



Pakistani and Indian Judicial Attitude towards the Applicability of Falsus in Uno, Falsus in Omnibus

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ABSTRACT

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The Latin maxim “falsus in uno, falsus in omnibus” means “false in one thing, false in everything.” The Supreme Court of Pakistan (SCP) has validated the applicability of the maxim. This paper is restricted to critically analysing the extraneous and non-practical assumptions made by SCP that have been lessening the scope of the judge and closing the doors of the court for the witnesses. The paper qualitatively conducts a comparative survey of Pakistani and Indian Judicial attitudes toward the maxim to pinpoint passive assumptions made by SCP while validating the applicability of the maxim.



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INTRODUCTION

The Supreme Court of Pakistan in *Police Constable Khizar Hayat Son of Hadait Ullah case* validated the applicability of the Latin maxim “falsus in uno, falsus in omnibus.” SCP held that a “witness who lied about any material fact must be disbelieved as to all facts.” SCP conceded that “*the truth, the whole truth, and nothing but the truth*” can be a more effective approach to dispensing criminal justice. The maxim was validated by the SCP on several grounds. This paper discusses whether the grounds made by SCP while validating the

maxim were sound or not. To this end, the piece after surveying all the judgments of Pakistani and Indian Courts discloses that SCP has utilised superfluous and non-practical assumptions while validating the maxim. The paper finds that there is unsoundness in the validity and utility of the maxim as well as it does not rest well with the rule of prudence. Moreover, the piece finds that the applicability of “*falsus in uno, falsus in omnibus*” closes doors for witnesses and lessens the scope of the judge as the duty of the judge is to separate the grain of truth from the chaff of falsehood.

Facts of the Case

In a criminal case instituted under section 302(b) of the Pakistan Penal Code (P.P.C), Khizar Hayat son of Hadait Ullah arose as an eyewitness, and on basis of his testimony accused was convicted on the charge of murder and was sentenced to death and to pay compensation as well. Mr. Hayat was a police constable in Police Station Wahdat Colony, Lahore. After perusal of the official record of the police station evinced that Mr. Hayat was performing his duty at the time of the murder and his police station was nearly 100 kilometers away from the crime scene so his availability at the crime scene was disbelieved due to it. Hence, the testimony of Mr. Hayat was disbelieved and was ruled out by the Superior Court of Pakistan. Mr. Hayat committed the offence of perjury that attracted Section 194 of P.P.C and the trial had been initialized against Mr. Hayat on the basis of “*Giving or fabricating false evidence with intent to procure conviction of the capital offence.*” While deciding Mr. Hayat’s case the SCP demarcated the fate Latin maxim “*falsus in uno, falsus in omnibus.*” In the landmark judgment, SCP deliberated the applicability of “*falsus in uno, falsus in omnibus.*” However, this paper is restricted to discussing the effect of applicability of the maxim on criminal justice and how the applicability of the maxim can lessen the scope of a judge.

The Decision of the Supreme Court of Pakistan

SCP declared that all the Pakistani courts must consider the applicability of the maxim “*falsus in uno, falsus in omnibus*” in criminal cases. SCP affirmed that in the past, by the apex court, the maxim was subjected to inapplicability in the criminal cases, resultantly, the criminal proceedings were facing witnesses that were giving false testimonies and it was becoming difficult for courts to dispense criminal justice and finding out the truth. The decision for the inapplicability of the maxim was pragmatic and unwise because it had sowed the seeds of unconstrained falsehood in testimonies. The approach of inapplicability of the maxim made the duty of the judge harder as well as gradually poisoning and sullyng the stream of justice.

Grounds for Applicability of Falsus in Uno, Falsus in Omnibus

SCP validated the applicability of the maxim on the following grounds:

SCP enunciated that it is common that the greater numbers of witnesses are fabricators and rely on falsehoods in the courtroom. A case can never be competent if it is instituted on false grounds and supported by false evidence or testimonies. Furthermore, SCP stated that the essence of the maxim is that when a witness is indulged in falsehoods or lies about any fact then he must be disbelieved as to all the material facts “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.” SCP conceded that PPC discusses various offences that deal with false evidence and perjury and giving false evidence or testimony has been treated as a very serious matter entailing some serious punishments under PPC. Consequently, the inapplicability of “*falsus in uno, falsus in omnibus*” encourages the commission of a very serious offence that is Perjury. Perjury is considered one of the serious offences in Pakistan. A

court can never be competent to permit anything that is expressly forbidden by the law. SCP held that the applicability of the maxim is binding and the reason behind it is that “the testimony of one detected in a lie was wholly worthless and must of necessity be rejected.”

SCP said that there shall never be a concept of an incomplete or partly true testimony (Starkie, 1826) and whenever any slight falsity will be perceived in the testimony then it will make the whole testimony worthless, and necessarily this testimony should be rejected (Wigmore, 1940). And if the witness willfully false his part of the testimony then distrust in the rest of the testimony arises (*California, 1993*). The credibility of a witness cannot be considered divisible which means “*accepted against one and rejected against another*” (Mohamed, 1959).

In the views of SCP a witness must give a truthful testimony because a false testimony supports the evils and propagates injustice in society as well as promotes aggression against justice. It also causes the loss of equity and fairness and it endangers the security and safety of the people.

SCP affirmed that while dealing with criminal cases the main objective of the court can never be to “*get at the truth*” but to resolve the issue in the shadow of the established legal principles. The main focus of the court should be to determine the case based on evidence and whether the evidence on the record substantiates the guilt of the suspect following the mandatory “doctrine of reasonable doubt” or not. The judge and court have to decide the case on the basis of the fact whether the accusations against the suspect have been validated by the prosecution in light of the law or not. The duty of a judge is not to discover the truth as discovering the truth is the role of the “investigating agency” in the criminal justice system. Inappropriately, the inapplicability of the maxim disparaged the virtue of truth and is demeaning the sacred conception of justice by authorizing the witnesses to add falsehood in their testimonies and the inapplicability of the maxim led the scope of a judge up to the detector of lie sifting grain from the chaff. The said obscurity was in search of any purpose to convict the suspect based on the witnesses’ testimonies on oath or solemn affirmation which testimonies have given to be not “*the truth, the whole truth and nothing but the truth*”.

Comment and Analysis of the Pakistani Supreme Court’s Verdict

The inapplicability of the maxim “*falsus in uno, falsus in omnibus*” was considered on various grounds that are; it is the court has to separate the grain of truth from the chaff of falsehood and the court should decide the case after deep perusal of facts and circumstance. *Umar Hayat v State* can be cited.

In criminal cases, there must be dynamic applicability of laws due to which the just and commonsense decisions should be made (Syed, 2020). “*Falsus in uno falsus in omnibus*” is an insignificant maxim based on its validity and utility. The maxim only confers and articulates to the judge what he may do in any circumstance as the maxim shorten in telling the judge what he must do or must not do, so, it is superfluous having significance for practicing perniciously (Wigmore, Vol III).

In *Ghulam Muhammad and others v Crown*, the maxim “*falsus in uno, falsus in omnibus*” was the first case in which the maxim was declared inapplicable. In the views of the court, the judges being the administrator of the criminal justice should spot the intentional mingling of falsehood with the truth based on their vast and intimate experience and should judge the mentality and the character of the witness. The court held that it is very difficult to separate the truth from the greater and clearer falsehood but indeed it is the actual mission before a judge and felicitous metaphor for it is to “separate the grain from the chaff.”

The court stated that there is one other observation that false testimony cannot be substantiated and authenticated because when zero is added or multiplied with any quantity the result can never be affected and remain pure and distinct. In criminal cases, the main duty of a judge is to get the truth with a degree of certainty and if the judge accurately performed this duty then his decision needs no kind of general maxim i.e. "*falsus in uno, falsus in omnibus.*"

The court tried to generate a viewpoint that the duty of the judge is to find the truth. The main role of the judge is a necessary guarantee of ascertaining truth. The judge is obliged to find out the truth from the available evidence (Tunduc, 2018).

Indian Perspective

This segment very comprehensively discusses the grounds on which the "*falsus in uno, falsus in omnibus*" is considered inapplicable in India.

Inapplicability of Falsus In Uno, Falsus In Omnibus In India

The Supreme Court of India stated that the maxim "*falsus in uno, falsus in omnibus*" is not applicable in India (Trustworthy, 2018). In *Balaka v State of Punjab*, Indian Supreme Court upheld the similar stance that was held decided in by SCP in *Ghulam Muhammad's* case. Supreme Court of India stated that it is the responsibility of the court to separate the falsehood from the truth as "grain is separated from the chaff." Furthermore, *Ugar v State of Bihar*, Indian Supreme Court conceded the unsoundness and impracticability of the maxim. A very practical comment was made by the Supreme Court as the court stated that "there is hardly a witness whose evidence is not mixed up with untruth or embellishments or is not fabricated." Consequently, the court must inspect the evidence or testimony very carefully. In *Jakki v State*, the court stated that the maxim is not accepted. Additionally, the maxim has been failed to gain the status of rule of law as it is an unstable maxim.

If the oral testimonies in criminal cases are judged by making "*falsus in uno, falsus in omnibus*" a touchstone then the court can never meet the criteria of justice. Because the maxim rejects all the parts of testimony if any falsity is found in either part of it and gives no satisfactory reason for the decline of the rest part of the testimony even if the rest part of the testimony appears to be correct to the discretion of the court. When the falsehood is seen in any part of the testimony then it should never be perceived that all the rest of the testimony is false and the witness should never be branded as a liar. Even the testimony of a witness cannot be rejected if the statements made by him are patently incorrect or doubtful. *Laxman and others v State of Maharashtra* can be cited in this regard.

The Supreme Court of India in *Sohrab v State of Madhya Pradesh* stated that:

"Court has held that Falsus in Uno falsus in Omnibus is not the sound rule for the reason that hardly one comes across a witness whose statement does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to salient feature of the case, after cautious scrutiny, cannot be considered."(*Dalsingar v State*)

Where chaff can be separated from the grain, it would be open to the court to convict an accused although evidence is deficient to prove the guilt of other accused persons. The falsity of a particular material witness or material particular would not ruin it from beginning to end. The maxim "*falsus in uno falsus in omnibus*" should have no application because the witnesses

cannot be “branded as a liar.” *Mahendran v State of Tamil* can be cited. In *Ashok Somalal Thakkar and another v State of Gujarat*, the court stated that the maxim is not a mandatory rule of evidence hence it cannot be applied to criminal cases as it is the less effective rule.

CONCLUSION

The court is obliged to seek and separate the truth from the falsehood. The judge has to separate the grain of truth from the chaff of falsehood after deep perusal of the facts and circumstances of the case. The application of the maxim is lessening the scope of the judge. It will become impossible for the court to dispense justice if the maxim is applied in criminal cases because it closes the door of the court for the witnesses as witnesses undoubtedly play an important role in the dispensation of justice. The decision of applicability of the maxim is an unfriendly attitude of the judiciary of Pakistan towards criminal law and criminal justice. There is a need to change the attitude of the Pakistani judiciary as the competency, sense of responsibility, and keenness of the judge to give just verdicts should be recognized. For the prevalence of justice, there is a need to find out the truth at the end of the day because justice is the name of finding the truth.

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