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Role of Forensic Evidence in Pre-Trial Investigation and Benefit of Doubt in Murder-Cases in Pakistan

Atika Lohani * Aamir Abbas †

Abstract: *This article discusses some murder trials in Pakistan during the year 2021 and underscores the evidence for the lack of pre-trial investigation and preparation of prosecution case as observed in such cases; and the impact of such lack of preparation of the case on the prosecution's interest in the justice system. In order to underpin the argument of this paper, 21 murder cases are chosen randomly from the year 2021 to analyse the judicial policy in acquitting the accused. In doing so, this paper notes the trends of judicial policy for their preservation of principles requiring proof of prosecution's case beyond a reasonable doubt, and the presumption of innocence of the accused person, and the role of forensic evidence in such cases.*

Key Words: Forensic Evidence, Forensic Report, Pre-Trial Investigation, Criminal Justice

Introduction

The adversarial legal system is famous for two rules of admissibility of evidence, which are the protection of innocence (Ward 2020), and proof of case beyond a reasonable doubt in criminal cases, and preponderance of burden of proof in civil cases (Keith 1990). The presumption of innocence and the benefit of the doubt in favour of the innocent are also supported by numerous legal principles including natural justice, the rule of law, due process of law and a fair trial (Perrin 1995). However, the preparation of a case in the pre-trial investigation in order to collect all the possible evidence is also an important factor for adversarial systems where both accused and victim are to be considered as a part of the triangle in the criminal administration of justice (Ishaq 2014). On the one hand, the presumption of innocence and benefit of the doubt is important to exonerate an innocently accused person (Ward 2020). On the other end, the pre-trial investigation benefits the victim's interest in justice for the wrongs committed against the victim (Freer 2020). For an adversarial system, these two aspects of interests of the accused and victims should not be neglected so that the public should not lose its trust and confidence in the criminal justice system (Perrin 1995).

Methodology

This is a qualitative research based on doctrinal research for law. The research is conducted through inductive and deductive content analysis of primary and secondary resources available as legislation, commentaries, research papers, journal articles, and judicial decisions on the topic.

Literature Review

In Pakistan, the legal framework for acceptance or non-acceptance of forensic/scientific and technological evidence is primarily provided under Article 164 of the law of evidence (Qanun-e-Shahadat Ordinance 1985) which accepts the modern technologies and scientific evidence as a mode of evidence in a criminal trial (Cheema 2016). Section 510 of Cr. P.C (Criminal Procedure Code (V of 1898) provides for the court expert either appointed by the government or called by the Court and this section provides for the admissibility of a report of such expert as per se evidence without any specific requirement of cross-examination of the expert who presented that report (Hamza and Kamil 2013). That means the report of the expert under section 510 (Criminal Procedure Code (V of 1898) is acceptable as primary evidence. However, court may call such an expert to the court for cross-examination. Article 59 of QSO (Qanun-e-Shahadat Ordinance 1985), however, provides for the admissibility of expert evidence and there is a

* Assistant Professor, Law College, University of Sargodha, Sargodha, Punjab, Pakistan.
Email: dratikalohani@gmail.com
† Assistant Professor, Law College, Government College University, Faisalabad, Punjab, Pakistan.

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mechanism of cross-examination of such expert when providing for the report as an expert in a criminal trial (Farani 2013). In this regard, the Investigation for Fair Trial Act of 2013 is also noteworthy in this that it provides for the report of the expert as per se evidence under section 510 Cr. P.C (Criminal Procedure Code (V of 1898). The provisions in PFSAA (Punjab Forensic Science Agency Act 2007) are also significant where section 9 and 10 provides for the experts working under PFSAA (Punjab Forensic Science Agency Act 2007) to be considered as experts appointed under section 510 Cr. P.C (Criminal Procedure Code (V of 1898) or under article 59 of QSO (Qanun-e-Shahadat Ordinance 1985) (Farooq and Waheed 2013). Chapter XXV of Police Rules, 1934 provides for the protocol for the police to consider while preparing a case for investigation, which is regarded as insufficient in that they do not consider protocol as introduced and prepared carefully based on expertise under PFSAA (Punjab Forensic Science Agency Act 2007) protocols to preserve crime scene and collection of material for scientific examination (Mangi and Khan 2021).

In this regard, this paper suggests engaging in a proactive role of courts (Roberts 2015) and the judicial policy in considering the role of forensic evidence and emphasizes the preparation for pre-trial investigation with a view to making the prosecution's case beyond a reasonable doubt. Preparation of the prosecution's case (Strasser 2014) and collection of evidence in all its forms, scientific, technological, oral, documentary, ocular and so on, will help the court to evaluate the possibility or impossibility of reasonable doubt in an effective manner, which may be appreciated to win the trust of the public in the criminal justice system of Pakistan (Freer 2020).

In order to highlight this argument and its practical and applied importance, this article takes into consideration 21 murder cases decided in the year 2021 in the Superior Courts of Pakistan, which are selected randomly for the purpose of the research analysis. The analysis will demonstrate that mostly the scientific evidence is treated as corroborative evidence while convicting an accused, and in the absence of other corroborative evidence, however, mere scientific or forensic evidence is not evaluated as sufficient evidence to convict the accused. That means the benefit of the doubt is given to the accused even if scientific evidence linking him to the occurrence is available if there is an absence of ocular evidence. However, in both situations, firstly, deciding on the exoneration of the accused of doubt in the prosecution's case, where the ocular or more reliable evidence is absent and secondly, while deciding on a lesser punishment in converting the death penalty into life imprisonment, the court has a trend of mentioning the absence of forensic evidence or delay in processing the forensic evidence. In doing so, it decides the benefit in favour of the accused of the prosecution's doubtful case.

Analysis of the Case Law relating to Murder Trials in 2021

The perusal of these cases suggests that the murder trial is challenged in Superior Courts mostly as an application for leave to appeal for the reappraisal of evidence. In State vs. Ahmad Omar Sheikh (2021 *SCMR* 873 *Supreme Court*), the appeals challenging the conviction of the accused and acquittal of co-accused were heard. In the trial court, the charge of kidnapping and murder of a foreign journalist was considered under 302 and 365-A (Pakistan Penal Code (XLV of 1860) read with sec. 6(a) and 7 of the Anti-Terrorism Act 1997. The Trial Court convicted the accused and co-accused and the accused was sentenced to death, while the co-accused persons were sentenced to imprisonment for life with a fine. In the first appeal, the High Court altered the convictions of the accused and sentenced him to 7 years imprisonment, whereas the co-accused were acquitted of all charges. In the appeal; that lie in the Supreme Court against the decision of the High Court, the court viewed that the prosecution was failed to prove any conspiracy between the accused and the co-accused in a hotel room in the presence of an alleged prosecution witness, and the identification of accused by the witness in the court was of no value because the accused have been brought in open courtroom face making it no difficult for the witness to identify him from his courtroom appearances. The delay in the crime report, which was lodged twelve days after the occurrence, and non-production of a laptop/computer during the investigation process, and the lack of forensic report in this regard for the received threatening email after the kidnapping of the deceased; all were the weakening factors for prosecution's case. Moreover, the copy of a video clip or tape showing the beheading of the deceased in the absence of its original video; which was withheld by the witness who received it, gives rise to an adverse presumption in the absence of a forensic report for such clip in that may be the video clip was prepared in a laboratory or some film studio. The date and time of arrest of the accused and co-accused were also doubtful and the delay in recording the judicial confession reveals that retraction of such confession is because of the impact of police torture and fear of police on the mind of the accused. The hand-

writing expert to prove ransom notes by the accused and a co-accused was also dismissed on the ground that the expert had no qualification, knowledge or expertise in this regard. After considering all these matters relating to the prosecution case, the court concluded that prosecution evidence was full of doubts and it failed to prove the case beyond reasonable doubts. The Supreme Court acquitted the accused and the acquittal of co-accused by the High Court was maintained as valid.

Similarly, in another murder case, Muhammad Bilal vs. State (2021 *SCMR* 1039 *Supreme Court*) while deciding the case under 302(b) [Pakistan Penal Code (XLV of 1860) (Criminal Procedure Code (V of 1898)] for Qatl-i-Amd and accepting the forensic evidence under Article , 164 QSO [Qanun-e-Shahadat Ordinance 1985], the Supreme Court considered reappraisal of evidence and found that the recovery of weapon from accused is doubtful although the weapon and empties were sent to Forensic Science Laboratory for examination and came as a positive report; but the fact that after recovery of the weapon from accused on 2nd of August where and with whom its custody was till 4rth August made the report doubtful. The police official, a witness to the record of the memo, deposed that the alleged pistol was not recovered in his presence and that the accused was not present at the time when the weapon was handed over to the investigation officer by Muharrir of the court office. This delay in sending the weapon for examination and these circumstances as above made the positive report of the PFSAA [Punjab Forensic Science Agency Act 2007] in relating the accused with the weapon and crime was considered unreliable even as corroborative evidence and in court's opinion, the prosecution case was not successful in proving the allegation beyond a reasonable doubt. The court allowed the appeal, the conviction and sentence awarded by the Trial court were set aside and he was acquitted.

In Munir Ahmed vs. State (2019 *SCMR* 2006 *Supreme Court*), while dealing with another murder case for a reappraisal of evidence, the court has noted that the accused and their numbers seem to be fictitious as the doubt arises if co-accused are acquitted on the same evidence while the accused was convicted. However, other circumstances prove that it is impossible to have evidence of a single fire shot to the deceased and another single fire shot to an injured person where a massive, indiscriminate firing by members of unlawful assembly was alleged. Moreover, it is difficult to assume that the complainant or anyone else on their behalf would be able to attribute fire shots to any single person if it was a real unlawful assembly of twenty-six or so people. The court also noted that fire shots and their attribution to any weapon leading to the link of the accused to the crime are not supported by the forensic report—the injured person requested in the written affidavit to free the noticeable number of people at the investigative stage. The court noticed that the trial court had acquitted four accused persons and High Court at appellate case has acquitted all accused persons except the one for whom a single shot on deceased and a single shot on injured was implicated. High Court decided differently for the accused and co-accused while relying on the same set of evidence in the absence of any forensic report corroborating the link of the accused with the crime. The Supreme Court decided that in such circumstances, it can be concluded that the occurrence did not take place as it had been alleged. Therefore, the accused was acquitted of the charge of murder.

Muhammad Mithal vs. State (2019 *YLRN* 43 *Karachi High Court Sindh*) was a case where the attempt to commit Qatl-i-amd, rioting, rioting armed with a deadly weapon and unlawful assembly were implicated under sections 302(b), 324, 147,148, 149 [Pakistan Penal Code (XLV of 1860)] respectively. Sindh High Court heard the appeal for appreciation of evidence and analysed the medical evidence with reference to the post-mortem of the deceased and opinion as to injury, weapon and the possibility of the crime committed by the accused in corroboration of the other oral testimonies by the witnesses in the case. The court noticed from the medical opinion that two injuries; firstly, ghyr-jaifah mutalahimah and the other ghayr-jaifah damiyah are such that the first injury is opined to be caused by firearm injury while the second one is viewed to be caused by a hard and blunt substance in close proximity to the complainant during the incident. The first injury, according to the medical report, was caused from a distance of 18 feet, which suggests that the injury from close proximity was caused by someone else near to the complainant as compared to the one who fired from 18 feet distance.

The opinion of the medical examiner in his report was not claimed by the complainant in his testimony as he neither mentioned any hard and blunt substance nor alleged anyone in close proximity to him. This situation clouded the entire case of the prosecution in doubt. In addition, the injury certificate did not show any time when injuries were caused which raised the suspicion as to the time of injuries and the occurrence. The court also considered that the medical officer, during cross-examination, has also stated that he acknowledged that he did not extract the pallet

from the forearm of the complainant for forensic analysis of that pallet. In his testimony, the medical examiner did not explain why he did not bother taking out the pallet for the forensic report on it. The medical evidence was also deficient in mentioning an x-ray of the forearm to establish the range of fire or to consider the risk of injury to the well-being of the complainant; which could be possible to assess if a pallet would have been extracted and sent for a forensic report on it along with the medical report in an effort to prove or disprove the guilt of the accused. The oral evidence, in this case, was not consistent with the medical evidence which can be inferred to be incomplete medical evidence where the medical officer did not take out the pallet and did not involve the detail about the risk and nature of the injury with reference to the pallet and did not bother to invite forensic report on the pallet for attribution of the crime or guilt to the accused. The court acquitted the convicted appellant in this case, considering the benefit of the doubt in his favour.

Arshad Anwar vs. State (2021 *YLR* 1145)is another case where the accused were implicated with the attempt to commit Qatl-i-amd, hurt as Ghayr-Jaifah, common intention, intentional insult with intent to provoke breach of peace, possession of unlicensed arms under Section 13 of Arms Act (XX of 1965), Sections 324, 302, 337-F, 34 and 504 (Pakistan Penal Code (XLV of 1860). The court dealt with an appeal for appreciation of evidence. In this case the active participation of the accused in the commission of the crime was proved, but the doubt in the prosecution case arose due to the non-availability of the forensic report of the weapon recovered on the pointation of the accused with a considerable delay while being in remand and noticeably the recovery was made on the last day of the remand and the recovery witness deposed as to the working condition of the weapon however the trial court had noticed that the weapon was not in working condition. The pallets recovered from the crime scene were not sent to the forensic laboratory for examination. The court decided to reduce the sentence of the accused to the time that he had already undergone during the trial of the case to the decision of this appeal in the court.

In a similar situation as observed in Muhammad Idrees vs. State (2021 *YLRN* 48 *Supreme Court Azad Kashmir*), the accused was implicated for Qatl-i-Amd, attempt to commit Qatl-i-amd, rioting, rioting armed with a deadly weapon, unlawful assembly under sections 302, 324, 147, 148, 19 (Pakistan Penal Code (XLV of 1860) and the Court heard it in an appeal for appreciation of evidence considered by the trial court. It was observed that the weapon, which was recovered from the occurrence of the crime at the pointation of the accused, but no independent witness was shown available on record and no explanation was available for such an absence of the ocular witness. The ocular witnesses in the case unanimously deposed that a large number of indiscriminate bullets were fired in a crowd, but the pallets recovered do not match in terms of number as well as the empties did not match the weapon recovered at the pointation of the accused. The explanation for the number of recovery of bullets by the prosecution was that in a densely populated area, the traffic was ongoing and the recovery of bullets was impossible due to these circumstances but the court was not satisfied and noted that the place of occurrence of crime was in close proximity of police station and it was the duty of the police to collect the material evidence at the relevant time without delay. It was also observed that weapon so recovered was never sent for Forensic examination in Forensic Science Laboratory. Therefore in court's opinion, the case against the accused that they fired 30-bore pistols in a peaceful procession and killed three innocent people injured many, was not made out beyond reasonable doubt. The court decided to reduce the sentence of the accused and converted it to the sentence already undergone.

In a decision for Iftikhar Khan alias Khari vs. State (2021 *PCrLJN* 45 *Supreme Court Azad Kashmir*), the alleged crimes included an attempt to commit Qatl-i-Amd, rash and negligent act, wrongful restraint, abetment, possessing an unlicensed weapon under Sections 302, 337-H(2), 341 and 109 (Pakistan Penal Code (XLV of 1860), Section 13 of Arms Act (XX of 1965). The court heard the appeal for a challenge against the appreciation of evidence in the lower court. This is a case where the forensic report from Forensic Science Laboratory was accepted as corroborative evidence in that the recovery witness who deposed that the weapon recovered on the pointation of accused was the presence at such recovery, and the forensic report along with medical report in post-mortem was in line with each other for the weapon, empties and injuries shown were from the same occurrence. Court decided that in the presence of strong corroborating shreds of evidence, minor discrepancies in corroborative evidence in the medical report in respect of the recovery of the bullet from the body of the deceased could be ignored. The appeals against conviction were dismissed in this case.

In another case, the State vs. Amanat Khan (2021 *SCMR* 1494 *Supreme Court*), the court considered that the negative forensic report and

absconding of the accused and considering along with this fact another fact of his previous record cannot outweigh the strength of unimpeachable ocular evidence deposing the event and withstanding cross-examination. The court accepted the prosecution's plea in that the absence of calibre of the weapon used in the crime or negative Forensic evidence could not be relied upon to cast a doubt in the case, which is established beyond a reasonable doubt from the ocular evidence. Such flaws in the investigative process cannot lessen the value of cross-examined eyewitnesses. The Trial court had convicted the accused and sentenced him to death; however, in High Court the benefit of the doubt was given to set aside the conviction and the sentence of the accused. The Supreme Court decided that leave to appeal against the acquittal of the accused, challenging setting aside of his conviction and death sentence, should be granted.

In Muhammad Daud vs. Syed Abid Ali (2021 *SCMR* 1470 *Supreme Court*), the murder trial decided on the acquittal of the accused and relied on a deposition by injured persons that they received fire shots injuries but their distance from the crime scene in a crowded canteen was importantly deposed to show the impossibility of visibility leading to conclude that injured person did not see an accused and co-accused firing on the deceased. The Trial Court and appellate court disregarded the forensic report confirming the use of two weapons with three empties linking the accused and co-accused with the crime and even disregarded the oral evidence of the eyewitnesses naming the accused and co-accused. The Supreme Court decided to grant leave to appeal to reappraise the evidence to see whether the eyewitnesses other than the injured have made up the case against the accused and whether the absconding of co-accused will have an effect on the case.

It can be inferred from the above analysis so far that a negative forensic report cannot exonerate the accused in the presence of a strong unimpeachable eyewitness withstanding cross-examination. Conversely, the negative forensic report or absence of a forensic report could be considered to convert the death penalty of the accused into life imprisonment or to the length of sentence already undergone by the accused during the pendency of the case. A positive forensic report linking the accused, weapon and empties to the same occurrence of the crime would not be sufficient to convict the accused if the testimony of injured persons did not explain the link between the accused and co-accused with the fire shot that ended in the death of the deceased.

In State vs. Ahmed Omar Sheikh (2021 *SCMR* 873 *Supreme Court*) the admissibility of videotape/clip under Article 164 of QSO was considered as evidence which should have been confirmed to be original after having a forensic report of the video so that the doubt of such evidence be tempered evidence could be outweighed. In the absence of such a forensic report, the videotape/clip will have no admissibility, instead it can raise an adverse presumption of its being tempered to implicate the accused. The Trial Court convicted the accused and co-accused persons for kidnapping and murder of a foreign journalist under sections 120-A, 365-A and 302 [Pakistan Penal Code (XLV of 1860)] read with sections 6(a) and 7 of [Anti-Terrorism Act 1997] and sentenced the accused to death and co-accused were sentenced to life imprisonment with fine. The High Court altered the conviction on the appeal, and sentenced the accused for 7 years rigorous imprisonment and acquitted all the co-accused persons from all the charges against them.

The role of forensic evidence and the delay in FIR, the medical report appeared in Khalid Mehmood vs. State (2021 *SCMR* 810 *Supreme Court*) as below. The prosecution failed to implicate the accused beyond a reasonable doubt; because of the concealment of the fact that the witness was actually accompanying the complainant; who had taken the deceased in injured condition to the hospital, and there was a noticeable delay in the registration of FIR from the time of the occurrence of crime. In this case, the post-mortem was also conducted after 7 hours of registration of FIR, and a medical report showed a single entry of the fire in the chest of the deceased. The medical examiner while explaining the delay in the post-mortem, deposed that the hospital was not inaccessible to complete the proceeding as it has 24/7 service. This is another fact that weakens the prosecution's case in that the dead body was transported for post-mortem at a delayed time. The role of the forensic report was also confined only to the working condition of the weapon as no empty was collected from the crime scene for examination relating the empty to the weapon recovered and ultimately to the accused. High Court did not believe the complainant's case for facts noticed was giving rise to doubts. Therefore, the conviction and sentence of the accused were set aside and he was acquitted of the charge of murder framed against him.

The Supreme Court was hearing an appeal Liaqat Ali vs. State (2021 *SCMR* 780 *Supreme Court*) and considered the reappraisal of evidence where the High Court had acquitted co-accused. The accused and co-accused were charged for

Qatl-i-amd, common intention, hurt caused, whilst committing lurking house-trespass or house-breaking, under Section 302(b), 34, and 459 [Pakistan Penal Code (XLV of 1860)]. It was observed that the evidence of the complainant and all the eyewitnesses were weak in that the complainant and a witness had transported the deceased in an injured condition to the hospital, while the Medical evidence showed that the deceased was brought to the hospital for post-mortem through a police office and such police officer was not presented in the courtroom during the trial. The role of the complainant was also doubtful, as he was not a resident of the home where a crime was committed and he could not explain his purpose to visit the home. The recovery of a weapon on the pointation of the accused was of no use for prosecution as a report from the forensic Laboratory was only confined to giving details about its working condition only. The High Court's decision to acquitting the co-accused was maintained and the accused was also acquitted of all charges of murder and so in this case.

For a charge of Qatl-i-amd under 302(b) [Pakistan Penal Code (XLV of 1860)] in Shaheen Ijaz alias Babu vs. State (2021 *SCMR* 500 *Supreme Court*) the court was observing reappraisal of evidence where High Court has acquitted the co-accused and convicted and sentenced the accused of the presence of motive, strong unimpeachable eyewitness testimony as to relate the accused to the crime in daylight, and considering the fact that the registration of FIR was without any delay in the Police office that proves the prosecution's case beyond any doubt. It is also noted that the forensic report of the weapon confirmed the nature of the injuries from the weapon recovered from the incident relating the accused to the alleged crime. Supreme Court maintained the decision by the High Court for conviction and sentence of the accused as modified by the High Court.

The case was heard for the reappraisal of evidence in Ghaffar Ali vs. State (2021 *SCMR* 354 *Supreme Court*), where the prosecution has established the case beyond a reasonable doubt; in that the FIR, post mortem was registered and conducted without delay and ruled out any fabrication of story, the ocular evidence was also strong to implicate the accused with the crime. Moreover, the medical evidence fully supported the ocular testimony in terms of relating weapon, injury and duration of the crime. In addition, the Forensic report confirmed that fifteen empties from the crime scene were fired from one and the same weapon. The Court also considered the conduct of the accused of unexplained absconding corroborating the eyewitnesses' disposition. The convictions and sentences against the accused were maintained in the decision.

In Mst. Asia Qaseem vs. Alamzeb (2021 *SCMR* 302 *Supreme Court*), the Bail order was sought to be canceled for a charge of Qatl-i-amd, rioting armed with deadly weapons under sections 302, 148 and 149 [Pakistan Penal Code (XLV of 1860)] was leveled against the party. The fact considered by High Court in the Bail order was that the implication of six people for the commission of crime and revelation of only two entry wounds does not commensurate with the implication of more than two persons in the commission of the crime. It was also observed that the ammunition recovered from the accused was not sent for forensic examination, further weakening the case of the prosecution. However, the Forensic examination revealed that the empties recovered from the scene were not only shot from a single weapon recovered from the accused but it was found to have also been fired from the weapon recovered from co-accused persons. Supreme Court considered the point of disposition of the complainant in her statement in the court under section 164 CrPC, where she implicated the accused and co-accused. It was concluded from all of these facts that the weapon was recovered on the spot. Therefore, the reappraisal of evidence in this case resulted in the cancellation of bail orders by the High Court.

In Muhammad Afzal vs. State (2021 *SCMR* 289 *Supreme Court*), the alleged crime was also Qatl-i-amd [Pakistan Penal Code (XLV of 1860)] and the Supreme court has reappraised the evidence to decide that benefit of the doubt granted to the accused by the High Court was sufficient for non-recovery of weapon and absence of forensic report where High Court has converted death sentence to life imprisonment. The rest of the case against the accused seemed to be proved beyond a reasonable doubt where complainant, eyewitnesses and accused were all known to each other and the occurrence was committed in day light and a delay in registration of FIR would not defeat the ocular account that withstood cross-examination. So in the presence of ocular evidence, the absence of a forensic report was not considered to exonerate the accused of the charge against him. Rather it was considered to convert the death sentence to that of life imprisonment.

In Ghulam Murtaza vs. State (2021 *SCMR* 149 *Supreme Court*), the accused of Qatl-i-amd [Pakistan Penal Code (XLV of 1860)] was the only nominated accused in the FIR and his role of firing on the deceased was supported by ocular evidence of inmate of the house who withstood

the cross-examination and pointed to the recovery of weapon, blood-stained clothes and her statement in the FIR was also the same. The medical report also supported the stance of ocular testimony and the crime empties and weapons examined in the forensic laboratory were also reported positive in linking the empties to the weapon which was recovered from the possession of the accused. The Supreme Court maintained the conviction and sentences passed for the accused.

The court has maintained the sentence and conviction of the accused as passed by the High Court in Akbar Ali vs. State (2021 *SCMR* 104 *Supreme Court*), relying on the ocular evidence to nominate a single person as accused. The negative report from the forensic laboratory and the lack of proving the motive of murder by the prosecution has leaded the court to decide a lesser punishment from death penalty to life imprisonment. However, the negative forensic report did not lead to exoneration of the accused in the presence of ocular testimony.

In Muhammad Hayat vs State (2021 *SCMR* 92 *Supreme Court*) the court was to consider a Shariat appeal to reappraise the evidence for a charge of Qatl-i-amd and Robery under 302(b) and 392 [Pakistan Penal Code (XLV of 1860)]. The prosecution's case was considered proven beyond a reasonable doubt where the complainant registered a prompt FIR, post mortem, and recovery of weapon to the effect that the defence could not find doubt in the case for ocular testimony, as it was unimpeachable. The court observed that the weapon recovered after disclosure of the accused when forensically found in six points of dissimilarity which was taken as a minor discrepancy hence, insufficient to shake the case made out by other circumstances and ocular testimony. The death sentences were maintained.

In Ghulam Abbas vs. State (2021 *SCMR* 23 *Supreme Court*), the benefit of the doubt was given to the accused of the prosecution's doubtful case for 5 hours delayed registration of FIR in the absence of any cogent explanation for this delay. The veracity of the ocular account of the eyewitness was shaken by their account of things that were never mentioned in the Police report or site plan by the Patwari. The medical evidence did not support the prosecution's case regarding the time of death of the deceased. Moreover, the motive of the occurrence and the presentation of the document important in this regard were never produced in the court. The court has also noted that no report from the Forensic Science Laboratory was available to establish whether the weapon recovered was in working order or not. The court held that petition for enhancement of the sentence of the accused and challenge to the acquittal of co-accused is dismissed.

In another situation, as in Muhammad Adnan vs. State (2021 *SCMR* 16 *Supreme Court*), the unexplained delay of more than nine hours to register FIR with lack of proof of motive by the complainant and the weak testimony of different ocular accounts of eyewitnesses led the High Court not to believe on the prosecution case for lack of proving motive of the occurrence. It was noted by the court that in such circumstances, the recovery of the pistol and positive report from the forensic science Laboratory was of no legal use as the police officer who had transmitted the empty secure from the spot was not produced in the court for cross-examination by the other party. The appeal seeking for acquittal of the accused was accepted by the court.

The analysis above shows that keeping aside the evidentiary value of forensic evidence as secondary or corroboratory, the lack of the report or not the following procedure for preparation of the forensic report in any particular case is an important factor for the court to see the doubt in prosecution's case and to decide acquittal of the accused person or convert death penalty into life imprisonment or sentence for the time period already spent behind bars by accused.

Discussion

Ironically, the adversarial system in civil law countries is not to be blamed for the unsatisfactory procedure and delay in a systemic development of a rigorously tested [Roberts 2015], reliable [Ward 2020], probative, non-prejudicial expert report [Frampton 2008], or forensic evidence of important facts, which can re-assess, re-live the past events in order to reveal the truth [Ward 2020]. The adversarial system is not to be identified for not performing the court's function of a 'gatekeeper'[Hamer and Edmond 2019] for scientific evidence and an excuse for judicial decision-making policy in choosing merely exclusion [Keith 1990] of scientific evidence to argue for court's function of a gatekeeper in this way [Hamer and Edmond 2019]. This is also not a proper meaning of what the term gatekeeper actually stands for. It is argued that the complexities of the adversarial system are to be overcome by preparation of the case effectively using the scientific process, collection of material evidence, and the court's proactive role [Roberts 2015] in examining the reliability of such scientific evidence using all the care and caution learnt so far in terms of informed diagnosis of the facts presented in the courtroom. This role of courts in an adversarial system would need the courts not to focus on and not to exercise a policy

of mere exclusion of such evidence (Keith 1990). It will actually emphasize courts performing their role to be proactive (Roberts 2015) to test the reliability of the evidence, being informed (Kovera and Austine 2015) to work towards adaptation of scientific knowledge for the legal processes (Roberts 2015).

The discussion on the infallibility of forensic evidence, flawed expert evidence, or biased expert evidence will start in a true adversarial system (Keith 1990) (Roberts 2015); when strategic litigation is considered by focussing on state of the art case management techniques (Roberts 2015) by public prosecution department, in a close liaison with efficient police; that collects, preserves and transmits material evidence from the crime scene following forensic protocols and standards to the Forensic Agency. The question as to knowledge, skill, experience, training, or education of the expert witness will be appreciated when defendants will counter the evidence in cross-examination where a discourse as to national standards of ethics for expert witnesses and for their ethical violations will be initiated. Without considering the difference between party-appointed experts and court-appointed experts (Faure and Visscher et al. 2016); such as the difference between Article 164 and section 510, the court's decision-making policy will also emphasize court's function as a gatekeeper (Hamer and Edmond 2019), and to start determining the development of the concerns such as self-regulation or certification, standardization to accept expert called either by the party or appointed by the court, capacity building of the judiciary and peer review (Freer 2020) of an acceptable person as an expert (Faure and Visscher et al. 2016). In doing so, law reform comes first (Perrin 1995), then reform in the preparation and presentation of experts in the courts, the discussion on the reliability and necessary requirement of such evidence. The lawyer must understand that their role in calling expert evidence should be carefully following the fact that the expert is not an advocate or the party to the case (Perrin 1995). The court's role comes where they accept the evidence, carefully examining the reliability and procedure of scientific evidence as to its infallibility and this will help them meet the challenge properly in an adversarial system (Kovera and Austine 2015).

In the analysis of cases involving murder crimes in Pakistan, as analysed above, it is revealed that courts are considering the scientific, technological and forensic evidence as a strength or weakness of the case and exclude the evidence or use it merely as a mitigating factor for the punishment or acquittal of the accused person. The analysis above also reveals that the trial judges have not started an overall function of gatekeeper (Hamer and Edmond 2019), which will call for a judicial focus on the validity and reliability of procedures, proficiency, or the ability of the individual claiming to be an expert (Hamer and Edmond 2019).

The perusal of the cases discussed above shows the evidence to draw an inference that availability, non-availability of forensic evidence, or even insufficiency of forensic evidence as used in the court procedure; is the trend in criminal case processing at police and prosecution side on the one hand. On the other hand, in the courtroom, only defects in this preparatory stage or the case preparation seem to be the last stage of examination of forensic evidence.

This phenomenon leads to the fact that the courts did not rely on the scientific evidence alone and their reluctance to consider it as primary evidence is self-evident in the first place. Secondly, the attempt of reading the cases above for the purpose of calculating the judicial trend as to the admissibility of forensic evidence, even as corroborative evidence to prove or disprove some material fact, also leads to an answer in a negative. This is because the presence of ocular or other corroborative evidence is the strongest yardstick for the court to convict a guilty person and in that situation, the presence of forensic evidence is nevertheless mentioned among the other elements considered by the court to arrive at a particular decision. On the contrary, if the unimpeached ocular evidence or other corroborative evidence is not available, as opposed to the trend when the only ocular account is available, the availability of positive forensic evidence linking the crime to the accused is not considered sufficient to convict a guilty person.

This analysis also shows that this type of judicial trend, as mentioned above, while dealing with forensic evidence in murder cases in Pakistan, seems to be a policy emerging from the weak situation of the cases at a preparatory stage, which can be regarded as a preliminary stage of the case. In other words, the trend as shown above highlights the need to complete the preparatory stage considering material evidence, including forensic evidence, as an important element to building the strength of the case (Hamer and Edmond 2019) at the pre-trial stage by the police, or public prosecution. That is a fact that needs to be managed properly by both the police and public prosecution departments in their consideration of all the possible material evidence, following the forensic protocol and standards.

This is to observe that the presentation of the forensic evidence in a typical case would normally

lead to other stages in a criminal case relating to forensic evidence, which is either to accept the evidence or to discuss the reliability test for the report presented in the court discussing the competency of the forensic expert (Keith 1990). In the analysis of the cases involving the crime of murder, as in the section above, it has also been noticed that there is an absence of analysis of the expert evidence, an absence of the discourse about the rules to accept or reject the scientific and technological, forensic, and medical evidence. Due to the lack of pre-trial preparation of the case, there is also a lack of discussion on the duties and responsibility of expert witnesses (Roberts 2015) as to lay down their reports or analysis and presentation of their evidence.

It is to suggest that pre-trial preparation of the case by the police; as a pre-requisite for their duty for the strength of the case at the preparatory stage (Hamer and Edmond 2019), will lead to a situation where courts will discuss the admissibility and value of such scientific evidence during the trial of the case. It is noteworthy that consideration of standards set by reliability, proficiency, competency, and expertise of the expert (Keith 1990), along with established principles of duties and responsibilities of expert witnesses (Frampton 2008), and practicing the norm of the adversarial system in inviting the defence cross-examining would be a better way to test probity of the conclusion for doubt in the prosecution case (Keith 1990). This can be considered to upshot towards a further opportunity to test the reliability of the expert evidence or expert witness within a courtroom setting.

Conclusion

This can be concluded that before deciding on the benefit of the doubt or converting punishment for a lesser punishment, it is beneficial for securing a fair trial in the sense of thinking of the victim's interest in the justice system (Freer 2020). Undeniably, the prosecution's preparation of the case should have two things among all others firstly, the protocol for collection, transmission, examination of forensic material should be followed; secondly, the presentation of the forensic evidence not in the sense of mere opinion evidence (Roberts 2015), rather it should be taken as a scientific report or evidence of a fact which is proving or disproving the link of accused with the crime. This is important to note the differentiation of scientific evidence to diagnose the cause of crime or give a medical or diagnostic opinion (Roberts 2015) for the cause of crime from the scientific evidence given as a fact, which is used to prove or disprove the link of accused with the crime, this evidence performs differently so they should not be weighed alike.

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