

9. Registered deed executed by Pardanashin lady. Sole statement of vendee on oath regarding sale by lady with her free will and for valuable consideration who being beneficiary of transaction cannot be considered sufficient to prove willingness of lady and genuineness of registered sale deed. Legal character of document must be established through independent evidence. [PLD 2008 S.C. 140]

10. Article 17(1)(2)— Proviso— Quranic concept. "Two witnesses from your own men" (شهادتين من رجالكم) had highlighted another principle that in such cases of financial stake of futuristic effect, longer duration or perpetual nature, preferable choice of witnesses had been advised to be from one's own community or relations. In cases of female witnesses, the relationship had been further preferred by using the phrases 'Mimman tarhoan', i.e., whom you preferably choose, which would not exclude evidence of other men and women, not necessarily related to the parties and did not exclude chance witnesses and circumstantial or corroborative evidence. Evidence of one woman in many classes of litigation was admissible, and particularly solitary statement of victim, duly corroborated, was also competent. Verse 2.82 of the Holy Qur'an had laid down the important principle that "if two men were not there, then one man and two women from those witnesses whom you like"; it did not say that if two men were "not there" then four women, which would mean that one man had to be there. Woman as a special relaxation had been given exemption, as far as possible and it was not desirable to compel a female witness to compulsorily appear for hearing before a court, during natural and biological period of her stress. Woman could not be over-stressed during period of suckling a child. Choosing women to be witnesses, would not only be least desirable for women themselves, but also in all probability be disadvantageous for the person who had to make a choice for her to be her witness, as his case would suffer because of her oft non-availability, and even for longer period. Keeping two male witnesses, would not mean that each one of those two men would stand as 'half (1/2) witness'. No concept of fractionalization of a witness in any legal evidentiary system existed. Instituting two ladies, if one of the two men was 'not there' would not fractionalize them as witnesses to be $\frac{1}{2}$ of the $\frac{1}{2}$ (=1/4) of the unit of witness. No such splitting or dissection of a person of a witness was available. [PLD 2013 FSC 7]

Chapter III

OF THE RELEVANCY OF FACTS

18. Evidence may be given of facts in issue and relevant facts. Evidence may be given in any suit or proceedings of existence or non-existence of every fact in issue and of such other facts as or hereinafter declared to be relevant, and of no others.

Explanation. This Article shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for education at the first hearing of the case, a bond on which he relies. This Article does not enable him to produce the bond or prove its contents at a subsequent stage of the proceeding, otherwise than in accordance with the conditions prescribed by the law for the time being in force relating to Civil Procedure.

NOTES

1. **Scope.** Criminal Procedure Court 1898 is not substantive law but it is procedural law. Qanun-e-Shahadat Order, 1984 is the relevant substantive law which determines the legal worth and admissibility of any kinds of evidence or statement. [PLD 2015 Pesh. 65]
2. **Opinion of investigating officer** Investigating officer cannot be accepted as an expert nor investigation, which is conductable even by an ordinary private person, can qualify as science or even as art. Even under the law, opinion of investigating officer is not admissible as evidence. Neither Criminal Procedure Code authorizes or allow investigating officer to form opinion about guilt or innocence of accused person which is purely judicial function performable by a court of law nor Qanun-e-Shahadat recognizes opinion of investigated officer as admissible in evidence. [PLD 2011 SC 350]
3. **Question of fact.** Question of fact accepted to be true need not to be proved. [2002 SCMR 1568]
4. **Withholding of best evidence.** Plaintiff not entering into witness box to prove his claim or bringing on file copies of document in proof of his claim either through his counsel or through his official witnesses, party withholding best evidence cannot rely on unchallenged statement of plaintiff's witnesses in proof of their claim. [1992 ALD 484]
5. **Conviction.** Conviction cannot be based on circumstantial evidence, in the absence of direct evidence. [PLJ 1999 Cr.C. Lah. 73]

19. Relevancy of facts forming part of same transaction. Facts which though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different time and places.

Illustrations

- (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so, shortly before after or it as to form part of the transaction, is are relevant fact.
- (b) A is accused of waging war against Pakistan by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.
- (c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.
- (d) The questions is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate person successively. Each delivery is a relevant facts.

NOTES

1. **"Hearsay".** Hearsay testimony admissible to elucidate and explain the connected circumstances. [2001 P.Cr.L.J. 1086]
 2. **Circumstantial evidence.** In a case of circumstantial evidence prosecution cannot claim conviction if a single doubt is created about any link of the circumstances. [2010 P.Cr.L.J. 1750]
- 20. Facts which are the occasion, cause or effect of facts in issue:** Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts, in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction are relevant.

Illustrations

- (a) The questions is, whether A robbed B.
The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third person, are relevant.
- (b) The question is, whether A murdered B.
Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.
The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

21. Motive, preparation and previous or subsequent conduct. (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceedings, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. The word "conduct" in this clause does not include statements unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other article of this Order.

Explanation 2. When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money, B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison. The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is whether a certain document is the will of A.

The facts that, not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate, that he consulted Advocates in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case on appearance favourable to himself, or that he destroyed or concealed evidence or prevented the presence or procured the absence of person who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is whether A robbed B.

The facts that, after B was robbed, C said in A's presence, "the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

(g) The question is whether A owes B rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, "I advise you not to trust A, for he owes B 10,000 rupees", and that A went away without making any answer are relevant facts.

(h) The question is, whether A committed crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this Article though it may be relevant as a dying declaration under Article 46 paragraph (1), or as corroborative evidence under Article 153.

(k) The question is whether A was robbed.

The fact that soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, he said had been robbed without making any complaint, is not relevant, as conduct under this Article, though it may be relevant as a dying declaration under Article 46 paragraph (1), or as corroborative evidence under Article 153.

NOTES

Scope. According to Article 21 of Qanun-e-Shahadat, 1984, the conduct of accused was a relevant fact. Failure of accused to furnish plausible explanation that on which point, time and place where the deceased got separated from him, had to be considered judicially, because accused could not be said to have discharged the onus, which lay upon him in view of the provisions of Article 21 of Qanun-e-Shahadat, 1984. Fact that accused ran away from the place of occurrence on hearing the voice of the complainant party amounted to intentional avoidance. Running away from the scene of occurrence could be considered a pointer to guilt of accused. Value of such conduct would depend upon facts and circumstances of each case. [2011 P.Cr.L.J. 1062]

22. Facts necessary to explain or introduce relevant facts.—Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libelous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after commission of the crime, A absconded from his house, is relevant under Article 21, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A.C. on leaving A's service, says to A "I am leaving you because B has made me a better offer". This statement is a relevant fact as explanatory of C's conduct which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, how is seen to give it to A's wife. B, says as he delivers it: "A says you are to hide this, B's statement is relevant as explanatory of a fact which is part of the transactions.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.