

(e) A is accused of fraudulently having in his possession counterfeit, coin which he knew to be counterfeit. He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine. A may prove these facts for the reasons stated the last proceeding illustration.

NOTES

Accused admitting guilt. Confession of accused admitting the guilt of commission of offence can only be used against that accused and not against the co-accuse. Under Article 34 Qanun-e-Shahadat an admission should be proved by or on behalf of person making it and not against any person. [2011 YLR 355]

35. When oral admissions as to contents of documents are relevant. Oral admissions as to the contents of a documents are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

36. Admission in civil cases when relevant. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation. Nothing in this Article shall be taken to exempt any advocate from giving evidence of any matter of which he may be compelled to give evidence under Article 9.

NOTES

Despite the admission of the first defendant, when the other defendant has denied the execution and attestation of sale deed and claimed same to be the result of fraud and collusion between the first defendant and the plaintiff, it is incumbent upon the plaintiff to have prove the valid execution and attestation of the agreement to sell. [PLD 2005 Lah. 654]

37. Confessions caused by inducement, threat or promise, when irrelevant in criminal proceeding. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

NOTES

1. Confession. Article 37 of Qanun-e-Shahadat speaks as to when the confession caused by inducement, threat or promise is irrelevant in criminal proceeding. Article 38 relates to confession to police officer not to be proved as against a person accused of any offence. Article 39 says that no confession of accused while in custody of police would be proved as against such person. Article 40 is the only exception to Articles 37, 38, 39 which shows as to how much of information received from accused can be proved. Difference as found in Article 40 Qanun-e-Shahadat is that when any fact is deposed to by an accused before the investigating officer and is 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 confession or not as relating distinctly to the fact there by discovered can be proved against the accused, otherwise any information consequent upon a fact, if is discovered that would also qualify irrelevance and inadmissibility. [2011 YLR 543] Confession in order to be pregnant of probative value must be voluntary, obtained without duress and coercion. Main object of putting certain questions before recording confessional statement is to judge as to whether accused was confessing his guilt voluntarily or otherwise. [PLD 2009 Quetta 1] Confession being specie of admission is admissible under Law of

Evidence and can be used against the maker provided his statement is made at the time when his position was that of an accused person without any inducement, threat or promise and amounts to confession of his guilt. [1990 MLD 581] Oral confession can be proved by unimpeachable evidence of independent witnesses. [1989 P.Cr.L.J. 574] Extra-judicial confession made by accused not admissible. [1996 P.Cr.L.J. 287] Joint confession is no confession. [1998 MLD 299] When a Court believes confession to be voluntary and true it can convict the accused on its sole basis. [1998 MLD 944] Accused after confession given to police custody—Vitiates voluntary value. [1999 MLD 2646] Something related to the case recovered or any fact discovered in consequence of information conveyed by the accused—Admissible. [2001 P.Cr.L.J. 86] No confession made to police shall be proved as against a person accused of an offence. [2001 P.Cr.L.J. 1300]

2. Confession made while in police custody. Confession made while in police custody is not admissible. [2001 P.Cr.L.J. 86]

3. Confession caused by inducement. Court cannot declare confession irrelevant even if there is no material to suggest that the confession was not voluntary. [PLD 2002 Kar 530]

4. Extra judicial confession. A weak type of evidence cannot be relied upon without any independent corroboration, [2002 P.Cr.L.J. 1015] and rarely sufficient by itself to maintain conviction. [2002 P.Cr.L.J. 329] Extra judicial confession—A weak type of evidence cannot be made a basis for conviction without independent corroboration. [1999 P.Cr.L.J. 381] Where confession is found not to be true but voluntary or where there is a voluntary confession but untrue, such confession cannot be legally taken into consideration. [2002 P.Cr.L.J. 1424] A weak piece of evidence to convict an accused solely on its basis. Such evidence to be corroborated by cogent, convincing, impartial and independent evidence. [2004 P.Cr.L.J. 1906] Extra judicial confession made before a person not known to the alleged confessor who was neither a lambardar nor a B.D. member and was not in a position to help accused, cannot be relied upon for conviction. It being a weak type of evidence in order to form sole basis of conviction must be supported by exceptional circumstances to create a belief that same was really made and was true, must be received with utmost caution. [2005 P.Cr.L.J. 123] When a man of sound mind and mature age would make a judicial confession in ordinary simple language, after he had been duly warned, and the court was satisfied that it was voluntary, true and trustworthy, it could be made the foundation for conviction. Weight to be attached to a confession would depend on the facts and circumstances of each case. [2012 YLR 2395 (FSC)]

5. Delay in recording confession. Delay in recording confessional statement per se no ground to discard the same unless it is proved. [2002 P.Cr.L.J. 1402]

6. Judicial confession. Voluntariness and truthfulness of confession can be evaluated on the considerations viz the character and duration of custody; as to whether confessor was placed in a position to seek advice of his relatives or his lawyers; nature and quantum a proof which was available against confessor before he confessed and whether confessions were consistent with evidence which was available at the time when confession was made. Retracted confession is a very weak type of evidence and needs strong corroboration. [2002 P.Cr.L.J. 1631]

38. Confession to police officer not to be proved. No confession made to a police officer shall be proved as against a person accused of any offence.

NOTES

1. Confession. Confession before a person in authority and made against co-accused; or before police inadmissible. [2000 P.Cr.L.J. 1734] should not be given any weight. [2012 YLR 1161] Prohibition can be treated as applying only to confessions which are to be proved as case the accused. It does not apply to statements on which the accused himself wishes to rely in connection either with his conviction or his sentence. [2008 P.Cr.L.J. 366]

Confession made to police officer. Confession made to Police Officer, is not to be proved against accused, but it could be used against accused only to the extent of discovery of a new fact. Burden is on the prosecution to establish its case. [2011 P.Cr.L.J. 1819, 2000 P.Cr.L.J. 562]

It is settled principle of law that the disclosure before the police has no legal value under the provisions of Qanun-e-Shahadat Order, 1984, and in fact nothing has been established or discovered on the disclosure of accused. [2014 P.Cr.L.J. 206] Alleged confession of accused during police investigation while in custody has no evidentiary value and same cannot be used against him. [2014 YLR 877]

2. **Judicial confession.** Judicial confession, which is self-exculpatory cannot be used against other person. [1991 MLD 2001] Confession oral or in writing must be taken and considered as a whole including the inculpatory as well as the exculpatory part. Court is competent to believe one part and disbelieve the other. [1989 P.Cr.L.J. 574] Discrepancies in statements of prosecution witnesses and Court witnesses, corroborative value of confession would be lost and no reliance can be placed on written confession. [1989 P.Cr.L.J. 574]

3. **Extra judicial confession.** Is a weak type of evidence. [2013 YLR 2800]

4. **Retracted confession.** Unless the retracted confession is corroborated in material particulars conviction cannot be based on its strength alone. [1989 P.Cr.L.J. 574] Evidentiary value. [1992 SCMR 754] Retracted confession recorded in presence of other accused person is not admissible in evidence. [PLD 1989 S.C. 492] Retracted confession has to be accepted only if it is corroborated by clear cogent and independent evidence. [PLD 1995 S.C. 336] Confession before police inadmissible. [1996 P.Cr.L.J. 1603] Confession of an accused before any police officer of any rank—Inadmissible. [1998 P.Cr.L.J. 12] No evidence for the purpose of awarding punishment. [1998 P.Cr.L.J. 1941]

5. **Confession by accused against co-accused.** Such confession made by accused against co-accused was inadmissible (in evidence) in view of Art. 38 of Qanun-e-Shahadat, 1984. [2014 MLD 316]

39. Confession by accused while in custody of police not to be proved against him.

Subject to Article 40¹, no confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation. In this Article, "Magistrate" does not include the head of a village discharging magisterial functions unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1898 (Act V of 1898).

NOTES

1. **Confession—Evidentiary value.** Under Article 39 confession by accused of his guilt under custody of police which is not made in the presence of Magistrate, in the absence of any strong corroborative piece of evidence is of no legal value. [2008 YLR 990] Delay in recording may not be fatal if Court is satisfied that the retracted confession is not tutored. [2002 SCMR 620] Confession of accused made before the I.O. duly course to investigation is not admissible. [2015 P.Cr.L.J. 1448]

2. **Accused in custody—**Where extra-judicial confession is made by accused while he is in custody of police, same is not admissible in evidence. [1999 P.Cr.L.J. 1469] Statement given by accused in custody—Not admissible. [2001 MLD 807]

3. **Extra-judicial confession.** A very weak type of evidence, no conviction can be based without having strong corroboration thereof. [PLJ 2005 S.C. 75]

40. **How much of information received from accused may be proved.** When any fact is deposited to 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.

NOTES

1. **Article 40.** Article 37 of Qanun-e-Shahadat speaks as to when the confession caused by inducement, threat or promise is irrelevant in criminal proceeding. Article 38 relates to confession to police officer not to