel, by itself calling for alternate punishment of imprisonment for life, fails to commend approval inasmuch as the totality of circumstances does not admit any space to divisibly draw any such benign distinction within the realm of human wisdom when all the three assailants in a petty criminal pursuit ruthlessly targeted the deceased in cold blood. Scales are in balance and the wage settled by the courts below being conscionable in circumstances merits no interference. Criminal Shariat Appeal fails. Dismissed.

2021 S C M R 198

Present: Mushir Alam and Qazi Muhammad Amin Ahmed, JJ

Shabbir Hussain VS The State

Statement of a police witness and its admissibility in Narcotics cases

QAZI MUHAMMAD AMIN AHMED, J

Mehmood-ul-Hassan Inspector (PW-3) joined by Mumtaz Bibi Lady Constable (PW-4) in the witness box furnished details of the arrest and recovery. We have gone through their statements to find them in a comfortable and confident unison on all the salient aspects of the raid as well as details collateral therewith. Learned counsel for the petitioner has not been able to point out any substantial or major variation or contradiction in their statements that may possibly justify to exclude their testimony from consideration. On the contrary, it sounds straightforward and confidence inspiring without a slightest tremor. Absence of a witness from the public, despite possible availability is not a new story; it is reminiscent of a long drawn apathy depicting public reluctance to come forward in assistance of law, exasperating legal procedures and lack of witness protection being the prime reasons. Against the above backdrop, evidence of official witnesses is the only available option to combat the menace of drug trafficking with the assistance of functionaries of the State tasked with the responsibility; their evidence, if found confidence inspiring, may implicitly be relied upon without a demur unhesitatingly; without a blemish, they are second to none in status. Similarly, forensic report is sufficiently detailed to conclusively establish narcotic character of the contraband. The argument is otherwise not available to the petitioner as he never disputed the nature of substance being attributed to him nor attempted to summon the chemical analyst to vindicate his position. A challenge illusory as well as hyper-technical is beside the mark in the face of "proof beyond doubt" sufficient to prove the charge to the hilt. Petition fails. Leave declined.

PESHAWAR HIGH COURT

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Rehmat-Gul-vs-the-State-_CNSA_.pdf

Crl. Appeal No.989-P/2019

Rehmat Gul. Vs The State

When notice for destruction of case property not given to the accused

ROOH-UL-AMIN KHAN, J:-

16. For the sake of discussion if we deem that issuance of notice to the accused was essential, which otherwise is not the requirement of the law, then the dictionary meaning of word “Notice” is to be taken into account which means “to see or become conscious of something or someone”. Here we would refer to the testimony of Raj Muhammad Shoaib Judicial Magistrate (PW.6), under whose supervisions the case property was destroyed. He deposed that on 14.05.2018, the I.O. produced accused Rehmat Gul before me for recording his confessional statement along with case property. The accused refused to confess his guilt. He weighed the case property contraband which came to 1785 grams. After separating 10 grams from each packet and resealing them for the purpose of exhibition before the trial court, I destroyed the remaining 17700 grams chars, in presence of APP, accused and I.O. of the case. He handed over samples to Criminal

Moharrir of this court. In this respect order is Exh.PW.3/3, memo of proceedings Exh.PW.3/4 and certificate Exh.PW.3/5. Similar is the statement of Arshad Mehmood SI, the Investigating Officer, according to which at the time of destruction of the case property the accused appellant was present in the entire proceedings. Order dated 14.05.2018 (Exh.PW.3/3) of the learned Judicial Magistrate, memo of proceedings Exh.PW.3/4 and certificate Exh.PW.3/5, substantiate the version of the Magistrate and the I.O. that at the time of destruction of the case property the appellant was very much present. In this view of the matter, presence of the appellant at the time of destruction of the case property was sufficient notice to him. The appellant has not raised any objection at the time of destruction of the case property. Similarly, as stated earlier he has also not put any suggestion to the PWs to call in question the proceedings regarding destruction of the case property. In case titled "Naseer Ahmaed vs the State" (2004 SCMR 1361), the Honourable Supreme Court has held that:

"So far as the non-production of the narcotics before the trial Court is concerned, the Investigating Officer during the trial submitted an application under section 516 Cr.P.C. for destruction of narcotics substance, which was allowed by the Magistrate on 04.12.1995 and the Destruction Certificate was issued by the Magistrate on 05.12.1995. We are mindful of the fact that during the trial, the petitioner did not raise objection for the destruction of the narcotics under the valid orders of the court".

…….. In case in hand, the learned Judicial Magistrate, Kohat on the direction of the learned Sessions Judge, after adopting the mechanism provided under 2nd and 3rd provisos to section 516A Cr.P.C. has ordered the destruction of narcotics and in this regard has also issued a proper certificate under his signature and seal of the Court. The entire proceedings of the destruction of narcotics were carried out/conducted in presence of the appellant, and the same has been vividly proved by the prosecution through cogent and confidence inspiring oral as well as documentary evidence.

17. Besides section 33(4) CNS Act 1997 read with proviso 2nd and 3rd to 516-A Cr.P.C, we would also refer to section 27 of the Control of Narcotic Substances Act, 1997, so as to know the aim and object behind the scheme of quick production of the recovered narcotics before the Special Court at the time of production of an accused for physical remand and expeditious disposal of the case property

18. From combined study of sections 27 & 33(4) of the CNS Act, 1997 read with section 516-A CrPc., one may infer the object and wisdom of the legislature that proceedings in cases of narcotics should expedite, fair and transparent that no innocent person be entangled in a false case and that the narcotics recovered in one case may not be planted against another innocent person. In this view of the matter, we are firm in our view to hold that the expeditious disposal/destruction of the recovered narcotics in presence of the appellant by the court of competent

jurisdiction has not prejudiced the appellant in his defense.

20. Resultantly, this appeal being meritless is hereby dismissed. Conviction and sentence of the appellant recorded by the learned trial Court are maintained.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-No-3987-P-2020.pdf

Writ Petition No. 3987-P/2020

Qaiser Shah and six others Vs The Government of KP, Through Sec. Health, Civil Secretariat, Peshawar and others

Appoint of Class IV through District Employment Exchange Commission, discussed.

ROOH-UL-AMIN KHAN, J:-

The contention of learned counsel for the petitioners in the connected WP No.4335-P/2020 that their petitioners being senior in registration then the petitioners of the instant writ petition, had prior right of appointment against the questioned posts, is not tenable because second proviso attached to section 10 of the Civil Servants (Appointments, Promotion and Transfer) Rules, 1989,provides that appointment in Basic Pay scale 3 to 5 shall be made on the recommendations of the Departmental Selection Committee through the District Employment Exchange concerned, or, where in a district office of the Employment Exchange does not exist, after advertising the posts in the leading newspaper.

In the instant case, appointment of the petitioners has been made on the recommendations of the Departmental Selection Committee and through the District Employment Exchange which were the mandatory requirements of proviso ibid. The proviso (ibid) does not make it mandatory that appointment of those candidates registered prior in time with the employment Exchange shall be made on priority basis. It is settled law that when the law requires a thing to be done in a particular manner the same should be done in that manner otherwise not. The law only provides that the appointment shall be made on the basis of recommendations of the Departmental Selection Committee through the District Employment Exchange concerned and not on the basis of senior amongst the candidates registered earlier to the other with the District Employment Exchange.

For the reasons discussed above, the instant writ petition is allowed. Impugned order dated 02.09.2020passed by the Medical Superintendent DHQ Hospital Charsadda/respondent No.3 is hereby set-aside. The petitioners shall be deemed in service since withdrawal of their appointment orders till date and are also held entitled to all back benefits.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/CrA-975-19--302-ppc-with-murder-reference-allowed.pdf

Fazal Dayan Vs the State, etc.

Pre requisites of a dying declaration discussed

S. M. ATTIQUE SHAH, J: -

Besides, it has been laid down by superior Court that dying declaration by itself is sufficient to sustain conviction thereon; provided following conditions are fulfilled: -

(i) Whether there was no chance of mistaken identity?
(ii) Whether deceased was capable of making statement?
(iii) After how-long time after sustaining injury deceased made statement?
(iv) Whether statement rings true?
(v) Whether it was free from promptness of outside?
(vi) Whether deceased was a man of questionable character?

No doubt dying declaration is a strong piece of evidence but such evidence could only be believed when it comes through mouth of independent and uninterested witnesses; whose credibility and impartiality was otherwise, not questioned; but in instant case no such independent witness had come forward to lend corroboration to such piece of evidence; therefore, the said statement/ dying declaration does not ring true. Moreover, the august Supreme Court of Pakistan in case titled “Mst. Zahida Bibi Vs. the State” reported in PLD2006 SC 255, has held that the dying declaration like the statement of an interested witness requires close scrutiny and is not to be believed merely for the reasons that the person is not expected to tell a lie.

There cannot be a fair trial, which is itself the primary purpose of criminal jurisprudence, if the judges have not been able to clearly elucidate the rudimentary concept of standard of proof that prosecution must meet in order to obtain a conviction. Two concepts i.e., "proof beyond reasonable doubt" and "presumption of innocence" are so closely linked together that the same must be presented as one unit. If the presumption of innocence is a golden thread to criminal jurisprudence, then proof beyond reasonable doubt is silver, and these two threads are forever intertwined in the fabric of criminal justice system. As such, the expression "proof beyond reasonable doubt" is of fundamental importance to the criminal justice: it is one of the principles which seek to ensure that no innocent person is convicted. Where there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of criminal justice.

Further, suspicion howsoever grave or strong can never be a proper substitute for the standard of proof required in a criminal case, i.e. beyond reasonable doubt. The lacuna occasioned in evidence of prosecution, creates serious doubt not only qua mode and manner of the occurrence; but also a big question mark on the alleged dying declaration of deceased then injured. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the

accused; then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession; but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/CR-No-1217-P-2005.pdf

Hayat Khan & others VS Gul Rehman & others

When the legacy changes many hand, the further legal heirs have no locus-standi to challenge the said inheritance mutation which remained unchallenged during the life time of their predecessor

SYED ARSHAD ALI, J.

2. The facts relating to this case are simple and straightforward. The plaintiffs/petitioners who are the legal heirs of Mst. Shughla & Mst. Padama daughters of Mehr Ali who was the son of Saad-ud-Din through the suit which they filed on 13.04.1993 before the Civil Court, challenged the transfer of the suit property from Saad-ud-Din to defendants No.1 to 13through different transactions which were concluded/executed in 1937 and 1938. It is the claim of the present petitioners that Mst. Shughla&Mst. Padama were illegally deprived of legacy of Saad-ud-Din in active connivance of Sanober & Ghulab who were the predecessor of the defendants No.1 to 13.

13. After perusing the aforesaid judgments of the Apex Court I have reached at the conclusion that when a legal heirs is deprived of his/her right of inheritance and he/she remains alive for a considerable period and does not challenge his/her deprivation from the legacy of the predecessor, then at later stage when the legacy changes many hand, the further legal heirs have no locus-standi to challenge the said inheritance mutation which remained unchallenged during the life time of their predecessor.

14. In the context of the present case, the predecessor of the present petitioners was deprived of their legacy in the year 1937, therefore, suit filed by the present petitioners in the year 1993 when the entire property had changed so many hands is not within the period of limitation.

15. Resultantly, this petition is dismissed in the above terms.

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Cr.A-351-m-of-2019.pdf

Akhtar Ali etc. VS Amir Hatam and 11 others

ISHTIAQ IBRAHIM. J.

During the course of arguments, a question arose before this Court that once a witness, whose examination-in-chief is recorded before the trial Court, can be abandoned by prosecution?

No doubt, prosecution or a party to a *lis* is at liberty to abandon a witness but once a witness comes into the dock and he opens

his mouth with regard to facts of the case then in that eventuality he could not be abandoned by prosecution rather it is the duty of the Court to take the proceedings into its own hands. The Court has prime duty to steer, control and regulates the course of examination of a witness on proper lines and to strike a fair balance between the parties before it for bringing uniformity and consistency in process of examination. Courts are also required to act vigilantly and not to remain oblivious of their duty in controlling and regulating the process of examination of a witness. But in the present case the Court has not discharged its duty and has acted as a silent spectator by allowing the prosecution to deal with the witnesses according to their own whims.

Before parting with this judgment, in order to avoid such like complications in future, the trial Courts throughout the province shall revisit the charges already framed against the accused in the pending/ running cases and shall, in case of any errors or omissions, make alterations or amendments in accordance with section 227, Cr.P.C. It is further reiterated that the learned trial judges shall frame the charge themselves and shall not rely on the formal charge framed by stenographers or steno-typists otherwise the same would be considered as negligence on the part of Presiding Officer concerned.

Copy of this judgment be placed before Hon'ble the Chief Justice, Peshawar High Court, Peshawar, for approval of his lordship to circulate the judgment among all the trial Courts in the Province.

Foreign Common Law Jurisdiction

https://indiankanoon.org/doc/182884653/

Supreme Court of India

Naresh Kumar Vs. Kalawati and Ors.

[Criminal Appeal No. 35 of 2013]

Decided On: 25.03.2021

When No eye witness account, importance of circumstantial evidence in shape of Dying declaration where the doctor has to certify that the injured was in a fit state of mind at the time of recording the dying declaration

Navin Sinha, J.

6. We have considered the submissions on behalf of the parties and have also perused the evidence available on the record. Though the discretionary jurisdiction of this Court under Article 136 of the Constitution is very wide, it has been a rule of practice and prudence not to interfere with concurrent finding of facts arrived at by two courts, by a reappreciation of evidence, to arrive at its own conclusion, unless there has been complete misappreciation of evidence, or there is gross perversity in arriving at the findings, causing serious miscarriage of justice. If the view taken by two courts is a reasonably possible view, this Court would be reluctant to interfere with a concurrent order of acquittal. In State of Goa vs. Sanjay Thakran & Ors., (2007) 3 SCC 755, it was observed:

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below.

However, the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re appreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with."

7. We shall now consider the facts of the present case in the background of the aforesaid enunciation of the law, to examine if the impugned orders call for interference by us, or not. The deceased was married to respondent no. 2 about 1½ years ago. She suspected a promiscuous relationship between the respondents. The deceased even after 1½ of marriage was unable to conceive. A probable defense has been taken that she committed suicide out of frustration.

8. The deceased had suffered 95% burn injuries at home on 17.09.1991 at about 4:30 pm while making tea. She was brought to Safdar jung Hospital at 6:00 pm. She is said to have initially told the police at the hospital that she had been set on fire by her husband. The deceased was examined by the said Dr. Anant Sinha at about 6:00 pm and prepared her MLC. She is stated to have told him that she had been set on fire by the wife of her husband's elder brother while making tea. The MLC records her as being fully conscious. It is signed only by the Doctor who has not been examined.

The deceased is then stated to have made a dying declaration before P.W. 25 that she was set on fire by respondent no.1 by pouring kerosene oil while she was making tea and that her husband had brought her to the hospital. It bears her right toe impression as her hands were burnt. The statement bears the signature of Dr. Anant Sinha. His signature has been proved by P.W. 19.

But it does not bear any endorsement by the Doctor with regard to his presence during the recording of the same and the fit state of mind by the deceased to make the statement. P.W. nos. 3 and 4 have stated that the deceased told them that she was set on fire by respondent no.1. P.W. 5 has stated that both the respondents have killed his sister. He then states that the deceased had told him she was set on fire by respondent no.1.

9. A dying declaration is admissible in evidence under Section 32 of the Indian Evidence Act, 1872. It alone can also form the basis for conviction if it has been made voluntarily and inspires confidence. If there

are contradictions, variations, creating doubts about its truthfulness, affecting its veracity and credibility or if the dying declaration is suspect, or the accused is able to create a doubt not only with regard to the dying declaration but also with regard to the nature and manner of death, the benefit of doubt shall have to be given to the accused. Therefore, much shall depend on the facts of a case. There can be no rigid standard or yardstick for acceptance or rejection of a dying declaration.

10. The first statement of the deceased made to P.W. 13 is based on hearsay as deposed by P.W. 20 that she was set on fire by respondent no.2. There is no reference to respondent no.1 in this statement and neither has she said anything about dowry demand. The next statement of the deceased, blaming respondent no.1 alone does not name respondent no1.

It is not signed by anybody and the Doctor who recorded the statement has not been examined. Merely because his signature has been identified by P.W. 19 cannot establish the correctness of its contents. The next statement of the deceased has been recorded by P.W. 25, blaming respondent no.1 alone without any allegation against respondent no.2, and on the contrary states that she was brought to the hospital by respondent no.2. It again does not disclose any dowry demand.

11. P.W. 25 who recorded the dying declaration does not state that the deceased was in a fit state of mind to make the statement. He states that the Doctor had certified fitness of mind of the deceased, when the dying declaration itself contains no such statement. In cross examination he acknowledges that the fitness of the deceased was certified by a resident junior doctor separately but whose signature and endorsement is not available on the dying declaration. At this stage it is relevant to notice the statement of P.W. 19 who acknowledges that Dr. Anant Sinha has not signed in his presence and that at times doctors would come and put their signatures in the record room.

12. In Paparambaka Rosamma and others vs. State of Andhra Pradesh, (1999) 7 SCC 695, distinguishing between consciousness and fitness of state of mind to make a statement, it was observed:

"9. It is true that the medical officer Dr K. Vishnupriya Devi (P.W. 10) at the end of the dying declaration had certified "patient is conscious while recording the statement". It has come on record that the injured Smt Venkata Ramana had sustained extensive burn injuries on her person. Dr P. Koteswara Rao (P.W. 9) who performed the postmortem stated that the injured had sustained 90% burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying declaration.

It was, therefore, necessary for the prosecution to prove the dying declaration as being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr Smt K. Vishnupriya Devi (P.W.10) did not comply with the

requirement in as much as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration.

The certificate of the said expert at the end only says that "patient is conscious while recording the statement". In view of these material omissions, it would not be safe to accept the dying declaration (Ex. P14) as true and genuine and as made when the injured was in a fit state of mind. In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below."

13. In the facts and circumstances of the present case, considering that the statements of the deceased have vacillated, there is no evidence about the fitness of mind of the deceased to make the dying declaration including the presence of the Doctor, the veracity and truthfulness of the dying declaration remains suspect. It would not be safe to simply reject the probable defense of suicide, to reverse the acquittal and convict the respondents.

17. The appeal is, therefore, dismissed.

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