

Evidence According to Law

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Abstract: Evidence is the information which is used in a court of law to try to prove something. Evidence is obtained from documents, objects or witnesses. Law of evidence was implemented in the country but no change to the Qanoon-e-Shahdat order 1984 is implemented. It is necessary for the court, jury, tribunals and inquiry to collect the evidence to decide the matter. According to law number of witness explained in a manner. It is the duty of the court to decide the case and plaintiff, all matters to the collecting evidence not on presumption. Standard of witness and qualification are measured by the court, court officer, Qazi, etc. Now modern devices or techniques are admissible in the court of law and used may be lawful.

Keywords: Witness, Evidence, Oral evidence, Documentary evidence, Decree order, Decision of the court

Introduction:

Evidence includes:

- i. All statements which the court permits or requires to be made before it by witnesses in relation to matter of fact under the inquiry, such statements are called oral evidence and

All documents produced for the inspection of the court, such documents are called documentary evidence.

Who may testify in the court?

According to Article 3 Chapter II of witnesses The Qanoon-e-Shahadat Order 1984, all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions put to them or from giving rational answers to those questions by tender years, extreme old age, disease whether of body or mind or any other cause of the same kind.

Competency of a Child Witness:

According to law a child is not a competent witness but special circumstance courts can consider it as witness with the age of 10-11 years of a girl consider as intelligent witness.

Case law 2015 YCR17=

2014 Pcr1j1803=

Conviction on statement of child witness, if corroborated with the circumstantial evidence.

2013 Pcr1j708

Tender age = does not specify any particular age. 1993 PSC (cr)736, 787.

2002 Pcr1j41

Old age person when they cannot understand the questions, not consider as witness.

Unsound mind person, lunatic person not allowed to evidence.

A convicted person by the court for perjury or giving false evidence not allowed to being witness.

A zani should not be allowed as witness.

A drinker should not be allowed as witness.

A liar should not be allowed as witness.

A gambler should not be allowed to give evidence.

A walid-ul-zina child, man should not allow for evidence.

A women is not allowed to give evidence in Hudood cases.

Relationship-party related not disqualified to testify as witness. PLD 2001=sc67

Evidence of servants and tenants not discarded. PLD 2001=sc67.

Tazkiah-al-shahood requirement can be fulfilled at the end of testimony. =1992 Pcr1j 1536
=PLD1992FSC39. =PLJ1999.SC.105

Competence and Number of witnesses:

Article 17, The Qanoon-e-Shahadat Order 1984

- i. The competence of a person to testify and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah.

In matter pertaining to financial or future obligations if reduced to writing, the instrument shall be attested by two men or one man and two women.

- i. In all other matters the court may accept or act on the testimony of one man or one women or such other evidence as the circumstances of the case may warrant.

In the Hudood cases four adult men are allowed to testify in the court. If the persons are non-Muslim, witnesses also non-Muslim.

Proof of document article 17 read with article 79. Document must be attested by two witnesses.

1. PLD-1995LAH=395 2. 1996 SC.256 3. 1998 MCD1592

4. 2008 LAH511 5. 2008SCMR 16939

Appraisement of evidence:

Witnesses are weighed and not numbered.

1991 MLD 2576 =KLR1992crc.160

Sole testimony of witness to be made foundation of guilt must be clean, cogent and consistent.

2001SCMR 199=2001-MLD-957

Quantum of evidence:

It is quality not quantity of evidence which merits consideration. If prosecution feels satisfied that its case can be proved by producing single witness then there would no compulsion for it to produce all those witness mentioned in FIR PLJ 2006CRC 196.

Procedure of the court:

According to the court procedure in civil cases mostly plaintiff with two witness present in the court for oral evidence and then give documentary evidence according to the plaintiff.

In the family cases mostly family member produced as witness just like father, brother, uncle and female in person in case of dissolution of marriage, maintenance, mahr and dowry article, conjugal rights etc.

In the criminal cases the witnesses of the FIR, complainant, eye witnesses and then other witnesses produced in the court, ocular evidence corporate with the medical evidence.

It is the discretion of the court to consider the evidence on standard and announce the decision or punishment.

Sometimes person alleged in the case confess their crime or iqrar. The officer has right to announce punishment on this act or send for trial. But these are with undue influence, jabber or greed.

Kinds of evidence:

i. Universal evidence

It is the first and important kind of evidence. A large number of people give evidence or statement about any matter or occurrence.

Documentary evidence

It is based on official documents, attested certified copies of the government and public record present in to the court. Must be attested by two witnesses.

Circumstantial evidence

Sometimes these types of evidence are collected. For example a dead body recovered from a house and a man sees by a person presume to be qatil or murderer.

Direct evidence

Evidence will be given weight if it is direct. When a witness appear in the court, told I saw it with my eyes and hear it with my ear.

Here say evidence is no evidence. It is not considered a good piece of evidence when a person says I hear this from another person.

A bad character person, thief or convict of QAZF are not given weight.

Evidence is given in oral, on oath, on affidavits and recording in court by commission and now video recording by zoom or modern devices and techniques.

Conclusion:

Evidence is the most important in the procedure of court for deciding the case and any matter or inquiry. According to Islamic law, fiqa and Qanoon-e-Shahadat order giving shahadat or evidence is the great responsibility. So the standard of the qualification is very comprehensive and complex. It is the duty of the officer of the court, qazi, arbitrator or jury person to keenly observe the evidence and deciding the case of convict.

In civil cases, mostly two witnesses are compulsory. Two men or one man and two women as per requirement of the case. In the succession and guardian cases mostly family persons are considered competent witness. In the divorce case female plaintiff is a competent witness with one another person. Nikah Nama is important document for divorce, dower, dowry articles and maher maintenance cases.

On behalf of the others one person can right to give statement. In the court mostly evidence recorded on oath. In the criminal cases mustagees with two eye witnesses give evidence first then medical evidence will recorded. Ocular evidence is corroborated with the medical evidence for the strong case of prosecution to punish the ilzamilah or mulzim. Confession is recorded before the magistrate and then use for punishment.

In the Islamic law a person can acknowledge and iqrar for his or her crime. It must oral and written also. In the Hudood cases male adult's persons are competent witness. Women are not allowed to witness in these cases according to Islamic law. But a women give statement in the case if she is raped.

The evidence of the women is considered true in the case of virginity of a women in question, birth of a child and medical examining. No DNA is compulsory according to the law.

In the Islamic countries, the punishments are given on the oath or according to the Islamic provision. Punishments of Hadd are given according to injunctions of Quran. Pakistan is a Islamic state, if the standard of witnesses not fall according to Islam then case will be decided according to Tazir. The heirs of the victim has right to wave or forgive the convict person. Court can consider the compromises according to CRPC procedure and schedule. The cardinal principal underlying the Islamic law relating to evidence is that decree or order of the court should be based on certainty and not on conjecture.

Recommendations:

- i. Implementation of ordinance in true meaning.
Giving false evidence punished.
- i. Keenly observe the standard of evidence in the court.
Analyzing the witnesses and the evidence in true manner and then punished.

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