



QUERY NO.: BHC-RC/DJ-08/2026

RESEARCH CENTER HIGH COURT OF BALUCHISTAN

NAME: ZAI-UR-RAHMAN, ADJ

SUBJECT: SECOND ROUND OF LITIGATION

DATE: QUERY RECEIVING DATE: 13 APRIL 2026

QUERY RESPONDING DATE: 16 APRIL 2026

BY: RESEARCH CENTRE

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PROPOSED QUERIES

- I. Can the statements of witnesses recorded in the first round of trial be considered for trial in the second round?*
- II. Can defence counsel rely upon cross-examination, which was conducted in the previous round of trial, for the accused arrested subsequently?*

The settled position of law is that evidence in a criminal trial must be recorded

in the presence of the accused and subjected to cross-examination, and any deviation from this rule is treated as a very limited exception. Statements of witnesses recorded during an earlier round of trial, particularly in proceedings against co-accused, cannot ordinarily be used against an accused who was not before the Court at that time, as such use would offend the mandate of Section 353, Cr.P.C. and the constitutional guarantee of fair trial under Article 10-A . Reliance is placed on **2019 M L D 306**. The Relevant part of the Judgment is reproduced as under;

*“6. ...Learned counsel for the appellants/accused has contended that the impugned judgment is contrary to the law and the same is complete departure of the procedural and substantial law, **as the trial Court while conducting the trial and convicting the appellants has committed an illegality in relying on the evidence of P.Ws. recorded earlier during trial of co-accused persons, which could not be used against the present accused/appellants;....***

15. Reverting to the second part of the proposition that whether such evidence recorded in absentia can be used against the absconding accused on his arrest, we are of the view that if earlier recorded evidence, is allowed to be used against the absconding accused on his arrest without providing him an opportunity to cross-examine the witness this may result in a departure from the word of fair trial on which the Criminal Administration of justice rests. Unless the Court or the prosecution justifies the exceptional circumstances which compelled them to depart from such mandatory requirement of the law. Therefore, on subsequent arrest of an absconding accused the prosecution and Court, at first instance, should make all efforts to secure evidence in presence of the accused as the same is established principle through precedents.....

16. The ratio of above case-law is that trial Court should record evidence in presence of accused, as the earlier recorded evidence cannot be used against absconding accused except in exceptional circumstances and that the previously recorded evidence can be taken into consideration, however its evidentiary value cannot be equated with such statement which has been subjected to cross-examination, therefore for giving weight to the statement of such witness it is to be seen whether such statement intrinsically rings true and whether or not supported by circumstances through any sources.”

The law does recognize a narrow exception in cases where statements have been recorded under Section 512, Cr.P.C., which, when read with Article 47 of the Qanun-e-Shahadat Order, may be treated as relevant in subsequent proceedings, but only where the prosecution establishes that the witness is dead, incapable, or cannot be produced despite due diligence, and a formal order for transposition of such evidence is passed; otherwise, reliance on earlier testimony is legally unsustainable. Guidance is sought from case reported as **2018 Y L R 148**. The relevant part is reproduced as under;

“8. After going through the judgment, it appears that the testimony of these two witnesses was taken into consideration against the appellant when he was convicted in the above terms. Needless to say that the statements of witnesses recorded under Section 512, Cr.P.C. can be legitimately treated as evidence in subsequent proceedings in view of provisions of Article 47 of Qanun-e-Shahadat read with section 512 Code of Criminal Procedure but the learned trial Court has neither passed any order regarding transfer of statements of above mentioned witnesses to the file of the present case nor serious steps were taken to bring on record evidence regarding the non-availability of Dr. Abdul Samad and incapacitation of Awal Khan retired SHO and thus committed illegality while passing the impugned judgment.”

Even in such exceptional cases, the evidentiary weight of such statements remains inherently weak, as they are not tested through cross-examination by the concerned accused. Consequently, a subsequently arrested accused cannot be bound by, nor can the defence legitimately rely upon, cross-examination conducted in a previous round of trial, because the right to cross-examine is a personal and substantive right which lies at the heart of a fair trial, and denial of such opportunity causes serious prejudice. **The only legally sound course, therefore, is to recall the prosecution witnesses, record their evidence afresh in the presence of the accused, and afford full opportunity of cross-examination.**