



Role of Evidence in Forming the Conviction of the Criminal Judge

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Abstract

Evidence is a part or element of the evidence, it is not complete or sufficient evidence, but it is reinforcing other evidence then it rises to the level of evidence, and the evidence is of variable value in the evidence according to the circumstances of each case, and therefore the assessment of the value of real evidence is difficult and therefore its impact on the formation of the judge's doctrine varies strength and weakness according to the strength and weakness of the evidence, The multiplicity of evidence is of great value in removing doubt in the judge's conviction when forming his conviction, unlike whether the evidence is single and not multiple.

Keywords

Evidence, Judge's Conviction, Defects of Proof with Evidence

JEL Classifications: J11, F43

1. Introduction

It is known that the criminal legislator provides for the incident that constitutes the crime in its criminal model, while the role of the criminal judge is to prove that fact and attribute it to the perpetrators, and that the facts established against the accused are variable because they have circumstantial connotations, subject to the circumstances and circumstances of each crime separately, and we find that any evidence is not enough to attribute the crime to the accused, and at other times the judge finds them sufficient to attribute the act committed to the

accused and this depends mainly on the factors that affect the adequacy of the facts on the basis of the Providing the judge's doctrine of conviction and one of these factors is pluralism, contemporaneity and compatibility of semantics, and this is what we will address in this research by indicating the impact of evidence on the freedom of the judge to form his conviction, where we will divide this research into two demands that we address in the first requirement the impact of evidence on the freedom of the judge to form his conviction, while the second requirement we will address the defects of evidence in criminal proof.

2. Impact of Evidence on Judge's Freedom to Form His Conviction

The fact that evidence is an indirect evidentiary is a process of inferring an unknown fact from a known fact, and that this conclusion is based on probability and possibility and not on the basis of certainty and certainty (Al-Maraghi, 2022), and the consequence of this is that the criminal judge cannot rely on evidence alone in the case of a guilty verdict, and that the role of evidence in the field of evidence is limited to the possibility of relying on it to strengthen other evidence, as it is not cut on the basis of certainty and certainty in proving the fact. What is required is to be proven, and whatever it may be, we will highlight in this section the impact of the evidence on the freedom of the criminal judge to form his faith in terms of its ability to assist the criminal judge in strengthening other evidence or through its role in denying the charge against the accused.

That facts with criminal connotations, i.e. those that have to do with the case at hand in terms of the occurrence of the crime or in terms of the conviction of the perpetrator, are evidence (khalefa, 2011), and that each indication is part of evidence or an element of it, and not complete evidence, and on this basis the evidence alone is not enough evidence in proof, since its strength in proof is of probability value, and that this possibility may be weak or strong depending on the strength of the link between the known fact, i.e. The significance and the unknown fact to be proven, but this possibility in its case does not negate doubt, since the strong or predominant probability is accompanied by even a small amount of doubt and low probability, as doubt is always inherent to the possibility in all cases of its existence.

Therefore, it is necessary to have some factors and data that lead to the removal of this doubt, and that one of the most important of these factors is the multiplicity of evidence, as the presence of each indication separately carries a measure of strength of proof accompanied by a degree of doubt, for example, if the fingerprint of the accused found at the crime scene in a contemporary time, it means that it has a strong probability that the accused will commit the act with little doubt in this area, if the highlights of the crime are seized In the home of the accused, this is a similar indication, which leads to the strength of the evidence in the evidence in the case of its multiplicity, but this does not mean raising the probability to the degree of certainty required, because of the availability of evidence if the probability remains, despite the existence of plurality, and this is what happens if the indications are weak in the proof (al-Sanhoury, 2004),

including evidence that is based on personal qualities in the accused, or on previous facts in the commission of the act.

However, if the plurality focuses on evidence with strong and direct links between the unknown incident, this matter has an effective effect on the formation of the doctrine of the criminal judge, as the judge is convinced or more convinced with the multiplicity of evidence than the effect of a single indication on the incident individually, because the judgments are based on certainty and certainty, and this is what the Federal Court of Appeal of Wasit in its capacity as a cassation court ruled that "all the evidence presented in the case in the investigation and trial cycles was in doubt and the court did not reach the court of appeal The issue is based on his emotional conviction that the accused committed the act attributed to him.. It concluded that it was insufficient to convict the accused after it became clear to her that the evidence was marred by doubt and that no sound judicial verdict could be based on it if the judicial rulings should be based on certainty and certainty and not on doubt and probability..." ("Wasit Federal Appeal Court Decision / Cassation Commission, No. 281 / T / Misdemeanors / 2018 on 4/4/2018,").

Looking closely, we see that the court does not rely on the evidence presented if it is in doubt, because the judgments are based on certainty and certainty, and the plurality of facts is in a diverse way, the plurality may be with the compatibility of the evidence and this type is of greater value in the formation of the conviction of the criminal judge, in addition, the consensus is evidence of the validity of the fact and claimed to trust it, as the identical evidence is of objective value (khalefa, 2011).

For example, the accused earlier committed the crime by buying a weapon, and then he shot at the victim, and after the crime the weapon was seized in the house of the accused and during the process of nominating the victim, the bullet belonging to the same weapon seized was found in the house of the accused, which means as a result that the victim was killed with a firearm, and this indicates the multiplicity of facts and all of them are related to one type, which is murder using a weapon, Since the multiplicity of evidence in the case can be relied upon by the court collectively if it leads in combination with the rest of the evidence to the result, provided that these evidence is not learned from the procedural conduct of the accused, and the example of the procedural conduct of the accused escape during the investigation or his failure to attend the trial sessions despite being notified, this is not considered an indication that the accused committed the crime attributed to him (Mohamed, 2010).

Plurality with the incompatibility of evidence may be to the extent that they cannot be reconciled, leading to a weakening of their value in the proof and in the formation of the criminal judge's doctrine, so if the evidence is contradictory or ambiguous, then in such a case it can be dispensed with, if the rest of the semantics help the judge to form his conviction of the proof of the fact (R. R. Awad, 2010).

Thus, we find that the multiplicity of facts with the compatibility of evidence is sufficient to rise from probability to certainty and thus the disappearance of

doubt, while plurality with conflict in evidence leads to the weakness or ambiguity of those evidences and therefore does not rise to the disappearance of doubt and probability, and is added to the multiplicity of facts in the evidence and their compatibility in the formation of the judge's conviction that the incident is contemporary, meaning that the contemporary fixed fact against the accused has a strong impact on the formation of the doctrine of the criminal judge being synchronized with the stated fact. It has to be found in the criminal model and to be proven, since the element of synchronization makes it very close and influential in the proof and in the case of other evidence, incriminating evidence can be provided against the accused (Gorphe, 1973).

In the case of non-contemporary, however, the facts are suitable for the formation of evidence, as long as the link between the fact to be proved is as far or weak as the case may be (khalefa, 2011), and on this basis we find that in the case of multiple contemporary facts, this leads to a force that influences the judge's belief in conviction, and leads to the disappearance of doubt, and thus the Court of Cassation ruled in one of its decisions, "The accused may not be criminalized on the basis of his abstract confession that he killed his wife for her misconduct without supporting it." This recognition of sufficient evidence or testimony heard, and the court shall in these cases endeavour by all means to expand the investigation in the aspects that appear to it from the conduct of the trial to obtain evidence and evidence in support of the accused's claim" ("Decision of the Court of Cassation No. 31 / Criminal / 46, issued on March 31, 1946, Criminal Jurisprudence, Part 4, Paragraph 264,"),

Through this decision, we note that the Court of Cassation has gone in the direction that the confession taken from the accused should be supported by contemporary evidence and evidence of the commission of the act and not rely on the confession as a basis for the issuance of a guilty verdict, as well as ruling in another judgment "and that the testimony of one witness if it is not supported by evidence and other evidence is not sufficient to prove the charge" ("Decision of the Court of Cassation No. 31/Second Public Authority/73, issued on 27/4/1973, Judicial Bulletin, No. 2, S 1973,"). This clearly illustrates the role and impact of evidence in forming the conviction of the criminal judge.

3. Disadvantages of Proof by Evidence

We explained in the first requirement of this research on the impact of evidence on the formation of the freedom of the judge and the formation of his conviction, and it remains for us to clarify that the process of proving evidence is always risky, as the judge when he deduces it has wide freedom to do so, there is no stability in the weight of evidence and what may be seen by a judge that other judges do not see (Al-Shammari, 2019), and that this is due to the defects and dangers that affect the evidence, and one of the most important of these defects is that the evidence has been developed in a manner Misleading or artificial, as this may make the judge's inference of her incorrect results (Ashour, 1978), for

example, the offender during the commission of the criminal act takes full precautions, so that he does not leave a trace of his criminal act and wears a glove in his hands to not leave a mark at the crime scene.

The evidence chosen by the judge often speaks only the truth, since it is considered a silent witness who does not make mistakes, but it is not excluded that these evidence was placed in a shady or artificial form (Al-Azergawi, 2011), and thus we find that the contradiction in the testimonies cannot be relied upon in the judgment as well as in the case that they are based on suspicion and suspicion. The statements of the plaintiffs in personal right that were devoid of macroscopic testimony and were based on suspicion and suspicion, as the testimony of the victim's uncle was based on the conclusion, and since the evidence was devoid of macroscopic testimony and the accused had denied the charge against him, the Dhi Qar Criminal Court, by virtue of its described decision, had erred in the assessment of the evidence" (Al-Hadithi, 2002).

The judge, like any other human being, has a certain perception of a crime that he may have realized himself, or based on information by the competent investigating authorities, and if the facts of the case come under his watch, he may find himself led to the belief he has before he sees the facts, circumstances and circumstances of the case (Thabet, 2005), so the judge must calculate everything before him, whether it concerns the facts of the case, the circumstances of the case and the strength of the evidence available in it, and does not neglect it. Any fact or evidence, even if it is at the level of weak or simple facts, but he must analyze those facts and link them together because justice requires him to first examine the facts known and embodied in the circumstances and circumstances of the case, and take them to the unknown thing of knowing the truth (khalefa, 2011).

This requires the judge to be in the process of deriving evidence from valid facts, whether related to the proceedings of the investigating authorities, or the minutes and reports he has signed therein, if the extraction of evidence in general as well as evidence from facts that have no basis in the case papers and their adoption is necessary to overturn the verdict, considering that the court has departed from the limits of the criminal case (Al-Azergawi, 2011).

Deception may be in evidence by attempting to confer a picture of the crime other than the actual one in which it took place, such as a person who commits a murder and then carries the body of the dead man to put it on the railway tracks in order to camouflage, and the misinformation may be more serious when the offender commits his crime and at the same time performs some cunning and masterful acts by attributing the commission of the crime to a person other than the offender in order to disguise the competent authorities when searching for the perpetrator.

Such as the fact that the real perpetrator left papers belonging to another person who would put them at the crime scene in order to disguise that they fell from that person while committing the crime (khalefa, 2011), as well as not removing the conflict between the indications of contradictory facts can be

considered one of the defects that affect the evidence, and thus the Egyptian Court of Cassation held that "if what the verdict proved when collecting the incident indicates that the accused shot the victim with one bullet that he wanted to kill, and this is contrary to what it has proven. The medical report that the victim was injured from more than one caliber all contributed to the events of death, what the court stated in the reasons for its judgment on the advanced image contradicts each other, so that the Court of Cassation cannot monitor the validity of the application of the law to the truth of the incident because of the disturbance of the elements mentioned in the judgment about it, and its instability that makes it in the judgment of the established facts, which makes it impossible for it to know on what basis the court formed its doctrine in the case and the judgment is flawed We have to veto it" ("Cassation No. 2272, for the year 9/3/1959, No. 28, Set of Legal Rules, Technical Office, part 3,").

Despite the dangers that may affect the evidence and its role in the deduction process, it has an impact on the formation of the doctrine of the criminal judge, but in some cases we find that evidence is often the only criterion by which the trial court balances the other evidence considered in the criminal case, and the court, through the evidence available to it, evaluates the evidence to ascertain its truthfulness or falsehood or to ascertain its positive or negative connotations (M. M. E.-D. Awad, 1981),

, because the process of estimating the criminal judge of the fact and the evidence presented must be carried out within the framework of the rules of judicial inference, which derives its origins from the science of logic, and here it must be noted that the criminal judge is free to derive his conviction from any evidence whatsoever after the conditions of that evidence have been met in terms of legality and relationship to the facts considered in the criminal case, and the fact that the evidence has a variable relative value according to the circumstances of each case, it is difficult to estimate the true value of it in all cases. Circumstances and circumstances, and therefore we find that there are bases and criteria used by the criminal judge in assessing the link between the evidence and the facts of the case and other evidence. (Mohamed, 2010).

Since the provisions of the law have released the freedom of the judge to form his conviction as we have already shown from any source he wishes, whether direct such as criminal evidence, or indirect such as evidence and evidence, the result of this matter is that the criminal judge can base his conviction on the evidence as one of the indirect evidence of proof, whether at the stage of the preliminary investigation as it is considered a justification for the investigative authorities to track down the crimes and know the perpetrators. Or at the trial stage as it is considered to be supportive of the evidence presented by the court provided that it is supported with the rest of the evidence and is not excluded by a legal provision.

We conclude from the foregoing that the impact of evidence on the freedom of the judge to form his conviction is achieved in terms of the fact that the evidence

has a probability value that is not sufficient on its own as evidence in the proof, and that this possibility and doubt plays a fundamental role in not relying on it in the evidence, and that the multiplicity of evidence is what removes or weakens the existence of doubt and possibility, especially since the plurality with the compatibility of the evidence and its non-conflict, as well as the contemporary facts of the commission of the crime in turn lead to the strength of their influence in the formation of the doctrine of the criminal judge, In addition, the dangers that affect the evidence and make it of a probable value require the criminal judge to remove the contradiction between the contradictory facts that affect the evidence in order not to allow it to cause a flawed and contradictory verdict, which is contrary to the rules of justice that seek to convict the accused and acquit the innocent and this is the basis on which the authority of the criminal judge is based in the formation of his conviction.

Conclusion

At the end of this research, we recommend a number of the most important conclusions and proposals, which we will list as follows:

Results

1- Evidence of circumstantial probability value is not sufficient on its own as evidence in proof, and that this probability and doubt plays a fundamental role in not relying on them in proving in the verdict of conviction.

2 - The multiplicity of evidence is what removes or weakens the existence of doubt and possibility, especially since the plurality with the compatibility of the evidence and its non-conflict, as well as the contemporary facts of the commission of the crime in turn lead to the strength of their influence in the formation of the doctrine of the criminal judge.

3- The basis on which the power of the criminal judge is based in the formation of his conviction is not to issue a flawed and contradictory judgment, which is contrary to the rules of justice that seek to convict the accused and acquit the innocent.

4. The criminal judge may base his conviction on evidence as indirect evidence, whether at the stage of the preliminary investigation because it is considered a justification for the authorities of the investigation to track down the crimes and know the perpetrators, or at the trial stage as it is considered to be supportive of the evidence presented by the court, provided that it is supported by the rest of the evidence and is not excluded by a legal provision.

5- It is difficult to estimate the true value of them in all cases and circumstances, because the evidence has a relative value that varies according to the circumstances of each case, and therefore we find that there are bases and criteria used by the criminal judge in estimating the link between the evidence and the facts of the case and other evidence.

Recommendation

1- We propose to the Iraqi legislator to provide clear evidence in amending the Code of Criminal Procedure, so that they can be relied upon more clearly by the judiciary in the decisions issued by it.

2 - Give a broad role in the process of deriving evidence in order to carry out the process of removing the doubt and ambiguity that the criminal judge has in the formation of his conviction in the case before him.

3- We propose to the judiciary in the process of deriving evidence that it be from true facts, whether related to the actions of the investigating authorities, or the minutes and reports signed therein, if the extraction of evidence in general as well as evidence from facts that have no basis in the case papers and their adoption is necessary to overturn the verdict, considering that the court has deviated from the limits of the criminal case.

Reference

- Al-Azergawi, R. S. (2011). The presumption and its role in evidence in criminal matters, Master's thesis, Middle East University.
- Al-Hadithi, A. M. A. (2002). Evidence of Evidence in the Criminal Case, research published in the Journal of Justice. (4).
- Al-Maraghi, A. A.-L. (2022). Criminal Evidence and Criminal Judgment, New University House, Alexandria.
- al-Sanhoury, A. a.-R. A. (2004). The mediator in explaining the civil law, part two, the theory of compulsion in general, proof, the effects of commitment, Alexandria Knowledge Facility.
- Al-Shammari, K. A. (2019). The evidence and its role in the criminal case - a comparative study - a research published in the Kufa Journal. 1(45).
- Ashour, C. M. A. (1978). Encyclopedia of Scientific Criminal Investigation, World of Books, Cairo.
- Awad, M. M. E.-D. (1981). Criminal Law and its Procedures in Egyptian and Sudanese Legislation, International Press, Cairo. 2.
- Awad, R. R. (2010). The Authority of the Criminal Judge in Assessing Evidence, Dar Al-Nahda Al-Arabiya, Cairo.
- Cassation No. 2272, for the year 9/3/1959, No. 28, Set of Legal Rules, Technical Office, part 3.
- Decision of the Court of Cassation No. 31 / Criminal / 46, issued on March 31, 1946, Criminal Jurisprudence, Part 4, Paragraph 264.
- Decision of the Court of Cassation No. 31/Second Public Authority/73, issued on 27/4/1973, Judicial Bulletin, No. 2, S 1973.
- Gorphe, F. (1973). "La Valeur probante des indices", Rev. Sc Crim.
- khalefa, M. A. A. M. (2011). The Judicial Role of Judicial Evidence and Legal Evidence in Criminal Evidence, Modern Book House, Cairo.

Mohamed, A. M. (2010). Distinguishing between Reality and Law in the Appeal by the Cassation Method, New University House, Alexandria.

Thabet, K. A. (2005). Judicial Psychology, Dar Al Dhaheriya, Kuwait.

Wasit Federal Appeal Court Decision / Cassation Commission, No. 281 / T / Misdemeanors / 2018 on 4/4/2018.