

Plurality or information. Plurality of information received before discovery shall not necessary take any of these information out of Article 40 Qanun-e-Shahadat in a suitable case it is possible to ascribe to more than one accused the information, which lead to the discovery. [2009 SCMR 1440, A/R 1942 Cal. 593] In the absence of any explanation of the accused as to how he came to have knowledge of the dead body in the dis-used well, it may fairly be presumed that he was the person who had thrown the body in a dismembered state into the well. [1968 P. Cr.L.J. 221]

2. **Tape recorded conversation.** By now a well accepted form of "real evidence". A party may produce to prove a fact in issue. Tape records, charts, photographs, finger prints and tracker dogs are some instances of the real evidence. [PLD 2004 Lah 829]

3. **Police custody.** Police custody does not necessarily mean formal arrest. It also includes police surveillance and restriction on the movement of the person concerned by police. [PLJ 2005 Cr.C. (Quetta) 253] Admission under Art. 40 of Qanun-e-Shahadat, 1984 must lead to discovery of some new fact or result in recovery of property of the case. Mere statement about the facts already in knowledge was not admissible. Disclosure made by accused could not be used as an admission within the meaning of Art. 39 of Qanun-e-Shahadat, 1984 whereby, confession of accused in custody recorded by the Police not to prove as against him. [2014 P. Cr.L.J. 571]

4. **Recovery of narcotic.** Disclosure of information followed by recovery can be used against accused person within the meaning of Article 40. [2012 P. Cr.L.J. 109 (Bal.)] Article 40 is an exception to Article 38 and Article 39 of Qanun-e-Shahadat. This Article cannot be taken advantage of by the State by bail stage. To bring the case within the ambit of this Article it is incumbent upon the prosecution to establish that the information conveyed by accused actually led to the discovery of some facts and that such fact was not in the knowledge of the police and that it came to light first time upon confession of accused. [2012 P. Cr.L.J. 653 (Sindh)]

5. **Fact proved by subsequent fact.** Fact proved by subsequent fact, is admissible under Art. 40 of Qanun-e-Shahadat, 1984. [2014 P. Cr.L.J. 1308]

6. **Recovery of crime weapon at the disclosure of accused.** Recovery at the pointation or disclosure of accused was admissible under Article 40 of the Qanun-e-Shahadat Order, 1984, which only required that there should be statement/information by accused which should lead to discovery/recovery. Mere failure of the recovery, was not fatal for prosecution, nor could be taken as to disbelieve the direct evidence, if same was corroborated by medical evidence, and also would come as natural and confidence inspiring. [PLD 2015 Sindh 426]

41. Confession made after removal of impression caused by inducement threat or promise, relevant. If such a confession as is referred to in Article 37 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

NOTES

1. **Extra judicial confession**—If extra judicial confession is actuated by a promise, it is not admissible. [1990 P. Cr.L.J. 311] It is improper to base conviction solely on retracted extra-judicial confession. [1989 P. Cr.L.J. 574] Piece of evidence already in the knowledge of the party, Article 41 cannot be used. [PLD 2008 Kar. 603]

2. **Confession made before Police Officer**—Confession made before Police Officer or Investigation Officer cannot be used as a proper and legal evidence against the accused. [PLD 1989 Kar 572]

3. **Undertaking given by a party in Court of law**—Retraction. Undertaking given by a party in the Court of law has to be given sanctity, because on the one hand there is a legal estoppel, and on the other moral and ethical against it. Retraction from such undertaking cannot be allowed, because the same would result in distrust of the public litigants in the judiciary and would tarnish the sacred image of the judicial Officers before whom once a consent is given by making a statement on oath and later on withdrawn, therefore, it would become a mockery of law and facts. If such practice is allowed to prevail and is ignored by the Courts, it cannot add to the trust of public litigants in the judiciary and judicial

system, but would reflect on lack of trust in the judiciary, which cannot be permitted, because sanctity to the judicial proceedings has to be preserved at any cost. [2011 SCMR 1361] Confessional statement of accused was corroborated by the medical evidence the recovery of blood stains articles and positive report of serologist it was further corroborated by the discovery of golden locket and wring which was admissible as evidence under Article 40 of Qanun-e-Shahadat. [2012 P.Cr.L.J. 85] Court in order to judge the evidentiary value of a retracted confession is to see as to whether the same appeared to be voluntary, without any inducement, promise, duress or coercion and whether same appeared to be true. If it appeared to be voluntary and true, then it was supposed to be the best evidence against the maker, even if the same was retracted that could be made sole basis of conviction, without looking for corroboration. Confessional statement had to be judged by looking into the facts and circumstances of the case. [2012 P.Cr.L.J. 85; 2010 SCMR 457 relv.]

42. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him:

Provided that the provisions of this Article shall not apply to the trial of cases under the laws relating to the enforcement of *Hudood*.

43. Consideration of proved confession affecting person making it and others jointly under trial for same offence. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons is proved.

- (a) such confession shall be proof against the persons; making it; and
- (b) the Court may take into consideration such confession as circumstantial evidence against such other person.

Explanation. "Offence", as used in this Article, includes the abetment of, or attempt to commit, the offence.

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said, "B and I murdered C". The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said: "A and I murdered C".

This statement may not be taken into consideration by the Court against A as B is not being jointly tried.

NOTES

1. **Evidence of accomplice.** Evidence of an accomplice cannot be accepted on its face value for convicting a co-accused unless it is corroborated in material particulars by other reliable and cogent evidence. [2005 YLR 3258]

2. **Judicial confession**—Consideration of proved confession affecting person making it and others jointly under trial for same offence—Principle stated. [2000 P.Cr.L.J. 865] Judicial confession recorded during course of investigation duly certified can be used as proof against the person making it. [1990 P.Cr.L.J. 1878] A confession is a proof against person making it and the same is to be taken into consideration as circumstantial evidence against person who are being tried jointly for the same offence. [1992 P.Cr.L.J. 1910] Judicial confession alone cannot warrant conviction unless it is strongly corroborated by any other independent source or reliable piece of evidence. [2003 YLR 263] Confessional statement of an accused can only be used against other accused if some other evidence, direct or circumstantial, connects him with such crime. Confession made by one accused can be taken into consideration against another accused.