

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. Revision Application No.S-85 of 2025

Applicant : Muhammad Nawaz through
Mr. Mehmood A. Qureshi, Advocate

Respondents No.1 to 6 : Through Syed Tarique Ahmed Shah,
Advocate.

State : Through Mr. Altaf Hussain Khokhar,
Deputy Prosecutor General, Sindh.

Date of Hearing : **25-02-2026**

Date of Order : **07-04-2026**

ORDER

Omar Sial, J.: The legal question emanating from the instant criminal revision is as follows:

Whether a witness is barred under Article 133, Qanun-e-Shahadat Order, 1984 ("Order of 1984") from making a voluntary statement during his/her cross-examination?

2. The relevant background to this case is that a cross-examination of a witness was in progress when the witness, after answering the question asked of him, continued to elaborate and clarify his answer voluntarily. An objection was raised by the counsel of the other side that the witness could not clarify his answer. The relevant portion reads as follows:

"It is a fact that JIT was constituted by the order of the Hon'ble High Court of Sindh, Circuit Court, Hyderabad. Voluntarily says that the said order was

set aside by the Honorable Supreme Court of Pakistan.”

3. The learned trial judge, on 08.09.2025, settled the objection by holding that the voluntary statement was inadmissible in evidence and that the proper course was to explain or clarify the question in a re-examination. The learned judge relied on a judgment reported at **PLD 2024 Sindh 289** to support the decision. This is the order that has been challenged in these proceedings.

4. Mr. Mehmood A. Qureshi, while relying on the opinion of legal jurists, has argued that the witness could not be restrained from volunteering information, whereas Mr. Tarique Shah has supported the learned trial judge's view that any explanation or clarification can only be sought during a re-examination. The Court has been ably assisted by both counsels. For brevity, I have not reproduced their entire arguments; however, the same are reflected in my observations and findings below.

5. Indeed, a rare question is asked in these proceedings. Chapter 10 of the Order of 1984 lays down certain rules to be followed at the examination of witnesses. Article 132 provides that:

- (1) The examination of a witness by the party who calls him shall be called his examination in chief.
- (2) The examination of a witness by the adverse party shall be called his cross-examination.
- (3) The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

6. Article 133 provides for the order in which a witness is to be examined, i.e.

- (1) Witnesses shall be first examined in chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.



- (2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination in chief.
- (3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if a new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine that matter.

7. The Order of 1984 stipulates several conditions for the questions that may be asked during the examination of witnesses; however, there are no restrictions on the answers that may be given by a witness. Article 133(2) only provides that the cross-examination, like the examination in chief, should relate to relevant facts, and gives a wider scope to the questions that may be asked in a cross-examination by providing that "*the cross-examination need not be confined to the facts to which the witness testified on his examination in chief*".

8. A similar issue to the present one arose in a rent case before the Lahore High Court in **Mushtaq Ahmed Malik vs Mohammad Sunawar Choudhary (2003 YLR 406)**.

The Court observed that:

"According to Article 133 of the Qanun-e-Shahadat Order, 1984, the order of examination of witnesses has been set down. The witnesses shall be first examined-in-chief and then if the adverse party so desires shall be cross-examined. The re-examination however, is limited to the explanation of matters referred to in cross-examination and if permission in this respect is granted by the Court. It would thus, be seen that the voluntary statement by a witness in cross-examination has no legal evidentiary value. It is not permissible for a witness to foist into his answer statement any material which is not in answer to or explanatory of his answer to the questions put to him. In jurisprudence, such voluntary evidence is denominated as "irresponsive" testimony and the introduction of such evidence shall be against the rule of re-

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examination as contemplated under Article 133 of the Qanun-e-Shahadat Order."

9. The issue arose again in a property-related case before the High Court of Sindh in **Mst. Ishrat Parveen and another vs Syed Azhar Ali and others (PLD 2024 Sindh 289)**. The Court in this case relied upon the judgment in the **Mushtaq Ahmed Malik** case (supra) and observed:

"It is by now judicially settled that the Voluntary statement by a witness in cross-examination has no legal evidentiary value. Witness is not permitted to foist into his answer statement any material which is not in answer to or explanatory of his answer to the questions put to him. Such voluntary evidence is denominated as "irresponsive" testimony and the introduction of such evidence shall be against the rule of re-examination as contemplated under Article 133 of Qanun-e-Shahadat, 1984."

10. Both the above judgments, and in this particular case, the Mst. Ishrat Parveen (supra) one have been interpreted to mean that there is a complete bar on a witness to volunteer information during his cross-examination. It is a view with which I most respectfully disagree.

11. The concept of volunteering evidence, as argued by Mr. Qureshi, has been explained in different evidence treatises, and the relevant excerpts of the same are reproduced as follows:

"A witness may not foist into his answer in any examination statements not in answer to questions put to him. This is called volunteering evidence, and the pleader of the opposite party should be on his guard to check its introduction by objection. The trial judge should, upon motion, strike out answers that are not responsive to the questions asked, that is, those answers that state facts not called for by the questions, or those which express an opinion as to the matter in question, unless the question calls for an opinion as in the case of experts. But where only a part of the answer is not responsive to the question, only that part will be struck out, which

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is objectionable for not being responsive.” **Law of Evidence by Sir John Woodroffe and Syed Amir Ali, 20th Edition**

“A witness may not foist into his answer statements not in answer to, nor explanatory of, his answers to, questions put to him. This is denominated “volunteering” evidence or “irresponsive” testimony...This rule is more strictly applied to answers given in the course of cross-examination. An adverse witness will not be permitted to obtrude such irrelevant matter in answer to a question not relating to it, and, if he should do so, the party cross-examining may apply to have the answers struck out of the Judge’s notes, after which the witness cannot be re-examined on the subject. Professor Wigmore, however, thinks that where the witness goes beyond the scope of the question and makes an answer not responsive, there is nothing per se wrong. If the answer includes irrelevant facts, they may be struck out; if it furnishes relevant facts, then they are nonetheless admissible, though they were not specifically asked for.”

Textbook on the Law of Evidence by Chief Justice M. Monir (8th Edition)

“If the answer gives an admissible fact, it is receivable, whether the question covered it or not. No party is the owner of facts in its private right. No party can impose silence on the witness called by Justice.” **A Treatise on the System of Evidence in Trials at Common Law by Professor John Harry Wigmore cited in Tushar Haribhai Gondalia v. State of Gujrat, 2015 GLH(1) 721.**

12. A conjunctive reading of all the above explanations and commentaries leaves no doubt in my mind that voluntary statements *per se* are not barred under the law. In fact, the witness is well within his rights to provide clarification in furtherance of his immediate response. What is barred is that the witness cannot hijack the cross-examination, provide elaborate explanations, and testify about matters that have no relevance whatsoever to the question posed to him/her. However, to require a witness to qualify his answers to cross-examination to a mere “yes” or “no” is a very restrictive and unsubstantiated

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interpretation of the law with the potential to compromise a party's right to a fair trial.

13. In the Indian case of **Tushar Haribhai Gondalia v. State of Gujrat, 2015 GLH(1) 721**, the High Court of Gujrat explained the near impossibility of a mere yes/no answer with the following illustration, *"There would be hundreds of questions which can never be replied in simple 'yes' or no- A clever lawyer may frame such question and if answered in 'yes' or 'no', both such replies would be equally incriminating. For instance, if a question is put to a witness, namely, "have you stopped beating your wife?" Then the question would imply that the witness has been beating his wife, and a further question would be whether he has stopped beating her. Thus, no matter whether the answer by the witness is affirmative or negative, it would still imply that the witness has been beating his wife. In such circumstances, it would only be appropriate if the witness clarified that he never used to beat his wife."*

14. Based on the above rationale, the High Court of Gujarat allowed the witness to make voluntary statements to clarify the answer to the question posed. It held so despite Section 138 of the Indian Evidence Act, 1872, which is para materia to Article 133 of the Order of 1984.

15. In my view, the above reasoning squarely applies to the case at hand. In the instant case, the witness was asked whether JIT had been formed at the Order of the High Court. The witness answered the question posed with a yes. However, he deemed it appropriate to clarify that subsequently, the J.I.T. was disbanded by an Order of the Supreme Court. The response given by the witness was not only directly proximate and relevant to the question posed to him, but it was a necessary clarification, *"for the manifestation of the whole truth concerning the matter in*



question.” **Peacock’s case, 9 Co. Rep. 70b (1612) and at 77 ER 795.**

16. Even otherwise, the English legal tradition goes so far as to hold that, *“It is not every irresponsible answer given by a party that will support an exception; not only must such an answer be improper in substance, but it must be apparent that the party intends to go beyond the question and to gain an advantage... Courts ought to cease repeating the novel and unwholesome assertion that “where an answer is not responsive to the question put, it is the duty of the Court to strike it out, on motion.” Powers J, in Underwood v. Cray, Cray v. Underwood, 94 Vt. 58, 60, 108, Atl. 513, 514 (1920).*

17. The argument that a clarification or an explanation given by a witness during his cross-examination is barred because of Article 133(3) is a flawed one. The entitlement of a witness to explain or clarify is indeed given expressly in Article 133(3), but that is not contingent on the permission of the Court, like in the case of a “new matter” being introduced. There can be many situations in which a party that called the witness seeks an explanation or clarification of a reply given by the witness, which the witness had not provided during cross-examination. Article 133(3) would then come into play. But if a witness, during his cross-examination and on his own, wants to explain or clarify an answer he makes, there is nothing stopping him from doing so. It sounds illogical that a witness cannot explain his answer during cross-examination but can do so freely in his re-examination.

18. I am also of the opinion that reliance on the Lahore High Court and High Court of Sindh judgments (mentioned above) to prevent a witness from volunteering information is also flawed. A close reading of the judgments cited shows that volunteering information

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“which is not in answer to or explanatory of his answer to the questions put to him” has been held to be not permissible.

19. A judge’s role in controlling the examinations is critical. Article 131(1) of the Order of 1984 provides that when either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise. It is the judge who must decide that the questions and answers are about relevant facts, and that the witness, while volunteering information, does not stray onto a completely different and irrelevant tangent. The judge must also step in if the witness, by volunteering information, is evasive or attempts to avoid answering the question asked. But it would not be fair to restrict his ability to explain or clarify what he has already said if that explanation or clarification is connected and better explains his immediately preceding answer. The judge must also ensure that the explanation does not introduce a new matter for which the court's permission is a prerequisite. A witness cannot be put in a straitjacket. Specifically in criminal matters, as a person’s life and liberty are at stake. Islamic jurisprudence places enormous weight on testimony (*shahada*) in criminal cases. Judges (*qazis*) were expected to probe witnesses rigorously before accepting their testimony. It is well settled and continuously reiterated by the courts that a cross-examination is an essential tool for the discovery of truth.

20. In light of the above discussion, I hold that Article 133 of the Order of 1984 does not bar the making of voluntary statements by a witness during his/her cross-


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examination, when the statement being made is relevant and in furtherance of clarifying the answer to the question posed to the witness. Any such answer, would not be irresponsible nor would it tantamount to foisting an answer upon the examiner. In fact, the right to make voluntary statements is fundamental to the due process of a trial, and anything short of it would be tantamount to a travesty of justice.

21. I understand that apart from the one example given in paragraph 2 above, there may be other volunteered statements that have met the same fate in the same trial. It would be appropriate, however, that the learned trial judge himself decides, in light of the above discussion, whether the statements volunteered are admissible or not.

22. The application stands disposed of in the above terms.


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JUDGE

Approved by me.

 7/4/2026
 Justice A. S. Arora