

ORDER SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.
(JUDICIAL DEPARTMENT)

Crl.Rev.No.206/2021

Muhammad Aslam vs The State and another

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of parties of counsel, where necessary.
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12.10.2023. Mahar Habib Ullah Garwah, Advocate for the petitioner.
Mr. Adnan Latif Sheikh, Deputy Prosecutor General.
Mr. Ghulam Muzamil, Advocate for the complainant.

This criminal revision has been directed against the order dated 26.07.2021 passed by learned Sessions Judge, Layyah during the trial in case FIR bearing No.246 dated 28.05.2020 registered under sections 302/337A(i)/337L(2)/148/149 PPC at police station Chowk Azam, District Layyah, whereby permission was declined to cross examine Dr. Haseeb ur Rehman PW-06 to the effect that he has also conducted medico-legal examination of four accused persons.

2. Learned counsel for the petitioner contends that when he was cross examining Dr. Haseeb ur Rehman PW-06, he sought permission from learned trial Court to ‘**examine**’ him on the fact that he has also conducted medico-legal examination of 04 accused persons and relevant Medico-legal certificates (MLCs) along with Radiologist report were also available on the record but he was restricted by the intervention of learned Assistant District Public Prosecutor assisted by the complainant’ counsel, and learned trial Court by virtue of order dated 26.07.2021

has held that such questions cannot be asked because prosecution has withheld the fact of injuries to 04 accused persons, therefore, under the law no question out of the scope of examination-in-chief can be asked which must be limited within that four corners; finally it was declared that defence is at liberty to produce MLCs of above referred 04 accused persons and this medical officer in their defence as required under section 340 (2) or 342 of Cr.P.C.

3. Learned Counsel for the complainant supported the impugned order while arguing that request of defence for examination of witness was misconceived being illegal because during cross examination, no pocket of examination-in-chief can be created. Whereas Learned Deputy Prosecutor General stated that request of learned defence counsel was given a wrong colour to construe it as examination-in-chief otherwise he wanted to ask question during such cross examination about a fact from the author of such medicolegal certificates and no bar exists to ask such questions in the format of cross examination because defence is always obliged to put its case, that can legally be done during cross examination and only then to prove the existence of such fact, MLCs and Radiologist report can be tendered in defence evidence.

4. Proponents were heard; legal provisions were examined.

5. What would be the legal position when defence counsel during cross examination asks questions from a witness about a fact which is not part of examination-in-chief, should it be allowed in the format of cross-examination. In order to search the

reply to query, it is necessary to see firstly the prevailing principles governing cross examination, its scope in law and limitation.

There are four broad objectives; each cross examination must have at least one of these as its aim.

They are; ¹

- (a) Laying the foundation
- (b) Putting your case
- (c) Eliciting extra and useful facts
- (d) Discrediting the evidence

The aim of cross examination is to advance the case of accused and to undermine the case of prosecution. In order to achieve this aim, it is the cardinal rule that while cross examining the witness on a fact, defence must put his case there and then in the form of questions about related facts in the knowledge of defence, though concealed by the prosecution or not part of examination-in-chief, otherwise it would be regarded as later invention to label it as concocted or afterthought. Undermining the prosecution case means ‘limiting the testimony and discrediting it’ whereas advancing the case of defence means ‘eliciting favourable testimony and developing the case of defence’.²

6. These two principles find their place in Articles 139, 140, 141, 151 & 152 of Qanun-e-Shahadat Order, 1984. Article 139, 140, 141 and 151 deal with discrediting the prosecution case, whereas Article 152 a deviation to general rule relates to advancing the case of defence which is reproduced for reference;

1. “ADVOCACY IN COURT” by Keith Evans published by Blackstone Press Limited Aldine Place, London W12 8AA United Kingdom.

2. “ADVOCACY” edited by Robert McPeake, 17th Edition, published by Oxford University Press.

152. Questions lending to corroborate evidence of relevant fact admissible: When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Illustrations A, an accomplice, gives an account of robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

Although the import of Article proves in favour of granting such permission while conducting examination-in-chief but there is no explicit bar to permit such explanatory questions in cross examination. Corroboration, in order to be of any value, must be on material particulars and the facts relied on for corroboration must be established by reliable and independent evidence. These facts must be such as to lend assurance to the crucial issue which is in question. Case decided by Madhya Pradesh High Court, reported as “Smt. Sarla Devi W/O Dwarkaprasad vs Birendrasingh S/O Beni Singh And ...” (AIR 1961 MP 127), is referred. In a case reported as “Paramban Mammadu And Ors. vs Unknown” (AIR 1951 Mad 737), it has been held

“If there is evidence that an assailant has received any injury on some particular part of his person & a corresponding injury is found on the body of the suspected person shortly after the offence is committed, & there is medical evidence that that injury was probably caused at or about the time when the offence was committed, the evidence of the injury would be strong corroborative evidence against that person.”

7. In the light of above referred provision and case laws, defence counsel must have been allowed to ask such questions from the medical officer during the cross examination and defence counsel can refer MLCs and radiologist report for asking question while showing it to the witness for the purpose of refreshing the memory as mentioned in Article 155 of Qanun-e-

Shahadat Order, 1984 and such witness can also be testified for the facts mentioned in such MLCs and Radiologist report, whereas prosecution has also right to cross examine such witness to this aspect while seeking permission from the court pursuant to Article 150 of Qanun-e-Shahadat Order, 1984; however, during cross examination such documents can simply be referred, and could only be tendered in evidence at a stage mentioned in section 265(7) Cr.P.C. which is reproduced for reference:

265-F. Evidence for prosecution:

(7) If the accused, or any one of several accused, after entering on his defence, applies to the Court to issue any process for compelling the attendance of any witness for examination **or the production of any document** or other thing, the Court shall issue such process unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of Justice such ground shall be recorded by the Court in writing. **(emphasis supplied)**

8. Coming to the question that in what manner a witness can refresh his memory about any fact and he be testified thereafter accordingly, the Articles 155 & 156 of Qanun-e-Shahadat Order, 1984 are reproduced:

155. Refreshing memory. (1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he know it to be correct.

(3) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

156. Testimony to facts stated in document mentioned in Art. 155.—A witness may also testify to facts mentioned in any such document as is mentioned in Art. 155, although he has no specific re-collection of the facts themselves, if he is sure that the facts were correctly recorded in the document.”

Thus, as per Article 155(1) medical officer can see the MLCs and as per Article 155(2) also the Radiologist report in the same fashion to refresh his memory for responding to the questions put by the defence. After refreshing the memory, medical officer can be testified for relevant facts connected with the circumstances including date, time and place of such medico-legal examination.

9. With the fore-cited observation, it is safely concluded and held that medical officer shall be summoned again as PW-6, whereupon defence counsel be allowed to cross examine him with respect to facts relating to medico-legal examination of four accused persons including other relevant facts, and pursuant to Article 150 of Qanun-e-Shahadat Order, 1984, if the prosecution seeks permission to ask any question from said medical officer, court can allow or withhold the permission as the situation arises and after close of prosecution evidence, the defence can tender such MLCs and Radiologist report in his defence evidence. This criminal revision, therefore, is allowed in such terms as held above.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

Approved for Reporting

JUDGE

This order has been dictated and pronounced on 12.10.2023 and after preparation, it was signed on 17.10.2023.

*M. Azhar**