SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Jamal Khan Mandokhail
Justice Shahid Waheed

Crl.P.L.A.721-L/2025
(On appeal against the order/judgment dated 12.06.2025 passed by the Lahore High Court, Lahore in Criminal Revision No.35598/2025)

Dr. Raheem Ullah and others ...Petitioner(s)

VERSUS

The State and others ...Respondent(s)

For the Petitioner(s)	:	Mr. Muhammad Akhtar Rana, ASC
For the State	:	Ch. Mustafa, Deputy Prosecutor General, Punjab
Date of Hearing	:	25.08.2025

JUDGMENT

Shahid Waheed, J:- This petition seeks leave to appeal against the order dated 12th of June, 2025, wherein the High Court refused to revise the Trial Court's order allowing the prosecution's application under Section 540 of the Code of Criminal Procedure, 1898 ("the Code"). The singular legal question that this petition raises is: can the process of trial, having reached the threshold of final arguments and nearing judgment, be interrupted by a prosecution application under Section 540 of the Code, in order to introduce a confession not made before a Magistrate but instead made before a journalist, captured on camera during police custody, and subsequently broadcast on social media platforms accessible to the public at large?

2. The factual background is not in dispute. The petitioners, accused of the crime of murder under Section 302 of the Pakistan Penal Code, 1860, stand arraigned and are currently on trial. The prosecution has presented its full evidence, including forensic reports, witness testimonies, and expert opinions, and the petitioners have rested their case after cross-examination. The matter has now progressed to the stage of final

arguments. At this advanced stage, the prosecution moved to summon a journalist, namely, Younas Gujjar, who, during the period of police custody, had interviewed with the petitioners. During this interview, which was subsequently uploaded to YouTube, the petitioners purportedly confessed to the crime. They articulated their motives in a manner that directly implicates their guilt. The prosecution's application seeks to have this recorded confession introduced into evidence, arguing that it is admissible under sustainable legal grounds, despite not having been made before a Magistrate. It is this application, rooted in the controversial intersection of police custody, media coverage, and public dissemination, that has been placed before us for adjudication, raising profound questions about the sanctity of the trial process, the rights of the accused, and the admissibility of such confessional evidence in a criminal trial.

3. In light of these undisputed facts, we now proceed to examine the moot question and seek an answer. The question, as formulated for the ease of understanding, can be further divided into two distinct parts: the first concerns the scope and application of Section 540 of the Code, and the second refers to the admissibility and legal weight of a confession made to a journalist while in police custody. We will first focus our analysis on the first part of the question to determine the extent and limitations of Section 540 as it applies to this case.

4. Section 540 is found in Chapter XLVI of the Code under the heading 'Miscellaneous'. This section is distinctly divided into two parts. The first part employs the word 'may', indicating a permissive and discretionary authority granted to the Criminal Court. This allows the court, at any stage during an inquiry, trial, or other proceedings under the Code, to choose among three specific actions: (a) to summon any person as a witness, (b) to examine any person in attendance who has not been formally summoned as a witness, or (c) to recall and re-examine any person who has previously been examined. The second part uses the word 'shall', signifying an obligatory, mandatory duty imposed on the Court. It mandates the Court, (i) to summon and examine, or (ii) to recall and re-examine, any person if their evidence is deemed essential for a just resolution

of the case. The language of the section—including phrases such as “any court”, “at any stage”, “of any inquiry, trial or other proceedings”, “any person”, and “any such person”—indicates that the section is framed broadly. The mandatory provisions of the second part leave no room for discretion, binding the Court to proceed if the evidence is crucial to a fair and just decision.[1]

5. It is important to emphasise that the trial process is not simply a game of surprise moves or evidentiary ambushes designed to secure an unfair advantage. The closure of evidence aims to bring certainty and finality to the proceedings, ensuring that both parties have a clear understanding of the case's scope and the evidence that will be considered. However, the law must strike a delicate balance between strict procedural adherence and the wider demands of justice, allowing flexibility to prevent technicalities from obstructing the pursuit of substantive truth, mainly when crucial evidence exists outside the initially closed phase of the trial.[2] In criminal trials, the interests of various stakeholders—namely, the accused, the public, and significantly, the victims—need to be carefully weighed. This requires protecting the rights of the accused, upholding the public’s interest in justice and safety, and adequately considering the rights and needs of victims. Therefore, a fundamental principle in the law of evidence is that the best and most reliable evidence available should be presented to the Court to establish a fact or resolve points in issue within a legal dispute. The Court itself does not have the authority under the relevant legal provisions, specifically the Code, to compel either party to examine particular witnesses on their side unless the parties voluntarily agree or the law explicitly requires it. However, if a party intentionally withholds available evidence and, if produced, would be adverse to that party’s case—such as documents, testimonies, or forensic reports—the Court may draw an adverse presumption against that party based on the principle of adverse inference, as outlined in Illustration (g) to Article 129 of the Qanun-e-Shahadat, 1984.

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[1] Muhammad Azam Vs. Muhammad Iqbal and others (PLD 1984 SC 95), Painda Gul and another Vs. The State and another (1987 SCMR 886), Mehrzad Khan Vs. The State (PLD 1991 SC 430), Ghulam Ali Vs. Pakistan through Vice Chairman, Pakistan Railways (1993 SCMR 540), The State Vs. Muhammad Yaqoob and others (2001 SCMR 308), Muhammad Murad Abro Vs. The State through A.G. Balochistan (2004 SCMR 966), Shahbaz Masih Vs. The State (2007 SCMR 1631), Ansar Mehmood Vs. Abdul Khaliq and another (2011 SCMR 713), Nawabzada Shah Zain Bugti and others Vs. The State (PLD 2013 SC 160)

[2] Sajid Mehmood Vs. The State (2022 SCMR 1882)

This raises an ancillary question regarding the role of the presiding officer in a trial: should the judge function merely as an impartial umpire, passively observing the contest between the prosecution and defence and declaring the winner at the end? Or does the judge have a legal and ethical obligation to actively participate in the fact-finding process, independently seeking out the truth beyond the parties' arguments? It is a well-established legal doctrine that a Court must perform its statutory duties—whether discretionary or mandatory—in strict accordance with the law to ensure justice is administered properly. To facilitate the discovery of truth and deliver a fair verdict, Section 540 of the Code authorises criminal courts to exercise their discretionary powers to summon witnesses, examine persons in attendance regardless of whether they have been formally summoned, and recall or re-examine witnesses who have previously testified. This authority enables the Court to obtain relevant evidence from various sources, ensuring that judgments are based on comprehensive and factual records rather than incomplete or speculative presentations, which could otherwise undermine the ends of justice. In this legal settings, we conclude that an application under Section 540 is legally permissible even at the argument stage of the case, provided that the evidence sought is genuinely essential for justice and not merely cosmetic or auxiliary, and that its admission respects the fundamental fair trial rights guaranteed under Article 10-A of the Constitution, which ensures the accused's right to a fair hearing.

6. This brings us to the second part of the question, and to consider whether the prosecution, towards the final stages of the trial, could be allowed to introduce the alleged confession made by the petitioners-accused to a journalist while in police custody. Before inquiring into this facet of the matter, it is a prerequisite to mark that one of the primary objectives of the criminal justice system is to ensure that persons who are guilty of committing offences are effectively brought to justice through due process. However, in the process of establishing the guilt of alleged offenders, various well-defined rules of evidence have been integrated into the legal framework. These rules serve to uphold procedural regularity and fairness.[3]

[3] Ernest Williams, The Modern View of Confession, 30 Law Q. Rev.292,298 (1914)

7. It is said that the confession of the party is evidence, but the worst sort of evidence. Confession is not statutorily defined, but judicial decisions speak that a statement merely suggesting an inference that the maker of the statement has committed a crime cannot be considered a confession. A confession must, in explicit terms, admit an offence or, at any rate, substantially all the facts that constitute the offence. An accused must acknowledge his involvement in all the physical and psychological facts that make up a crime in a confessional statement.[4] The Courts have consistently held that, since Articles 30 to 45 broadly deal with admissions and include Articles 37 to 43, which concern confessions, as such confessions are a species of which an admission is the genus, and although not all admissions are confessions, all confessions are a type of admission.[5] While admissions are relevant under Article 34 and can be proved against the person who makes them, limits are set within which confessions are deemed admissible. Article 38 talks about a confession made to a police officer, which shall not be proved as against a person accused of any offence. Article 39 also states that no confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. These two Articles put a complete bar on the admissibility of a confessional statement made to a police officer or a confession made in absentia of a Magistrate while in custody. In fact, Articles 37 to 43 merely specify when a confession may or may not be proved, and are intended to prevent police torture aimed at coercing confessions. It is notorious from the wide currency of the expression “third degree method” that over-zealous police officers, not infrequently, forcibly extract information or confessions through violence, threats, or improper inducements. It is also seen that innocent people often falsely accuse themselves without any apparent reason. Therefore, the need to ensure that a confession is made voluntarily and freely is of utmost importance in administering justice lawfully and protecting innocent persons from injustice. It seems that, for this reason, the formalities to be observed when recording a confession of the accused are laid out in Section 164 of the Code, and the established principle in this

[4] Pakala Narayana Swami Vs. Emperor (AIR 1939 PC 47)
[5] Sidheshwar Nath Vs. Emperor-Opposite Party (AIR 1934 Allahabad 351)

regard is that a confession made by the accused in police custody and not recorded before a Magistrate according to the procedure specified in Section 164 cannot be said to be voluntary, and as such cannot form the basis of conviction.

8. “Nemo tenetur seipsum accusare" is a Latin legal maxim meaning "no one is bound to accuse themselves", which forms the basis of the right against self-incrimination. This principle protects individuals from being compelled to provide evidence or testimony that could incriminate them in a criminal case, ensuring the right to remain silent and preventing forced confessions.[6] It is a fundamental guarantee in criminal justice systems, as provided in Article 13(b) and 14(2) of the Constitution, and serves to prevent untrustworthy or involuntary confessions. It has been universally accepted that a free and voluntary confession is deserving of the highest credence because it is presumed to originate from a sincere sense of guilt; however, a confession becomes untrustworthy when it is not voluntarily made.[7] The sole purpose of the voluntariness rule is to reduce the possibility of wrongful conviction by preventing the court from considering dubious confessions.[8] There have been various ways of stating the voluntariness test or determining when the accused’s will is overborne. First of all, a statement is not considered to be voluntary if, without inducements, it is not the product of an “operating mind”. An operating mind means being aware of consequences and is meant to catch statements that will be untrustworthy because of the accused’s lack of rationality.[9] Secondly, a statement is not considered voluntary if the suspect was unaware of the consequences of making the statement and was unable to make a free and informed decision to confess, for example, if the accused lacks awareness due to intoxication or a mental disorder. Thirdly, a statement given in oppressive circumstances is considered to be made involuntarily. As the essence of the law is exhaustive in matters of confession, it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction. Therefore, regarding the admissibility and inadmissibility of a confession,

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[6] Ernesto A. Miranda V. State of Arizona (384 US 436)
[7] Wilson V. State (19 Ga. App 759); State V. Novak (109 Iowa 717)
[8] Steven Penney, Theories of Confession Admissibility: A Historical View (1998) American Journal of Criminal Law 309
[9] Ward V. The Queen (1979) 2 SCR 30; Horvath V. the Queen (1979 2 SCR 376

the following general principles may be deduced,[10] and they must be observed to the letter: A confession is

	Inadmissible.		Admissible.
(a)	If made to a police officer, even if made *in the immediate presence of the Magistrate.*	(a)	If made, whilst not in police custody, to any person other than a police officer, *i.e.,* to a private person.
(b)	If made to a private person while in police custody, and *not* in the immediate presence of a Magistrate.	(b)	Whilst in police custody, made to a private person in the immediate presence of a Magistrate.
(c)	If made under promise, threat or inducement from a person in authority.	(c)	If made after the removal of impression caused by a promise, threat or inducement.
		(d)	If made under a *deception* or *artifice,* such as *a promise of secrecy,* obtained in consequence of deception practised upon the accused, when accused drunk, or made in answer to questions which the accused need not have answered, or when accused not warned that he was not bound to make such confession.

9. Viewed in this light, the alleged interview of the petitioners recorded by a journalist during police custody and not in the immediate presence of the Magistrate, and subsequently uploaded to YouTube, in which the petitioners purportedly confessed to the crime, could not be considered voluntary. As such, it was inadmissible, and could neither be introduced nor received; nor was it essential for a fair decision of the case. It appears that the prosecution had filed this application with the sole intention of undermining the sanctity of the Trial Court, aiming to create anomalies in the trial or to fill gaps in the evidence. If the prosecution had a different intention, it had ample opportunity to present such proof, which was within its knowledge, before closing its evidence. The Trial Court should

[10] S. Roy, The Law of Confession, Fourth Edition, P.8.

have guarded against the misuse of its powers under Section 540 by the prosecution, and also should not have put the prosecution in an advantageous position vis-a-vis the defence.[11] Therefore, we hold that the prosecution's application under section 540 of the Code deserved to be swiftly disregarded, as it was antithetical to the spirit of the fair trial guaranteed under Article 10-A of the Constitution.

10. Sequel to the discourse above, this petition is converted into an appeal and allowed; consequently, the orders dated 4th of June, 2025 and 12th of June, 2025 of the Trial Court and that of the High Court are set aside, and the application brought by the prosecution under Section 540 of the Code is dismissed.

11. Above are the reasons for our short order of even date.

Judge

Judge

Lahore
25.08.2025
APPROVED FOR REPORTING
Irfan Aslam/Libah Nadeem (LC)

[11] Painda Gul and another Vs. The State and another (1987 SCMR 886), Sh. Muhammad Amjad Vs. The State (PLD 2003 SC 704)