
**Reliability of Disbelieved Testimony in separate Trials and Legal
Consequences of Violating Section 103 Cr.P.C.**



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RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

COURT: HON'BLE MR. JUSTICE NAJAM UD DIN MENGAL
SUBJECT: CRIMINAL LAW
DATE: 03RD MARCH 2025
BY: MR. WASEEM AHMED RESEARCH OFFICER
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Query: Whether testimony of witnesses disbelieved in one trial can be accepted in another trial arising from the same transaction?

Query: What are the implications of breaching Section 103 Cr.P.C.?

In response to the queries, it is submitted as follows: -

Statement of Facts

The accused/appellant was charged in two separate cases under the **Arms Act 2022** for recovery of one unlicensed pistol and one Kalashnikov during a single transaction/occurrence.

Case No. 1: Possession of a **pistol**, tried before a **Judicial Magistrate**, resulting in **acquittal**.

Case No. 2: Possession of a **Kalashnikov**, tried before the **Sessions Judge**, resulting in **conviction** based on the same prosecution witnesses.

Query: Whether testimony of witnesses disbelieved in one trial can be accepted in another trial arising from the same transaction?

A careful analysis of legal principles and case law, reveals that **there is no precedent directly addressing this proposition**, however, a thorough examination of the case law developed by the superior courts, indicates that ***the testimony of witnesses disbelieved in one trial does not automatically become inadmissible in another trial arising from the same transaction.*** It is well established principle that *every case must be decided on its own record, and evidence recorded in one case cannot be used as evidence in another.* In case **Khalid Hussain vs Naveed alias Qabl Ali and others** (P L D 2007 Karachi 442) the Court unequivocally held that evidence recorded in one case cannot be used as evidence in another and that each trial must be adjudicated independently. ***The judgment further noted that a Sessions Court, being a higher court, should not be influenced by a Magistrate's findings regarding witness credibility.*** It holds that:

“11. There is yet another circumstance which is that a Sessions/Additional sessions Judge, being a higher Court, is not expected to be influenced by

any finding given by a Magistrate, a Court subordinate to him. Thus, the apprehension of the appellant that the Sessions /Additional Sessions Judge conducting trial of the murder case would be influenced by the finding of the Magistrate is not well-founded. On the contrary, chances of trial Court being influenced by the acquittal will increase in case the narrow scope acquittal appeal is dismissed and the acquittal is confirmed by the High Court.”

This principle acknowledges that a ***Sessions Court is not expected to be influenced by the conclusions of a Magistrate in a connected matter, as the evaluation of testimony varies depending on the specific circumstances of each case.*** As it is possible that the same witnesses may provide different evidence in different trials due to various factors, including *a shift in their recollection of events* or may be disbelieved because of *a change in the availability of corroborating evidence*. Therefore, while prior disbelief in one case may affect the credibility assessment, it does not serve as an ***absolute bar*** to accepting the testimony in a subsequent trial.

Although ***there is no direct precedent*** addressing the specific query of *whether the testimony of witnesses disbelieved in one trial can be accepted in another trial arising from the same transaction against the same accused*, the settled principle, contained in the following case law, supports, ***by analogy***, that such testimony hold evidentiary value, for testimony of witnesses disbelieved against one accused can still be relied on against other accused if it finds corroboration from independent and unimpeachable evidence. In this connection it would be advantageous to refer to a judgment of Honourable Supreme Court in the case of ***Mohammad Asif Vs. The State*** reported in **2017 SCMR 486** wherein it was held as under:

“It is a trite of law and justice that once prosecution evidence is disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence, independent source and shall be unimpeachable in nature but that is not available in the present case.”

This principle, traditionally applied in cases involving multiple accused charged in a single transaction, ***logically extends to separate trials of an accused for offenses arising from the same transaction.*** The underlying rationale is that evidence, even if disbelieved in one instance, is not permanently inadmissible but merely requires stronger corroboration to be considered reliable in a subsequent trial.

In same vein, the **principle of abundant caution**, as affirmed in **2023 P Cr. L J 1200**, establishes, by analogy, supports the view that testimony disbelieved in one trial does not become permanently inadmissible in another trial arising from the same transaction. Instead, *courts must independently assess the strength of evidence in each instance, ensuring that judicial caution does not lead to the exclusion of testimony that may still hold probative value when supported by independent and unimpeachable corroboration.*

Thus, while prior disbelief in one case may create skepticism about a witness’s credibility, it does not render the testimony inadmissible in another trial and a ***higher Court/ A Sessions Court should not be swayed by a Magistrate’s findings in a related matter, as the assessment of testimony depends on the unique circumstances of each case.***

Query: What are the implications of breaching Section 103 Cr.P.C.?

Section 103 Cr.P.C. upholds *procedural justice* by requiring independent witnesses in search proceedings, ensuring fairness and preventing abuse of authority. Although the compliance with section 103 is **mandatory** yet if independent witnesses are unavailable despite genuine efforts, the search is not invalidated, and police testimony may be relied upon. However, if no efforts are made to comply, and only police officers act as witnesses, the **credibility of the search is weakened**, especially if challenged in cross-examination. In cases where the recovered item itself constitutes the offense (e.g., an unlicensed weapon), failure to secure independent witnesses **raises doubts about the prosecution's case**. The **prosecution must justify non-compliance** with Section 103; otherwise, reliance solely on police witnesses is insufficient. Reliance can be placed on *Mushtaq Ahmed vs the state* (PLD 1996 Supreme Court 574) in which the Court observed as follows:

"13. From the above provisions of Cr.P.C. and the case-law, the following principles are deducible:--

(i) That section 103, Cr.P.C. relates to a search of a place situate in a locality and not to a search of a person;

(ii) That the requirement of section 103, Cr.P.C. that the officer or the other person who is about to make search of a place under, Chapter VII of the Cr.P.C. we call upon two or more respectable inhabitants of tire locality in which the place to be searched is situate to attend and witness search though is procedural but is of rumidatory in nature. It is, designed and intended to guard against any possible chicanery, and concoction;

(iii) That if in spite of the best, efforts on the part of the officer or the other person who made the search, two or more respectable inhabitants had not attended and witnessed the search and if there was nothing on record to cast doubt about the bona fide of the officer or the other person, the above Search Would not be vitiated and the testimony of the officer concerned could be relied upon.

(iv) That there is a marked distinction between a case in which compliance of section 103, Cr.P.C. is made and a case in which no efforts to comply with the same were made and the police personnel were made Mashirs to the recovery. In the former case, failure to produce two respectable inhabitant as witnesses on the Court for a justifiable reason free from any doubt would justify the acceptance of his or their testimony, whereas the latter case, the search would lose its credibility particularly when the testimony of such Mashirs is challenged by the defence in the cross-examination;

(v) That likewise there is a marked distinction between a case in which the offence charged with is the recovery of the article itself like recovery of an unlicensed Klashnikov and a case in which the article recovered e.g. a crime weapon is to be used as a corroborative piece of evidence. In the former case if the witnesses to the recovery were police personnel though it was ' possible to have two Mashirs from the locality where recovery was made, their testimony in the absence of other reliable pieces of evidence would not warrant conviction, whereas in the latter case, if other pieces or evidence on record are free -from doubt, the testimony of the police personnel if otherwise free; from any legal infirmity may be accepted;

(vi) *That there is also a marked distinction, between a case in which police officer is an eye-witness to the-commission of an offence like a murder on a road where he is on duty and a case in which he is an investigating officer and as such becomes 'a Mashir to We recovery of a crime weapon. In the former case, his testimony is as good as of any other witness from the public, but in the latter case in the absence of any Justifiable reason not to make two or more respectable inhabitants of the locality as witnesses to the recovery, implicit reliance cannot be placed on the recovery if the same is challenged by the defence in the cross- examination;*

(vii) *That the question, whether testimony of a police official as a Mashir to the recovery of an offending article is to be accepted or not besides testing on the touchstone of the above legal principles, depends on the facts of each case; the Court will have to discern inter alia, as to whether such witness bore any animus against the accused involved or was he not over-zealous investigating officer/witness."*

In recent years, courts have increasingly recognized *the reluctance of private individuals* to act as witnesses in criminal proceedings. This judicial acknowledgment has led to a shift in approach, wherein greater reliance is placed on the testimony of police officials, provided their statements remain consistent and withstand scrutiny. In ***Salah-ud-Din vs the state (2010 SCMR 1962)*** the August Supreme Court affirmed that ***police officials are as competent and reliable as other witnesses, provided their testimony withstands cross-examination.*** The Court held that the reluctance of the general public to act as witnesses in criminal cases is a judicially recognized fact, making reliance on official witnesses necessary in certain circumstances. ***It emphasized that in the absence of any alleged enmity or ulterior motive, the statements of police officials, if found consistent and unshaken, could form the basis of conviction.*** The Court ruled that:

"4. We are conscious of the fact that no private witness could be produced but **it must not lost sight of that reluctance of general public to become witness in such like cases by now has become a judicially recognized fact and there is no way out but to consider the statement of an official witness as no legal bar or restriction whatsoever has been imposed in this regard.** We are fortified by the dictum laid down in *Hayat Bibi v. Muhammad Khan (1976 SCMR 128)*, *Yaqoob Shah v. The State (PLD 1976 SC 53)*, *Muhammad Hanif v. State (2003 SCMR 1237)*. **It is well settled by now that police officials are good witnesses and can be relied upon if their testimony remained unshattered during cross examination** as has been held in case of *Muhammad Naeem v. State (1992 SCMR 1617)*, *Muhammad v. State (PLD 1981 SC 635)*. The contentions of Mr. Kamran Murtaza, learned Advocate Supreme Court on behalf of petitioner qua violation of provisions as enumerated in section 103, Cr.P.C. seems to be devoid of merit when examined in the light of provisions as contained in section 29 of the Act which provides exclusion of section 103, Cr.P.C. The learned trial Court has appreciated the entire evidence in accordance with well settled principles of appreciation of evidence and conclusion arrived at has been affirmed by the learned Division Bench vide judgment impugned which being well based does not warrant interference. The petition being meritless is dismissed and leave refused."

Such rulings strengthens the proposition that official witnesses can be treated at par with civilian witnesses when their evidence is credible and corroborated.

Summary of Key Points

Query 1: Can Testimony Disbelieved in One Trial Be Accepted in Another?

- Each trial is independent, and evidence must be evaluated separately.
- Disbelieved testimony in one case does not automatically render it inadmissible in another.

- Courts assess credibility based on case-specific facts, corroboration, and judicial discretion.
- Case law (*Khalid Hussain v. Naveed* PLD 2007 Karachi 442, *Muhammad Asif v. State* 2017 SCMR 486) supports the principle that evidence may be accepted in one instance while rejected in another.
- ***The ultimate test is whether the testimony meets the evidentiary threshold in each trial.***

Query 2: Implications of Breaching Section 103 Cr.P.C.

- Section 103 mandates the presence of independent witnesses during search and seizure, but non-compliance does not automatically nullify evidence.
- Courts recognize practical challenges in securing public witnesses and often rely on police testimony, provided it is credible and unchallenged (*Mushtaq Ahmed v. State* PLD 1996 SC 574, *Salah-ud-Din v. State* 2010 SCMR 1962).
- While procedural irregularities may weaken the prosecution's case, the admissibility of evidence ultimately depends on its reliability and corroboration.
- The defense can challenge such evidence, but exclusion is not absolute unless prejudice is established.

The End

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