

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Criminal Revision Application No. S-66 of 2025
(Hameedullah vs Fakhar ul Islam and others)

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of case.

28.11.2025

Ms. Amna Magsi, Advocate for the Applicant.

Mr. Altaf Hussain Khoso, Advocate for the Respondent No.1 along with Respondent No.1, Fakhar-ul-Islam (CNIC No. 42401-3911504-5).

Ms. Rubina Qadir, Additional P.G. Sindh along with SIP Muhammad Aslam Police Station Pak Colony, Karachi.

Ali Haider 'Ada' Through this Criminal Revision Application, the applicant assails the order dated 07.02.2025 passed by the learned Additional District and Sessions Judge, Karachi West (Trial Court), whereby the application filed under Section 540, Cr.P.C. by the applicant, being accused in Sessions Case No.1030/2020, was dismissed.

2. The record reflects that FIR No.57/2020 was lodged by the complainant for an offence under Sections 324/34, PPC, alleging that the injured Sher Ali, cousin of the complainant, had sustained a firearm injury. During the course of treatment, however, the injured did not survived and ultimately succumbed to his injuries, where after the police submitted the challan under Section 302, PPC. The trial proceeded accordingly. During the trial, one Medical Officer, Dr. Abdul Jabbar, was examined as PW-4 on 15.03.2023 at Exh-09. He produced Entry No.30 (Exh-9/A), the Provisional Medical Certificate (Exh-9/B), the DNA report of cloth (Exh-9/C), and the Death Certificate (Exh-9/D). It is pertinent to note that the Death Certificate was issued by Surgical Unit-IV, Civil Hospital Karachi, and was signed by the attending doctors. The accused sought to summon those doctors, namely Dr. Mubashra, Dr. Yasra, and Dr. Imrana, for their examination, but the learned trial Court declined the application.

3. Learned counsel for the applicant submits that no postmortem was conducted; therefore, the testimony of the treating doctors is essential for the just and proper adjudication of the matter, as they administered treatment to the deceased and were present at the time of his death. She argues that these doctors were not cited as prosecution witnesses, yet their evidence is crucial in light of the deposition of Dr. Abdul Jabbar, which, according to her, contains contradictions regarding the cause of death, stated as cardio-respiratory arrest resulting from a firearm injury to the abdomen. Counsel contends that, in these circumstances, the proposed doctors ought to be summoned either as prosecution witnesses or as Court witnesses under Section 540, Cr.P.C. She prays that the instant Revision Application be allowed and has relied upon PLD 2013 SC 160, 2017 P.Cr.L.J 1319, PLD 2021 SC 715, 2017 P.Cr.L.J 854, and 2014 YLR 353.

4. On the other hand, learned counsel for Respondent No.1/complainant opposes the application and submits that the trial has continued for four years and is now at its final stage. He has produced the CFMS case diary indicating that the matter is fixed for final arguments on 29.11.2025. He contends that there is no necessity to summon the said doctors, as Exh-9/D (Death Certificate) has already been exhibited through PW-4 and the defense is free to rely upon it. He adds that the proposed doctors are not marginal witnesses and calling them at this belated stage would serve no useful purpose. He therefore seeks dismissal of the Revision Application.

5. Learned Additional Prosecutor General Sindh supports the impugned order, submitting that the matter now awaits final arguments and that the documentary evidence relied upon by the defense is already on record through PW-4. She argues that there is no justification for reopening the prosecution case or summoning additional witnesses at this advanced stage and therefore prays for dismissal of the application.

6. Heard the learned counsel for the parties and have examined the material available on record.

7. In the instant case, this Court is required to examine whether the discretion under Section 540, CrPC. was invoked by the trial Court in a judicious manner. Initially, the case attracted Section 324, PPC; however, within twenty-four hours, the deceased Sher Ali succumbed to his injuries, resulting in the conversion of the offence to Section 302, PPC. It is the primary duty of the investigating agency to make efforts for conducting an autopsy /postmortem medical examination to determine both the cause and nature of death. Admittedly, such procedures were not undertaken by the investigation agency, and no explanation has been provided for this omission.

8. As to the cause of death, Exh-9/D, available at page 41 of the Criminal Revision Application, reflects that Dr. Mubashra and Dr. Yasra, serving at the Operative Surgical Unit IV, along with Dr. Imrana, a consultant, were unanimous in recording the cause of death as cardio-pulmonary arrest. However, the deposition of Dr. Abdul Jabbar, examined as PW-4, introduces an additional detail not mentioned in Exh-9/D; while Dr Jabbar as examined by the prosecution deposed in his chief-examination that **“death occurred as a result of cardio-respiratory arrest caused by a firearm injury to the abdomen.”** This aspect, which was not discussed by the doctors of the Surgical Unit, underscores the need for examining the authors of Exh-9/D, who, being marginal witnesses can provide crucial clarification on the cause of death.

9. Now, for the discussion, the purpose of Section 540 of the CrPC, it is essential that the same be reproduced as follows:

540. Power to summon material witness or examine person present: Any Court may, at any stage of any inquiry, trial or other proceeding under this Code summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it essential to the just decision of the case.

10. In order to arrive at a just conclusion, the Courts are empowered to call any person who is likely to be conversant with the facts of the case, after ascertaining such need from the parties Public Prosecutor or the complainant, subject to the general condition that summoning of

such a witness should not cause delay or defeat the ends of justice. Section 265-F(2), Cr.P.C., authorizes the Court to summon any person who may be able to give evidence for the prosecution after confirming from the Public Prosecutor or the complainant that such person is likely to be conversant with the facts of the case. Likewise, Section 265-F, Cr.P.C., grants the accused the right to apply for summoning witnesses or for production of documents. The main purpose of Section 265-F, Cr.P.C., is to uphold the concept of a fair trial. To achieve this objective, equal opportunity has been provided to both the prosecution and the defense in the matter of summoning evidence. It is nowhere stipulated in this provision that only those witnesses can be examined whose statements under Section 161, Cr.P.C., have been recorded. Thus, the trial Court is not restricted to examining only those witnesses who are mentioned in the calendar of witnesses.

11. Whilst, on the other hand, Section 540, Cr.P.C., empowers the trial Court to summon any material witness, even if his name does not appear in the column of witnesses, provided that his evidence is considered essential for the just and proper decision of the case. This provision is divisible into two parts. The first part is discretionary and enables the Court, at any stage of an inquiry, trial, or other proceedings under the Code, (a) to summon any person as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. The second part obligates the Court to take any of the above steps if the evidence sought appears essential for a just decision of the case.

12. The object of Section 540, CrPC., is to advance the cause of justice and the power under this section is not intended to assist the prosecution or to provide an unfair advantage to the accused. It is not to be exercised merely to fill gaps or lacunae in the prosecution case. The pivotal consideration is whether, in the circumstances of the case, the proposed evidence is necessary for a just decision.

13. There is no legal bar against examining a witness under Section 540, CrPC. whose statement under Section 161, CrPC., was not recorded during investigation. However, when such a witness is examined, the

evidentiary value of his testimony must be assessed with care. Support for this proposition is found in the case of **Sajid Mehmood v. The State (2022 SCMR 1882)**.

14. It is a settled proposition of criminal jurisprudence that an application moved under Section 540, Code of Criminal Procedure, 1898, for summoning or examining additional evidence, cannot be dismissed in a mechanical manner. The Court is not justified in rejecting such a request merely on the grounds that the application has been filed at a belated stage, or that allowing it may purportedly fill lacunae in the prosecution case. These reasons, by themselves, do not constitute lawful or sufficient grounds for denial of the statutory discretion conferred by Section 540 Cr.P.C. Rather, the true test which the Court is duty-bound to apply is whether, upon examining the entirety of the material available on the record, the presence or testimony of the proposed witness appears essential for the just decision of the case. The emphasis of the statute is on the advancement of justice, and the provision is intended to empower the Court to take all necessary. Reliance is placed upon the case of *Iddar and others v. Aabida and another* (AIR 2007 SC 3029).

15. Thus, the judicial approach under Section 540 CrPC. must remain guided by the objective of securing the ends of justice, allowing the Court to summon or recall any witness whose evidence is essential for an effective adjudication of the matter. Further reliance is placed upon the authoritative judgment rendered in *Nawabzada Shah Zain Bugti and others v. The State* (PLD 2013 SC 160), wherein the Hon'ble Supreme Court held that:

10. The Court has also to keep in mind that in trying a case it has to find out the truth to render a judgment in accord with canons of justice. If it finds that the investigation is defective, it cannot just sit idle as a timorous soul and has to exercise all the enabling provisions under the law including section 540, Cr.P.C. to discern the truth. For the purpose of this provision, the Court even without any formal application from prosecution or accused, can summon any person as witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined. In Ansar Mehmood v. Abdul Khaliq (2011 SCMR 713), the judgment of the High Court was reversed and that of the trial Court restored which had

allowed examination of additional evidence in terms of section 540, Cr.P.C. While doing so, the Court commented on the ambit of this provision in terms as follows:--

"5. Bare reading of section 540, Cr.P.C. transpires that where an evidence is essential for just decision of the case, it is obligatory upon the Court to allow its production and examination. Examining the law on the subject, reference can be had to Muhammad Murad Abro v. The State through A.G. Balochistan (2004 SCMR 966), wherein it was held that provision of section 540, Cr.P.C., is to enable the Court to go at the truth of the matter, so as to come to a proper conclusion. In the case under trial, it is obligatory to summon a person whose evidence is essential for just decision of the case. Similar view was taken in Painda Gul and another v. The State and another (1987 SCMR 886), with addition that the Court has widest powers under section 540, Cr.P. C. and can summon a witness for examination at any stage of the case. However, while exercising discretion it must guard itself against the exploitation of this power by a litigant party and keep in view the guiding principle, what the ends of justice demand. Cases titled as Dildar v. State through Pakistan Narcotics Board, Quetta (PLD 2001 Supreme Court 384) and the State v. Muhammad Yaqoob (2001 SCMR 308), lay down guide. Observations made in 2001 SCMR 308, are quoted:--

"It is thus manifest that calling of additional evidence is not always conditioned on the defence or prosecution making application for this purpose but it is the duty of the Court to do complete justice between the parties and the carelessness or ignorance of one party or the other or the delay that may result in the conclusion of the case should not be a hindrance in achieving that object. It is salutary principle of judicial proceedings in criminal cases to find out the truth and to arrive at a correct conclusion and to see that an innocent person is not punished merely because of certain technical omission on his part or on the part of the Court. It is correct that every criminal case has its own facts and, therefore, no hard and fast rule criteria for general application can be laid down in this respect but if on the facts of a particular case it appears essential to the Court that additional evidence is necessary for just decision of the case then under second part of the section 540, Cr.P.C., it is obligatory on the Court to examine such a witness ignoring technical/formal objection in this respect as to do justice and to avoid miscarriage of justice."

11. In Shahbaz Masih v. The State (2007 SCMR 1631), a similar view was reiterated by the Court and it was held as under:--

7.Court enjoys full, powers to summon and, examine any person as a witness at any stage of trial; rather it is imperative for the Court within terms of section 540, Cr.P.C. to summon and examine a person when evidence of such person appears to the Court essential to do

the just decision of the case. Also, the Court can examine any person in attendance though not called as a witness. The underlying object, always, is to reach truth"

16. Keeping in view the above facts and circumstances of the case and the foregoing discussion, the instant Criminal Revision Application is hereby allowed. The order of the trial court dated 07.02.2025, passed in an application under Section 540 CrPC, is hereby set aside. Further, the trial court is directed to summon the witnesses namely Dr. Mubashra, Dr. Yasra, and Dr. Imrana, and thereafter proceed in accordance with law. All efforts shall be made to secure the attendance of the above witnesses, and no unnecessary adjournment shall be granted by the trial court. The defense counsel shall examine the witnesses, and the trial court shall conclude the trial within a period of three months positively.

Accordingly, this instant criminal revision application is hereby disposed of in the above terms.

J U D G E

Shahbaz