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RULE OF CIRCUMSTANTIAL EVIDENCE UNDER COMMON AND CIVIL LAW: A COMPARATIVE ANALYSIS FROM ISLAMIC LAW

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ABSTRACT

Common and civil law are allowing two type evidences such as direct and indirect on the other hand Islamic law allow just direct evidence. Also, direct evidence is acceptable in court without any confusion but indirect evidence which is also known as circumstantial evidence, which requires an implication to be made in order to arrive at a conclusion to be drawn from the evidence. Because the perception among the public is that circumstantial evidence carries less weight than direct evidence. However, one sometimes hears persons who have been convicted of an offence affirm their intention to appeal against a conviction as the evidence was only circumstantial. The position is worse when it comes to its admissibility under Islamic law. The common perception is that circumstantial evidence is inadmissible in criminal proceedings under Islamic law system. This paper, therefore, examines the significance and admissibility of circumstantial evidence in criminal proceedings. Basically, this paper discusses based on Quran and Hadith of Prophet Mohammad (SWA). It is qualitative research. Primary and secondary resources are used in this paper. The information has been taken from many readings, articles and books. It makes a comparative analysis of the Common, civil and Islamic law systems. It finds out that circumstantial evidence is admissible in all cases in Common and civil law system, while in Islamic law system; Muslim jurists

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hold different views with respect to its admissibility in Huduud and Qisaas cases. It draws a conclusion that although Muslim jurists hold different views, the soundest view is its admissibility in all cases including Huduud and Qisaas.

INTRODUCTION

Evidence act is importance part of law because a person to be convicted under Common, civil and Islamic law systems, there must be provide sufficient evidence to satisfy court of the guilt of the accused. Also, in a criminal case, the prosecutor is required to prove the defendant's guilt beyond a reasonable doubt. The defense attorney typically responds by attempting to create a reasonable doubt in the mind of the finder of fact, either the judge or the jury. This may be accomplished by presenting an alternative version of the fact presented by the prosecutor, calling the credibility of the prosecution witnesses into question or offering affirmative defenses such as self-defense. The prosecution and defense may rely on direct and indirect evidence or combination of both types of evidence under common and civil law. There are two types of evidence; namely, direct evidence and circumstantial evidence. We know that, direct evidence is based on personal eye witness, knowledge or observation. The evidence if believed by the jury directly and conclusively establish the fact or fact must use and no inference is required. In contrast, circumstance evidence indirectly establishes a fact. The trier of fact must use an inference or presumption to establish the fact at issue. A witness may directly view a killing (direct evidence) or testify that he or she viewed the defendant flee from the crime scene (indirect evidence). Also, direct evidence nearly always is sufficient to carry a case to the jury. The jury needs only to evaluate the witness's credibility to determine the ultimate facts in issue. This does not hold true for circumstantial evidence. In cases involving the use of circumstantial evidence, a critical preliminary inquiry for the judge is whether evidence sufficient for jury deliberation has been presented.

Many common and civil lawyer things that, circumstantial evidence is sufficient when it enables the jury to make reasonable inferences about the ultimate facts in issue; it must be more than mere conjecture, speculation, or guess. But the evidence is insufficient; the plaintiff loses on the defendant's motion for a directed judgment. If the evidence is sufficient, the judge gives the case to the jury. Sufficiency of the evidence, therefore, is the judge-determined "burden of production" element of the burden of proof. The other element, the so-called "burden of persuasion," is jury-determined. On the other hand the condition is worse when it comes to

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admissibility of circumstantial evidence under Islamic law. The general perception is that circumstantial evidence is inadmissible under Islamic law. "Muslim scholars are divided in opinions when it comes to the conclusiveness of circumstantial evidence. This is due to the principle of fundamental shar'iah that hadd punishments are not to be accepted out if there is a slight element of doubt in existence. (Hadith Trimidhi : idra'u al-hududa bi'shubhat which means "drop the hudud in all cases of doubt). Thus, the question arises regarding admissibility of circumstantial evidence in hudud crime". In syariah law of evidence, evidence is known as bayyinah. Literally, it means 'clearness' but technically, the term refers to a thing which clarifies or explains a right or interest. Al-Quran as the main source of syariah law has explained clearly on several types of proof mainly by way of testimony of witnesses known as syahadah and by way of confession, also known as iqrar. Finally, this paper examines the significance and admissibility of circumstantial evidence in criminal proceedings. It makes a comparative analysis of the Common, civil and Islamic law Systems.

MEANING OF INDIRECT OR CIRCUMSTANTIAL EVIDENCE

Common and civil law

"Black's Law Dictionary defines circumstantial evidence as evidence based on inference and not on personal knowledge or observation".

Circumstantial or indirect evidence is "evidence of a collateral fact that is of a fact other than a fact in issue, from which, either alone or with other collateral facts, a fact in issue may be inferred".

He explains his definition by saying: "A particular set of circumstances may lead to the appropriate inference being drawn; for example, nobody saw the accused in fragrante delicto, but he was seen in the area just before the victim, against whom he was known to have borne a grudge, was murdered, and his finger prints were found at the scene of the crime. The inference to be drawn from these circumstances is that the accused was the murderer, even though no one saw him do it, and there is no direct evidence, only circumstantial evidence, that it was him." And anther definition is "An item of circumstantial evidence is an evidentiary fact from which an inference may be drawn rendering the existence or non-existence of a fact in issue more probable. The fact in issue is not proved by a witness relating what he directly perceived. So circumstantial evidence is indirect evidence."

Islamic law

In Arabic the word Qarinah (plural Qara,an) is used for circumstantial Evidence It is derived from the word Qaranah, Which means presumption, conjunction, relating, union, affiliation, association, linkage and indication. While its technical meaning is "It is an apparent sign associated with something concealed which may uncover the concealed matter. It is noteworthy that testimony, confession or admission and oath the are direct

means of proof while Circumstantial Evidences are presumptive proofs and are inferred from circumstances".

RULES ON ADMISSION AND WEIGHT OF EVIDENCE UNDER COMMON AND CIVIL LAW

The common law contains several rules which restrict admission of evidence. The main barriers to the production of documentary evidence are: authencity, the hearsay rule, and the best evidence rule. The requirement of authencity as a condition precedent to admissibility of evidence is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. The authencity of a document may be proven in any way, such as handwriting verification, or oral testimony of a person who saw the document executed. The admission of the authencity of a document is no evidence that the content of the document is accurate, nor does it deprive a party of an opportunity to object to its admissibility in evidence. Under the "hearsay" rule, a witness may not testify about fact of which he or she has no direct knowledge, eg about conversation of other people a witness heard. Under the '"best evidence" rule, the evidence must constitute the best available evidence. In the case of written documents, the original document must be presented. On the other hand, The civil procedure rules in the civil law system contains the rules on evidence which determine what may be introduced as evidence and sets conditions of admissibility and weight of evidence. However, in the civil law, while there are some restrictions, there are not rules corresponding to the common law rules on admissibility such as "hearsay" and '"best evidence" rules. In principle, any evidence is admissible, but the court will evaluate how much weight is to be accorded to an evidence. Evidence admitted is subject to appeals for factual error.

IMPORTANCE OF CIRCUMSTANTIAL EVIDENCE UNDER COMMON AND CIVIL LAW

Several types of circumstantial evidence are inherently cogent, whereas other types may have very little probative value such as "Circumstantial evidence is evidence from which the fact-finder can infer whether the facts in dispute existed or did not exist.' Circumstantial evidence thus includes all forensic evidence, such as blood or fingerprints, as well as non-forensic evidence that does not by itself prove the defendant's guilt.

In Uganda v. Albina Ajok, the case rested mainly on circumstantial evidence and it was stated quoting the case of R. v. Taylor (1928) 21 cr. app R 20: Circumstantial evidence is very often the best evidence. It is evidence by surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial. However, circumstantial evidence has to be approached with caution because, as pointed out by lord Normand in the case of Teper v. R (1952) AC 480, 489, 'Evidence of this kind may be fabricated to cast suspicion on another….it is also necessary before drawing the inference of the

accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference'.

Hence, so long as the opportunity of fabrication can be reduced, circumstantial evidence may be more reliable than direct testimony. However, as stated above, some types of circumstantial evidence may not be not carry enough weight to convince court on that particular fact.

In the case of Kasaja son of Tibagwa v. R, the East African Court of Appeal was powerless to sustain a conviction for murder where the incriminating evidence consisted of the fact that the accused's spear had been found near the body, and that the accused had not answered the alarm upon the sounding of which it was the duty of all villagers to turn out. As a general rule, the value of circumstantial evidence lies in its increasing effect, that is to say, while a single item of circumstantial evidence may only slightly increase the likelihood that the accused is guilty, several items taken together may carry enough probative force to justify a conviction.

In the case of Makungire Mtani v. R, Makungire (the appellant) and one another person (Muzungu) were jointly charged with murder of the deceased. Muzungu, however, died in remand before the hearing started, and so the trial proceeded in respect of the appellant alone. He was convicted basing on circumstantial evidence of mysterious disappearance of the deceased from the company of the appellant, silence of the appellant in his defense during trial, blood stains of the deceased's blood group found on the appellant's clothes, and incriminating circumstances in a murder charge. He was then sentenced to death. The appellant's advocate contended among other things that the prosecution evidence was highly circumstantial to support a conviction, and that the learned trial Judge misdirected himself as the burden of proof.

It was held that:

a) In the circumstances of the present case, there was more than considerable suspicion against the appellant; for he refused to give an explanation of how the deceased mysteriously disappeared from his company.

b) We think that the evidence of the appellant's clothes bearing blood stains of the sample blood group as the deceased but different from his own was an incriminating circumstance which was properly taken into account in establishing the appellant's guilt.

Sentencing is a Person in Common and civil Law founding on Circumstantial Evidence:

We know that, circumstantial evidence is sufficient when it enables the jury to make reasonable inferences about the ultimate facts in issue; it must be more than mere conjecture, speculation, or guess. Also, before sentencing any person basing on Circumstantial Evidence, the incriminating facts must be incompatible with the innocence of the accused or guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of guilt. Such as

Danielsen v. Richards Manufacturing Co., which involved a suit for injuries suffered because of an allegedly defective surgical instrument, prolongs the confusion. The Nebraska Supreme Court apparently affirmed its traditional holding" that circumstantial evidence is not sufficient to reach the jury unless "the circumstances proved by the evidence are of such nature and so related to each other that the conclusion reached by the jury is the only one that can fairly and reasonably be drawn therefrom." Unfortunately, the court equated this "only reasonable inference" standard with an inference "reasonably probable, not merely possible." The terms, however, are not synonymous. "Only reasonable inference" amounts to "beyond a reasonable doubt," while "reasonably probable" equals "by a preponderance of the evidence presented."' Use of the former standard obviously will keep more cases from the jury than would use of the latter standard; the former standard requires more of the plaintiff than does the latter. The historical trend, in civil cases, has favored use of the latter, less imposing standard. Which standard actually is applied in Nebraska must be determined by looking beyond the Supreme Court's language to its practice.

In the case of Protas John Kitogole and another v. Republic, the appellants were charged and convicted of murder by the Tanzanian High Court. The case against both accused/ appellants was base wholly on circumstantial evidence. The pieces of circumstantial evidence tending to implicate the second were:

1. After the two deceased watchmen had been fatally wounded, he was found at the home he was staying with a big fresh cut wound which was bleeding.

2. A trail of blood was traced from there right up to the carpentry workshop where the murders were committed. The appellant's explanation that the cut wound was inflicted on him by bandits who had invaded the home was not backed by any evidence.

3. On the fateful night, some 14 carpentry planes were stolen from the workshop, and six days later the appellant told PW5, a relative, that he had carpentry planes for sale but cautioned him not to disclose this to anyone because theft of carpentry planes had taken place at Tosamaga.

4. Just about six days prior to the commission of the murders, the same workshop had been broken into and a welding machine (electric motor) was stolen from there but was later found abandoned only about nine meters away. In the dead of the same night, the appellant had approached PW4 and asked him for a motor vehicle to transport a motor from a workshop. Sensing that the said motor was stolen PW4 refused to oblige.

The court of appeal considered whether or not the pieces of circumstantial evidence could ground a conviction in respect of each appellant. It was held such as,

1. The fact that only shortly after the murders were committed, the second appellant was found with a big cut wound and that a trail of blood was traced from where he was found to the scene of the murders were incriminating circumstances which lead to the only reasonable inference

that the appellant took part in the murders. And the fact that the second appellant gave a false account of how he sustained the injury goes to strengthen this view.

2. Although the evidence against the second appellant was a great deal stronger than that against the first appellant, we are fully satisfied that the circumstantial evidence against the first appellant was enough to lead to the irresistible conclusion that he was one of the killers.

In Nazir Ahmad v. R, the appellant was convicted for the theft of three motor cars. Finger prints had been found on various parts of the car which had been stripped of wheels, tyres, starter motors and lamps. On appeal the conviction was upheld because the possibility that the finger prints had been placed there by accident or by an innocent person was too remote to warrant serious consideration.

ADMISSIBILITY OF CIRCUMSTANTIAL EVIDENCE UNDER ISLAMIC LAW

We know that, Under Islamic law, circumstantial or indirect evidence refers to admissibility of Alqara'in. "The term Alqara'in is plural of Alqariinah, which literally means connection, conjunction, relation, presumption, inference or indication. In the language of the law, the word Alqariinah refers to something which surrounds an event and serves as a sign for the existence or non-existence of something. In other words, it is something surrounding an event from which a legal inference can be drawn for the existence or non-existence of something"

Thus, circumstantial evidence and Alqariinah are both synonymous and refer to circumstances surrounding an event from which an inference can be drawn for existence or non-existence of the issue under investigation. The basis of admissibility of circumstantial evidence under Islamic law is found in both the Qur'an and the Sunnah of the Prophet (S.A.W).

In the Qur'an, Allah says:

They said: "our father, we went racing with one another and left Yusuf by our belongings and a wolf devoured him, but you will never believe us even if we speak the truth'. And they brought his shirt stained with false blood. He said: 'Nay, but your own selves have made up a tale"

The verses are about the story of Prophet Yusuf and his brothers who threw him into a well because of being the most adored son to their father. After throwing him into the well, they came back in the evening weeping. They told their father that they had left Yusuf guarding their belongings and went racing with one another. As they were away, a wolf came and devoured Yusuf. They brought his shirt stained with false blood to convince their father that the blood was a result of the wolf devouring Yusuf. Their father based on circumstantial evidence to invalidate their tale as he looked at Yusuf's un-torn shirt and said: "When did the wolf become so intelligent so as to remove Yusuf's shirt un-torn before devouring him?" That is why he said: "Nay but your own selves have made up a tale"

Allah also says: "Yusuf and the woman raced towards the door one behind the other and she tore his shirt from behind. In the process they met her husband at the door". On seeing him she cried out: what punishment does one deserve who shows evil intentions towards your wife? What else than he should be put in prison or tortured with painful torment. Yusuf said: "It was she that seduced me". At this moment, a witness of her own folk testified saying: "If his shirt is torn from the front then her tale is true and he is a liar but if his shirt is torn from the back then she has told a lie and he is speaking the truth". When her husband saw Yusuf's shirt torn at the back, he said: "Surely it is a plot of you woman, certainly mighty is your plot

The verses are about the story of Prophet Yusuf and his master's wife. The woman after closing all the doors of the house, tried to seduce Yusuf into evil. Prophet Yusuf instead refused and rushed to open the door.

The woman decided to race with him and pulled him from behind. In the process she tore his shirt from behind. As they reached the door, they found Yusuf's master. The woman tried to accuse Yusuf of trying to do evil to her, but Yusuf defended himself by counter accusing her that she was the one who was trying to seduce him. As neither of the two had evidence to support his/her claim, a person from among her own folk offered circumstantial evidence to prove the fact in issue. He said that look at his shirt, if it be that it is torn from the front, then that would be enough evidence for her that Yusuf was trying to do evil to her and as she was trying to defend herself she tore his shirt from the front. But if it be that his shirt is torn from the back, then that would be enough proof for Yusuf that as he was trying to escape from evil, she tried to pull him from behind and as a result his shirt got torn from the back.

The master (the wife's husband) trusted on circumstantial evidence of the shirt being torn from the back, to prove that the woman was telling lies, and that is why he said: "Surely it is a plot of you women, certainly mighty is your plot". If it be mentioned that the verses refer to laws of Prophets before Prophet Muhammad and therefore are not his laws, it can be argued that the laws of Prophets before Muhammad (S.A.W) are also his laws unless it has been made clear in his revelation that those laws have been abrogated. In another verse, Allah says: "You may know them by their mark they do not beg of people at all" The verse talks about a group of people who are in need and destitute but they do not go on begging people at all. The ignorant people assume them to be rich because of their modesty. But Allah directs the prophet to use circumstantial evidence of their self-effacement, humility and modesty to know them such that they can receive support from Swadaqah (Zakah).

Also, In the Sunnah, Abu Hurairah reported that the Holy Prophet (S.A.W) said: There were two women who had small sons. A wolf came and took away the son of one of them. The elder of the two women said to the younger: 'it was your son.' The younger said: 'No it was your son.' They brought their dispute to Prophet Daud who decided the case in favour of the elder one. The young one was not satisfied with the decision

and appealed to Prophet Sulaiman, who ordered for a knife to make two pieces of the child so as to give one piece to each of them. The elder one accepted that the child be cut into two pieces for each of them, but the younger one cried and said to Sulaiman: 'May Allah grant you mercy, do not cut the child into two pieces, he is the son of the elder.' When Sulaiman heard of this, he decided the case in favour of the young one. Also, Prophet Sulaiman decided the case basing on circumstantial evidence of the young one crying: "Do not cut him into two pieces; he is the son of the elder one." This implied that the child belonged to her and therefore she wanted to save its life, while the elder one wanted the child to be cut into two since she had lost hers so she wanted also the younger one to lose hers.

Sentencing is a Person under Islamic Law Founding on Circumstantial Evidence:

We know that, under Islamic law of offences are classified into three categories such as,

1. Huddud,
2. Qisaas and
3. Taziir.

The word Hadd (pl. Hudud) implies punishment that has been prescribed by God in the Quran or the Hadith. Crimes for which the Quran names certain fixed punishments are called Hudud. The punishments in Huduud embody three main aspects; the first is that these punishments are prescribed in public interest, the second is that they are fixed and cannot be lightened nor made heavier, and the third is that after having been reported to the courts of law they cannot be pardoned either by the judge, or by any political authority, or by the victim of the offence. These offences are six, namely; illicit sexual relations, armed robbery, theft, drinking of alcohol, slanderous accusation of illicit sexual relations, and apostasy. Offences in this category violate what is called Huquuq Allah (Rights of Allah) i.e. they affect the general public.

This conceptualization of punishment is somewhat similar to the conscience collective declared by Durkheim. After the law has been broken, punishment should be meted out without fear or favor or it would lead to a crumbling of the social fabric. The permanence of Hadd punishments is mirrored in the following verse of the Quran: II: 229, Sura Al-Baqarah, "These are the limits imposed by Allah. Misbehave them not. For whoso disobeyed Allah's limits: such are wrongdoers".

Under Islamic criminal law six major offenses are predictable as Hudud. Penalties for each of these offenses have been set in the Quran and Hadith.

Al-Qisaas are offences whose punishments have been approved by the Qur'an and Sunnah, but can be submitted by the person offended against or his near relatives. They are applicable to offences of murder and injury. Offences in this type violate what is called 'Huquuqul Adamiyin (Rights of human beings)' and that is why they can be remitted by the person offended against or his near relatives.

This form of punishment seeks to prevent crime, inspire respect for society, and reform the offender. In Islamic legal writings the word Taazir indicates a punishment that seeks to prevent the criminal from further committing crimes and secondly at improving the criminal. It therefore has a dual purpose, to deter and to reform. In his famous book Tabsirat al-Hukkam explains the aims of Taazir to be a sort of disciplinary, reformative, and deterrent type of sentence.

Taazir was de fined as a form of unrestricted punishment that was to be delivered for misbehavior against Allah, or against an individual for which neither fixed punishment nor penance was prescribed. This definition therefore eliminates all crime for which Qisas is prescribed, because in all cases where Hadd, Kaffara , or Qisas are applied, Taazir cannot be applied to replace them. This meaning therefore rejects all crime for which Qisas is prescribed, because in all cases where Hadd, Kaffara, or Qisas are applied, Taazir cannot be applied to replace them. The term Taazir was not used in the Quran or the Hadith in the sense that the Muslim jurists use it. However, the Quran and the Hadith referred to some types of crimes for which no fixed sentences were suggested. It was left to the judge or the ruler to decide what type or way of sentence should be imposed. There are three instances where the Quran mentions this type of punishment: An-Nisa (women) verses 16, 34 and Al-Shura (consultation) verse 40. One of the related verses of the Quran refers to the sentence for homosexuality. It orders the authority "to punish them both," but the type of punishment is not given and it is left entirely up to the judge. Rulers and judges are facilitated in protection the interests of society when these are threatened by actions or omissions that fall beyond the purview of Hadd and Qisas.

Though it was not used in the Quran or the Hadith, it is not correct to say that the Quran does not know about this kind of punishment. In fact the Quran lays down the general principles from which Taazir was deduced and further mentions some of its applications. The legal principles of Taazir are indirect in the Quran. Examples and cases of Taazir are also found in the Hadith. These cases were used later in a manner to construct the juristic formulation of Taazir as part of the Sharia. The jurists owe their knowledge of Taazir to the Hadith of the Prophet. The decisions of the companions regarding Taazir are more clearly enunciated in the manuals of Islamic law; however, they were still based on the Hadith of the Prophet. The punishments for Taazir are not determinate. The judge has wide discretion in such cases. The judge can choose the punishment that is most suitable to a particular crime, or the circumstances of the criminal, her prior conduct, and his psychological condition. However, the judge does not have unfettered or unbridled authority and is obliged not to order a punishment that is not permitted under the Sharia. For example, he cannot order that the offender be whipped naked. These sentences are not the only ones that can be prescribed in cases of Taazir . Any punishment that serves the determination of Taazir , that is, to prevent any further crime and reform the offender, can be used so long as it does not oppose the general

principles of Islamic law. The punishments meted out under Taazir represent what was known and actually used in Islamic legal texts and practice; however, any other type of useful punishment may also be legally employed. Besides determining the punishment, the ruler or Qazi (judge) is also traditionally given the task of determining whether an act is criminal. Thisis the essence of Taazir, which has been de penalized as a punishment for any wrongdoing. Because transgressions cannot be foreseen, this right has been granted to the ruler or Qazi to meet the needs of society and protect it against all kinds of transgressions.

On circumstantial evidence and these are:

Circumstantial evidence is admissible and can be based on in convicting a person in all offence including Huddud and Qisaas. This view is based on the tradition of the Prophet which says: "If people's claims were accepted on their face value some persons would claim other people's blood and properties but proof should be adduced by one who makes a claim". They argue that proof is whatever brings the truth to light and circumstantial evidence can be part of the proof.

Circumstantial evidence is not admissible in offences of huduud and qisaas. It is only admissible in offence of taaziir. This means that a person cannot be convicted of crimes of huduud and qisaas basing on circumstantial evidence. This is the opinion of common of Muslim jurists. The opinion is based on the following:

The prophet (S.A.W) said: "Avoid application of huduud punishments as far as possible. If you find a way out for a Muslim without applying hadd to him, you should set him free for it is better for a judge to error in pardon than to error in punishment".

The prophet (S.A.W) said: 'If I were to stone any one without proof, I would have stoned soand-so (fulanah), for her speech, appearance and cohabitation are such which raise suspicion".

The two hadiths support the rule that doubt invalidates huduud, and since circumstantial evidence is always doubtful, it cannot be a basis for judgments in huduud which are removed by doubts. Thus, a person cannot be convicted of crimes of huduud and qisas basing on circumstantial evidence.

Circumstantial evidence is not admissible in crimes of huduud and qisaas apart from two, namely that,

1. Adultery and fornication which can be proved by pregnancy of an unmarried woman if there is no claim of coercion.

2. Alcohol drinking which can be proved by its smell.

This view is based on:

3. Umar the second Khalifah's statement when he said that Adultery is proved when pregnancy appears or confession is made.

4. Umar, Uthman and Ibn Masuud applied Hadd of drinking alcohol to whoever was found smelling alcohol or vomited it basing on circumstantial evidence.

CONCLUSION

It can be concluded that circumstantial evidence is admissible under both Common Law and Islamic Law systems. In Common Law, circumstantial evidence is admissible in all cases, while in Islamic law it is admissible in cases of Taaziir by all Muslim jurists. It is only contentious in cases of Huduud and Qisaas where Muslim jurists hold different views. It has been seen however, that the soundest view is the admissibility of circumstantial evidence in all cases including Huduud and Qisaas if it is of such a nature as to satisfy court of the guilt of the accused, that is, if it proves beyond reasonable doubt that the accused is guilty. Circumstantial evidence is of many types, some of which are cogent and convincing, while others have very little probative value. Therefore, caution must be taken to admit only those which are highly probative and cogent to satisfy court beyond reasonable doubt of the guilt of the accused. As a general rule, the value of circumstantial evidence lies in its cumulative effect, that is, while a single item may only slightly increase the likelihood that the accused is guilty, several items taken together may carry enough probative force to justify a conviction.

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