
ADMISSIBILITY OR OTHERWISE OF EXTRA JUDICIAL
CONFESSION BEFORE POLICE LEADING TO RECOVERY OF
NEW FACTS?



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN



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COURT: HON'BLE MR. JUSTICE AMIR RANA

SUBJECT: CRIMINAL LAW

DATE: 11TH MAY 2024

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QUERY: WHAT IS RULE ABOUT ADMISSIBILITY OR OTHERWISE OF EXTRA JUDICIAL CONFESSIONS LEADING TO RECOVERY OF NEW FACTS?

LEGAL FRAMEWORK

- The relevant legal provisions dealing with the admissibility or otherwise and value of extra judicial confession made before the police leading to recovery of incriminating material are contained under Article 40 of the Qanoon-e-Shahadat Order 1984.

JUDICIAL PRECEDENTS: -

- **2016 S C M R 1766 [Supreme Court of Pakistan]**
Present: Anwar Zaheer Jamali, C.J., Amir Hani Muslim and Faisal Arab,
JJ RAFAQAT ALI and others---Appellants Versus The STATE—
Respondent

“12. We have heard the learned Counsel for the Appellants, the learned Law Officer and have perused the record with their assistance. In the present proceedings, the trial Court has examined 19 P.Ws, which include two injured witnesses who received firearm injuries at the hands of the Appellants during the incident. These two prosecution witnesses did identify the Appellants in Court. This ocular evidence could not be discarded on the ground that only Rafquat Ali, the Appellant No.1, was picked by the P.Ws in the identification parade. It is not in dispute that the two injured witnesses P.W-10 Mst. Asmat Bibi and Muhammad Pervaiz P.W-12 were receiving medical treatment at the time of identification parade, therefore, they could not be expected to participate in the identification parade. However, all the Appellants were identified by these injured witnesses in Court with details of their specific role. The medical evidence corroborates the ocular evidence. The Appellant No.1, Rafquat Ali, who made extra judicial confession on his arrest led to the recovery of weapon of crime. During the investigation after the arrest of Appellant No.1 and in pursuance of the disclosures made by him, the other Appellants were arrested and recoveries were effected on their pointation. The reports of the Chemical Examiner and the F.S.L were positive.

- **2011 P Cr. L J 511 [Federal Shariat Court]**
Before Haziquel Khairi, CJ, Salahuddin Mirza and Muhammad Zafar Yasin, JJ
MANZOOR AHMAD and another---Appellants Versus THE STATE---Respondent

“6. The contention of learned counsel for the appellants Mr. Imtiaz Hussain Gondal was that the extra-judicial confession of appellant Manzoor Ahmad shall have no evidentiary value as the confession was made by him at a Police Station. No doubt, an extra-judicial confession of an accused is a weak piece of evidence and when it is made at Police Station it surely is inadmissible in evidence as envisaged under Articles 38 and 39 of the Qanoon-e-Shahadat. However he also made confession before Shaukatullah Farooqi (P.W. 11) when the appellant led them to Civil Hospital. P.W. 11 is an independent witness and is a businessman. Similar confession was made by him before P. W. 12 Matloob Hussain, a movie maker. Thus the extra-judicial confession of appellant Manzoor Ahmad before P.Ws. 11 and 12 when seen along with his disappearance after the incident, recovery of stolen articles from him and pointation to the place of occurrence and to the place where he abandoned the car, furnishes satisfactory evidence to his guilt.”

- **2023 M L D 1972 [Balochistan]**
Before Abdullah Baloch and Rozi Kan Barrech, JJ
MUHAMMAD IDREES---Appellant Versus The STATE---Respondent

“11. it may be stated here that, as provided by Articles 37, 39 of the Qanun-e-Shahadat Order, 1984, a confession made by an accused person while he is in police custody is not admissible. However, if something related to the case is recovered or any fact is discovered in consequence of information conveyed by the accused person, then the information so received would be admissible in evidence to the extent of recovery if corroborated with other pieces of evidence within the purview of Article 40 of the Qanun-e-Shahadat Order, 1984 because then, the presumption would be towards its truthfulness, but if nothing in consequence of the disclosure is recovered or discovered, then the information so received by itself would not be admissible; therefore, the alleged disclosure of the appellant before the police about the commission of alleged offence was not admissible and the same cannot safely be used against the appellant.”

- **2022 Y L R 1290 [Islamabad]**
Before Athar Minallah, C.J. and Miangul Hassan Aurangzeb, J NADEEM QAYYUM and others---Appellants Versus The STATE---Respondent

“35. Article 40 of the 1984 Order, which is an exception to Article 39, provides that when any fact is deposited as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Article 40 of the 1984 Order has been interpreted by the Hon'ble Supreme Court in the case of Mst. Askar Jan v. Muhammad Daud (2010 SCMR 1604) in the following terms:-

“9. A perusal of above Article reveals firstly that it serves as a proviso to Articles 38 and 39 of the Order. Secondly, it is founded on

the principle that if the statement or information of the accused amounts to confession or otherwise is supported by the discovery of a fact it may be presumed to be true and not to have been extracted. It comes into operation only (i) if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody; and (ii) if the information relates distinctly to the fact discovered.”

10. Thus, firstly there should be an information or statement of the accused whether it may be confession or otherwise and that too when he was in police custody and secondly on the basis of such information or statement a fact is discovered. If there is no statement of the accused or information given to the Police, which is an essential requirement of the Article, then the subsequent discovery would become inconsequential. Further such information either oral or recorded by the police is required to be proved by the prosecution through evidence.

13. Thus, in order to apply Article 40 of the Order, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source and that the knowledge of the fact was first derived from the information given by the accused. Reference is also invited to *Jaffer Husain v. State of Maharashtra* (AIR 1970 Supreme Court 1934). It is also important to note that the recovery of articles cannot be described as a discovery under Article 40 of the Order when they are not recovered, from any hidden place and if in the normal course of investigation the investigation agency is bound to see them and take in possession without the accused making any statement of pointing them out."

36. The statement of an accused regarding facts which are already in the knowledge of the police or any other person does not fall within the purview of Article 40 but Article 39 of the 1984 Order. However, a statement made by an accused in police custody can be taken into consideration only if it leads to the discovery of a fact which was not previously known to anybody. In the instant case, there is nothing on the record to show that prior to the disclosure made by Qayyum and the pointation of the well from where the deceased's body was recovered was known to any other person. Since Article 39 of the 1984 Order is subject to Article 40, the information disclosed by Qayyum, even though whilst in police custody, as to the place where the deceased's body was thrown by the appellants, can be relied upon."

Conclusion: *Upon meticulous examination of the pertinent statutory provisions and the jurisprudential authorities, it is discerned that a confession extra judicially tendered to a police officer may be deemed admissible as evidence against the accused, if the condition that said confession lead the discovery of unknown facts. Furthermore, an extrajudicial confession made in the presence of a private individual is receivable in evidence; however, it is regarded as inherently weak and must be corroborated by additional inculpatory evidence to substantiate its probative value.*

Annexure(s) Full Judgments in the books
