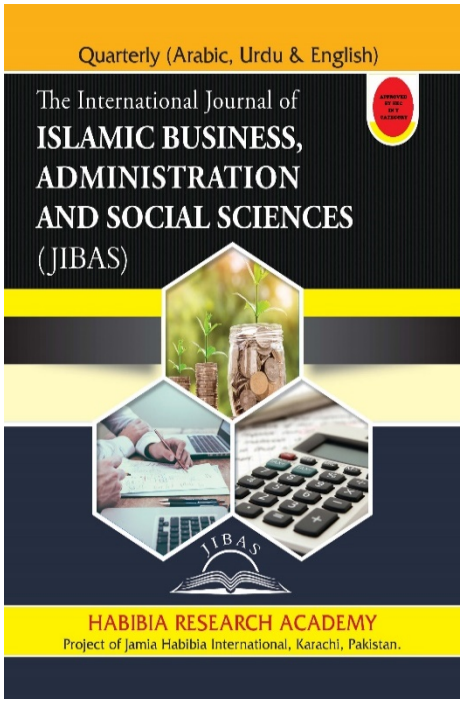
JIBAS (The International Journal of Islamic Business, Administration and Social Sciences) (Quarterly) Trilingual (Arabic, English, Urdu)
ISSN: APPLIED FOR (P) & (E)
Home Page: http://jibas.org
Approved by HEC in Y Category
Indexing: IRI (AIOU), Australian Islamic Library, Euro Pub.
PUBLISHER HABIBIA RESEARCH ACADEMY
Project of **JAMIA HABIBIA INTERNATIONAL,** Reg. No: KAR No. 2287 Societies Registration Act XXI of 1860 Govt. of Sindh, Pakistan.
Website: www.habibia.edu.pk,
This work is licensed under a Creative Commons Attribution 4.0 International License.



TOPIC:

REVOLUTIONIZING JUDICIAL EVIDENCE: THE INFLUENCE OF MODERN DEVICES ON CREDIBILITY AND JUDICIAL REVIEW IN PAKISTAN

AUTHORS:

1. *Aliya Saeed, Research Scholar PhD(LAW), School Of Law, University Of Karachi, Email ID: aaliasaeed@yahoo.com Orcid ID: https://orcid.org/0009-00001-3823-4123*
2. *Dr. Ghulam Dastagir, PhD Research Fellow, Department Of Criminology, University Of Karachi Email ID: Chanasar@gmail.com Orcid ID:https://orcid.org/0009-00008-1075-7812*
3. *Syed Fahad Ali, Research Scholar LLM, School of Law, University of Karachi, Email ID: Balochfahad90@hotmail.com Orcid ID:https://orcid.org/0009-00006-2605-9109*

How to Cite: *Saeed, Aliya, Ghulam Dastagir, and Syed Fahad Ali. 2024. "REVOLUTIONIZING JUDICIAL EVIDENCE: THE INFLUENCE OF MODERN DEVICES ON CREDIBILITY AND JUDICIAL REVIEW IN PAKISTAN" International Journal of Islamic Business, Administration and Social Sciences (JIBAS) 4 (2):53-66. URL: https://jibas.org/index.php/jibas/article/view/18.*

Vol. 4, No.2 || April –June 2024 || P. 53-66
Published online: 2024-05-30

QR. Code

APPROACH OF PAKISTANI COURTS REGARDING ADMISSIBILITY OF MODERN DEVICES OR TECHNIQUES IN EVIDENCE

Aliya Saeed, Dr. Ghulam Dastagir, Syed Fahad Ali,

ABSTRACT:

In contemporary legal systems worldwide, the incorporation of modern devices and techniques as evidence has become an essential component, reflecting a paradigm shift towards embracing technological advancements in the pursuit of justice. This paper delves into the nuanced approach adopted by Pakistani courts concerning the admissibility of modern devices and techniques as evidence. In examining the jurisprudence of Pakistani courts, it becomes evident that they recognize the significance of modern evidence-gathering methods. Through an analysis of case law and legal principles, this study sheds light on the evolving attitude of Pakistani courts towards incorporating evidence obtained through modern devices such as DNA profiling, CCTV footage, and electronic communications. The paper discusses landmark cases where Pakistani courts have grappled with the admissibility of evidence procured through modern techniques, outlining the criteria used to assess its reliability and relevance. It explores the legal framework governing the admission of such evidence, including the provisions of the Qanun-e-Shahadat Order, 1984, and relevant judicial precedents. Furthermore, the study examines the challenges faced by Pakistani courts in effectively integrating modern evidence into the legal system. Issues such as chain of custody, authentication, and the need for corroborating evidence are explored within the context of contemporary legal practice in Pakistan. Ultimately, this paper offers insights into the evolving landscape of evidence law in Pakistan, highlighting the growing importance of embracing modern devices and techniques in the pursuit of justice. It underscores the need for the judiciary to adapt to technological advancements while ensuring adherence to principles of fairness, reliability, and procedural integrity.

KEYWORDS: *Legal System, Modern Techniques, Evidence*

INTRODUCTION:

The modern devices and techniques in evidence are now globally welcomed. These modern devices and techniques are critical not only in internet-based crimes but also in cases ranging from terrorism to fraud. Every single case now requires some kind of modern technique in evidence. The Courts now in all over the world apply modern evidence so that cases can be decided promptly without following other sorts of evidence. These techniques include DNA testing, fingerprint analysis, cell tower data, polygraphic tests, fax, email, surveillance footage, tape recorder, video film, video cassettes, etc. But

one point is that these devices and techniques are often misused for wrongful gains and ulterior motives in courts. It has now become easier to fake up evidence by tampering with audio, video cassettes, and CDs in civil, criminal, and commercial litigations. These fabricated and fake claims are established to snub the rivals in the courts. This kind of behavior not only helps in destabilizing the social structure of society but also promotes immorality. Anyway, the positive use of these modern devices and their evidentiary value is now recognized by all world legal systems. This paper concludes by putting forward the main findings of the research and suggestions for the best use of these modern devices and techniques in evidence.

Statutory Framework in Pakistan:

Article 164 of Qanun-e-Shahadat 1984 states that in cases where evidence is available through modern devices or techniques, the court if it thinks appropriate may allow producing it. In other words, it is the discretion of the court to allow the production of evidence where it is available because of modern techniques and devices.

Modern Evidence and Pakistani Courts:

What the approach of Pakistani courts has been regarding the admissibility of modern devices and techniques in evidence, there are a series of cases. One of the earlier reported cases on the subject is Arif Hashwani v Sadruddin Hashwani (PLD 2007 Kar 448). In this case, the court decided that audio and video recordings are admissible as evidence. In Khanzada Inamullah khan v Mst. Zakia Qutab (PLD 1998 Peshawar 52), the same principle was reiterated. In the case of Dr. Mobashir Hassan v Federation of Pakistan (PLD 2010 SC 623), the court allowed producing electronic and print media reporting considering it a modern device within the ambit of Article 164 of Qanun-e-Shahadat 1984.

The court decided in the case Raja Muhammad Nasir v Mahmood Shaukat Bhatti (PLJ 2003 LHC 159) that computer technology being a modern technique is well within the ambit of Art. 164 of Qanun-e-Shahadat 1984.

The video film also comes within the sphere of the document, and it can be considered as a piece of documentary evidence. It was decided in the case Arshad Mahmood v Raja Muhammad Asghar (PLJ 2010 SC-AJ&K 54).

In Mir Tariq Mehmood Khetran v Returning Officer (2019 M L D 1335), the facts in brief are that the petitioner and respondent contested the general election from NA-259 Dera Bugti. The respondent Shahzain Bugti was declared to be a returned candidate by the Election Commission of Pakistan. He obtained 22787 votes, whereas, the petitioner Tariq Mehmood Khetran (runner-up) secured 21566 votes with a difference of 1221 votes. The petitioner challenged the election of the respondent mainly because a large number of bogus votes were cast by the respondent; the election was manipulated and procured by

him in connivance with the election staff; the request of the petitioner for recounting of the votes in view of a narrow margin was declined by the Returning Officer without any justification; massive rigging was committed at 29 Polling Stations, situated at Dera Bugti. The court determined "Article 164 of the Qanun-e-Shahadat Order, 1984 provides that Court may allow the production of any evidence that may become available through modern devices and in the peculiar circumstances of the instant case, the evidence of NADRA would provide a more authentic and accurate account of what had transpired at the polling stations and, thus would be more believable than the oral account of rigging, if at all that has taken place."

In the case Baber Ahmad v The state (2017 YLR 153), the petitioner and co-accused entered the jewelry shop duly clad in black Burqa impersonating them as lady customers after entering the shop they stabbed the salesman Altaf Hussain and after critically injuring him looted the ornaments and fled away. The injured Altaf was then removed to DHQ Hospital Gilgit where he remained under treatment. The court pronounced "the evidence of CC TV footage is concerned, after necessary amendment in Qanun-e-Shahadat and by insertion of Article-164 of Qanun-e-Shahadat, the evidence collected through modern devices is admissible as a valid piece of evidence. The recovery of incriminating articles on the pointation of the accused/petitioner and their later identification by the owner of the ill-fated shop is also a negative circumstance against the petitioner. There is a prima facie case against the petitioner/accused. Moreover, the case in hand is one of a heinous nature and could be termed as an offense against society. Grant of bail is discretion but when a case which affects on the whole of society, discretion is always exercised with caution and restraint as such types of people cannot and should not be let loose on the society to disturb the peace and tranquility of the public in general. The petitioner is not entitled to the concession of bail, which is accordingly declined."

In the case Zakir Hussain v The State (2017 PCr.L.J 757), the court observed "the prosecution has also relied on the evidence of a CD which contains the confessional statement of, the accused and how the gruesome murder of an innocent child of 3 years was committed. The CD was played before the accused and his counsel in trial Court and the trial Court was convinced that the narration of occurrence by the accused is natural. A CD was provided to the accused by the trial Court but we are afraid that the evidence of CD was neither taken seriously nor it was shattered nor even its admissibility was challenged under Article 164 of Qanun-e-Shahadat, 1984. The evidence procured through modern devices is admissible in evidence."

In Gulzar Hussain Awan v Akbar (1999 YLR 2250), the court noticed "It will be seen that Article 164 of Qanun-e-Shahadat, 1984 permits a Court to allow to be produced in

evidence all such material that may have become available because of modern devices or technics. In the matter of Collector of Customs and another v. Saeedur Rehman and others (PLD 1989 SC 249 at 257), it was held by a Full Bench of the Hon'ble Supreme Court that the production of video cassette in evidence is admissible and also conclusive and sufficient in some cases but not in all in view of Article 164 of Qanun-e-Shahadat. Even in the case of Zafar Iqbal and others v. Bashir Ahmed and another (PLD 1988 SC 109 at 114), it was held by the Hon'ble Supreme Court after reference to Article 164 of Qanun-e-Shahadat that undoubtedly an audio cassette could be made admissible in evidence. Earlier, to these cases even in the matter of the Islamic Republic of Pakistan v. Abdul Wali Khan, M.N.A. (PLD 1976 SC 57 at 113) production of tape-recorded speeches of some NAP leaders were held to be part of evidence, and the same reports were accepted. In view of these decisions, I do not see any reason why the evidence of tape-recorded conversation was not accepted by the learned Commissioner, and the question was left to the Court to decide the same."

In Syed Abdul Hameed v Syed Boo Ali Shah Zaidi (1999 MLD 2989), the court suggested, "In my view in order to obtain eviction of the rented premises for his own need a landlord has to approach the Court with clean hands and establish his bona fide need for the premises in good faith. As long as he can do so, the Court is not called upon to enquire into any other factual circumstances, etc. In these circumstances, I am of the clear opinion that the respondent does not need the premises i.e., shop for his personal bona fide need i.e., for the purpose of using it for his son's benefit. The appellant and his witnesses Abdul Rafiq have unequivocally stated in their affidavits-in-evidence that the respondent had declared in front of the other tenants and neighbors his intention to rent out the shop in question after obtaining its possession at enhanced pugree of Rs,100,000 and had offered him the same at Rs,80,000 statements had gone unrebutted. So, I have also seen the video recording of the negotiations between the parties to this effect which piece of evidence is admissible under Article 164 of the Qanun-e-Shahadat Ordinance. In the circumstances, this Appeal is allowed with no order as to costs."

In Mst. Zubeda Bibi **v** The State (2000 Y L R 2088), the court rejected the bail of the petitioner observing "Another piece of evidence being relied upon by the prosecution against the present petitioner is in the shape of an audio cassette wherein during a telephonic conversation the present petitioner is allegedly requiring her co-accused to murder Muhammad Afzal Taj deceased."

In the case of Kh. Ijaz Ahmad and Others v D.R.O. and Others (2001 YLR 448), the court determined "so far as the video film is concerned there is nothing in the order of learned R.O. as to who provided him with the same. I may refer here to the same judgment of

Abdul Wali Khan to state that in the said case tape recorders of the speeches of the NAP leaders were admitted only when the Officer recording the speeches was produced. He produced the tape. The 8 tape was run in open Court and the Officer identified the voices of persons speaking. What to speak of the production of any such person or his affidavit that had made the recording we do not even know who that person is. The video film of course seen by the learned R.O in isolation was not a piece of legal evidence and could not have been relied upon by the learned R.O.

as to the photographs. Here again, the order of learned R.O. Is silent as to who provided him photographs who had taken photographs who had developed the photographs and where are the negatives. Here again, photographs could not have been admitted in the evidence without the evidence of the alleged photographer and the developer of the film concerning the negatives thereof. It will thus be seen that the impugned orders declaring the petitioners to be of bad character or bad repute are not based on any evidence."

In Salman Ahmad Khan **v** Judge Family Court, Multan and Others (P L D 2017 Lahore 698), the court was of the view that "the evidence received through modern devices is admissible under Article 164 of the Qanun-e-Shahadat Order, 1984. Although the Qanun-e-Shahadat Order is not strictly applicable to family courts the family court is not barred from receiving such evidence under any provision of law. Moreover, the technicalities should not stand in the way of justice."

In the case Mir Sahib Khan v Zareen Khan and 3 Others (2009 YLR 1849), the court remarked "the alleged delay in lodging F.I.R, has been satisfactorily explained and statements of eye-witnesses having been duly corroborated by medical evidence, circumstances evidence in the shape of recoveries, Forensic Science Laboratory report, physical features of the spot and abscondence of the convict-appellant has proved the guilt of convict-appellant to the hilt and he was rightly convicted."

In Raja Muhammad Asghar and Another **v** The State and Another (2006 Y L R 1599), the court declared "under Article 164 of Qanun-e-Shahadat Order, the Court can allow and use any evidence available through modern devices and techniques, but it is only a circumstance to lend support to the reliable evidence and cannot hold the position of conclusive proof. The video cassette in the instant case, as stated earlier, does not even provide any supportive evidence to the prosecution tale."

In Qurban Ali and Another **v** The State (2007 P Cr. L J 675), the court observed "the prosecution has produced E-mails Exhs.12, 13 and 14 sent by David Brown to Mr. Memon of C.P.L.C.. Neither said Memon nor David Brown has been examined to prove the said E-mails. An E-mail address can be created by anybody under any name; therefore, the person who created the E-mail address is required to be examined in Court to prove its

authenticity otherwise it will adversely affect the authenticity of the E-mail. Further, E-mail must be mailed through a computer by using the internet, which can be connected through a telephone. The E-mail could have been traced through the telephone number about the identity of the person who sent the E-mail. The prosecution did not make any efforts to prove the said E-mails by law. As such, they cannot be relied upon, hence the same are discarded."

In the case Umair Ashraf **v** The State (2008 M L D 1442), the remarks of the court were " the contention of the learned counsel for the applicant is that the CD which has been allowed to be produced in evidence consisting of the confession of the accused before the police has no evidentiary value. This contention can be raised at the time of arguments but at the moment evidence that has been collected by the prosecution by way of modern device cannot be disallowed. In light of the above, there is no substance in the contentions of the learned counsel for the applicant as such criminal revision stands dismissed."

In Ammar Yasir Ali **v** The State (2013 P Cr. L J 783), the court stated "However, mere producing CCTV video as a piece of evidence and its watching in open court is not sufficient to be relied upon unless and until corroborated and proved to be genuine. As proof of the genuineness of such CCTV video, it was incumbent upon the prosecution to examine the person who recorded the video to testify the same, which requirement the prosecution has failed to fulfill even failed to point out the source of providing the CCTV video, the Investigating Officer who received the CCTV video in his evidence has categorically stated that during the investigation he received CCTV movie from a person who did not want to disclose his name or identity being a man of some surveillance. During cross-examination, he has further admitted that nothing was visible and identifiable in the video as such the CCTV is not a reliable piece of evidence."

In the case Saifal v The State (2013 P Cr. L.J 1082), the court affirmed that "the record of the mobile company and evidence of its representative is admissible in terms of Article 164 of Qanun-e-Shahadat Order which provides that the court may allow the production of any evidence that may have become available because of modern devices and techniques."

In Shahid Zafar And Others **v** The State (2015 P Cr. L J 628), the court announced "it is evident in DVD cassette, produced by SIO Muhammad Mubin, and uttered words ("Maro" "Maro"). Evidence in DVD cassette/video recording produced in trial Court is admissible in evidence under Article 164 of Qanun-e-Shahadat Order 1984."

In the case Akhtar Ali Ghowada **v** The State(2015 M L D 1661), the court was of the view that "evidence procured through modern device like CCTV has been made admissible under Article 164 of the Qanun-e-Shahadat Order, 1984 but at bail stage tentative

assessment of entire evidence is to be made by the Court. CCTV evidence certainly will be taken into consideration by the trial Court in accordance with law."

The judgment in the case Muhammad Sohail Alias Samma v State (**[**PLJ 2019 Cr.C. 599**),** disposed of Criminal Appeal filed by appellants Muhammad Sohail alias Samma and Mumtaz Bibi (against their conviction and sentence) and Murder Reference forwarded by the learned trial Court for confirmation of the death sentence awarded to appellant Muhammad Sohail alias Samma or otherwise. Both the appellants faced trial in a private complaint filed u/S. 302/34, PPC as well as case FIR No, 198/2014 dated 10.04.2014 registered u/S. 302/34, PPC' at Police Station Zafarwal, District Narowal. As both matters have arisen out of the same judgment dated 30.01.2016 passed by the learned Addl. Sessions judge, Zafarwal, according to which appellants were convicted and sentenced as under:

i. **Appellant Muhammad Sohail alias Samma Under Section 302(b), PPC** awarded a death sentence as *Ta'zir*. He was also directed to pay compensation of Rs, 5, 00,000/- to the legal heirs of deceased Sana Ullah Rabbani under Section 544-A, Cr.P.C., and in default thereof, he was ordered to further undergo simple imprisonment for six months.

ii. **Appellant Mumtaz Bibi Under Section 302(b) read with Section 34, PPC** awarded imprisonment of life. She was also directed to pay compensation of Rs, 5, 00,000/- to the legal heirs of deceased Sana Ullah Rabbani under Section 544-A, Cr.P.C., and in default thereof, she was ordered to further undergo simple imprisonment for six months.

The facts of the case narrated by the complainant, Muhammad Afzal were "*I am a resident of Mohalla Havailian, Dhamthal, and a shopkeeper by profession. On 10-04-14 at about 12:30 PM, I along with my wife Mst. Shahida Parveen and my son Sana Ullah Rubbani aged about 4/5 years were present in our shop and Sana Ullah was playing there in the shop. In the meantime, Sohail son of Tariq caste Malik, r/o Dhamthal who is a resident of the same vicinity came to my shop and bought three cigarettes of Capstan brand. Thereafter I came back to my house and after some time, my wife came there and asked about Sana Ullah and I told her that Sana Ullah did not come home, for which we became worried and started searching for him. At about 3:00 pm, Sammer son of Ishaq, Navid son of Muhammad Akram, and Shakeel son of Muhammad Aslam who were also searching for Sana Ullah, entered a deserted house situated in front of his house and there found the dead body of my son Sana Ullah lying in the toilet. They made noise and I along with my wife and other inhabitants of Mohalla came to the scene and saw my son being tied by mouth and hands in a dead position and the fire in extinguished form was available nearby. At that moment, Muhammad Iqbal son of Muhammad Ali, and Zahoor Ahmad*

alias Hazoor Hussain son of Muhammad Iqbal r/o Dhamthal told me that they saw Sohail and Zohaib sons of Tariq Malik and Mst. Mumtaz Bibi widow of Tariq along with my son while entering the house of Sohail etc. Sohail, Zohaib, and Mumtaz Bibi have killed my son by taking him along with them by tying his hands and mouth.

The motive behind the occurrence is that a few days before, there was a quarrel with them for not giving edible items on credit, and due to that Sohail and his mother threatened to kill, and for the said reason my son had been murdered by the above said accused."

*Through this judgment, the court decided "*There is another piece of evidence in the shape of a DNA test report available with the prosecution and has paramount importance in this case. Soon after the occurrence, Rehmat Ali S.I. visited the crime scene on 10-04.2014 and found three pieces of cigarettes Capstan brand along with other things and secured the same through recovery memo Ex-PC and on pointing out the PWs prepared rough site plan Ex.CW-4/H. They also confirmed that he had recorded the statement of Muhammad Iqbal and Zahoor Hussain alias Hazoor Hussain the above-mentioned witnesses of the last seen u/S. 161 Cr.P.C. on the same day at the place of occurrence. According to report of Punjab Forensic Science Agency Ex-CW/P, parcels containing the pieces of three cigarettes were received by the said Agency on 14.04.2014, whereas the appellants were arrested in the instant case on 16.04.2014 by the police, which factum also confirmed by Rehmat Ali SI, while deposing as CW-4 before the learned trial Court and on the same day i.e., 16.04.2014, all the three accused were produced before the Punjab Forensic Science Agency and their buccal swabs were taken, the result and conclusion of which as per report is as under:

"The DNA profile obtained from items # 1.1, 1.2, and 1.3 (Cigarette butts) matches the DNA, profile of Sohail Ahmad (item # S1). In the absence of an identical twin, Sohail Ahmad (item #S1) is the source of the DNA obtained from items # 1.1, 1.2, and 1.3 (Cigarette butts) to a reasonable degree of scientific certainty. Zohaib Ahmad (item # S2) and Mumtaz Bibi (item # S2) are eliminated as being the source of DNA obtained from items # 1.1, 1.2, and 1.3 (Cigarette butts)."

It shows that pieces of cigarettes were sent to the office of the Punjab Forensic Science Agency before the arrest of the appellants and after arrest, their buccal swabs were procured by the official of said agency and there is no doubt in our mind regarding securing of pieces of Cigarette from the place of occurrence, preserving it in a sealed parcel and transmitted it to the office of Punjab Forensic Science Agency and there is not an iota of doubt in our mind that same were tampered with at any stage and the positive report of buccal swabs found matched with the pieces of said cigarette secured from the place of occurrence. So, in our view, the chain of custody from generation of samples to

their deposit with the Punjab Forensic Science Agency and up to its presentation in the Court is established beyond any doubt.

Conducting of DNA test to prove the truthfulness of allegation of crime is not new. By using DNA technology, the Courts are in a proper position to reach a just conclusion on a disputed fact. Initially, the Court often excluded it from the evidence and did not pass the conviction based on it, as the Evidence Act, of 1872 had no provision in this regard. However, Article 164 of the Qarnun-e¬Shahadat Order, 1984, has resolved this anomaly, wherein the evidence available because of modern devices, etc. has been made admissible in Courts of law. In a recent enactment through Act IV of 2017 dated 16.02.2017, a proviso has been added in Article 164 of the Qanun-e-Shahadat Order, 1984, which reads as under:

"Provided that conviction based on modern derives or techniques may be lawful"

Sub-section (3) of Section 9 of the Punjab Forensic Science Agency Act, 2007 reads as under:

"(3) *A person appointed in the Agency as an expert shall be deemed as an expert appointed under Section 510 of the Code and a person Specially skilled in a forensic material under Article 59 of the Qanun-e- Shahadat Order, 1984 (X of 1984)."*

A perusal of the above-mentioned provision shows that the report of the Punjab Forensic Science Agency regarding the DNA is per se an admissible piece of evidence u/S. 510 of Cr.P.C. In this regard, we are guided by the dictum laid down in the celebrated judgment passed by the august Supreme Court of Pakistan in the case of "*Salman Akram Raja and another v. Government of Punjab through Chief Secretary, and others"* reported in (2013 SCMR 203), wherein it is observed that:

"In this regard, it is to be noted that the administration of DNA tests to determine the truthfulness of the allegation of crime is not new. Initially, the DNA was not so reliable; therefore, the Courts often excluded it from the evidence and did not base the conviction on it. However, in the last decade or so DNA technology has significantly advanced and the introduction of DNA profiling has revolutionized forensic science. Now DNA test provides the Courts a means of identifying perpetrators with a high degree of confidence. By using DNA technology, the Courts are in a better position to reach a conclusion whereby convicting the real culprits and excluding potential suspects as well as exonerating wrongfully involved accused. Reference may be made to the case of United States v. Yee (134 F.R.D. 161), wherein conviction was recorded based on DNA test results."

In criminal cases, the identity of the actual accused is an element of primary importance. A lot of pre-meditation, improvements, and tactical delays on the part of the complainant party can be checked if scientific analysis is resorted to. Apart from saving time and ensuring quick disposal of cases, many genuine complaints remain unresolved due to stereotypical methods of investigation. So we find that Article 164 of the Qanun-e-

Shahadat Order, 1984 has resolved the problem and the evidence based on modern devices and techniques has been made admissible.

Under the circumstances, we hold that these days science and technology have so much importance, and the identity of a man cannot be concealed.

*"In India, the DNA report was admissible in evidence under Section 45 (*Opinion of Expert*) of the* Evidence Act, 1872 *(Article 59 of QSO). Now DNA testing has obtained legislative recognition through the Code of Criminal Procedure (Amendment) Act, 2005 by the addition of Sections 53 and 53A, which expanded the scope of the term "examination" to* ***include DNA profiling****. The Indian Superior Courts however elaborated the evidentiary value of the DNA report in criminal cases as*

a) The Supreme Court of India in the case of Mukeshanr. u. State for NCT of Delhi & Ors (2017 AIR (SC) 2161) held:

"406 ……..DNA profiles generated from the clothes of the accused recovered at their behest consistent with that of the victim and unimpeachable evidence incriminating the accused in the occurrence. As submitted by the prosecution, there is no plausible explanation from the accused as to the matching of the DNA profile of the victim with that of the DNA profile generated from the clothes of the accused.

419 ……DNA Analysis Report, as provided by PW-45 is a vital piece of evidence connecting the accused with the crime:

449 ……. The DNA report and the findings thereon, being scientifically accurate establish the link involving the accused persons in the incident,"

b) The Supreme Court of India in the case of Kamti Devi v.Poshi Ram. (2001) 5 SCC 311 held:

".11..... The method of proving identity through DNA profiling was scientific and accurate.

c) Dehli High Court in the case of the state through reference v. Ram Sinah and other (2014(4) CCR174) held.

"345. In the light of the above, we conclude that to prove the authenticity and correctness of DNA analysis, the prosecution must establish the following:

I. The process of generation of DNA profiles from the samples taken from the victims and the accused persons individually.

II. The chain of custody from the generation of the samples to their deposit with the CFSL Laboratory and up to its presentation in the Court must be established beyond any doubt. That is to say, to prove the DNA matching, it is necessary used establish that the various exhibits that were used for DNA analysis were received by the expert/laboratory without any tampering. In other words, there was no manipulation of the exhibits from the time of their generation till the time they were received for forensic examination and thereafter till the time, the complete record of biological evidence is presented in the Court.

III. The process of matching the DNA through the concerned expert, thus linking the accused with the victims, the scene of the crime, the dumping spot, and the weapons of offense."

Deoxyribonucleic Acid Test, commonly known as DNA is almost conclusive proof of one's identity. In our opinion, after receipt of the report of DNA Lest as discussed above, the controversy should have been resolved and we have entertained no doubt in our mind regarding the culpability of appellant Muhammad Sohail alias Samma.

We have also noticed another aspect of the case which is available in the shape of medical evidence. CW-5 Dr. Taj Muhammad while appearing before the learned trial Court has given a final opinion in the following words:

"In the light of the above findings, the cause of death in this case is asphyxia by strangulation and sedation by tranquilizers (lorazepam)."

For what has been discussed above, we hold that the prosecution has successfully proved its case against the appellant Muhammad Sohail alias Samma by producing cogent, reliable, and trustworthy evidence based on last seen, medical evidence and DNA report, which fully connects him in the commission of an alleged crime and he was also found guilty by the Investigating Officer during the investigation. So, it is established on record that he being the sole perpetrator committed the gruesome act of killing an innocent child aged about 4/5 years. So, Criminal Appeal No., 323 of 2016 is dismissed to the extent of appellant Muhammad Sohail alias Samma and his conviction u/S. 302(b), PPC is maintained. However, as far as the quantum of sentence awarded to him is concerned, we have observed some extenuating circumstances in his case because the prosecution has specifically introduced the motive based on which appellants have committed the alleged crime but we found nothing except the statement of the complainant regarding the previous quarrel between the parties, there is no other evidence available in this regard. Even in his statement, the complainant has not given any time, date, and place of occurrence, and also not explained whether the said incident was reported to police or not. Therefore, we are of the view that to meet the ends of justice for the safe dispensation of criminal justice, the sentence of death awarded by the learned trial Court to the appellant Muhammad Sohail alias Samma is not justified. Guidance in this regard is sought from the ratio decidendi laid down by the Hon'ble Supreme Court of Pakistan in the case of "Muhammad Riaz and another vs. The State and another" (2007 SCMR 1413), wherein their Lordships have held as under:

"No doubt the normal penalty for an act of commission of *Qatl-i¬Amd* provided under law is death, but since life imprisonment also being a legal sentence for such offense must be kept in mind wherever the facts and circumstances warrant mitigation of sentence because no hard and fast rule can be applied in every case."

Hence, the death sentence awarded by the learned trial Court to the appellant Muhammad Sohail alias Samma is converted into life imprisonment and as a result thereof, Murder Reference No., 57 of 2016 is answered in NEGATIVE and his death sentence is NOT CONFIRMED. The benefit of Section 382-B, Cr.P.C. is also extended to him.

As far as, the case of appellant Mst. Mumtaz Bibi is concerned, she is the mother of the main accused/appellant Muhammad Sohail alias Samma and the only incriminating material available to the prosecution against her is in the shape of last-seen evidence.

Though we have fully believed the evidence of last seen as mentioned above in the case of the present appellant, no corroboration of last seen is available, so, by extending the benefit of the doubt to the appellant Mst. Mumtaz Bibi, we accept Criminal Appeal No., 323 of 2016 to her extent and she is acquitted of the charge. She is in jail, so, she is ordered to be released forthwith if not required in any other criminal case."

In Muhammad Shahid Sahil v The State(PLD 2010 FSC 215), rape was committed by the petitioner. As a result, the victim conceived and gave birth to a baby girl. The victim moved an application in the court for DNA to prove the daughter was of the petitioner. The court accepted the application bringing it within the sphere of Article 164 of Qanun-e-Shahadat 1984.

In Salman Akram Raja v Government of Punjab (2013 SCMR 203), the Supreme Court of Pakistan directed that DNA tests be conducted in all sexual offenses and that DNA samples be preserved as well.

In Zulfiqar Ali v The State (2012 YLR 847), an unmarried girl was sexually assaulted twice by her father before marriage, the court convicted the accused of rape relying on the report of DNA.

In Muhammad Ashfaq v The State (2014 PCrLJ 1531), a person accused of rape and murder was acquitted on the ground of non-procurement of DNA evidence by the relevant investigating agency.

Conclusion:

In the judicial system of Pakistan, it has always been tried to apply evidence available via modern devices and techniques so that the requirements of justice can be fulfilled. In some cases, corroboration was required for such kind of evidence and in some cases plea of corroboration was rejected. The application of this sort of evidence is common in all modern judicial systems of the world. However, Pakistan is far behind regarding the applicability of such evidence because of the insufficiency of technical skill and requisite capacity. Due to the paucity of workforce and scientific substratum, such valuable evidence is often lost. In this regard, capacity building of the investigating agencies should be enhanced. The judiciary in Pakistan should encourage the investigating agencies to present modern evidence so that the cases can promptly be decided. The courses regarding the applicability of modern evidence must be made part of the training of the judges in judicial academies. It is now the need of the hour that proper scientific infrastructure should be developed in Pakistan for the preservation of modern evidence failing which would result in the fiasco of justice

References:

1. Akhtar Ali Ghowada v The State, 2015 MLD 1661.
2. Ammar Yasir Ali v The State, 2013 P Cr. L J 783.
3. Arif Hashwani v Sadruddin Hashwani, PLD 2007 Kar 448.
4. Arshad Mahmood v Raja Muhammad Asghar, PLJ 2010 SC-AJ&K 54.
5. Baber Ahmad v The State, 2017 YLR 153.

6. Dr. Mobashir Hassan v Federation of Pakistan, PLD 2010 SC 623.
7. Gulzar Hussain Awan v Akbar, 1999 YLR 2250.
8. Kamti Devi v. Poshi Ram, (2001) 5 SCC 311.
9. Kh. Ijaz Ahmad and Others v D.R.O. and Others, 2001 YLR 448.
10. Khanzada Inamullah Khan v Mst. Zakia Qutab, PLD 1998 Peshawar 52.
11. Mir Sahib Khan v Zareen Khan and 3 Others, 2009 YLR 1849.
12. Mir Tariq Mehmood Khetran v Returning Officer, 2019 M L D 1335.
13. Mst. Zubeda Bibi v The State, 2000 YLR 2088.
14. Muhammad Ashfaq v. The State, 2014 PCrLJ 1531.
15. Muhammad Shahid Sahil v. The State, PLD 2010 FSC 215.
16. Muhammad Sohail Alias Samma v State, PLJ 2019 Cr.C. 599.
17. Mukesh v. State for NCT of Delhi & Ors, 2017 AIR (SC) 2161.
18. Qurban Ali and Another v The State, 2007 P Cr. L J 675.
19. Raja Muhammad Asghar and Another v The State and Another, 2006 YLR 1599.
20. Raja Muhammad Nasir v Mahmood Shaukat Bhatti, PLJ 2003 LHC 159.
21. Saifal v The State, 2013 P Cr.L.J 1082.
22. Salman Ahmad Khan v Judge Family Court, Multan and Others, PLD 2017 Lahore 698.
23. Salman Akram Raja v. Government of Punjab, 2013 SCMR 203.
24. Shahid Zafar And Others v The State, 2015 P Cr. L J 628.
25. State through reference v. Ram Sinah and others, 2014(4) CCR 174.
26. Syed Abdul Hameed v Syed Boo Ali Shah Zaidi, 1999 MLD 2989.
27. Umair Ashraf v The State, 2008 MLD 1442.
28. Zakir Hussain v The State, 2017 PCr.L.J 757.
29. Zulfiqar Ali v. The State, 2012 YLR 847.

This work is licensed under a Creative Commons Attribution 4.0 International License.