

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Revision No.118-2016

Sultan Ubaid-ur-Rehman

Vs.

The State & Another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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16.12.2016

Mr. Jan Muhammad Khan, Advocate for petitioner.

Through this petition, the petitioner seeks
following relief:-

**“In the above circumstances, it is
therefore respectfully prayed that the
impugned order dated 23.11.2016
passed by the learned trial court, may
kindly be set aside, and direction may
kindly be passed to the learned trial
court to summon the register of
mortuary regarding 20.04.2015 from
PIMS, Islamabad”**

2. Brief facts of the case are that FIR No.157
dated 20.04.2015 Under Sections
302/148/149/337A(i) PPC was registered at Police
Station, Industrial Area, Islamabad, wherein it was
alleged by respondent No.2 that the petitioner, in
connivance with this co-accused, took away PW
Touseef to their house, in continuance of the fight
took place between them, he upon knowing this,

went to the house of petitioner and his co-accused along with deceased and Yasrab (PW), on seeing them, co-accused of the petitioner raised 'Lalkara' that they are the cousins of Touseef and should not be spared, upon which, the accused party aggressed upon them. The charge has been framed on 11.06.2016 and till date, evidence of two PWs has been recorded and partial cross-examination to the extent of PW-3 is also recorded. On 15.10.2016, during cross examination of PW-3, defense counsel requested learned trial court to summon the register of mortuary pertaining to the date of occurrence i.e. 20.04.2015, and also moved an application in this regard, which was turned down vide impugned order dated 23.11.2016, hence this petition.

3. Learned counsel for the petitioner inter alia contends that during cross-examination of PW-3, question with regard to bringing dead body in mortuary was raised and in this regard unauthenticated document was available with defence which was neither confronted nor exhibited during cross-examination as required by Article 92 of the Qanoon-e-Shahadat Ordinance. Such document when required to be confronted or exhibited should come from proper custody. The

document available with the counsel for the accused, under the circumstances, could neither be produced nor confronted hence time was sought to move an application for summoning record from mortuary. As per learned counsel, the cross-examination of PW-3 was reserved for the reasons that defence counsel was allowed to move application.

4. From the record, it appears that an application was though moved, but same did not contain any provision of law. As required by law, such relief could be sought by pressing Section 94 Cr.P.C. into service. The document required to be summoned in order to reach at just and proper conclusion could only be filed by moving application when either same is to be exhibited or confronted to the concerned person.

5. In the instant case, the police officer namely Aashiq Shah, SI himself brought the dead body at mortuary against which such entries are available. Later on, when he was available at police station, the complaint of complainant was lodged in the shape of FIR by said S.I. with the different story of bringing the dead body by the complainant at police station. Such ambiguity can only be removed by summoning record from mortuary, because it is a

vital document for reaching at just and proper conclusion, as it is a right of accused which cannot be assassinated.

6. When such legal position was confronted to Mr. Ahmad Hassan Rana, learned State Counsel, who put appearance on Court's call, he admitted the same with the request that notice should also be issued to complainant.

7. On perusal of record, it is explicitly clear that learned trial court misconceived legal position by suggesting defence counsel to raise such plea in defence at the time of recording statement under section 342 Cr.P.C, whereas law require otherwise. The relevant portion of Section 94 Cr.P.C. is reproduced hereunder: -

“94. Summons to produce document or other thing.

(1) Whenever any Court, or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officers a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order: Provided that no such officer shall issue any such order requiring the production of any document or other thing which is in the custody of a bank or banker as defined in the Bankers' Books Evidence Act, 1891 Pakistan:



Code of Criminal Procedure 1898 19 ADB/OECD
Anti-Corruption Initiative for Asia Pacific
September 2007

www.oecd.org/corruption/asiapacific/mla
asiapacific@oecd.org (XVIII of 1891) and relates,
or might disclose any information which relates to
the bank account of any person except”

8. Initially, when dead body was brought at mortuary, the time of receiving dead body and its examination has to be recorded by keeping the entries. Such document is essential to resolve the issue. It needs no further scrutiny with the help of any other assistance. In my view, if any such evidence either in favour of prosecution or defence is raised same should have been taken into consideration by the Investigating Officer or even by said Sub-Inspector namely Ashiq Shah, who recorded verbatim of complainant including version of bringing the dead body at police station. The police officer himself was the witness of delivering dead body to the mortuary, but he neither indicated non-availability of dead body at Police Station or in his oral or written version or even in the footnote of FIR. Such factual and legal issue has to be resolved by invoking powers vested to the Court under section 94 Cr.P.C. and not in the way as indicated by learned trial court at the time of recording statement under section 342 Cr.P.C.

9. Learned trial court, under the circumstances, when trial is entirely concluded may taken such view to avoid further delay in conclusion of trial. In all there are three stages where such relief is permissible to the defence counsel;-

- i) At any stage of trial before recording statement under section 342 Cr.P.C.
- ii) At the time of recording statement under section 342 Cr.P.C., the accused may suggest to name all defence witnesses and any other material required to be summoned from any concerned quarter.
- iii) Third is the written statement permissible under section 265(f) Cr.P.C., whereby the accused can afford such defence to summon record for which a separate order has to be passed by the court.

On recording statement under section 342 Cr.P.C. being closure of case when only defence is to be taken in shape of either DWs or through whom any document is required to be exhibited by confronting the same to them. In this regard, ambiguity may arise, if any of PWs already examined is called in defence as DW. Such transgression of the witness may create multiple problems in the case by raising some technical questions such as mode of raising question suggestive or otherwise from said DW already examined as PW. Suggestive question again could be a hurdle in the defence therefore such procedure adopted by learned trial court is not warranted by law. It may be agitated

when the court desires conclusion of trial expeditiously or may avoid some other multiple questions and further evidence as required by Article 133 of Qanoon-e-Shahadat Ordinance. This being general complexion of law has to be regarded therefore I am of the opinion that the stage where this application was moved for summoning the record was proper and appropriate instead of calling it at the time of recording statement under section 342 Cr.P.C. Therefore, , at this initial stage to avoid further delay, the request made by the petitioner is allowed and as a result whereof, the impugned order dated 23.11.2016 passed by learned trial court is hereby set aside.

10. While allowing this Criminal Revision, the application moved by defence counsel on behalf of accused is allowed. The requisite record be summoned from mortuary and after its examination, same may be confronted by the defence counsel to the relevant PWs i.e. complainant and Ashiq Shah, SI.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Approved for reporting.

Blue slip added
w/ed

JUDGE