

Corroborating Evidence as a Mechanism to Fill ‘Reliability Void’ in Pakistan’s Criminal Justice System: Judicial Discretion and its Limitations

Shahbaz Ahmad Cheema¹

Abstract

Technique of corroboration plays a vital role in appreciation and evaluation of evidence in judicial proceedings. Its purpose is to ensure conviction of real culprits and to prevent wrongful punishment of innocent persons. This paper analyzes the relevance and significance of technique of corroboration in criminal justice system of Pakistan. It discusses circumstances that necessitate corroboration and how that necessity is met in the judicial proceedings. In Pakistan, some witnesses and pieces of evidence are corroborated to usher them reliability when they are found to be lacking credibility or of suspicious nature. The requirement of corroboration is not necessarily dictated by law: it is mandated by prudence, caution and practice for satisfying the judicial conscience as to credibility of a witness and reliability of original evidence. When a witness or original evidence does not meet the requisite standard of credibility and reliability, that particular situation generates a ‘reliability void’. This reliability void necessitates resorting to technique of corroboration to ascertain veracity of such witness or for bestowing trustworthiness to such evidence. However, corroboratory evidence does not convert an absolutely unreliable witness or piece of evidence into a reliable one.

Keywords: Corroboration; Child witness; Interested Witness; Accomplice; Confession; Dying declaration; Criminal justice system; Pakistan.

Introduction

Technique of corroboration is probably one of the most efficient mechanisms for ascertaining truth in judicial proceedings ever developed by human beings. It is generally resorted to for minimizing element of error in judicial proceedings by evaluating the worth of original evidence and cross-checking the probity and integrity of witnesses. The paper in hand is an analysis of the application of this technique by the superior courts in Pakistan. It commences with the explanation of nature of corroboration and corroboratory evidence, and thereafter it carries out an analysis of

¹ Professor, University Law College, University of the Punjab, Lahore. shahbazcheema@ymail.com

reported cases as to how the courts make use of this pragmatic and efficacious technique. In addition to the introductory section 1, this paper is divided into two main sections where section 2 discusses the nature of corroboration, and section 3 deals with some specific circumstances in which this technique is employed by Pakistani courts. Section 4 concludes by highlighting some main propositions of the analysis.

It would be appropriate to state limitations of the paper first before conducting an analysis. Firstly, due to limited space available in a paper, it is practically impossible to deal with all circumstances requiring corroboration, hence, the author has selected illustrative circumstances to explicate the process of corroboration. Secondly, each illustrative situation discussed in the section 3 does not comprehensively encompass all circumstances of corroboration because necessity and plausibility of corroboration is linked to the satisfaction of judicial conscience which may feel contented multifariously in different cases.

Nature of Corroboration

The word corroboration is difficult to define but without having a minimal understanding of the term it is impossible to start using this technique in judicial proceedings. It is derived from the Latin word '*corroboratus*', past part of the word '*corroborare*' which has itself been derived from another Latin word '*robust*' (*Mehrban v. State*, 1974). Murphy's (2009) definition of corroboration is the best starting point. According to him, corroboration means 'support' and 'confirmation'. Hence, corroborative evidence is some evidence other than the one which it confirms, establishes, or makes more certain (*Asghar v. State*, 1968). It is additional in nature but confirmatory in quality. We cannot regard a piece of evidence as corroborative that lacks these characteristics. To understand corroborative evidence, we may classify evidence into two categories: the one is original evidence and the other corroborative evidence. The latter cannot substitute the former, but confirms it (Cheema & Khan, 2014). In criminal law, eye witnesses are usually primary witnesses and their oral testimony is corroborated by other evidence including circumstantial, documentary and scientific.

The Supreme Court of Pakistan in *Ilyas v. State* (2001) observed that the word corroboration is a 'many faceted term' which is incapable of a comprehensive definition. Being mindful of the significance and relevance of his technique in judicial proceedings, the court noted that corroboration can be done from anything capable of satisfying prudent man in given circumstances. In another case, *Zaman v. State* (1999), the Supreme Court attempted to provide a simplest definition of the term by

observing that it consists of any evidence which tends to connect a person with the commission of crime. This latter definition is open to criticism on the basis that corroboratory evidence is not only used for implicating accused persons, sometimes it also confirms innocence of those who are inadvertently brought to face judicial proceedings.

In Pakistan's criminal justice system, the requisite standard of proof for conviction is to establish facts against an accused person 'beyond reasonable doubt'. When original evidence does not alone meet such criterion, then it is to be confirmed by some other evidence. That other evidence is corroborative or corroboratory evidence which works in two different senses:

- a. Statutory requirement of not relying on solitary witness without corroboration.
- b. If original evidence is not sufficiently reliable, it may be converted into reliable evidence by corroboration.

The first sense is a product of legislative instrument. Sometimes legislative instruments treat evidence of a solitary witness as insufficient unless it is corroborated by other witnesses. This kind of corroboration is linked with an important concept of evidence, i.e., plurality of witnesses. In some categories of cases, more than one witness is required as per wisdom of legislature so that they all corroborate each other's evidence, e.g. under Hudood laws of Pakistan. It is pertinent to cite that codes in antiquity, e.g. Justinian Code, and prior to 17th century in English legal system, one witness's evidence was considered insufficient for conviction and such plurality of witnesses was thought to be embedded in divine law (Peiris, 1981).

In the second sense mentioned above, corroboration is understood the way in which the term is generally used nowadays. In this sense, corroboratory evidence ushers reliability to original evidence which does not satisfy conscience of a court independently. Therefore, corroboration rectifies cracks or mends fractures in original evidence. This sort of deficiency is referred to as 'reliability void' in this paper. The original evidence which calls for corroboration is sometimes termed as 'suspect evidence' taking into consideration its source or nature.

Reliability of any piece of evidence or any witness is not something capable of conclusive determination by any legislative instrument. This function is, by necessity, left with the courts and judicial prudence is entrusted to determine reliability. In the phraseology employed by Stephen (1872), reliability is a 'matter of prudence'. Pakistani Law of Evidence, namely Qanun-e-Shahadat Order, 1984, is structured upon the concept of relevancy of facts and leaves the issue of reliability of

evidence to be ascertained by the courts through judicial prudence. The term corroboration in Pakistan is by and large employed with reference to reliability void of original evidence and not in context of erstwhile rule of plurality of witnesses.

Reliability void exists where original evidence is ‘not confidence inspiring or is of doubtful character’ as observed by the Supreme Court in *Shahnaz v. Liaquat* (2007). In another case, Peshawar High Court puts the similar proposition in a different way by observing that if original evidence embodies ‘exaggerations and is of doubtful veracity’, independent corroboration will be sought (*Awais v. State*, 2004). The same court has said that if the original evidence is creditworthy, but does not warrant conviction, then corroboration becomes necessity. In *Shera v. State* (2002), the Supreme Court enlisted numerous circumstances of corroboration of original evidence. They are enmity between parties, witnesses are interested, related or inimical and not independent, and the court feels that conviction without corroboration on the basis of ocular/original evidence alone is not safe.

If original evidence is credible, truthful and trustworthy and appears sufficient to establish the charge, corroboration from any other source is not required (*Rashid v. State*, 2003). In the same case, the court also observed that corroboration is only a ‘rule of abundant caution’ and not a mandatory rule to be resorted to in each and every case: corroboration is called for only in those circumstances where the judicial conscience is not satisfied as to truthfulness of evidence. Peshawar High Court has held that if the original evidence does not suffer from ‘any major or significant contradiction’, the same is not required to be corroborated (*Rahim v. State*, 2004). When the court is satisfied as to ‘truthfulness of direct/original evidence’, corroboration of the same would not be of any consequence (*Panah v. State*, 2011).

The technique of corroboration is of relevance when original evidence has some substance and probative force, however, if original evidence does not possess any creditworthiness, no amount of corroboration can inject it with reliability. In a murder case *Khan v. State* (1999), the Supreme Court while evaluating the evidence available on case file noted that the presence of eye witnesses on spot seems doubtful. Moreover, the witnesses have improved their statements to make them in accord with the post-mortem report. When eye witnesses’ account is ‘unreasonable and inherently improbable’, the court concluded, ‘no amount of corroboration could rehabilitate the same’. In other words, if original evidence is found to be inherently unreliable, technique of corroboration is incapacitated to revitalize it. Therefore, corroboration is

of consequence when original evidence possesses some value, but it is not independently sufficient for arriving at a conclusion beyond any shadow of doubt.

Considering the above debate, we may classify the original evidence with reference to corroboration in three categories. The first is wholly reliable; the second is entirely unreliable and the third possesses some probative value, but that is inconclusive to warrant any conclusion independently. Corroboration does not have any significance for the first and second category evidence. The former does not need it and alone merits to draw any conclusion, whereas the latter would not be infused with desired level of credibility even after corroborating it. Therefore, it is the third category evidence for which corroboration has far reaching consequences.

Having discussed the circumstances of corroboration, the next important question is how corroboration is applied? In this context, *R v. Baskerville (1916)* has attained an unparalleled recognition at least in commonwealth world. It was pronounced by the Court of Criminal Appeal in the United Kingdom and followed by Pakistani courts. The decision was about corroboration of an accomplice's evidence, and numerous important rules regarding the procedure of corroboration were articulated. Taking into account the importance of these rules, they are reproduced here in detail:

- a. "The corroboration must be by some evidence other than that of an accomplice; and, therefore, one accomplice's evidence is not corroboration of the testimony of another accomplice.
- b. The corroborative evidence must be evidence which implicates the accused, that is, which confirms in some material particulars not only the evidence that the crime has been committed, but also that the accused committed it. In other words, the corroboration must be both as to the *corpus delicti* and as to the identity of the accused.
- c. It is not necessary that the story of the accomplice should be corroborated in every detail of the crime, since, if this were so, the evidence of the accomplice would be unnecessary.
- d. The corroboration need not be from direct evidence that the accused committed the crime: it is sufficient if it is merely circumstantial evidence of his connection with the crime."

Peshawar High Court in *Asghar v. State (1968)* observed that the rules enunciated in *R v. Baskerville (1916)* are applicable with the same rigor to dying declarations in Pakistan. If these rules are relevant for one genre of evidence, the same

could also be extended to other pieces of evidence having similar nature and characteristics. The superior courts of Pakistan have laid down some principles with respect to corroboration in its various decisions which are coextensive to the rules crafted in *R v. Baskerville (1916)*. A brief account of these principles is as under:

- a. Nature and extent of corroboratory evidence may vary from case to case and depends on judicial discretion of the court (*Shera v. State, 2002*).
- b. The corroborative evidence should prove guilt of an accused (*Nawaz v. Sultan, 1977*). Or at least it must connect or tend to connect the accused with the crime (*Shahzad v. State, 2002*).
- c. The corroborative evidence is not required to confirm the whole story narrated by a witness whose evidence is being corroborated, it is sufficient if it supports the ocular/original evidence in material particulars (*Shera v. State, 2002*).
- d. The corroborating evidence is not required to come from an independent witness: it may come from anything (*Nawaz v. State, 2002*). Corroboration may be sought from direct or even from circumstantial evidence (*Shera v. State, 2002*). But at least it is settled that corroboration cannot be sought from the evidence of the witness whose evidence is required to be corroborated (*Zahida v. Naseem, 2006*).
- e. A corroborative piece of evidence cannot corroborate another corroborative piece of evidence (*Sarwar v. State, 2001*). A tainted piece of evidence cannot be used for corroboration of similarly tainted evidence (*Manzoor v. State, 1973*).

Corroborating Evidence in Pakistan

Pakistani courts rely on technique of corroboration as a matter of prudence and caution in a number of circumstances. Sometimes peculiar situation of witnesses makes it necessary to get their testimony corroborated, and sometimes corroboration becomes desirable considering quality of particular evidence. This section illustrates six selected circumstances of corroboration with a purpose to analyze how it is applied by Pakistani courts. The first three instances relate to witnesses and the remaining three instances pertain to evidence given in certain circumstances.

Child Witness

According to Article 3 of the Qanun-e-Shahadat Order, 1984, children are competent witnesses and their evidence may be relied upon by the courts. The law

does not stipulate that their evidence must be corroborated. But it is a matter of common sense that they often mix up imagination into reality and unable to differentiate between what they have observed and what has been told to them by someone else. Innocence of children is a double-edged weapon: they are expected to speak truth, and at the same time, they might convey factually inaccurate testimony innocently. Such considerations have rendered the courts to conclude that solitary evidence of children should not be relied upon unless it is corroborated.

The law with respect to children's evidence is summarized well in *Farid v. Amreen* (2003). The court observed that no precise age is mentioned in law for determination of competency of a child. Hence, it is a question of fact. The court enlisted three main considerations for evaluation of children's evidence: the first is capacity and intelligence of a child; the second his/her capacity to differentiate truth from falsehood; and the third his/her realization of duty to convey truthful evidence. The courts should accept such evidence with great care and caution because a child of tender age is a risky witness who could easily repeat fluently a story put into his mind and does not possess discretion to distinguish between what is based on his/her perception and what s/he has heard from others. Concluding the discussion, the court cautioned that the courts should generally be mindful of putting absolute reliance on children's evidence without corroboration.

In *Razia v. State* (2009), a mother of five children along with her paramour killed her husband and the incident was witnessed by two children aging 12 and 10 years. The both accused persons were convicted for death sentence by the trial court which was upheld by the first appellate court, i.e. High Court. When the matter was brought before the Supreme Court, it observed that the trial court before putting reliance on the evidence of children had taken all possible steps to judge their intelligence and maturity. The children were present on the crime scene and their evidence had inspired confidence. They remained consistent and steadfast in their statement that the both -their mother and her paramour- killed their father. Moreover, their evidence was corroborated from other evidence including the post-mortem report. The Supreme Court observed that in such circumstances some minor discrepancies or even contradictions would not vitiate the decisions of the courts below. Resultantly, the court upheld the impugned judgment, but converted death sentence of the mother into life imprisonment taking into account welfare of five bereaved children who had already lost their father, while death sentence of the mother's paramour was kept intact. It is worthy to be noted, that the courts at all levels

of judicial proceedings were satisfied as to veracity of the children's evidence, even then they opted to corroborate their testimony to rule out any possibility of error.

The judicial approach of corroborating children's evidence is well entrenched and deep rooted in Pakistan for safe dispensation of justice. In a case (*Mudassar v. State, 2011*), a child of 7/8 years saw his father firing at his mother. He adduced in the court "papa fired at mama". His testimony was corroborated by another witness and the accused was convicted.

It is manifestation of the same judicial approach that a child's testimony without corroboration is often not relied upon. In *Ulfat v. State (2010)*, the Supreme Court set aside concurrent findings of the courts below and exonerated the accused as the evidence of solitary child witness was not properly corroborated. After being convicted by the courts below, the appellant brought his case before the Supreme Court and contended that the courts had relied upon testimony of the child witness without getting it corroborated. He argued that the solitary evidence of the child was neither corroborated by the medical evidence nor by recovery of alleged weapon of offence. The Supreme Court observed that the courts in Pakistan generally follow a settled principle of prudence as to corroboration of a child's witness despite his intelligent deposition. The apex court noted that there were serious doubts in the medical evidence adduced by a lady doctor as to nature of weapon used in the offence. Moreover, the weapon, which was recovered after about two and half years, was not found to be blood stained nor the same was chemically examined. In such circumstances, the court concluded that child's testimony without requisite standard of corroboration did not merit for conviction of the appellant.

This sub-section may be concluded by observing that corroboration of children's testimony is not a legal obligation, but the courts generally go for it as a matter of caution and for avoiding miscarriage of justice. In essence, the courts have to satisfy their judicial conscience as to truthfulness of child's evidence and if they conclude that his evidence is credible, confidence inspiring and straight forward, the law does not prevent them to place reliance on it without corroboration. But when child's testimony does not achieve this level of reliability and generates a reliability void, technique of corroboration is there as a prudent way out.

Interested Witness

Interested witness is another illustration of suspicious nature of witness necessitating corroboration. Article 3 of the Qanun-e-Shahadat Order, 1984, states that all persons are competent to testify provided they understand questions put to them

and respond in rational manner. Hence, if an interested witness understands questions put to him and then responds to those questions in a sensible way, his competency in eye of law is established. The issue here is not about competency of an interested witness rather what value should be attributed to his testimony. This latter issue depends on corroboration.

The first important matter to settle is who is an interested witness? Whether mere existence of relationship between the parties and their witnesses is sufficient to treat the latter as interested witnesses? In *Farid v. State* (1992), the Supreme Court observed that relationship simpliciter is not enough to treat witnesses as interested. To qualify as an interested witness, one must possess some motive to falsely implicate the accused. And if a witness is proved to have such motive, his evidence in absence of corroboration, cannot sustain conviction.

The above legal position has been reiterated in *Ijaz v. State* (2009). While reappraising evidence in a murder case, the court pronounced that an interested witness is the one (a) who has a motive to implicate an accused person falsely, or (b) is swayed by a cause against him, or (c) is biased, partisan, or inimical towards him. It implies that an interested witness must have an ulterior motive for false attribution of a crime against an accused. Mere relationship is not enough to put aside the testimony of an interested witness, particularly when his presence at the crime scene seems natural and his testimony inspires confidence. The court further highlighted a novel aspect of relatives' testimony by observing that such witnesses in murder cases may be found to be more reliable because they, on account of their association with deceased person, do not want the real culprit to go scot free and to implicate an innocent person instead.

In *Ahmad v. State* (2010), the Supreme Court tabulated the principles pertaining to corroboration of interested witnesses as under:

- a. "It is a mistaken notion that reliance can never be placed on the uncorroborated testimony of interested witnesses;
- b. Looking for corroboration before placing reliance on an interested testimony, is only a rule of caution, prescribed by the courts and not a rule of law commanded by the Legislature;
- c. The said rule is not an inflexible rule;
- d. The crucial test for accepting or rejecting a piece of evidence is its intrinsic worth and not really the source from which the same emanates; and

- e. Corroboration even if required for the satisfaction of the conscience of the court, does not always have to come from independent sources of unimpeachable character, but can be gathered even from the circumstances available on record.”

Since corroboration of an interested witness’s testimony is a rule of prudence, an important question arises: when can a court rely on an interested witness without corroboration? The answer to this question was provided by the Supreme Court in *Rohtas v. State* (2010). The court held that requirement of corroboration of an interested witness can be condoned in appropriate cases carefully taking in account the following aspects. Firstly, truthfulness of such witness is to be ascertained on the touchstone of inherent merit of his statement; and secondly, if his statement is found reasonable, plausible and reliable, it can be accepted without corroboration, even if he is a worst enemy of the accused.

Accomplice

According to Article 16 of the Qanun-e-Shahadat Order, 1984, an accomplice is a competent witness and except in offences punishable under Hudood laws conviction on his uncorroborated testimony is not illegal. An illustration (b) appended to Article 129 of the Qanun-e-Shahadat Order, 1984, states that an accomplice is untrustworthy witness and his evidence should be corroborated. One may draw attention to an apparent contradiction in the above provisions which has been resolved by the courts since long by declaring the former provision as a rule of law and the latter as a rule of prudence, caution or practice (Ratanlal & Dhirajlal, 2004).

Once the Federal Shariat Court in *Haider v. Government of Pakistan* (1991) declared Article 16 of the Qanun-e-Shahadat Order, 1984, as against injunctions of Islam on the ground that an accomplice is *fasiq* (licentious) whose testimony even in *tazir* cases must be corroborated in light of the Quranic verse 6:106. The matter was appealed against in the Supreme Court as to necessity of corroboration in *tazir* cases (*Federation of Pakistan v. Shafi*, 1994). The Supreme Court refused to affirm such extensive requirement of corroboration and observed that requiring corroboration of an accomplice’s evidence has virtually matured into a rule of law and is followed by the courts in almost all eventualities. Hence, there is no need to make it a legal obligation to corroborate an accomplice’s evidence in *tazir* cases and thereby depriving the courts from the discretion they exercise in this matter on case to case basis.

Since the controversy over corroborating an accomplice's testimony is left to the judicial discretion, two cases are discussed to elucidate how this discretion works. Corroboration has been required in the first case, while the second dispenses with it. This discussion will make a point that the courts generally corroborate an accomplice's evidence unless it rings true or in other words does not suffer from reliability void.

In *Waheed v. State* (1995), the victim was alleged to have been kidnapped, and thereafter, raped by the accused while keeping her in captivity at various places. On finding opportunity, the victim escaped from the accused's alleged confinement and reported the matter to police. During her statement, she disclosed that she accompanied the accused to Lahore voluntarily to look after his wife after taking 20,000 rupees from her house, where he detained her for satisfying his sexual lust. Thereafter, he kept her moving from one place to another for some months. Another important piece of evidence in the case was medical evidence that did not support the conclusion that she was forcefully subjected to sexual intercourse. The trial court and the Federal Shariat Court (i.e. first appellate court) convicted the accused relying on her solitary evidence without corroboration.

The accused agitated the matter before the Supreme Court and pleaded that the alleged victim was an accomplice in the case; hence, her testimony could not be trusted without an independent corroboration. The court acceded to the accused's contention and concluded that she willingly accompanied him and facilitated the commission of the offence, hence, she was an accomplice and not victim. Consequently, the court held that her testimony should have been discarded unless corroborated in material particulars. Since no credible corroborative evidence was available on case file, the apex court acquitted the accused. In the present case, the court insisted on corroboration of an accomplice's evidence, and in its absence, set aside concurrent findings of the courts below.

In *Munawar v. State* (1993), the Supreme Court after reappraising the case concluded that the accomplice's testimony in such like cases does not need to be corroborated. In this case, the accomplice was associated with an international narcotic smuggling gang. In a smuggling mission, he was arrested in Norway and then convicted. When other members of the gang were arrested in Pakistan, he was undergoing imprisonment in Norway. He was brought back to Pakistan to stand as witness against his associates as no other credible evidence was available against them. Generally an accomplice's evidence is considered suspicious because of his

expectancy to earn some favor from the prosecution in terms of acquittal or concession in punishment. Owing to undergoing imprisonment in another country, the accomplice did not expect to have any beneficial impact on his remaining imprisonment. Considering this aspect of the case, the court said that it did not require corroboration of the accomplice's testimony because he would be sent back after adducing his evidence for undergoing his remaining period of imprisonment. Therefore, there was no possibility of adducing false evidence against his associates for appeasing or winning favors of either prosecution or court.

In nutshell, an accomplice's evidence is not different from the testimonies of children and interested witnesses discussed above. In all such cases, the courts are generally inclined to corroborate their testimonies unless they find something exceptional which absolve them from the necessity of corroboration. Having discussed three situations of witnesses' corroboration, the remaining part of this section will analyze three pieces of evidence which are generally corroborated in criminal proceedings.

Extra Judicial Confession

Confession is acknowledgement of commission of an offence or of those facts which constitute an offence. Its main categories are judicial and extra-judicial confessions. Judicial confession is made before a judicial officer authorized to record it. On the other hand, extra-judicial confession is made before any person other than a judicial officer, e.g., relatives, friends and police officials. All kinds of confessions must be proved to be voluntary and truthful before they are relied upon by a court. Articles 37 to 39, 41 and 42 of the Qanun-e-Shahadat Order, 1984, have dealt with the characteristic of voluntariness of confessions meticulously, while truthfulness of a confession is a matter of human judgment which could not be determined by any legal provision, hence, it is left to judicial prudence. Here comes the relevance of technique of corroboration. When a confession is corroborated by its surrounding circumstances, it is expected to be truthful, but when the surrounding/attending circumstances diverge with it, it may not be truthful. Judicial confessions are recorded after observing formalities laid down in law and judicial decisions. That is why they enjoy better probative value as compared to extra-judicial confessions. For extra-judicial confessions, such formalities cannot be followed and this is the reason, they remain in need of corroboration by other evidence (*Zia v. State, 2000*).

In *Zafar v. State (2006)*, the Supreme Court set aside concurrent findings of the courts below in which they had convicted an accused on solitary evidence of an

extra judicial confession without corroboration. The apex court observed that the both courts had erred in law by convicting on uncorroborated extra-judicial confession. In another decision (*Sajid v. Basharat, 2006*), the same court noted that an extra judicial confession is, at the best, a weak piece of evidence and in order to treat it as reliable evidence it must be confirmed by corroboratory evidence to usher belief that it was in fact made and what it expressed was truthful. Law does not provide for corroboration of an extra judicial confession, but prudence and caution dictate so. Human beings are inclined to consider statements prejudicial to one's interest as truthful and extra judicial confession is one such statement. If it is not suitably corroborated, this inclination might lead to disastrous consequences for dispensation of justice.

Retracted Confession

Another kind of confession well known in legal circles is retracted confession. When a confession made earlier -either judicially or extra judicially- is retracted/retrieved subsequently that is termed as retracted confession. The fact of retraction gives rise to serious issues as to truthfulness and voluntariness of the earlier confession, though the mere fact of retraction does not deprive it from its evidentiary value, but puts the courts on guard to deal it with extra care and caution. At this juncture, technique of corroboration becomes relevant.

It was held in *State v. Munir (1964)* that though retracted confession can legally be taken into consideration against its maker, yet in a criminal case, it is not prudent to base conviction on its strength alone unless it is corroborated in material particulars. In *State v. Waqar (1992)*, the court observed that it is not rule of law that confession, whether retracted or not, cannot be made sole basis of conviction, but prudence and caution necessitate that a retracted confession must be affirmed by some other evidence. In *Latif v. State (1999)*, while reaffirming the law stated in the previous case, it was held that conviction cannot be pronounced on retracted confession alone: it has to be corroborated by other evidence to the satisfaction of the court that crime was committed by the accused.

In *Daniel v. State (1992)*, a judicial confession recorded in conformity with the requirements laid down in law was retracted subsequently and this was assailed on the ground that it was made after three days of police custody and that before being made foundation of conviction it should have been corroborated in each and every particular. The court observed that a judicial confession properly recorded cannot convert into involuntary and its intrinsic value is not diminished on mere fact of retraction. The court further said that a confession cannot be discarded because it is

recorded after three days of police custody, and the law does not mandate that each and every aspect of such confession must be corroborated, it is sufficient if retracted confession is confirmed generally. The Supreme Court in *Khalid v. State* (2003) observed that if a confession is retracted and alleged to have been earlier obtained under coercion, before believing such confession it is imperative to examine whether it is corroborated by other evidence on material points or not. And where requisite corroboration is not available, such confessional statement is of no avail.

Dying Declaration

Another important piece of evidence is dying declaration which is required to be corroborated in many situations. It is presumed generally that a dying man cannot speak except truth. But this presumption is shattered in many circumstances, and in all such circumstances the required level of reliability can only be achieved through technique of corroboration. It has long been settled that a dying declaration if rings true and is proved genuine that can be relied upon without corroboration (Cheema & Khan, 2013). In *Shahbaz v. Crown* (1953), it was held that “a dying declaration is a valuable piece of evidence and if it is free from suspicion and believed to be true it may be sufficient for conviction.” One of the most important decisions in this regard is *Zarif v. State* (1977) which was decided by the Supreme Court of Pakistan. Justice Anwarul Haq, speaking for the majority, observed that “it cannot be laid down as an absolute rule of law, nor even of prudence, that a dying declaration cannot form the sole basis of conviction unless it is corroborated.” Another important decision of the Supreme Court affirming this chain of legal reasoning is *Farmanullah v. Qadeem* (2001). However, in case dying declaration is found to have infirmities, prudence and caution make corroboration indispensable (*Misri v. State*, 1999).

In *Farman v. Farid* (1994), the court observed that “to import veracity to a dying declaration, it is necessary that the declarant should be free from external influence and not crowded around by unauthorized persons while making the statement.” In the instant case, it was transpired from the evidence that five or six persons were sitting around the declarant when he was making the statement leading to the inference that they might have prompted him to say something. Consequently, the Supreme Court refused to convict on such uncorroborated solitary dying declaration. The West Pakistan High Court in *Taj v. State* (1960) held that if it is found that a dying man in his dying declaration has indulged in telling lies even partially that should put the courts on guard against accepting the remaining part of it without any convincing corroboration.

In another case *Gulab v. State* (1985), it was a proved fact that there was hostility and hatred between the deceased and the accused. The dying declaration was recorded by the Magistrate after a meeting held between the declarant and his mother. The chain of circumstances led to the inference that the deceased might have been tutored by his mother. Taking into account the peculiarity of circumstances, the court held that “such dying declaration could not safely be relied upon without independent corroboration in material particulars.”

If there are more than one dying declarations in a particular case, they must be consistent. But if a court finds inconsistencies between them, it has to corroborate them before putting reliance upon them. In *Rasool v. State* (1984), two dying declarations were recorded: the one in F.I.R. and the other as a statement under Section 161 of the Code of Criminal Procedure 1898. The both statements had contradictions and inconsistencies. Considering this, it was held that these declarations lacked requisite standard of reliability for conviction of murder without corroboration. Therefore, dying declarations similar to extra-judicial and retracted confessions are corroborated as a matter of prudence and caution when they engender reliability void and do not inspire confidence alone.

Conclusion

Historically, corroboration is linked to an important concept of evidence, i.e. plurality of witnesses, but within Pakistan’s judicial system, it has emerged as a well-developed technique for ushering reliability to those witnesses and pieces of evidence which suffer from reliability void. The courts are assigned the task of discovering truth from an array of contentions and multitude of evidence. They accomplish this onerous task while having limited recourses including legal and prudential at their disposal. Legislative measures cannot guide the courts as to reliability of any witness or any piece of evidence. This assignment is carried out by them through prudence and common sense. At this juncture, usefulness and efficaciousness of technique of corroboration is much appreciated. Hence, it may be concluded that corroboration within the context of Pakistan’s judicial system is an artifact of prudence and common sense.

When a given evidence does not satisfy courts’ judicial conscience as to credibility of any witness who is otherwise considered to be legally competent, they utilize the technique of corroboration in the interest of justice. And the same is the case of various pieces of evidence which lack requisite standard of reliability and then that deficiency is met through corroboration. As has been analyzed throughout the

paper, child witness, interested witness and accomplice are legally competent witnesses, however, their testimonies are generally viewed with suspicion because of their specific circumstances. Moreover, dying declaration, extra judicial and retracted confessions have unconvicted credibility unless corroborated by other evidence. Therefore, technique of corroboration lends a hand to the courts for determining reliability of such witnesses and pieces of evidence when they are afflicted with reliability void.

Importantly, the courts employ similar phraseology to express their satisfaction as to reliability or otherwise irrespective of the fact whether the matter pertains to a witness or a piece of evidence. When the courts are satisfied as to reliability and do not require corroboration, they pronounce that a witness or a piece of evidence rings true, inspires confidence and is credible or trustworthy. On the other hand, when a witness or a piece of evidence does not possess that level of reliability, then technique of corroboration is available to ensure safe dispensation of justice. Nevertheless in those situations when the original evidence is altogether unreliable, mere corroboration could not transform it into a reliable testimony.

However, there are certain inherent limitations of corroboration requiring further clarification. Although corroboration is employed for elimination of errors from judicial decision-making, as a matter fact there are various discretionary stages, such as dispensability, necessity, and plausibility of corroboration, which rely on judicial discretion and any lapse in the exercise of such discretion may lead to a flawed verdict.

References

- Abdul Latif v. State, PLJ SC 264 (1999)
- Abdul Rashid v. State, SCMR 799 (2003)
- Abdul Waheed v. State, SCMR 1498 (1995)
- Ali Asghar v. State, PLD Pesh 47 (1968)
- Awais v. State, PCrLJ 377 (2004)
- Cheema, S. A. & Khan, S. O. (2013). Dying Declarations in Pakistan and India: A Case Law Study of their Evidentiary Value. *Pakistan Journal of Social Sciences (PJSS)*, 33(1), 97-108.
- Cheema, S. A. & Khan, S. O. (2014). Dying Declaration and Its Corroboration in Pakistan and India: An Analytical Study of Case Law. *European Journal of Business and Social Sciences*, 2(12), 89-100.

- Daniel Boyd v. State, SCMR 196 (1992)
- Dr. M. Sarwar Ch. v. State, YLR 2478 (2001)
- Farman Bi v. Ghulam Farid, SCMR 1852 (1994)
- Farmanullah v. Qadeem Khan, SCMR 1474 (2001)
- Federation of Pakistan v. Muhammad Shafi Muhammadi, SCMR 932 (1994)
- Peiris, G. L. (1981). Corroboration in Judicial Proceedings: English, South African and Sri Lankan Law on the Testimony of Accomplices Compared. *The International and Comparative Law Quarterly*, 30(3), 682-716.
- Ghulam Farid v. State, SCMR 1258 (1992)
- Ghulam Rasool v. State, PLD Sh.C. (AJ&K) 2 (1984)
- Gul Zaman v. State, SCMR 1271 (1999)
- Gulab Jan v. State, PCrLJ 1162 (1985)
- Haider Hussain v. Government of Pakistan, PLD FSC 139 (1991)
- Haq Nawaz v. Sultan Khan, SCMR 393 (1977)
- Ijaz Ahmad v. State, SCMR 99 (2009)
- Khalid Javed v. State, SCMR 1419 (2003)
- Manzoor v. State, PLD Lah. 714 (1973)
- Mehrban v. State, PCrLJ 543 (1974)
- Mir Muhammad Farid v. Amreen, YLR 2234 (2003)
- Misri v. State, PCrLJ 116 (1999)
- Mudassar Ali Shah v. State, MLD 873 (2011)
- Muhammad Ahmad v. State, SCMR 660 (2010)
- Muhammad Ilyas v. State, PLD SC 333 (2001)
- Muhammad Khan v. State, SCMR 1220 (1999)
- Muhammad Panah v. State, YLR 1811 (2011)
- Munawar Hussain v. State, SCMR 785 (1993)
- Murphy, P. (2009). Law of Evidence. Oxford: Oxford University Press.
- R v. Baskerville, 2 K.B. 658 (1916)
- Rahim Shah v. State, PCrLJ 1129 (2004)
- Ratanlal & Dhirajlal (2003). The Law of Evidence. Nagpur, India: Wadhwa & Company.
- Razia v. State, SCMR 1428 (2009)
- Rohtas Khan v. State, SCMR 566 (2010)
- Sajid Mumtaz v. Basharat, SCMR 231 (2006)
- Shah Nawaz v. State, PCrLJ 388 (2002)

- Shahbaz v. Crown, PLD Lah. 566 (1953)
Shahnaz Bibi v. Muhammad Liaquat, SCMR 1438 (2007)
Shahzad v. State, SCMR 1009 (2002)
Shera Masih v. State, PLD SC 643 (2002)
State v. Munir, PLD SC 813 (1964)
State v. Waqar Ahmad, SCMR 950 (1992)
Stephen, J. F. (1872). The Indian Evidence Act (1 of 1872) with an Introduction on
the Principles of Judicial Evidence. London: Macmillan & Co.
Taj Muhammad v. State, PLD Lah 723 (1960)
Ulfat Hussain v. State, SCMR 247 (2010)
Zafar Iqbal v. State, SCMR 463 (2006)
Zahida Saleem v. Muhammad Naseem, PLD SC 427 (2006)
Zarif v. State, PLD SC 612 (1977)
Ziaul Rehman v. State, SCMR 528 (2000)