

conducted not in accordance with the provisions of the Cr.P.C. Identification by voice—A weak piece of evidence cannot throw light. [1992 SCMR 1047] Identification parade—Picking up of accused without detention—Illegal. [1996 P.Cr.L.J. 503, 287] Identification parade must be held as early as possible after the arrest of accused but not later than 15 days. [1997 P.Cr.L.J. 280] Identification parade—Delay not by itself sufficient to discard the testimony. [PLD 2001 S.C. 398] Procedure and guidelines stated. [2002 P.Cr.L.J. 518] Where the accused is not previously known to the witness and the witness has only a fleeting glimpse of the accused holding of the test identification parade becomes essential. [2003 YLR 110] Guidelines as to conduct of identification parade detailed by the High Court. [PLD 2008 Lah. 470] Holding that identification parade is not a check against false implication but is a good piece of evidence against genuine culprits [2014 YLR 1412]

3. Evidentiary value—Identification parade loses its sanctity when no role has been attributed to the accused during commission of offence. [2001 P.Cr.L.J. 1892] Such test has corroborative value and itself is not a substantive piece of evidence and can only corroborate statement of a witness if he deposes that he had seen the culprits on the date, time and place of incident and subsequently identified him to be the same culprit in identification test. [2005 YLR 954] No reliance can be placed on the identification parade unless description of the accused is given by the witness in his police statement. [PLD 2001 Quetta. 86] Substantive evidence of a witness is his statement in the Court, but the purpose of an identification test is to test that evidence and the safe rule is that the sworn testimony of a witness in Court as to identity of the accused who was stranger to the witness, requires corroboration which should be in the form of an earlier identification proceedings. [2009 SCMR 1810] Evidence of identification parade would lose its efficacy and cannot be relied upon if prosecution witnesses would not describe the role played by each of the accused at the time of commission of the offence. [2009 P.Cr.L.J. 997] Principle of identification is evidence of a witness given in the Court to the effect that as to how and under what circumstances he came to pick out a particular person and details on the part which that accused played in the crime and that the statement made by such a witness at the time of identification parade might be used to corroborate the evidence in Court as otherwise it would be hearsay except to the simple fact that the witness were in a position to show that he knew certain accused person by site. [1988 SCMR 557]

Qatl-e-amd. After arrest of accused, there identification parade is essential to be conducted in view of facts and circumstances of case. In case of absence of identification parade for identity, involvement of a convict accused in commission of offence is doubtful. [2015 P.Cr.L.J. 1364]

23. Things said or done by conspirator in reference to common design. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong anything said, done or written by any of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against Pakistan. The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Peshawar for a like object, D persuaded persons to join the conspiracy in Karachi, E published writings advocating the object in view at Multan, and F transmitted from Lahore to G at Kabul the money which C had collected at Peshawar and contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them and although the person by whom they were done were strangers to him and although they may have been taken place before he joined the conspiracy or after he left it.

24. When facts not otherwise relevant become relevant. Facts not otherwise relevant are relevant.

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

- (a) *the question is, whether A committed at crime a Peshawar on a certain day. The fact that, on that day, A was at Lahore is relevant. The fact that, near the time when the crimes was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.*
- (b) *The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C, or D, is relevant.*

25. **In suit for damages facts intending to enable Court to determine amount are relevant.** In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

26. **Facts relevant when right or custom is in question.** Where the question is as to the existence of any right or custom, the following facts are relevant:

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;
- (b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustrations

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

NOTES

Relevant facts must be proved through evidence for existing of any customs by the party alleging the same. [1998 MLD 1857]

27. **Facts showing existence of state of mind, or of body, or bodily feeling.** Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1. A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2. But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this Article, the previous conviction of such person shall also be a relevant fact.

Illustrations

- (a) *A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.*

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as showing to show that he knows each and all of the articles of which he was in possession to be stolen.

- (b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

- (c) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten, X, Y and Z, and that they had made complaints to B, are relevant.

- (d) The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

- (e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it are relevant, as showing that A did not intend to harm the reputation of B.

- (f) A is sued by B for fraudulently representing to B that C was solvent whereby B, being induced to trust C who was insolvent, suffered loss.

The fact that at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

- (g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

- (h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had had notice of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

- (i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

- (j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

- (k) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

- (l) The question is whether A's death was caused by poison. Statements made by A during his illness as to his symptoms are relevant facts.

- (m) The question is, what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

- (n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

- (o) A is tried for the murder of B by intentionally shooting him dead.

[Articles 28]

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.
The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

NOTES

Accused's version immediately after the occurrence is relevant. [1998 P.Cr.L.J. 216]

28. Facts bearing on question whether act was accidental or intentional. When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrence, in each of which the person doing the act was concerned, is relevant.

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from different insurance officers, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The fact that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant as showing that the delivery to B was not accidental.

29. Existence of course of business when relevant. When there is a question whether a particular act was done; the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations

(a) The question is, whether a particular letter was dispatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant.

(b) The question is, whether a particular letter reached A.

The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

ADMISSIONS

... oral or documentary which