

OF JUDGMENT WRITING IN CRIMINAL TRIALS

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Introduction

My duty as a Judge must be "to objectify the law, not my own aspirations, convictions and philosophies, but those of men and women of my time". Cordozo in his "Nature of the Judicial Process". Before discussing the principles of judgment writing, it seems appropriate to know as to what 'Judgment' means in judicial parlance. It would be interesting to note that judgment has not been defined either in the Pakistan Penal Code (XLV of 1860) or in the Code of Civil Procedure 1908 or in the Code of Criminal Procedure, (V of 1898). For academic purposes, therefore, the dictionary meaning may be resorted to Judgment, according to Oxford Advanced LEARNER's Dictionary of Current English, by A.S. Hornby, means giving a decision after trial'. In the Tomlin's Law Dictionary the judgment has been described as 'the sentence of law or decision pronounced by the Court, upon the matter contained in the record'.

The word 'judgment' has also been defined in some of the reported cases. In Nand Lal V. Emperor (AIR 1936 Bombay) which was later on followed in Damu V. Sri Dhar (1948) 21 Cal 121, it was defined as under:-

"A judgment is the expression of the opinion of the Judge or Magistrate arrived at after due consideration of evidence and of arguments, if any, advanced before him."

Judgment has been looked at from another angle in Surya Rao V. Sathihiraju (AIR 1948 Mad. 510) in following manner:-

"In civil cases, it is the final order passed in a suit instituted in a court, in criminal cases it is a final order in a trial terminating either in a conviction or acquittal of the accused."

Classification of Judgments

The judgments may be classified as follows:-

- 1) Class of Court - Civil, Criminal, Revenue;
- 2) Stage of list - judgments of trial Courts, appellate Courts or Courts of revision;
- 3) Nature of trial - regular or summary;
- 4) Nature of dispute - original causes or miscellaneous proceedings.

Classes of Courts

Generally speaking, there are civil, criminal and revenue courts and the type of judgment would differ in each cases.

On the criminal side, with which we are concerned at the moment there are Courts of Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges and the Magistrates of the First, Second and Third Class.

Stage of Litigation

According to the stage of litigation there are judgments of trial Courts, appellate Courts and Courts of revision. Even in appellate judgments, there is consideration difference in the judgments of first appeal and those of second appeal.

Regular or Summary Trial

Judgments may be delivered after regular trial or after a summary hearing. On the criminal side, summary jurisdiction is exercised by Magistrates under section 260 of the Code of Criminal Procedure. Judgments in regular trials are full and detailed while those under summary trials are brief statements of reasons in support of findings. Likewise appeals are generally decided after full hearing. They are, however, also dismissed summarily under section 421 of the Code of Criminal Procedure.

Despite these and some other distinguishing features, there are some factors which are common to all kinds of judgments.

Form and Requirements of a Judgment

Form

1. Heading;
2. Facts submitted by the prosecution and accused;
3. Points for determination;
4. Decision on these points;
5. Reasons for the decision;
6. Final order convicting or acquitting the accuse;
7. Awarding sentence in case of conviction;
8. Signature and the date of decision and announcement.

Legal Requirements

Reference in this context can be made to sections 366 and 367 of the Code of Criminal Procedure. The salient features of section 367 ibid are: (1) that the Judge who records the evidence should record the judgment or his succeeding Judge or Magistrate should do so. (2) Then every judgment of a Criminal Court must contain a clear statement of the points for determination, the decision thereon and the reasons therefore. In a case from Indian jurisdiction (AIR 1945 Nag.411) it was very aptly observed that the judgment should state sufficient particulars to enable a court of appeal to know that facts (of prosecution case) are proved and how? Mere copying the contents of the FIR, reproducing the entire evidence and recording conviction of an awarding sentence to or acquitting the accused does not satisfy the requirements of section 367 ibid (3) The judgment shall then be signed and dated in open Court by the Presiding Officer be, it a Magistrate, an Additional Sessions Judge or a Sessions Judge. (4) The judgment shall then be pronounced in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their counsel. (5) The accused shall, if in custody be brought up, or if not in custody, be required by the Court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and sentence is one of fine only or he is acquitted, in either of which case it may be delivered in the presence of his Counsel. (6) If the accused is convicted of an offence of Qatl-e-Amd, or Qatle-i-amd not liable to Qisas or Qatl-i-Shibh-i-Amd or Qatl-e-Khata and so on so forth the judgment shall record conviction under one of these offences with the relevant section of the law and shall also award sentence provided for the offence or any legal sentence provided for.

Language

The following rules should be kept in mind regarding the language of a judgment: -

1. A judgment should be written in the language of the Court or in English.
2. It should be plain and easily understood. If the judgment is in the English language, the use of oriental words should be avoided, except technical, revenue or law terms. Poetic allusions should be avoided.
3. The judgment should not be prolix or verbose "A prolix judgment is a torture to write and a torture to read".
4. The language should be sober and temperate and should not be satirical. There should be no joking in a judgment. Judges should be dignified and restrained in expression of opinion maintaining impartiality and discarding bias.

Written by Presiding Officer

A judgment should not be written by a clerk and signed by the Court. It should be written by the Presiding Officer of the Court or from his diction. Section 367(1) Cr.P.C. makes it permissible to dictate orally to another, but in that case every page of the judgment should be signed.

Qisas and Diyat

If an accused is or if there are more than one the accused are convicted of Qatl-e-Amd shall, under section 302 P.P.C. and subject to the substituted Chapter XVI of the Pakistan Penal Code, be:

- a) Punished with death as qisas.
- b) Punished with death or imprisonment for life as tazir' having regard to the facts and circumstances of the case, if the proof in either of the forms specified in substituted section 304 is not available; or
- c) Punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of qisas is not applicable.

In case the Court accepts the plea of Afw (waiver) in Qatl-e-Amd within the contemplation of substituted section 309 P.P.C. by a 'wali' or 'aulia', as the case may be, then the Court shall also determine, with reasons therefore, as to whether it should be waiver simpliciter or Diyat should also be imposed. There are cases specified in the Ordinance where there is no Diyat. In such cases the court may award Arsh (compensation). If it is so decided then the Court would be required to award it with reasons therefore and quantum thereof. Qatl-e-Amd not liable to Qisas or other cases in which Qisas for Qatl-e-Amd cannot be enforced falling respectively under substituted sections 306 * 307 P.P.C. are required to be differentiated in the relevant part of the judgment and dealt with accordingly both in conviction and sentence. Likewise distinction has to be drawn in the judgment in cases of hurt liable to Qisas and those not liable to Qisas.

Substituted section 338 E lays down that subject to the provisions of Chapter XVI of PPC and section 345 of the Code of Criminal Procedure, 1898, all offences under the aforesaid Chapter may be waived or compounded within the contemplation of substituted sections 309 & 310 P.P.C. The Presiding Officer would be required to record in the judgment whether the 'wali' waiving or compounding the offence was competent to do so and also that he was doing so voluntarily.

The Determination of Facts and the Application of Law

The duties of a Judge are two-fold: the ascertainment of facts and the application of law, including the consequent punishment. The determination of facts also involves the problem of admissibility, cogency and effect of evidence and also the question of evidence and method of the Judge.

Application of Law

The Judge has to consider the relevant law on the Statute Book and see which section or sections, or a part of section applies to the case in hand.

Discussion of Evidence

Discussion of evidence covers a major portion of the judgment and the right conclusion or findings depend on question of fact. Therefore, proper care and attention should be paid to this important part of the judgment. The Judge or Magistrate has to base his findings on evidence, strictly in accordance with the Qanun-e-Shahadat. He cannot use his own knowledge about the character of witnesses or import into his judgment facts other than those brought through proper evidence. Obviously he should not base his findings on conjectures.

Punishment

Purpose

In criminal cases the court has to punish the offender as the law of the country defining offences or crimes ordains a Magistrate or a Judge to do so. There are several theories of punishment such as the retributive, preventive, deterrent and reformative under the responsibility category and the educative and treatment theories, which fall under the irresponsible category. Since this aspect is beyond the scope of our concern, therefore, I would skip over it. Punishment in criminal cases under the Ordinance have been covered earlier, therefore, it need not be reiterated here. Judgments in cross cases have been a matter of concern in appeals. It must be remembered that charge, evidence and judgments in cross cases should be separately recorded. Each judgment should be supported by the evidence on that file and no reference of evidence either ocular or circumstantial (including documentary) may be made which has been recorded on the file of the cross case unless its primary or secondary evidence has been brought on the file in hand.

Conclusion

Judgment writing is an art by itself and cannot possibly be acquired in any perfection without adequate knowledge, long practice and experience.