NOTICE TO POLICE CONSTBLE KHIZAR HAYAT SON OF HADAIT ULLAH on account of his false statement: In the matter of

P L D 2019 Supreme Court 527

ORDER

ASIF SAEED KHAN KHOSA, C J.--While deciding Criminal Appeal No. 238-L of 2013 filed by Muhammad Ilyas convict this Court had passed the following judgment on 13.02.2019:

> "Asif Saeed Khan Khosa, CJ.: Muhammad Ilyas appellant and some others had allegedly ambushed one Muhammad Asif at about 07.30 P.M. on 13.10.2007 in village Bathanwala in the area of Police Station Rayya Khas, District Narowal and had then fired at and killed him in the backdrop of a motive based upon a quarrel between the parties about one year prior to the present occurrence. With these allegations the appellant and his co-accused were booked in case FIR No. 152 registered at the above mentioned Police Station during the same night and after a regular trial the appellant was convicted by the trial court for an offence under section 302(b), P.P.C. and was sentenced to death and to pay compensation. The appellant challenged his conviction and sentence before the High Court through an appeal which was dismissed to the extent of his conviction for the offence under section 302(b), P.P.C. but the same was partly allowed to the extent of his sentence of death which was reduced by the High Court to imprisonment for life. Hence, the present appeal by leave of this Court granted on 26.06.2013.
>
> 2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.
>
> 3. The occurrence in this case had taken place during a night and a source of light had been mentioned in the FIR as well as in the site-plan of the place of occurrence but admittedly no such light or its source had been secured by the investigating agency. The ocular account of the incident in issue had been furnished before the trial court by Muhammad Boota complainant (PW7) and Khizar Hayat (PW8) who were very closely related to the deceased inasmuch as the complainant was a brother of the deceased whereas the other witness was a cousin of the deceased. Khizar Hayat (PW8) had been disbelieved by the High Court and his testimony had been ruled out of consideration because on the basis of some official record produced before the trial court it had been established that in his capacity as an official in the police department Khizar Hayat (PW8) was present on his duty at a Police Station situated in Lahore, i.e. hundreds of miles away from the place of occurrence. Muhammad Boota

complainant (PW7) had stated in the FIR as well as in his statement before the trial court that at the relevant time he was going to see off Khizar Hayat (PW8) and another and was, thus, proceeding with them towards a bus stop. If presence of Khizar Hayat (PW8) at the relevant time had been disbelieved by the High Court then the very reason stated by the complainant for his availability at the scene of the crime at the relevant time had disappeared. This shows that even Muhammad Boota complainant (PW7) had no regard for the truth and he too was a planted witness. Instead of providing support to the ocular account the medical evidence had gone a long way in contradicting the complainant inasmuch as the seat of injury attributed to the present appellant in the FIR had been changed by the complainant in his statement made before the trial court. The duration between death and postmortem examination mentioned in the Post-mortem Examination Report showed that the murder in question could have taken place much prior to the stated time of occurrence. No time of death of the deceased had been mentioned in the Post-mortem Examination Report. In column No.3 of the Inquest Report no time of death of the deceased becoming known had been mentioned. The motive set up by the prosecution had been found by the High Court not to have been proved. Nothing had been recovered from the appellant's custody during the investigation of this case.

4. For what has been discussed above a conclusion is inescapable that the prosecution had failed to prove its case against the appellant beyond reasonable doubt. This appeal is, therefore, allowed, the conviction and sentence of the appellant are set aside and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if not required to be detained in connection with any other case.

5. Before parting with this judgment we have found that Khizar Hayat (PW8) was at the time of the present incident serving as a Police Constable at Police Station Wahdat Colony, Lahore and he had claimed to have seen the present occurrence taking place at about 07.30 P.M. on 13.10.2007 in village Bathanwala in the area of Police Station Rayya Khas, District Narowal. Muhammad Waris, Moharrir/Head Constable (DW1) had appeared before the trial court and had produced official record of Police Station Wahdat Colony, Lahore quite categorically establishing that Khizar Hayat (PW8) was not on leave and was present at his duty at Police Station Wahdat Colony, Lahore at the time when the present occurrence had taken place in the area of Police Station Rayya Khas, District Narowal. On the basis of the said record the High Court had categorically concluded that Khizar Hayat (PW8) could not be believed to be an eye-witness and such finding of the High Court has not been assailed by the complainant party or the State before this Court. It is, thus, obvious that Khizar Hayat (PW8) had deposed on oath falsely before the trial court and on the basis of his false testimony Muhammad Ilyas appellant had been sentenced to death by the trial court. These facts apparently attract the provisions of section 194,

P.P.C.. Let a notice be issued to Khizar Hayat son of Hadait Ullah, caste Jat, resident of Gakhar Wali, Tehsil Pasrur, District Sialkot stated to be presently posted at Police Station Qilla Gujjar Singh, Lahore to appear before this Court on 04.03.2019 and to show as to why he may not be ordered to be proceeded against for commission of an offence under section 194, P.P.C. The Deputy Inspector-General of Police (Operations), Lahore is directed to ensure appearance of Khizar Hayat before this Court on the appointed date."

2. Today Khizar Hayat, who had appeared before the trial court as PW8, has appeared in person along with his learned counsel and they have tried to convince us that the statement made by Khizar Hayat before the trial court in connection with the above mentioned criminal case was a true statement and that he had not indulged in any falsehood. Paragraph No. 5 of the judgment passed by this Court and reproduced above, however, shows a different story. It appears that the said Khizar Hayat had deposed falsely in the trial of a criminal case in which Muhammad Ilyas accused had been convicted and was sentenced to death on the charge of murder. Through the above mentioned judgment this Court had acquitted the said convict of the charge after disbelieving the evidence produced by the prosecution against him, including the testimony of Khizar Hayat (PW8). As the said Khizar Hayat had ostensibly committed the offence of perjury attracting the provisions of section 194, P.P.C. therefore, the matter is referred to the learned District and Sessions Judge, Narowal for proceeding against Khizar Hayat in accordance with the law.

3. While attending to this matter we have felt that the deeper issue involved in the matter relates to the fact that the rule falsus in uno, falsus in omnibus had in the past been held by the superior Courts of this country to be inapplicable to criminal cases in Pakistan which had gradually encouraged and emboldened witnesses appearing in trials of criminal cases to indulge in falsehood and lies making it more and more difficult for the courts to discover truth and dispense justice. We have undertaken an exhaustive exercise so as to trace the history of the said rule and to understand how the jurisprudence around it has developed in Pakistan while also adverting to the relevant Islamic and legal provisions dealing with the subject. After a careful consideration of the history of the rule, the relevant Islamic provisions and the law of the land and after analysing the precedent case-law available on the subject we have come to the conclusion that the view that the rule is not to be applied to criminal cases in Pakistan was formed as a result of taking into account extraneous and practical considerations, rather than legal and jurisprudential, and the said view is not in accord with the Islamic provisions on the subject besides militating against the criminal law of this country according to which deposing falsely in a court and commission of perjury entail serious penal consequences. While coming to the said conclusion we first looked at the rule in its historical perspective, then traced through case-law as to how the rule was said to be not applicable in Pakistan and how it has been dealt with by this Court and lastly analysed the Islamic provisions relevant to the matter of giving false testimony. The

following paragraphs deal with each of these heads turn by turn. Falsus in uno, falsus in omnibus - Historical perspective

4. Falsus in uno, falsus in omnibus is a Latin phrase meaning "false in one thing, false in everything." The rule held that a witness who lied about any material fact must be disbelieved as to all facts1 because of the reason that the "presumption that the witness will declare the truth ceases as soon as it manifestly appears that he is capable of perjury" and that "Faith in a witness's testimony cannot be partial or fractional…." In its original form, the rule was mandatory and the notion "was that the testimony of one detected in a lie was wholly worthless and must of necessity be rejected." John Henry Wigmore, an American jurist who served as the Dean of Northwestern Law School from 1901 to 1929, traced the rule to the Stuart treason trials of the late 17th century4. In Trial of Hampden (9 Howell's State Trials 1053, 1101 (1684)), it was contended while referring to the rule of falsus in uno, falsus in omnibus that "If we can prove that what he hath said of my lord of Essex is false, he is not to be believed against the defendant." In Trial of Langhom (7 Howell's State Trials 417, 478 (1679)), it was argued that "If I can prove any one point (in answer to that which he hath given evidence) not to be true, then I conceive, my lord, he ought to be set aside." Similarly, it finds mention in Trial of Coleman (7 Howell's State Trials I, 71 (1678)) that "[I]t would much enervate any man's testimony, to the whole, if he could be proved false in any one thing." Barbara Shapiro, an American academic and author, notes that Michael Dalton's early 17th century manual for Justices of the Peace advised magistrates that when examining accused felons, they should discredit the whole of the accused's story if any part proved false.

5. By the early nineteenth century English judges were telling juries that they might - but need not - disbelieve the entire testimony of a witness who had lied about a material fact. In the United States of America, however, the U.S. Supreme Court endorsed a mandatory form of the rule as late as 1822, as did some state courts well into the twentieth century. In the case of The Santissima Trinidad (20 U.S. (7 Wheat.) 283, 339 (1822)) it was held that when a witness tells a deliberate falsehood, the courts of justice are bound to apply the maxim falsus in uno, falsus in omnibus. In the famous O. J. Simpson murder trial the Judge in that case instructed the jurors that "[a] witness who is willfully false in one material part of his or her testimony is to be distrusted in others.

" False testimonies in the courts in India - An old menace

6. In an article Truthful Character of Indian Witnesses (AIR 1945 Journal 6) Thakur Prasad Dubey, M.A., LL.B., P.C.S. (Judicial), Farrukhabad had written about the unfortunate trend of false testimonies in courts in the undivided India. He had observed as follows:

> "It is a well-known fact that Judges even of the Highest Tribunals of the land have very often expressed their opinions that witnesses in India are greater liars than elsewhere and such an opinion yet continues to be entertained throughout the country by very many Judges. The Judicial Committee made the following

observations in a very old case reported in 4 M.I.A. 431 [(1849) 4 M.I.A. 431 (P.C.), Mudhoo Soodun Sundial v. Suroop Chunder Sirkar.] at p.441:

"It is quite true that such is the lamentable disregard of truth prevailing among the native inhabitants of Hindustan that all oral evidence is necessarily received with great suspicion."

Their Lordships again affirmed their conviction in another case reported in 11 M.I.A. 177 [('67) 11 M.I.A. 177 (P.C.), Wise v. Sunduloonissa Chowdhrance.] where it was said:

"In a native case it is not uncommon to find a true case placed on a false foundation and supported in part by false evidence."

C. D. Field, an old eminent commentator of Law of Evidence, has the following to say on the point:

"There would appear to be an opinion pretty generally prevalent that witnesses in India are more mendacious than witnesses in other countries and it has repeatedly been stated that Judges in India have a far more difficult task to perform than Judges in England in consequence of the untruthful nature of evidence with which they have to deal. (Introduction pp. 30-31, Edn. 8)."

A somewhat familiar observation was made by a Bench of the Allahabad High Court in a recent murder case of Azamgarh about which there was some controversy in the press. Taylor has attempted to give reasons for such a general prevalence of falsehood. He says:

"Thus it has been justly observed that a propensity to lying has always been more or less a peculiar feature in the character of an enslaved people - accustomed to oppression of every kind ……. It is little to be wondered at if a lie is often resorted to as a supposed refuge from punishment and that thus an habitual disregard is engendered."

He attributes this as one of the causes of the prevalence of the disregard for truth generally in India, among the peasants of Ireland and among the subjects of Czar (Taylor vol. I, Arts. 45 and 53, Edn. 8.) It has been suggested in many quarters that on account of the growth of modern education this tendency towards falsehood has been checked and that there is not so much of perjury now as it was before the advent of British system of justice in this country. While it has to be conceded that perjury and falsehood among the litigants and witnesses in our law Courts has been on the increase ever since the establishment of Anglo Indian Courts the proposition that its tendency has been checked due to modern education does not seem to be warranted by the dictates of the experience of those who have been dealing with that class of people days after days and years after years. The class of people who have received College or University education constitute a drop in the ocean so far as population goes

and that class is seldom seen in our law Courts as parties or witnesses. ---------------------

As against this it cannot be denied that perjury in Indian Courts has gone on increasing and it has that increasing tendency even now. Historically the fact appears to be that after the establishment of Anglo-Indian Courts perjury started with the town and Bazar people. The honesty of the villagemen remained yet untouched for a considerable time. But the impregnable traditional honesty of the villagers seems to have begun to give way in law Courts in course of time and now we have the lamentable deterioration of that class as well.

I do not know how it will strike my learned readers but to me it offers itself as a perplexing phenomenon that a race traditionally, religiously, culturally and historically honest should in the course of less than a century get itself so highly deteriorated in their virtues of truth. The causes thereof are not far to seek for those who have experiences of the functionings of our modern laws and law Courts. Have we pondered over the very common expression of our present day witnesses when while speaking of facts outside Courts they every day say "I will speak the truth here and will have no hesitation in telling the whole truth for it is not a Court." And when they enter the court-room they are completely changed and will not have the slightest hesitation in telling the blackest of lies. The unravelling of this mystery will lead us to the discovery of the real causes of the fall of the moral of the Indian witnesses. They seem to feel that the Court is an alien body - a secular institution something different from themselves and their social and village environments, a place where truth can be mercilessly butchered with impunity without the latest compunction. Yet we have the counter picture that these witnesses will not easily tell a lie before even a Court arbitrator and will seldom tell a lie in a village panchait of villagemen. This is certainly a complex riddle and it is for the Legislators and thinkers of our land to solve it. Perjury is eating up the very vitals of our society and blackening the fair pages of our history.

The most important part played for the demoralization of our witnesses has been that of the lawyers of the mufassil Courts and in some measure that of the mufassil Judges themselves. Our technical laws of proof of facts have equally contributed towards that cause. It is through lawyers that witnesses pass before they appear before the Judge. If they tolerate perjuries and falsehoods and actively or passively by connivance or consent allow a false witness to state false facts the doors of perjury are flung wide apart. These processes being repeated in thousands of instances every day throughout the country at the hands of our educated Vakils will naturally make lying less odious and give it a sanction due to the position they occupy in society even to the hesitant and faltering. It is thus that the whole atmosphere of the law Courts is becoming nauseatingly intolerable. The over-crowding in the profession, the unhealthy spirit of

competition, the growth of the power of the dominating influence of village barristers who can dictate terms for action and whose number has ever been increasing are all contributing towards the fall of the professional morality among our lawyers. And are not some of the Judges in the muffasils abettors of that misfeasance? Do we not often overemphasise the number and quantity of witnesses and pay lesser attention to more vital materials which can unearth the buried truth with greater certainties, I mean elements of circumstances, conducts, general probabilities, natural permissible presumptions, documentary pieces of evidence and the demeanour and ways of the delivery and behaviours of parties and the witnesses in the Court. Do not some of us bury our heads down and go on recording statements hours after hours regardless of what passes on in front of us? Do not some of us dismiss cases because witnesses on one side are larger in number than on the other? Lawyers have to cater to the standards of Judges. And do not some of the Courts of appeals in the mufassil make similar contributions towards that cause? I am firmly of the opinion that if Judges begin to detest false evidence and exercise their statutory powers to suppress it, the legal profession will shape its way differently. Which of us whether of the Bar or of the Bench does not feel that not even 10 percent of our present day witnesses make truthful contributions for finding correct facts. Yet the useless 90 percent will have to be put in and their conscience and those of others who are responsible for the conduct of the cases sacrificed. There has arisen a vicious circle in which every part is contributing its due share. The criminal law of perjury is for all purposes very seldom resorted to and very seldom successful. That is another cause which makes liars and perjurers bolder and more fearless.

These facts are patent enough to attract the attention of the Leaders of the Community, the people who have powers to shape the State Policy. Man does not live by bread alone. Take away the man's honesty and you reduce him to the position of a devil. Indian Society is in danger due to these increasing law Court perjuries and drastic all round measures are necessary to eradicate them. It needs the vigilance and the co-operation of all sections of people. After we have won the War this subject must form one of the most urgent and pressing items of the peace time progress. No price will be too high for it. Commissions may be set up to devise and recommend ways and means for restoring Indian honesty to its historical and traditional standard."

Falsus in uno, falsus in omnibus - Applicability in Pakistan

7. The rule was first held not to apply to cases in Pakistan in the case of Ghulam Muhammad and others v. Crown (PLD 1951 Lahore 66) and the judgment was authored by Muhammad Munir, CJ. The case involved murder of five people for which thirteen persons were implicated by the complainant party out of whom ten were tried and resultantly nine were found guilty. At the trial two of the accused persons took the plea that they were not in the village at the time of occurrence and were actually locked up in

a police station. The learned Additional Sessions Judge disbelieved the said plea and came to the conclusion that in fact the said accused persons took part in the occurrence. The High Court upon re-examining the evidence found that the reasons prevailing with the trial court were not borne out of the record and consequently it held that the said two accused persons were not present at the place of occurrence when the murders were committed. While considering the effect of that finding recorded by it the High Court observed as follows:

> "Now what is the effect of this finding on the prosecution case? If there had been no circumstances tending clearly to show that the witnesses saw the murders, it would have been our duty to hold, that because they named Muhammad and Rahmat, they did not see the occurrence and thus to acquit the whole lot. The same would have been the result, if there had been no other evidence against any one of the appellants tending to show that he did take part in the murders."

But the High Court did not apply the rule holding that:

> "Generally when it is proved that some innocent persons have been dishonestly implicated in a crime, the Court is entitled, and it is safer, to acquit even those who have not been able to prove that they were falsely implicated. The rule, however, is not absolute, and its indiscriminate application in this Province is as dangerous to the administration of criminal justice as the general application of the contrary, rule, that in such cases the only persons against whom the evidence of the witnesses may be rejected are those who succeed in proving their innocence.
>
> Judges with vast and intimate experience of the administration of criminal justice in this country have often felt that where falsehood has been intentionally mixed with truth, they are under no obligation to winnow the grain of truth from the chaff of falsehood. Others with equal experience and keen insight into the character and mentality of witnesses who generally give evidence in criminal cases in this Province have emphasised the grave danger of miscarriage of justice if oral evidence were judged by maxim of falsus in uno, falsus in omnibus, and have considered proof of perjury on a material point by itself not to be a sufficient reason to reject that portion of the evidence which appears to be true. There are other observations on the subject, some plain in language and idea; others forceful epigrams, such as, that false evidence can never be corroborated, that zero added to a quantity adds nothing to that quantity and that whatever quantity be multiplied by zero, the result must still remain zero. I have always felt that the question of questions for the Judge in such cases, is how to get at the truth with that degree of certainty as is always insisted upon in criminal cases and it seems to me that if you can do that, the result need not be determined by any general rule. It may be that the greater and clearer the falsehood, the more difficult the task of extracting the truth, but that is the real task before a judge, I have never felt any uncertainty about. I cannot, therefore, accept Mr. Saleem's contention

> that since it is proved in this case that the witnesses have involved at least two men who could not have taken any part in the murders, their evidence against the other accused must for that reason alone be rejected."

8. By analysing the reasoning prevailing in the said judgment it may pertinently be noticed that the High Court was influenced purely by practical considerations relevant to testimonies made in the Province of the Punjab. It is obvious that use of the words 'in this Province' clearly indicated that the scope of the High Court's reasoning was narrow as it was discussing the 'character' and 'mentality' of witnesses who gave evidence in that particular Province. With utmost respect, such practical considerations ought not to have been brought into effect to hold that a principle, which is backed by Islamic provisions no less, as will be seen later, is not to apply any more in light of the said considerations. It appears that instead of curbing a menace creeping into administration of justice the High Court had decided to adopt a pragmatic approach and to go along with the menace by bending the principle itself. In hindsight that approach was most unwise as it sowed the seeds of unchecked falsehood in testimonies not only making the job of a judge more and more difficult but also increasingly polluting and sullying the stream of justice itself.

9. In the above mentioned case the High Court had failed to explain how the rule's application was dangerous to the administration of criminal justice and what "grave danger of miscarriage of justice" was there "if oral evidence were judged by maxim of falsus in uno, falsus in omnibus". It can be seen quite clearly that the High Court was influenced by extraneous and practical considerations, rather than legal or jurisprudential, which led it to conclude that there would be miscarriage of justice if the rule continued to apply. A Larger Bench of this Court had observed in the case of Mst. Sughran Bibi v The State (PLD 2018 SC 595) that "Interpretation of law by this Court ought not to be premised on damning generalisations which are nothing but subjective." The reasons advanced by the High Court in the case under discussion for doing away with the rule were clearly general and subjective in nature and the High Court ought to have been careful in that regard.

10. The High Court had further observed in that case that "the question of questions for the Judge in such cases, is how to get at the truth with that degree of certainty as is always insisted upon in criminal cases". We are, however, of the view that the aim while deciding criminal cases ought not to be to "get at the truth" but to decide a matter in light of the settled legal principles with the sole focus on determining whether the evidence on the record proves the guilt of the accused person in accordance with the requisite standard, i.e. beyond reasonable doubt or not. We, through our experience, are of the opinion that trying to ascertain the truth, although a noble and ideal effort in its own right, may prove to be a slippery slope as the full facts of any criminal case are never presented before a court. For a Judge to do complete justice and to get to the truth in a criminal case, he needs, as a matter of necessity, to have in his knowledge all of the

facts relevant to the case at hand. As that is never the case, the rule of law and consistency in approach can be only fostered and strengthened if criminal cases are decided in a uniform way and only and only in light of the settled principles of evidence, not by bringing in subjective and practical considerations, which invariably will vary from one judge to the next.

11. As noted above, historically the notion was that the rule was mandatory in nature and we are in no doubt that the rule should be applied mandatorily. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted above that originally the view "was that the testimony of one detected in a lie was wholly worthless and must of neces sity be rejected." A good application of the said notion can be seen in the case of Mohamed Fiaz Baksh v.The Queen (PLD 1959 Privy Council 24). The case was about a murder for which two men were convicted in trial. Both men appealed to the Court of Appeal and the said Court dismissed the appeal of one but quashed the conviction of the other and ordered a new trial in his case. In ordering a new trial the Court was influenced by the fact that the witnesses produced were discrepant and had improved on their previous statements. However, in upholding the conviction of the other convict it was observed by the Court of Appeal as follows:

> … they considered entirely different considerations applied. They could find a good deal unfavourable and nothing favourable to him in the statements and considered that nothing favourable to him could have been obtained therefrom which was not obtained at the trial. They accordingly held that the jury's verdict in respect of this appellant could not be disturbed on this ground."

The Privy Council held the approach adopted by the Court of Appeal as erroneous and concluded as under:

> Their Lordships are unable to accept this reasoning. If these statements afforded material for serious challenge to the credibility or reliability of these witnesses on matters vital to the case for the prosecution it follows that by crossexamination-or by proof of the statements if the witnesses denied making themthe defence might have destroyed the whole case against both the accused or at any rate shown that the evidence of these witnesses could not be relied upon as sufficient to displace the evidence in support of the alibis. Their credibility cannot be treated as divisible and accepted against one and rejected against the other. Their honesty having been shown to be open to question it cannot be right to accept their verdict against one and re-open it in the case of other. Their Lordships are accordingly of opinion that a new trial should have been ordered in both cases."

12. Before we go on to analyse how the Supreme Court of Pakistan has dealt with the rule we deem it appropriate to cite a few cases in which the social conditions prevailing

in the Province of the Punjab in the context of evaluating dying declarations have been discussed.

Bkhshish Singh alias Bakhshi and others v Emperor (AIR 1925 Lahore 549)

"In our opinion it would be hardly safe to convict on the uncorroborated dying declaration of Lal Singh because it is wellknown that inhabitants of the Punjab will often in dying declaration not only accuse the actual offenders, but will also add the names of other enemies."

Tawaib Khan and another v The State (PLD 1970 SC 13)

"In the same line, there are the dying declarations of the deceased which have a degree of sanctity under the law, being the statements of a dying man, on the belief that he being placed in a situation of immediate apprehension of severance of his ties with the mundane affairs, he would not tell a lie and implicate innocent persons on false charges. But, I consider that in the matter of the administration of criminal justice, taking in view the present state of our society, the assessment of evidence, whether it is the statement of a witness or the statement of a person who is dead, is essentially an exercise of human judgment to evaluate the evidence so as to find out what is true and what is false therein. In this effort, the case has to be considered in all its physical environments and circumstances to find out how far the evidence or its different parts fit in with the circumstances and possibilities that can be safely deduced in the case. In this country, the habit, unfortunately, is quite common, now judicially recognized, that people do add innocent persons along with the guilty to satisfy their sense of revenge and to put the other side to the utmost grief. It is difficult to lay down a rigid rule that a person who is injured and is under an apprehension of meeting his death, would suddenly be gifted, as if by a magic transformation, with a clean conscience and a purity of mind to shed all the ageold habits and deep-rooted rancours and enmities. Even, assuming that the pangs of conscience are there at the time to prohibit making of false charges, the question arises whether these pangs are strong enough to fortify him to resist the promptings and persuasions of his relations and others who may be surrounding him at the time and incite him to support the pattern of the charge which they have chosen to make against the accused persons, whether innocent or guilty? It is for this reason that a close scrutiny of the dying declarations like the statements of interested witnesses, becomes absolutely necessary."

Muhammad Ameer and another v Riyat Khan and others (2016 SCMR 1233)

"A dying declaration is an exception to the hearsay rule and, thus, the same is to be scrutinized with due care and caution, particularly in the backdrop of the observations made by different Courts about veracity of a dying declaration in the Province of the Punjab and a reference in this respect may be made to the cases of Bakhshish Singh alias Bakhshi and others v. Emperor (AIR 1925 Lahore 549),

Tawaib Khan and another v. The State (PLD 1970 SC 13) and Usman Shah and others v. The State (1969 PCr.LJ 317)."

13. We now turn to see how the Supreme Court of Pakistan has dealt with the rule in different cases till date:

Tawaib Khan and another v The State (PLD 1970 SC 13)

"The maxim "falsus in uno falsus in omnibus" has all along been discarded by the courts in this country. Similarly, the rule that the integrity of a witness is indivisible, despite its moral virtue, has not been endorsed by the superior courts of this country without reservations and cannot be accepted as one of universal application. In the last analysis, as stated in some of the eminent judicial decisions, "the grain has to be sifted from the chaff" in each case, in light of its own particular circumstances."

The State v. Mushtaq Ahmad (PLD 1973 SC 418)

"Moreover, it has been ruled by this Court in a number of recent cases, that having regard to the social conditions obtaining in this country, the principle falsus in uno falsus in omnibus cannot be made applicable to the administration of criminal justice and therefore Courts are under a duty to sift "chaff from the grain"."

Samano v. The State (1973 SCMR 162)

"It was next submitted that the fact that the evidence of the eye-witnesses had not been relied upon as against Fateh Mohammad, would react on its credibility as against the present appellants as well. The argument of course proceeds on the premise that the credit of a witness is indivisible, but the maxim falsus in uno, falsus in omnibus has not been followed by the Courts in this subcontinent, and it has been repeatedly held that in the context of the conditions prevailing in the country, the Courts have a duty to sift the grain from the chaff."

Bakka v. The State (1977 SCMR 150)

"The principle falsus in uno falsus in omnibus has long since ceased to be applied by the Courts in this country, and they have always endeavoured to separate the grain from the chaff."

Khairu and another v. The State (1981 SCMR 1136)

"It was next submitted that as the prosecution witnesses had lied in one essential respect namely, as to the first petitioner having been over-powered it was difficult to rely on their ipse dixit as to the culpability of the petitioners. The High Court held that the rule, falsus in uno falsus in omnibus, is not applicable for discarding the evidence of the witnesses as a whole and hence so much of the evidence which is credible can be accepted."

Ghulam Sikandar and another v. Mamaraz Khan and others (PLD 1985 SC 11)

"It is often said that the principle falsus in uno falsus in omnibus is not applicable in Pakistan. The same principle has been described in some cases, slightly differently; namely, that the testimony of an eye-witness should not be treated as indivisible although there is no consensus with regard to the later view. A contrary view has also been held. Expressed in a more direct manner a similar rule in the administration of criminal justice which is hall-mark of Islamic Jurisprudence, that when a witness has been found false with regard to the implication of one accused about whose participation he had deposed on oath the credibility of such witness regarding involvement of the other accused in the same occurrence would be irretrievably shaken. However, as a matter of convenience a rule has been developed in Pakistan since the famous case of Ghulam Muhammad v. Crown (PLD 1951 Lah. 66) propounded by late Chief Justice Muhammad Munir that where it is found that a witness has falsely implicated one accused person, ordinarily he would not be relied upon with regard to the other accused in the same occurrence. But if the testimony of such a witness is corroborated by very strong and independent circumstances regarding other the reliance might then be placed on the witness for convicting the other accused. For further and practical application of this rule the following cases can be instructive; (particularly if the principle of indivisibility of credibility laid down in the Privy Council case Muhammad Faiz Bakhsh v. The Queen (PLD 1959 PC 24) is to be ignored :-

Tawaib Khan and another v. The State PLD 1970 SC 13;

The State v. Mushtaq Ahmad PLD 1973 SC 418;

Muhammad Shafi and others v. The State 1974 SCMR 289;

Bakka v. The State 1977 SCMR 150;

16 Khairu and another v. The State 1981 SCMR 1136;

Ahmad and others v. The State 1982 SCMR 1049;

Aminullah v. The State PLD 1982 SC 429 and

Muhammad Nawaz v. The State 1984 SCMR 190.

It is to be emphasised that the sub-rule of "separating the grain from the chaff", has been demonstrated in many cases by applying the sure test - whether the same tainted ocular evidence has received corroboration from independent and equally strong inculpatory evidence/circumstance (sic)/accused.

The afore-discussed main rule shall suffer serious change if and when it is examined in the light of the Islamic Principles. But for the time being even if the rule generally followed by the superior Courts is applied to this case it would be very essential to seek strong and independent corroboration against each one of the accused on account of various reasons discussed in the High Court judgment as also in this judgment."

(Bold letters have been supplied for emphasis)

Ziaullah v The State (1993 SCMR 155)

"In any case, the rule falsus in uno falsus in omnibus is no longer applicable and not unoften the Court has to sift the grain from the chaff. Reference in this connection may be made to Khairu and another v. The State (1981 SCMR 1136)."

Zulfiqar Ali v The State (1993 SCMR 2046)

"It is by now well settled that the maxim falsus in uno falsus in omnibus has no universal application and the Courts can sift the grain from the chaff and convict those accused whose guilt is established beyond any doubt and can acquit those whose involvement is not free from doubt."

Irshad Ahmad and others v. The State and others (PLD 1996 SC 138)

"Even otherwise maxim "falsus in uno falsus in omnibus" has all along been discarded by the superior Courts of this country. In order to reach the truth "the grain has to be sifted from the chaff" in each case in the light of its own particular facts."

Saad Saood Jan, J. stated in his additional note that

"As regards the extension of the maxim falsus in uno falsus in omnibus to the appreciation of evidence I am not sure if it stands totally discharged. There can be no doubt that a witness who deliberately speaks a lie or withholds truth on a material fact which should be known to him seriously compromises his credibility and it would be unsafe to rely upon his testimony alone to convict an accused person. However, there is always a possibility that on certain other facts in issue he may have spoken the truth; but before a part of his statement can be acted upon there must be some indication in the ambient circumstances or in the other evidence on record which lends assurance that he could not have lied with regard to that part. But for such assurance his whole statement has to be treated as suspect and not worthy of credit."

Zia Mahmood Mirza, J. observed in his additional note that

"As regards the principle embodied in the maxim "falsus in uno falsus in omnibus" or to put it somewhat differently the rule that the integrity/credibility of a witness is indivisible, it has almost invariably been held by the superior Courts of this country that it has no universal application and the grain has to be sifted from the chaff in each case. Late Chief Justice Muhammad Munir in the case of Ghulam Muhammad v. Crown PLD 1951 Lah. 66 did not accept the contention that since the witnesses had involved at least two men who could not have taken any part in the murders, their evidence against the other accused must for that reason alone be rejected. It was observed that "the question of questions for the Judge in such cases is how to get at the truth with that degree of certainty as is always insisted upon in criminal cases and it seems that if you can do that, the result need not be determined by any general rule." Reference may also pertinently be made to Tawaib Khan and another v. The State PLD 1970 SC 13 wherein it was observed that the maxim "falsus in uno falsus in omnibus" has all along been

discarded by the Courts in this country. Similarly, the rule that the integrity of a witness is indivisible, despite its moral virtue, has not been endorsed by the superior Courts of this country without reservations and cannot be accepted as one of universal application. In the last analysis, as stated in some of the eminent judicial decisions, "the grain has to be sifted from the chaff" in each case, in the light of its own particular circumstances". Again in Bakka v. The State 1977 SCMR 150 this Court observed that "the principle falsus in uno falsus in omnibus has long since ceased to be applied by the Courts in this country, and they have always endeavoured to separate the grain from the chaff". Similar view was taken by this Court in Khairu and another v. The State 1981 SCMR 1136 wherein it was held that the rule "falsus in uno falsus in omnibus" "is not applicable for discarding the evidence of the witnesses as a whole and hence so much of the evidence which is credible can be accepted.' This view was reiterated in Ziaullah v. The State 1993 SCMR 155 holding that the rule "falsus in uno falsus in omnibus" is no longer applicable and not unoften the Court has to sift the grain from the chaff". Reference may usefully be made to Ghulam Sikandar v. Mamaraz Khan PLD 1985 SC 11 where this Court while examining the aforenoted principle observed that a rule has since been developed in Pakistan that where a witness is found to have falsely implicated one accused person, ordinarily he would not be relied upon with regard to the other accused in the same occurrence, but if the testimony of such a witness is corroborated by very strong and independent circumstances regarding the other, reliance might then be placed on the witness for convicting the other accused."

Muhammad Ahmad and another v. The State and others (1997 SCMR 89)

"Needless to point out that it is by now a settled proposition that the maxim falsus in uno falsus in omnibus has no universal application and not unoften the grain has to be sifted from the chaff. Refer Khairu and another v. The State (1981 SCMR 1176)."

Nazeer Ahmad alias Nazeera v. The State (1998 SCMR 1768)

"… falsus in uno falsus in omnibus (false in one false in all), is no more operative and the rule of sifting the chaff from the grain is to be applied while apprising the evidence in criminal cases."

Sardar Khan and 3 others v. The State (1998 SCMR 1823)

"The maxim "Falsus in uno falsus in omnibus" has not been accepted by the superior Courts in Pakistan as having universal application. Therefore, it does not, necessarily, follow that where the Court does not accept the evidence of a witness against some of the accused in a case, the Court cannot accept his evidence against the other accused. The Court often sifts the grain from the chaff while accepting the evidence of a witness against some of the accused in a case and at the same time not relying on his version against other accused in the case (see Muhammad Ahmed v. State 1997 SCMR 89 and Khairu v. State 1981 SCMR 1176)."

Mir Hassan and others v. State and others (1999 SCMR 1418)

"In the case of Sardar Khan v. State (1998 SCMR 1823), this Court stated the following broad principles for appreciation of evidence while deciding the cases involving capital punishment:

The Maxim 'falsus in uno falsus in omnibus' has not been accepted by the superior Courts in Pakistan as having universal application. Therefore, it does not, necessarily, follow that where the Court does not accept the evidence of a witness against some of the accused in a case, the Court cannot accept his evidence against the other accused. The Court often sifts the grain from the chaff while accepting the evidence of a witness against some of the accused in case and at the same time not relying on his version against other accused in the case (see Muhammad Ahmed v. State 1997 SCMR 89 and Khairu v. State 1981 SCMR 1176).

Khawand Bakhsh and others v. The State and others (PLD 2000 SC 1)

"The principle of falsus in uno falsus in omnibus would not be applicable to their case because of availability of sufficient corroboratory material against them. The rule about the indivisibility of the testimony of a witness is that ordinarily if he is found to have falsely implicated an accused person, he should not be relied upon with regard to the other accused in the same occurrence, but if his testimony stands corroborated by strong and independent circumstances regarding the other, the reliance might then be placed on him for convicting the other accused. The Courts are required to separate grain from the chaff by considering whether the same tainted evidence stands corroborated from some independent and strong circumstance or evidence. The following cases may be cited where the circumstances in which the principle of falsus in uno falsus in omnibus and its applicability in Pakistan in different situations was elaborately discussed:--

(i) Tawaib Khan and another v. The State PLD 1970 SC 13,
(ii) The State v. Mushtaq Ahmad PLD 1973 SC 418,
(iii) Muhammad Shafi and 4 others v. The State 1974 SCMR 289,
(iv) Aminullah v. The State PLD 1982 SC 429 and
(v) Muhammad Nawaz v. The State 1984 SCMR 190."

Rashid Khan and another v. The State (2000 SCMR 854)

"In any event the contention cannot prevail as the maxim 'falsus in uno falsus in omnibus' does not hold the field anymore having been replaced by a more rational methodology of evaluation of evidence called 'sifting grain from the chaff'. Reference in this context may be made to the judgments of this Court reported as Tawaib Khan v. State (PLD 1970 SC 13) and Samano v. State (1973 SCMR 162). The testimony in question can be safely believed vis-a-vis the appellant as it is amply corroborated by his aforementioned admission."

Sarfraz alias Sappi and 2 others v. The State (2000 SCMR 1758)

"The proposition of law in criminal administration of justice namely whether a common set of ocular account can be used for recording acquittal and conviction against the accused persons who were charged for the same commission of offence is an overworked proposition. Originally the opinion of the Court was that if a witness is not coming out with a whole truth his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in uno falsus in omnibus but subsequently this view was changed and it was held that principle enshrined in this maxim would not be applicable and testimony of a witness will be acceptable against one set of accused though same has been rejected against another set of accused facing same trial. However, for safe administration of justice a condition has been imposed namely that the evidence which is going to be believed to be true must get independent corroboration on material particulars meaning thereby that to find out credible evidence principle of appreciation of evidence i.e. sifting chaff out of grain was introduced as it has been held in the cases of Syed Ali Bepari v. Nibaran Mollah and others (PLD 1962 SC 502), Tawaib Khan and another v. The State (PLD 1970 SC 13), Bakka v. The State (1977 SCMR 150), Khairu and another v. The State (1981 SCMR 1136); Ziaullah v. The State (1993 SCMR 155), Ghulam Sikandar v. Mamaraz Khan (PLD 1985 SC 11), Shahid Raza and another v. State (1992 SCMR 1647), Irshad Ahmad and others v. State and others (PLD 1996 SC 138) and Ahmad Khan v. The State (1990 SCMR 803)."

Qutab-ud-Din v The State (PLD 2001 SC 101)

"As far as the principle of falsus in uno falsus in omnibus is concerned it has got no application so far as criminal justice prevailing in this country is concerned. However, the Courts are empowered to scan the evidence to reach at a conclusion as to whether the evidence furnished by a witness can be believed simultaneously against one set of accused and can be discarded against the other set of accused, however, subject to independent corroboration or particular point qua the accused against whom such evidence is to be believed. In this behalf if any authority is needed reference can be made to the case of Ghulam Sikandar and another v. Mamaraz Khan and others PLD 1985 SC 11. Relevant para. from the above judgment is reproduced hereunder:--

"It is often said that the principle falsus in uno falsus in omnibus is not applicable in Pakistan. The same principle has been described in some cases, slightly differently; namely, that the testimony of an eye-witness should not be treated as indivisible although there is no consensus with regard to the later view. A contrary view has also been held. Expressed in a more direct manner a similar rule in the administration of criminal justice which is hall-mark of Islamic Jurisprudence, that when a witness has been found false with regard to the implication of one accused about whose participation he had deposed on oath the credibility of such witness regarding involvement of the other accused in the same occurrence would be irretrievably shaken. However, as a matter of convenience a rule has been developed in Pakistan since the

famous case of Ghulam Muhammad v. Crown (PLD 1951 Lah. 66) propounded by late Chief Justice Muhammad Munir that where it is found that a witness has falsely implicated one accused person, ordinarily he would not be relied upon with regard to the other accused in the same occurrence. But if the testimony of such a witness is corroborated by very strong and independent circumstances regarding other the reliance might then be placed on the witness for convicting the other accused. For further and practical application of this rule the following cases can be instructive; (particularly if the principle of indivisibility of credibility laid down in the Privy Council case Muhammad Faiz Bakhsh v. The Queen (PLD 1959 PC 24) is to be ignored :--

Tawaib Khan and another v. The State PLD 1970 SC 13;

The State v. Mushtaq Ahmad PLD 1973 SC 418;

Muhammad Shafi and others v. The State 1974 SCMR 289;

Bakka v. The State 1977 SCMR 150;

Khairu and another v. The State 1981 SCMR 1136;

Ahmed and others v. The State 1982 SCMR 1049;

Aminullah v. The State PLD 1982 SC 429 and

Muhammad Nawaz v. The State 1984 SCMR 190.

It is to be emphasised that the sub-rule of "separating the grain from the chaff", has been demonstrated in many cases by applying the sure test -- whether the same tainted ocular evidence has received corroboration from independent and equally strong inculpatory evidence/circumstance (sic)/accused.

The afore-discussed main rule shall suffer serious change if and when it is examined in the light of the Islamic Principles. But for the time being even if the rule generally followed by the superior Courts is applied to this case it would be very essential to seek strong and independent corroboration against each one of the accused on account of various reasons discussed in the High Court judgment as also in this judgment. No such corroboration is forthcoming against Khan Beg and Maqbul Illahi. Therefore, maintaining their acquittal on this ground alone would be amply justified."

The above view has been followed in the cases (i) Khairu v. State 1981 SCMR 1136; Muhammad Ahmed v. State 1997 SCMR 89 and Mir Hassan v. State 1999 SCMR 1418."

Anwar and another v. The State (2001 SCMR 1518)

"We are also of the view that the principle of law "falsus in uno, falsus in omnibus" is no longer accepted by the superior Courts of this country and the Court is under a duty to sift the chaff from the grain and find out as to whether a part of the evidence is reliable and confidence inspiring."

Muhammad Zubair and another v. The State (2002 SCMR 1141)

"It would not be out of place to mention here that maxim 'falsus in uno falsus in omnibus' is not applicable in prevalent system of criminal administration of justice and moreso there is no rule having universal application that where some accused persons have not been found guilty the other accused would, ipso facto, stand acquitted because the Court has to sift the grain from the chaff. If any authority is needed reference can be made to cases titled Riaz Hussain v. The State (2001 SCMR 177) and Samano v. State (1973 SCMR 162)."

Ellahi Bakhsh v. Rab Nawaz and another (2002 SCMR 1842)

"It is well-settled by now that the maxim "falsus in uno falsus in omnibus" has no universal application and it is bounden duty of the Court to sift the grain from the chaff. In this regard reference can be made to Khairu v. State (1981 SCMR 1136)."

Umar Hayat v. The State (2007 SCMR 1296)

"This may be seen that in a case of joint liability, the Court may in the light of the rule of sifting the grain from chaff, give benefit of doubt to an accused but his acquittal may not be relevant for determining the guilt of his co-accused and Court is not obliged to acquit all accused on the basis of rule of falsus in uno falsus in omnibus which is not followed by the Courts in Pakistan."

Ghulam Mustafa v. The State (2009 SCMR 916)

"In our jurisprudence it is by now well established that the legal maxim falsus in uno falsus in omnibus is not a universal principle to be applied in all criminal cases. However, according to settled case-law there are exceptions and if evidence on the record warrants a doubt in the credibility of such witnesses then indeed their testimony regarding another set of co-accused is to be considered with caution and cannot be accepted without strict corroboration from other independent and credible sources. In this connection reference can be made to the case of Muhammad Nawaz v. State 1969 SCMR 132, Shafoo v. State 1968 SCMR 719 and Allah Ditta v. State PLD 2002 SC 52."

Khadim Hussain v. The State (2010 SCMR 1090)

"In fact a futile exercise appears to have been made to press into service the doctrine of "falsus in uno falsus in omnibus (false in one thing, false in all), which is admittedly not applicable in prevalent system of criminal administration of justice and moreso there is no rule having universally applicable that where some accused were not found guilty the other accused would ipso facto stand acquitted because the Court has to sift the grain from chaff. Samano v. State 1973 SCMR 162. There is no cavil to the proposition that the rule that the integrity of a witness is indivisible, despite its moral virtue, has not been endorsed by the superior Courts of this country without reservations and cannot be accepted as one of universal application. In the last analysis, as stated in some of the

eminent judicial decisions, the grain has to be sifted from the Chaff in each case, in the light of its own peculiar circumstances Riaz Hussain v. The State 2001 SCMR 177."

Muhammad Zaman v. State (2014 SCMR 749)

… mere acquittal of some of the accused statedly involved in the commission of crime by the trial Court … by extending benefit of doubt to them, will not demolish the case of the prosecution as a whole against the remaining accused … as the legal maxim "falsus in uno falsus in omnibus" will have no application in such circumstances."

Muhammad Raheel alias Shafique v. The State (PLD 2015 SC 145)

"Apart from that the principle of falsus in uno falsus in omnibus is not applicable in this country on account of various judgments rendered by this Court in the past and for this reason too acquittal of the five co-accused of the appellant has not been found by us to be having any bearing upon the case against the appellant."

Muhammad Afzal v. The State (2017 SCMR 1645)

"We are mindful of the fact that principle of falsus in uno falsus in omnibus is not applicable in our system of administration of justice relating to criminal cases and the courts are required to sift grain from the chaff in order to reach at a just conclusion but it is well settled by now that if some accused are acquitted on the basis of same set of evidence the said evidence can be believed to the extent of the other accused facing the same trial but the courts have to be at guard and are required to look for corroborating evidence for maintaining conviction in such like cases."

Munir Ahmad and another v. The State and others (2019 SCMR 79)

"By now it is well settled that principle of falsus in uno falsus in omnibus is not applicable in our system designed for dispensation of justice in criminal cases and courts are required to sift grain from the chaff in order to reach at a just conclusion."

14. It has surprised us to notice that the only case in this country in which some reasons had been recorded for holding that the rule falsus in uno, falsus in omnibus is not to be applied was the case of Ghulam Muhammad and others v. Crown (PLD 1951 Lahore 66) wherein Muhammad Munir, CJ. had built an argument around the tendency in witnesses in the Province of the Punjab to mix truth with falsehood. In the said case no such tendency in the other parts of the country had been mentioned but in all the later cases the scope of the observations made by Muhammad Munir, CJ. had been extended to the rest of the country as a matter of course and without any discussion at all! Apart from that Muhammad Munir, CJ. was of the view that the job of a judge was to discover the truth whereas in our system of criminal justice discovering the truth is the job of the investigating agency and the judge is to decide as to whether the allegations being levelled against an accused person have been proved by the prosecution in accordance with the law or not. Such blurring of the distinction between the jobs of an investigator and a judge in the reasoning of Muhammad Munir, CJ. had remained

unnoticed in all the subsequent cases on the subject. The said obscurity has, unfortunately, gone a long way in distorting the criminal jurisprudence in the country besides demeaning the virtue of truth and corrupting the sacred concept of justice by extending a license to witnesses to tell lies and reducing the judge to a lie-detector sifting grain from the chaff and looking for a reason to convict an accused person on the basis of statements of witnesses on oath or solemn affirmation which statements have been established to be not "the truth, the whole truth and nothing but the truth".

Perjury is a serious offence in Pakistan

15. The Pakistan Penal Code, 1860 (P.P.C.) contains many offences dealing with perjury and giving false testimony. The very fact that there is a whole chapter, numbered XI, dedicated to such offences amply testifies to the fact that matters relating to giving of testimony were taken very seriously by those who drafted the P.P.C. and their continued retention in the P.P.C. ever since reflects the will of the legislature, which is the chosen representative body of the people of Pakistan through which they exercise their authority within the limits prescribed by Almighty Allah. The following sections, listed under Chapter XI titled "Of False Evidence And Offences Against Public Justice", highlight the fact that giving false testimony has been treated to be a very serious matter entailing some serious punishments.

> 191. Giving false evidence: Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.
>
> 192. Fabricating false evidence: Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".
>
> 193. Punishment for false evidence: Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

194. Giving or fabricating false evidence with intent to procure conviction of capital offence: Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by any law for the time being in force, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; if innocent person be thereby convicted and executed: and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or for a term of seven years or upwards: Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by any law for the time being in force is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

196. Using evidence known to be false: Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

197. Issuing or signing false certificate: Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198. Using as true a certificate known to be false: Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

199. False statement made in declaration which is by law receivable as evidence: Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Using as true such declaration knowing it to be false: Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

201. Causing disappearance of evidence of offence, or giving false information to screen offender: Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false; if a capital offence: shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life: and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years' imprisonment: and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

202. Intentional omission to give information of offence by person bound to inform: Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

203. Giving false information respecting an offence committed: Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

204. Destruction of document to prevent its production as evidence: Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

> 209. Dishonestly making false claim in Court: Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.
>
> 211. False charge of offence made with intent to injure: Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both, and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Holding that the rule falsus in uno, falsus in omnibus is inapplicable in this country practically encourages commission of perjury which is a serious offence in this country. A court of law cannot permit something which the law expressly forbids.

16. It can be seen from the analysis of the judgments mentioned above that the main reasoning given for not applying the rule relates to the social conditions prevalent in the country. It seems that because it was felt by the superior Courts that generally witnesses testifying in criminal cases do not speak the whole truth and have a tendency to exaggerate or economise with the real facts, there is a danger of miscarriage of justice in the sense that a real culprit may go scot free if a court disbelieves the whole testimony on account of reaching the conclusion that the testimony was false in some respect. With all due respect, we feel that such an approach, which involves extraneous and practical considerations, is arbitrary besides being subjective and the same can have drastic consequences for the rule of law and dispensation of justice in criminal matters.

Falsus in uno, falsus in omnibus - Islamic provisions:

17. It was held in the case of Ghulam Sikandar (supra) that "Expressed in a more direct manner a similar rule in the administration of criminal justice which is hallmark of Islamic Jurisprudence, that when a witness has been found false with regard to the implication of one accused about whose participation he had deposed on oath the credibility of such witness regarding involvement of the other accused in the same occurrence would be irretrievably shaken. ------- The afore-discussed main rule shall suffer serious change if and when it is examined in the light of the Islamic Principles." Adverting to the Islamic principles relevant to the issue at hand we note that the following verses of the Holy Qur'an deal with the matter of giving testimony:

"And do not mix the truth with falsehood or conceal the truth while you know [it]"

(Surah Al-Baqarah: verse 42)

"And let not the witnesses refuse when they are called upon"

(Surah Al-Baqarah: verse 282)

"And do not conceal testimony, for whoever conceals it-his heart is indeed sinful"

(Surah Al-Baqarah: verse 283)

"O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just, that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do"

(Surah Al-Ma'idah: verse 8)

O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives"

(Surah An-Nisa: verse 135)

“So follow not [personal] inclination, lest you not be just. And if you distort [your testimony] or refuse [to give it], then indeed Allah is ever, with what you do, acquainted"

(Surah An-Nisa: verse 135)

"And establish the testimony for [the acceptance of] Allah"

(Surah At-Talaq: verse 2)

"…And we will not withhold the testimony of [i.e. ordained by] Allah. Indeed, we would then be of the sinful."

(Surah Al-Ma'idah: verse 106)

"And avoid false statement"

(Surah Al-Haj: verse 30)

"And they who do not bear witness to what is false"

(Surah Al-Furqan: verse 72)

From the above, it can be seen that giving testimony its due importance and weight is an obligatory duty and those who stand firm in their testimonies are among the people of righteousness and faith. Among the necessities of faith is giving truthful testimony even if against oneself or a relative. If there are no other witnesses that would enable justice to be done and there is a fear that someone's right may be lost, it then becomes the individual responsibility of the few available witnesses to testify. Islam not only enjoins giving testimony, it also forbids concealing it because concealing evidence is something that is disapproved in Islam and detested by nature. Giving false testimony has many evils for it supports falsehood against truth and promotes injustice and

aggression against justice. It also effaces fairness and equity and poses danger to public safety and security.

18. According to the corpus of traditions of the Holy Prophet (Peace Be Upon Him), false testimony is one of the greater sins and the following Ahadith demonstrate the significance attached to giving true testimony:

> It was narrated by Hazrat Anas (RA) that the Prophet (PBUH) was asked about the great sins. He said, they are (1) To join others in worship with Allah; (2) To be undutiful to one's parents; (3) To kill a person (which Allah has forbidden to kill) (i.e. to commit the crime of murdering) and (4) to give a false witness.
>
> It was narrated by Hazrat Abdullah (RA) that the Prophet (PBUH) said if somebody takes a false oath in order to get the property of a Muslim (unjustly) by that oath, then Allah will be angry with him when he will meet Him.
>
> "To testify falsely tantamounts to polytheism." It is mentioned in Tafsir Abdul Al-Fath Razi that the Holy Prophet (PBHU) repeated said statement thrice and then quoted verse No. 30 of Surah Al-Haj stating that "… And avoid false statement."

19. The Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 deals with the offence of Qazf, which has been defined by virtue of section 2 of the said Ordinance as:

> "Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes an imputation of 'zina' concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation, or hurt the feelings, of such person, is said except in the cases hereinafter excepted, to commit 'qazf'."

The Holy Qur'an while dealing the offence of Qazf ordains that:

> "And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient"

(Surah Al-Noor: verse 4)

> "And those who accuse their wives [of adultery] and have no witnesses except themselves - then the witness of one of them [shall be] four testimonies [swearing] by Allah that indeed, he is of the truthful"

(Surah Al-Noor: verse 6)

> "And the fifth [oath will be] that the curse of Allah be upon him if he should be among the liars"

(Surah Al-Noor: verse 7)

> "But it will prevent punishment from her if she gives four testimonies [swearing] by Allah that indeed, he is of the liars"

(Surah Al-Noor: verse 8)

> "And the fifth [oath will be] that the wrath of Allah be upon her if he was of the truthful"

(Surah Al-Noor: verse 9)

> The verses reproduced above highlight the importance Islam places on the requisite standard of evidence to be achieved. It can be seen that the Holy Qur'an puts a great emphasis upon the need to meet the requisite standard of evidence, so much so that for a person levelling the allegation of Zina but not meeting the given standard, it not only provides for a penal punishment, but also for withdrawal of such a person's civic right to give evidence in all matters of his life.

20. Article 2 of the Constitution of the Islamic Republic of Pakistan, 1973 declares that "Islam shall be the State religion of Pakistan." Clause (1) of Article 227 of the Constitution mandates as follows:

> "All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions."

According to Article 189 of the Constitution "Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan". Declaring by this Court that the rule falsus in uno, falsus in omnibus is inapplicable in Pakistan is enunciation of a principle of law and has a binding effect. If inapplicability of that rule militates against the Injunctions of Islam and if such inapplicability cannot be enacted by the Parliament on account of its repugnance to the Injunctions of Islam then this Court may not be in a position to introduce such inapplicability through an enunciation of a principle of law or to continue with the same any more. A court of law cannot grant a licence to a witness to tell lies or to mix truth with falsehood and then take it upon itself to sift grain from chaff when the law of the land makes perjury or testifying falsely a culpable offence. A court also has no jurisdiction to lay down a principle of law when even the Parliament is expressly forbidden by the Constitution from enacting such a principle as law. The inapplicability of this rule in Pakistan was introduced by Chief Justice Muhammad Munir in the year 1951 at a time when Article 227 of the Constitution was not in the field but after introduction of the said constitutional prohibition the enunciation of law by his lordship in this field, like the infamous doctrine of necessity introduced by his lordship in the constitutional field, may not hold its ground now, as already predicted and foreseen by this Court in the case of Ghulam Sikandar (supra) in the following prophetic words:

> "Expressed in a more direct manner a similar rule in the administration of criminal justice which is hall-mark of Islamic Jurisprudence, that when a witness

> has been found false with regard to the implication of one accused about whose participation he had deposed on oath the credibility of such witness regarding involvement of the other accused in the same occurrence would be irretrievably shaken. ------- The aforediscussed main rule shall suffer serious change if and when it is examined in the light of the Islamic Principles."

21. We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury.

22. The office of this Court is directed to send a copy of this order to the Registrars of all the High Courts in the country with a direction to send a copy of the same to every Judge and Magistrate within the jurisdiction of each High Court handling criminal cases at all levels for their information and guidance.

MWA/N-5/S
Order accordingly.