Journal homepage: http://www.journalijar.com

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH

RESEARCH ARTICLE

Investigating judicial assumptions of recorded sound and picture in hearing crimes deserving Hadd

Saeed Gohari
University of Zabol, Department of Law, Iran

Manuscript Info

Manuscript History:

Received: 15 April 2014
Final Accepted: 22 May 2014
Published Online: June 2014

Key words:
assumptions, hearing, Hadd crimes, judge's knowledge
Corresponding Author

Saeed Gohari

Abstract

One crucial issue in penal cases is evidence to prove a crime. Since it is impossible to prove crime and realize punitive conviction in any penal system, the evidence to prove a crime is certainly fundamental in penal law. Specific evidences are presented in Islamic law and the case law. These evidences include confession, evidence, oath and judge's knowledge. However, with the advent of technology, new methods such as pictures and video clips taken from the criminals to prove a crime are efficient in discovering the truth and leading judge's knowledge to the reality and reaching a just decision. The aim of this study has been to investigate judicial assumptions (recorded sound and picture) in hearing the crimes. The methodology is analytical-descriptive and the data are gathered from library resources. The results indicate that though crucially important in discovering and proving the crimes, these evidences alone could not be regarded and reliable for judge's decree and legally they are considered as assumptions which are provided through an expert opinion and can be regarded as conventional ways for the judge to gain knowledge.

Copy Right, IJAR, 2014,. All rights reserved.

INTRODUCTION

One crucial issue in judgment is the evidence and assumptions to prove a crime. Some Islamic scholars and lawyers have regarded the ways to prove a crime as limited to the cases designated in Islamic law (Sharia) according to the Quranic verses and narrations; they disapproved of developing the evidence for proof. In the judgment, the important intention is for the judge to convince his conscience. The ways to persuade the conscience could not be limited to any particular one according to the conscience itself (Atabay, 2010:2).

By accepting the judge's knowledge as one way for proof in Islamic law, forensic medicine, scientific police, criminal picturing, and the like as new methods to discover and prove the crime can be applied in Islamic law (Jaan Jaan, 2012: 28-29). Undoubtedly, fighting criminals using traditional evidences of the crime (confession and evidence) is not practical. Therefore, either we have to witness disturbance of the order or security of the citizens which are targeted by criminals, or the judiciary system must become equipped with various scientific methods to struggle crimes.

According to the principle 166 of the Constitution of Islamic Republic of Iran based on which the decrees have to be well reasoned out, the judge is bound to mention evidences to his knowledge to prevent any misuse from taking place and guarantee judicial decisions' consistency (Mirmohamad Sadeghi, 1998: 309). Regarding the rapid advances of science and its positive and negative consequences, the evidences need to be analyzed since they are considered as proof for cases (Langarudi, 1998: 309). Because there is no argument for monopoly of assumptions, there should not be any problems in adding electronic data which help judge's knowledge in judicial assumptions. As validity of assumptions is of generic type, they are valid unless the opposite is proved (Zanjani, 1998: 4346).

The present research seeks to investigate the place of judicial assumptions (the recorded sound and picture) in Hadd crimes through a descriptive-analytical approach using library resources.

1. Theoretical bases

Regarding the role of recorded sound and picture in proving Hadd crimes, this study has examined the bases from three respects: evidence to prove, Hadd crimes, judge's knowledge.

1.1. The evidence

Evidence lexically means "guide", "sing" or "mark" (Dehkhoda, 1993, volume 7: 9735-9736). Conventionally it means something that proves something else (Emami, 2000, volume 6: 8). In law, evidence has a general and a specific meaning. In the specific sense it refers to any means which is predicted in the law and causes the judge's conscience to be convinced to the truth. In general sense, evidence provides the means that convinces the conscience of the judge. For example, "testimony" is evidence in its specific sense, but since it is said that "the burden of evidence lies on the shoulders of the claimant", "evidence" is used in its general sense i.e. providing and presenting means that convince judge's conscience to the truth of the claimed case is the claimant's duty (Shams, 2005, volume 3:83). What is important about evidence being used in either sense is recognizing the truth of a claim which contains legal consequences (ibid, 84).

1.2. Proof

Proving an issue means to elaborate on its truth and accuracy. Therefore, the legal meaning of proof is not far from general meaning of the evidence.

Certainly, proof is closely related to the issue of understanding, knowledge and conception. The area of proof is the area of man's knowledge of the existence of things. A mind which is convinced of a fact did not believe in it already and the proof equals the end of this ignorance and disbelief and acquiring that knowledge to the truth. The truth and the accuracy of something are not recognized unless the mind observes it clearly or becomes aware of it (Tavasoli, Jahromi, 2003: 138).

From this viewpoint, proving a right is to create belief and knowledge about the existence of a right. If we believe we have a right, it means that it has been proved to us and if we prove a right or a promise, we try to create a justified belief in this regard. In a judicial hearing this person is the judge. According to Kullen and Captain's definition, proof is directly related to identifying and recognition (Katouzian, 2010: 122). One who convinces the impartial mind of the judge of his legitimacy has managed to prove his right; since as is said, the judge is more ignorant than the two parties of the claim.

2. The evidence to prove a claim in penal cases

Various definitions have been proposed for evidence in penal cases. In a sense, all means that are used to prove or reject an issue or to prove validity or nullity of an assumption is called "evidence" (Dayyani, 2006: 5).

In general, in penal cases evidence is referred to a set of administrative regulations to prove a crime in connection with the external events or the behavior of the prosecuted person. The burden of proving the evidence is on the judicial authority's shoulders since it is bound to rely on the occurrence of the crime. To this aim, article 27 of the Principles of General and Revolutionary Court's Procedure in penal cases binds the judge to carry out all the necessary investigations. Thus, the penal judge plays a critical role in acquiring the evidence. Moreover, in penal cases the base is that the crimes are provable by any kind of evidence, since despite legal cases in which proving legal acts needs certain conditions, most criminal acts in penal cases are unlimited and various; it is also difficult to find an evidence to assign them to the accused person (Goldouzian, 2003: 18&21).

Based on what was said, the article 160 of the Islamic punitive law enacted in 2013 considers judge's knowledge as an evidence to prove a claim as well as confession, oath, and testimony. The article 211 regards judge's knowledge as the certainty coming from evidences. The lawmaker also states in the article 161 and 212 that even in case of producing evidences opposite judge's knowledge, those evidences are not reliable for the judge and he has to mention the evidences for his knowledge to grant a decree accordingly. It was mentioned in the article 105 of the Islamic punitive law enacted in 1991 that: "the Islamic judge could act based on his own knowledge in the Right of God and the Right of People to enforce God's limits. Besides, he has to mention the evidence for his knowledge". Also, in articles 120, 128, 199 and 231 of the same law, judge's knowledge was determined as evidence to prove murder, sodomy, lesbianism and theft (Mirhashemi, 2012: 244-245).

From the viewpoint of Islamic jurisprudence (Fiqh) the judge's knowledge has also been considered as valid in the Right of God and the Right of People. He is not allowed to grant a decree based on the evidence even if the evidence is produced against his knowledge (Musavi-Al-Khomeini, 1999, volume 2:408). As a result, in penal law, the judge's knowledge could be used as an evidence to prove any crime in which judge's knowledge is clarified or the law remains silent about such Tazir crimes.

However, if the evidences to prove a crime are mentioned in the law and the judge's knowledge is not among them, he cannot refer to his knowledge in such crimes; for example the ways to prove adultery are included in articles 68, 74 and 75 of the Islamic punitive law enacted in 1991 and judge's knowledge was not among those evidences. Hence, the judge was not allowed to refer to his knowledge in such crimes (ibid: 323&382). The article 73 conveyed the same meaning. However, in the new Islamic punitive law though the conditions of confession and testimony in adultery and sodomy are the same as the 1991 law based on articles 199, 200 and 232, the way to prove these crimes are not limited to these evidences. Thus, it can be said that according to general articles 160, 211 and 212, judge's knowledge could be used as a basis for the decree based on the definition of article 211 (Mirhashemi, 2012: 245-246).

Now, providing knowledge for the judge can be done according to scientific investigation including referring to an expert. The expert's opinion is a knowledge-bringing tool for the judge which has a crucial role in penal cases (Dayyani, 2006: 247-248).

Accordingly, the note to article 211 of the new Islamic punitive law states: "cases such as expert's opinion, etc. and other assumptions that are knowledge-bringing could be an evidence for judge's knowledge".

3. Crimes deserving prescribed punishment (Hadd)

Any crime having a definite punishment is called Hadd. Therefore, those crimes that contain Hadd punishment are crimes deserving Hadd. Article 15 of the Islamic punitive law states: "Hadd is a punishment its cause, type and the quality of enforcement is determined in the Islamic law (Sharia).

3.1. Adultery

Adultery includes a sexual intercourse between a man and a woman without any marriage ties and without being a case of doubtful intercourse (article 221 of the Islamic punitive law). It is stated in Tahrir-al-Vasila that: "the realization of an adultery deserving Hadd occurs when the man enters his penis into a woman's vagina while the woman is originally unlawful to him and there is no permanent or temporary marriage, the woman is not his slave and there are no doubts" (Musavi-al-Khomeini, 1999, volume 2:454).

3.2. Qazf (false accusation of unlawful intercourse)

Qazf is accusation of adultery or sodomy to the absent hearer with the following conditions: first, Qazef (one who accuses) has knowledge about what he says; second, he has the intention to accuse the person of adultery or sodomy; third, accusing adultery or sodomy should be sufficiently clear; forth, Maqzuf (the accused person) should be specified (Langarudi, 1998: 522).

Qazf, according to article 245 of the Islamic punitive law enacted in 2013 includes accusing another person of adultery or sodomy if this person is dead. Qazf is the only case of Hadd which judicial authorities hear it by a private plaintiff's complaint (article 225 of the Islamic punitive law).

It is necessary that Qazef be aware of his words and mentions the accusation clearly. The knowledge of the hearer about the meaning of the words is not a conditions and the mere awareness of Qazef suffices. Another point is that, inferred from the term "word" and "hearer" in the article 141 of the Islamic punitive law enacted in 199, it appears that this accusation must have been made orally and the written accusation is not enough (Vefaghi, 1993: 59). But it is read in note to article 246 of the new Islamic punitive law that: "Qazf is actualized by writing, though written electronically, as well as orally. Hadd for Qazf, according to article 250 of Islamic punitive law is eighty lashes.

3.3. Corruption on the Earth

In Persian corruption means destruction, decay, chaos (Moein and Amid monolingual Farsi Dictionaries for the entry 'corruption'). In Arabic and Quranic verses, corruption means getting out of moderation and the corrupt person is the one who causes disturbance in the order of things (Habibzadeh, 2000: 146).

Corruption on the earth has to contain an action on the part of the corrupt person due to which the earth loses its competence as a place for humans to live (Gholami, 2010: 39-40).

Article 287_ anyone who widely commits crimes against people's physical integrity, national or foreign security, disperse lies, disturbing the country's economic system, lighting fire and bringing about destruction, distributing dangerous or poisonous materials or running corruption centers or aiding them in such a way that leads to severe disturbance in the country's order, insecurity or major damage to people's physical integrity or their private and public properties or causes corruption and fornication to be widely promoted is regarded as corrupter on the earth and is sentenced to death.

3.4. Resorting to arms in order to frighten people (Muharebeh)

Muharebeh originally means to take, so it is applied for one who resorts to arms to frighten people or fight them and intends to take their lives, properties or security. The evidence for Muharebeh is Holy Quran 5:33. According to the Islamic scholars' famous opinion, Muharebeh is a crime deserving Hadd and they have stated the decree after theft since it is conceptually close to some examples of theft. There is no unity in defining Muharebeh. There is

controversy among Shia and Sunni scholars and even the Shia scholars have not followed the same opinion due to different interpretation of the Holy Quran 5:33 (Habibzadeh, 2000: 14).
Article 279_ Muharebeh includes resorting to arms intending to take their lives, property or honor or frighten them in such a way that causes insecurity in the environment. Whenever a person uses arms with personal intentions against one or more particular person(s) and his action does not have a public aspect, he is not considered as Muhareb. So is the person who uses arms against people but could not cause insecurity for being unable to do so.

3.5. Armed Rebellion (Baghy)

Baghy means to corrupt and it has origins in 'jealousy'; hence, they call a tyrant 'Baaghy' since anyone who is jealous would be cruel (Majma-al-Bahrain, under 'Baghy').
Baghy means getting out of moderation and means arrogance. In the Holy Quran, Baghy has been used with four meanings (tyranny, disobedience, jealousy and adultery) all rooted in its lexical meaning that is desire accompanied by force.
Many Islamic scholars have defined Baghy as disobeying the Shia Imam (Thani, 1983:160; Korki, 1991:482; Saheb-e-Javaher, 1981: 323-324).
Article 287_ a group rising against the Islamic Republic with arms is called Baaghi and in case they use arms, the members of it would be sentenced to death.

4. The ruling system of evidence in Iran's punitive law

4.1. the system of legal evidence: in the system of legal evidence which can be called as 'convincing the lawmakers conscience', the lawmaker determines the acceptable evidence(s) and their proof value and binds the judge to grant the decree of conviction in case the evidence(s) or the required evidence(s) his inner belief be ignored, and in case the required evidences are not provided, the judge is bound to acquit the accused person and has no rights to refer to other evidence (Ashuri, 2004:233). In fact, the lawmaker in this system of evidence has determined constant laws and it shows the judge the type of evidence that the penal decree must be based upon and which conditions must be set for the evidence used as basis of a decree.
These rules bind the judge to carefully observe the rules and when his knowledge does not totally conform to legal formulas he does not have the right to grant the decree. Therefore, the lawmaker has determined the proof value of various evidences in advance based on a general plan; during this process the judge only has to "become aware of other rules pertaining to evidence and thus his major mission is to help acquire evidence and investigate them and to provide necessary legal conditions to grant the decree" (Tarkhani, 2002: 97).

2. The system of convincing the conscience

The system of non-material evidence or judge's conscience convincing called by some as "the effect of evidence on the power of reasoning" has been replaced for the system of legal evidence by accepting the presumption of innocence. In this system, the judge's inner certainty is the criterion for judgment and he assesses the evidence in total freedom, has the option to accept or reject them and is not restricted to the pre-determined evidence of the lawmaker. He discovers the truth as well, and grants the decree based on his inner belief. The non-material evidence system is based on this: "becoming assured of physical actualization or non-actualization of the crime and ascribing it to the criminal and determining his penal responsibilities is mainly affected by the judge's conscience and inner feelings than the pre-made decision of the lawmaker" (Moein, 1985: 309). This system has left the judge with the option of freely assessing the evidence. In the logic of evidence theory, this freedom is considered as an essential complement for the principle of freedom of acquiring evidence since the lawmaker normally mentions the issue of judge's decision based on inner belief right after stating the principle of freedom of acquiring evidence (Molinan, 2000:11).
In the system of convincing judge's conscience all evidences are means and each evidence has the same value as others. The penal judge is not bound to acquire particular evidence and even the confession, which is the queen of evidences, is not considered as evidence. Like other judicial evidences, this one's proving power depends on judge's assessment (Rassat, 2007:634). The punitive judge could make use of all investigative possibilities determined by the law and play an active role in searching for the evidences and assessing them. Reaching his persuasion is the lawmaker's focus of attention and the advantages over the system of legal evidence are clear. The philosophy of evidences for proof is for the judge to reach certainty; of course he could not resort to illogical evidences (Tadayyon, 2010:63). Undoubtedly, reaching certainty for the judge does not necessitate his absolute authority and they cannot resort to their convinced conscience despite evidences that usually require conviction of the accused person, and makes the offenders to escape justice. What is important for the judge is to gain truth which can be reached by logical means and possibilities. Of course, the unconventional means that might be against people's rights are not regarded as evidence and the courts could not resort to inhumane means such as torture to discover the truth and attain persuasion of conscience (Khazani, 1998: 75).

3. The era of scientific evidence

Thanks to scientific advances, especially in human sciences, and affected by positivism, employing scientific means to collect evidences and to discover the truth has replaced traditional means of acquiring evidence. Obviously, the advent of modern technology has been effective in the judiciary system. While the criminals use modern ways to commit crimes, justice also has to be equipped with appropriate means and apply technology (Goldouzian, 2003: 274).

In an article titled: "the issue of new methodologies in penal cases" we read: "it is unlikely that scientific criteria and correct, logical enforcement of the law could be prevented. Though in the judiciary system the new technologies are rarely seen, no one today denies their role in various punitive fields. On the other hand, it would be better if science is used to discover the truth and attempts must be made to reduce judicial errors as much as possible and the facilities should be employed to the benefit of the accused person and to prove his innocence on the other hand. It frequently happens that an error in judgment yields very bad results. Now, it is the time that the Angel of Justice keeps her eyes wide open and analyzes the personality of the person being judged (Grown, 1950: 313). Thus, as time passes, observing legal and humane rules while acquiring evidence receives more importance; whereas, the principles of accuracy of action, honesty and trust are being ignored and the person's character and justice are often in danger of violation (Goldouzain, 2003: 275).

5. The validity of judge's knowledge

Knowledge means human's being aware of the nature of events occurring around him; a state which is acquired through assessing the clues and situations dominating an external phenomenon and any possibility of opposition is removed by acquiring that. There are other states against knowledge for the mind about the surrounding phenomena; one is ignorance, meaning lack of awareness of the nature of a thing and the weakest possibility among many possibilities; doubt, meaning the state of mind for equal possibilities; and conjecture, meaning the stronger among the possibilities. On the one hand, knowledge per se has positivistic value and is reliable and being acted upon; on the other hand, it is something based on which the reality of phenomena can be discovered. Therefore, it is said that knowledge enjoys validity and this validity is innate and not relying on the lawmaker's stipulation.

A point worth mentioning is that though judge's knowledge might be the absolute discoverer of the truth for him, it does not bind the lawmaker; whereas, it is the lawmaker who determines the evidence to prove a claim according to social conditions. Now the question is how the situation is in legal systems. Can the judge act upon his own knowledge and grant a decree based on it or the relations in today world are so complicated that the judges do not benefit from such possibility? (Ahani, 2002: 36).

1. The validity of judge's knowledge from the viewpoint of Islamic jurisprudence

Knowledge in Islamic jurisprudence refers to certainty and awareness which is also called ordianry knowledge (Jafari, Langarudi, 1988, volume4: 563). In judiciary cases there are two types of knowledge: 1. Knowledge that expresses the rules and regulations discussing people's duties; 2. judge's knowledge toward the disputed issue and its truth. This knowledge can be obtained for the judge as a result of experience and study or through examining the case as well as the explanations of the parties. By knowledge we mean the second sense. The evidences to prove claims are examples of ordinary knowledge. In Islamic jurisprudence, by knowledge we mean certainty against conjecture and its reality is just to discover the truth completely. Certainty is a carnal state in which the thing is known for the person and it is against conjecture, doubt and probability. In other words, certainty is an absolute without any possibility of errors (Beihaghi, 1987: 106). However, it is not the aim of Islamic jurisprudence and law to achieve knowledge without any unknowns contained in it; rather, it is the ordinary knowledge which is used in the law to settle disputes. There is much controversy over judge's knowledge among Shiite scholars, though the famous of whom has claimed consensus over judge's knowledge. The scholars are divided into four general groups about the validity of judge's knowledge.

a. The majority has considered absolute permission, whether it be the Right of God or the Right of People or been obtained at the time of judge's authority or before that.
b. A group who do not consider judge's knowledge as absolutely permissible and believe that the ways to prove a claim are confession, evidence, and oath.
c. Another group believes that judge's knowledge is valid for the Right of God but not for the Right of people.
d. And another group, quite opposite the above-mentioned belief, contends that judge's knowledge is valid for the Right of People not the Right of God.

2.The validity of judge's knowledge from the viewpoint of law

Several letters of the former Islamic punitive law consider the validity of evidences as hinging upon creating knowledge for the judge. However, there is controversy over the validity of judge's knowledge. According to the

theory of limited validity of judge's knowledge the general evidences are: confession, testimony and oath. In some cases the lawmaker has exceptionally stipulated the validity of judge's knowledge but these exceptional cases must be interpreted narrowly. The proponents of this view state in justifying article 105 that: "the aim of this article has not been to generalize validity of judge's knowledge, otherwise and in case the lawmaker intends to expand the realm of validity of judge's knowledge as evidence to prove all crimes, the articles 120, 119, 128, 231, 305, 315 would not regard judge's knowledge as an evidence like others to prove a crime. The lawmaker's stipulation to this and regarding judge's knowledge as an evidence to prove specific crimes after the article 105 refers to the fact that the lawmaker has not sought to expand judge's knowledge and to express the general decree. The second perspective referring to unlimited knowledge of the judge regards article 105 as not inconsistent with other legal articles which has considered judge's knowledge as evidence. Moreover, while the lawmaker has regarded judge's knowledge as an evidence to prove crimes in crucial cases such as murder or theft deserving Hadd, primarily it should be permitted in other crimes (Ahani, 2002:49-50).

In the new Islamic punitive law, although according to articles 199, 200 & 232 the conditions for confession and testimony for adultery, sodomy and lesbianism is the same as what was mentioned in the law enacted in 1991, the way to prove these crimes are not limited to these evidences; thus, it can be said that regarding general articles 160, 211 and 212 judge's knowledge can be evidenced for his decree. Even in case legal evidences are raised against judge's knowledge, those evidences are not valid for the judge and he has to grant the decree based on his own knowledge (Mirhashemi, 2012:246). Hence, regarding the new law it can be said that the lawmaker has adopted the arguments of the first group of scholars and regards judge's knowledge as valid.

6. The place of sound and picture in the evidence to prove Hadd crimes

6.1. Testimony

Testimony in the electronic form can be presented to the court in two ways: one, recorded testimony in electronic devices such as CDs and memories. It can be inferred from the Principle of Litigation Civil about this type of presentation that it is necessary for the witness to be present in the court to hear the testimony and even if the testimony is in the written or electrical form (article 1285) it appears that this information could be regarded as testimony; rather it can be considered an assumption (Katouzian, 2006: 172). Although despite the affidavit, the judge could well observe the witness or hear him in this form of testimony (Berton, ibid), the possibility of challenging the witness by the parties and investigating the condition of the witness by the judge is taken away from them. The second form of electronic testimony is online testimony. This testimony is based on facilities in such a way that the witness could give the evidence live in a way that his sound, picture and state is clearly observable and understandable by the judge and the parties. Besides, the possibility of challenging the witness is provided at the same time for the parties. Now to what extent such testimony is valid? If accepted, is this testimony regarded outside of the court or inside it? (Mohamadi & Miri, 2006:53).

Despite all these advantages, due to a traditional view in the civil law and the Principle of Litigation Civil, its validity is restricted to only an assumption for the judge. However, we suppose that wherever the witness brings an excuse for not being present in the court, i.e. where by no means it is possible for the witness to be present, the testimony be presented online. Though this method is not better than the presence of the witness in the court; it is prevailed over affidavit. Therefore, in this case it is not good to doubt the possibility of accepting testimony. Of course there are practical problems in online testimony. This type of testimony costs too much in terms of time and money, even it might become difficult to hear the testimony due to time discrepancies (Mohamadi & Miri, 2009: 174).

6.2. Confession

Confession is to state a right against oneself (article 175 of the Civil Law). Electronic confession is very similar to electronic testimony, especially regarding the form of presenting to the court. Thus, the confession could be in the written, recorded in CDs or memories or online form.

Wherever the confession is presented through an electronic device to the court, it is considered valid and outside the court, since stipulated by the article 203 of the Principle of Litigation Civil the confession is regarded as inside the court when "it is given in petition or during negotiations in the court or one of the instruments given to the court…". The confession we are talking about is not the same as any of the contents designated in this article since although the confession might be given while negotiation, confession to the right has already taken place outside the court. If the confession is given to the court through an electronic document, it is regarded as a written confession according to the article 204 of the above-mentioned law (Mohamadi & Miri, 2009: 174). Some has referred to the meaning of "orally" which means coming from the mouth and do not regard confession on the discs to be valid (Shams, 2005: 99). However, it seems that this argument is not valid to reject such confessions, particularly when modern legal phenomena like electronic evidence are being concerned. In penal law, the recorded confession is not valid; rather, it

could help the judge in decision-making as an assumption. Furthermore, one can assert the accuracy of what he has said in the court. But, a confession being recorded without the person's knowing is not valid since it is unethical and against ethics of hearing and is considered as violating people's privacy. In case the judges evidence such confessions, they have done an unethical action in the hearing which is undesirable. The lawmaker has considered the presence of the witness in the court as necessary to hear his testimony; but such necessity does not exist in confession. Thus, when it is given online it could be regarded as valid.

Conclusion

In penal claims, sound picture and are regarded as judge's knowledge due to convincing the conscience of hearing and referring to them as evidence to prove a claim is possible in some cases. As a result, to prove crimes their proof evidence is mentioned in the law specifically and judge's knowledge has not been considered as specified evidence, referring to sound and picture would be problematic. In the new law such limitation does not exist. Thus, using recorded sound and picture can be regarded as judicial assumptions to prove a claim. Even in claims such as adultery, sodomy, false accusation to adultery or sodomy (Tafkhiz) and lesbianism the decree can be granted based on judge's knowledge and referring to experts.

In case this tool contradicts the evidence to prove a crime such as confession, testimony, etc. according to the article 212 of the new Islamic punitive law, should the judge's knowledge contradicts other legal evidences and the knowledge remains evident, those evidences are not valid for the judge and he grants the decree by mentioning his own evidences and the respects to refute other ones.

References

1. Emami, Hassan (2000). Civil Law, Tehran, Eslamieh.
2. Atabay, Mohamadsadegh (2010). The place of scientific evidences in Iran's punitive law, M.A thesis in penal law and criminology, University of Tabriz.
3. Ashuri, Mohamad (2004). The Principle of Penal Procedure, Tehran, SAMT Publication.
4. Ahani, Batul (2002). The validity of judge's knowledge in granting the decree, journal of Fiqh and family law, Spring, number 25.
5. Basirpour Beiragh, Ghadir (2005). Legitimacy of applying assumptions in the evidence to prove crimes in the eyes of penal Fiqh, journal of Name-Mofid, Afand, number 52.
6. Beihaghi, Abujafar-Ahmad-ibn-Ali-ibn-Mohamad-al-Moghri (1987). Taaj-al-Masaader, the institute of cultural studies and research.
7. Tadayyon, Abbas (2010). Assessing penal evidences in the Iran and France systems of hearing, the comparative law research, 14, summer, number 2.
8. Tarkhani, Shahriar (2002). The principles of acquiring and presenting penal evidences in Iran and France law. M.A. thesis, Imam Sadegh University, Tehran.
9. Tavassoli Jahromi, Manuchehr (2003). (Fixity and Proof) journal of the Faculty of Law and Political Sciences. Winter, number 62.
10. Jaan Jaan, Fatemeh (2011). Electronic technologies and their role in advancing Islam's penal objectives. Judiciary Law Viewpoints Quarterly. Winter, number 56.
11. Jafari Langarudi, MohamadJafar (1988). Encyclopedia of Human Sciences. Tehran, volume 4, 1st edition.
12. Jafari Langarudi, MohamadJafar (1998). Terminology of Law. 9th edition, Tehran, Ganj-e-Danesh Publications.
13. Habibzadeh, MohamadJafar (2000). Muharebe in Iran's penal law. Tehran, office for publishing scientific literature of Teacher Training University.
14. Khazani, Manuchehr (1998). Pamphlet of Principle of Penal Procedure, Faculty of Law, Shahid Beheshti University.
15. Dehkhoda, Aliakbar (1993). Dictionary, Tehran, University of Tehran.
16. Dayyani, Abdolrasoul (2006). Evidence to prove a claim in penal and civil cases, Tehran, Tadris.
17. Saaket, MohamadHossein (2003). Hearing in Islamic law, Tehran, Mizaan.
18. Shobeiri Zanjani, Seyed Mousa (1998). The book of marriage, 1st edition, Qom, Raay Pardaz Research Institution.
19. Shams, Abdollah (2005). The Principle of Litigation Civil, volume3, Tehran, Deraak.
20. Shahid Thani, Zeinoddin (1983). Al-Rouza-Al-bahia fi Sharh-al-Lo'ma al-Dameshghiia, Beirut, Dar-e-Ehya al-Torath al-Arabi.
21. Saheb Javaher, Mohamad Hassan (1981). Javaher al-Kalaam, Beirut, Dar-e-Ehya al-Torath al-Arabi.

22. Gholami, Ali (2010). Corruption on the earth and crimes against morality. Islamic Law Research Journal, 11 (2), winter, 32.
23. Katouzian, Naser (2010). (Certain Contracts), volume 1, Tehran, Katouzian Legal Foundation.
24. Katouzian, Naser (2006). Proof and evidence for proof. Volume 2, 3rd edition, Tehran, Mizaan Publications.
25. Grown (1950). The issue of new methodologies in penal cases. Journal of criminal sciences.
26. Goldouzian, Iraj (2005). Evidence to prove crimes. Tehran, Mizaan Publications.
27. Mohaghegh Korki, Ali-ibn-al-Hossein (1991). Jaame-al-Maghaased, Beirut, Dar-e-Ehya al-Torath al-Arabi.
28. Mohamadi, Saam & Miri, Hamid (2009). A comparative study of electronic presentation of evidences in the court, its types and validity, Name-Hoghughi, 76, volume 5, number 2.
29. Musavi-al-Khomeini, Seyed Ruhollah (1999). Tahrir-Al-Vasilah, volumes 2&4, Qom, Dar-al-Elm.
30. Mir Mohamad Sadeghi, Hossein (1999). Specific penal law2 (crimes against properties and possession), 6th edition, Tehran, Daadgostar Publications.
31. Mirhashemi, Zahra (2012). The place of genetic fingerprinting in evidences for proving claims in the area of women in Iran's law and Fiqh. The Social Cultural Council for Women and Family, year 15, Fall, number 57.
32. Vefaghi, Dariush (1993). A discussion on accusation and dispersing lies and Qazf in the current laws. The legal journal of judiciary. Summer, number 8