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The conflict of the Murder Evidences in the Imami Jurisprudence and the Islami Penal code

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ABSTRACT ─ There are many reasons for the conflict between the criminal evidences; which, the sometimes individually, and other times allegedly create the conflict. The study and evaluation of the causes of the murder evidences and the resolutions are significant; while, the legislator has only referred to the conflict between confessions (Articles 235, and 236 of the Islamic Penal code) on the subject of the murder, and has remained silent for other cases. In this article, some techniques of the conflict resolutions will be provided by studying the various example of the conflict between the murder evidences, including the confession, the judge's knowledge, the adjuration, and the testimony, based on the Imami jurisprudence.

KEY WORDS: murder, evidences, adjuration, testimony, the judge's knowledge, the conflict of evidences, the Imami jurisprudence

Introduction

One of the critical issues of the criminal procedure is acquiring, classifying, and applying the evidences; which, sometimes it creates the conflict between the evidences, resulting in their invalidity (2). From the view of the modern criminal procedure, what ever creates the invalidity and discredit of the several evidences of a tie, will result in the conflict between the criminal evidences (Salehi and Samadi, 2008, p.15). The conflict is the conflict between two or more balanced (3) evidences;[1] So that, commonly they can not be grouped; and, no one else is abrogating (Mohammadi, 1996, P.336). The background of the conflict between the evidences of the crime of murder is the number of the murder evidences in the Islamic penal code, restricted to the four subjects including the confession, the judge's knowledge (1), the adjuration, and the testimony. The availability of each one of these evidences can be positive of the murder event; but, sometimes two more evidences are synchronously given for proving the murder. The synchronous positive evidences of the crime create the conflict between the evidences; which, the way out of the conflict is significant. In the Islamic penal code only the conflict between two confessions has been resolved by using Articles 235, and 236, wile all other subjects have been neglected. In this article, other kinds of the conflict between the evidences positive of the murder will be discussed in two parts: the adjuration conflicting other evidences, and the testimony conflicting other evidences; also, the way out of the conflicts will be provided, too.

The conflict between adjuration and other evidences

One of the evidences of proving the murder, and the injuries and damages to the bodily organs is the adjuration; which, although besmeared, it is executable. The adjuration (Qassamah) is derived from taking an oath (QatibAherbini, 1954, vol.4, p.109). However, the adjuration is not restricted to the adjurations on the murder and crime (2) (Davarzani, 2004, p.120).[2]

1- In Article 194 of procedure code of Public and Revolutionary Court in civil Affairs, the legislator has mentioned in the definition that: "the evidence is a subject which the parties to the conflict refer to." In the lawyers' language, the evidence is every tool for seen in the law; and, in the judicial reference it convinces the judge's conscientious to the reality of the subject of the claimed affair (Shams, 2003, p.183); also, the evidence is a set of executable rules for proving a crime adopted in connection with external events and the behavior of the person prosecuted (Goldouziyan, 2005, p.18).

2- In this article, by the criminal evidences, we mean the legislator reasons defined by the legislators. Along with these evidences, there are other reasons called the legal reasons which are comparable to the theoretical reasons, and the scientific reasons (See Samadi and Salehi, 2009, PP.74, and75).

3- The balance between two evidences means that they are equal without any priorities.

1- In the Imami jurisprudence, the judge's knowledge long with other evidences (confession, testimony, and adjuration) has been recognized as the proofs of claim; which, it involves special attributes.

2- It seems that, nowadays, in the criminal justice, the adjuration on crimes sentenced and on sanctions, belongs to the illegal evidences. However, whether the Dexter rule on sanctions can be claimed as evidenceand not has been a cause of difference between lawyers. Those who believe that the adjuration on sanctions can play as an evidence, argue that in Article 271 of the Procedure Code of public and Revolutionary courts in civil Affairs (that in all financial claims, and in other rights of people such as marriage, divorce, see in the divorce, blood relations, attorney, and will which lack the other evidences of documentation, the religious adjuration meeting the following articles can be a property and document of the court verdict), and in Article 178 of the procedure code of public and Revolutionary courts in criminal justice (on cases where the resolution and proving the claim can be achieved by religious adjuration, each one of the parties to conflict can use their right of adjuration) the legislator has approved the right of adjuration for the conflicting parties as an evidence. To criticize the view of the supporters, it seems that the expressions of «parties to the conflict», and «right of adjuration» imply that the right of adjuration has no standpoint in the criminal matters; because, these words are exclusive to the legal claims. Besides, if we take it that on the sanctions, there is a right of adjuration for the accused person, if the accused person disclaims the adjuration to the judge, he must take the adjuration. However, there is not such a thing in the jurisprudence and rules; and, when the claim is a combination of God's Right, and the right of people such as Dexter robbery, it can only prove the right of people offense, i.e. the stolen property, and the losses resulting from neither the crime, nor the crime per se. According to the argument, the adjuration is not executable on claims sentenced. The claim that "the defendant should provide evidence, and the one who denies should provide the Dexter" is applicable to all trials, whether legal or criminal, is contradictory to the principles and foundations of some claims. Accordingly, the adjuration on sanctions is illegal. If the judicial authority based on the accused adjuration passes his acquittal, but afterwards the plaintiff succeeds in bringing to court some other proving evidences, the conflict of prove and disprove occurs; while, if the oath was not considered as an evidence, upon the discovery of the new evidence the conflict would not occurred.

1- SoleymanIbnQalid says (About Abdollahsays :) Isaiah who was accompanied by IbnShabramah asked me about a killed one found on others' land. I said: The Ansari founds the dead body of a man in one aqueducts of Khyber and said: the Jews killed him. The prophet told them: Do you have any evidence? They replied: No. The prophet (PBUH) said: Do you take an oath? They replied: How can we take an oath on something we have not seen? The prophet said: then, the Jews must take an oath. The Ansari said: will they take an oath against our killed friend? Then, the prophet himself paid the blood-money (Vassel, 1901, vol.19, p.118).

2- Although the word 'evidence' (Bayanah) in the language of anecdotes, even on the matter of judgment and quality of the verdict exclusively means two witnesses; but, in accordance to the literal meaning, it signifies providing proof. In this writing, by evidence we mean two witnesses. However, quoting the famous statement that holds "accuser should provide evidence, and the one the defendant should provide the Dexter the first meaning has been extracted in order to put it on the accuser to give evidence and prepare proof; which, according to their view, it differs from case to case; also, in some cases its quality, and number has been religiously identified. Testimony by two reliable persons is one example of the evidence, which in all cases is valid, but is not exclusive (Khooee, 2001, vol.42, p.405; HorrAmeli, ibid, p.113)."

3- The Holy God has passed different verdicts on bloodshed and property. For property he has said that the evidence should be prepared by the accuser, and the adjuration is on the defendant, and for bloodshed he has stated that the defendant should provide evidence, and the adjuration is on the accuser, lest a Muslim's blood overwhelmed (HorrAmeli, ibid, p.115).

But, the jurists have used it in the mentioned cases. (Feyomi, 1984, vol. 12, P.503; Shahid Sani, Bita, p.197; Najafi, 1981, vol.42, p.226; Tabtabee, 1991, vol.10, p.315). In the Islamic jurisprudence, the legitimation of adjuration as one of the positive evidences of the murdercrime has been frequently emphasized, regardless of the views of some opponents (see Ibn Fahd Helli, 1990, vol.5, p.216; MaraashiShoushtari, 1997, p.13). Its sources go back to the traditions and memories of the Holy prophet (PBUH), and the Chaste Imams (PBUT). Its source of canonization refers to the story of murderinga Ansari man around castle of Khyber, and judging the claim by the Holy prophet (PBUH) (1). The besmear means polluting oneself (IbnAthir, 1963, vol.4, p.275). In the jurists' terminology, the besmeared is a circumstantial evidence upon which the claimer is over come (MohagheghHelli, 1982, vol.4, p.222). However, the adjuration is an evidence contrary to the principals of fair trial, because according to the principle that says "the accuser should provide evidence, and the defendant should provide the Dexter", for proving the claim, the evidence should be prepared by the defendant; while, in the adjuration the principle has been altered, and preparing the evidence is put on the prosecuted (2). Regardless of the swearer's condition, and the duct of adjuration which is related to the realization of besmearing, the adjuration can be a discoverer reason of fact; and, even when there are not available any evidence of the murder (testimony, confession, and the judge's knowledge), it creates for the criminals the concern that they are not safe from discovery and arrest. In this regard, for the benefit of preventing, the adjuration causes the criminals to avoid shedding the blood of innocent people; so doing, Muslims' lives are kept safe (1). But, if the adjuration is brought up along with other positive evidence of the crime, and causes conflict, the way out of the conflict will need the problem identification, and arranging its different possibilities.

The conflict between adjuration and confession

The word of confession means "to clearly express, and clarify" (Anwari, 2003, P.125). In terminology, it is "an acknowledgement log the person doing the act or omission which according to the law will legally effect to the determent of confession" (2) regardless of that "today, the value and validity of the confession by the accused is seen doubtfully" (Akhondi, 2002, vol.4, p.250);but, doubles to say that the confession in the criminal affairs is a way for the judge to acquire the knowledge, which "along with other evidences will be evaluated" (Ashouri, 2006, p.219). But, this function of the evidence is subject to observing the legal texts.[3] So, the confession by illegal methods such as confession based on torture (3), stripping power of disposal by hypnotizing, and using polygraph is null (Ranjbariyan, 2005, p.153); because, the doctrine is contrary to any kind of reluctance, coercion, and deception of the accused. The confession, notice, testimony, and adjuration must be gained safely, and according to the person's individual will. On the case of the conflict between the adjuration and confession, the question arise that whether the confession and adjuration are either in longitudinal or lateral relationship, and whether there is a transposition dominates, or whether the two evidences can be summed up. Some have argued that the evidences are equally discoverer reasons of fact, and can be alleged. In their view, the confession can be alleged with the adjuration; but, in the finality, they prefer the role of the adjuration (Razizadeh, 1995, p.251). The above theory can be factual because firstly, the adjuration becomes the evidence of the claim when the murder is in a specific status (besmeared); secondly, the proving power of the adjuration is less than other evidences; and, in case of the conflict with other evidences, the adjuration will be aside.[4]Then, the proving power the confession is stronger than the adjuration; and, it makes no difference that the conflict occurs in the proceeding of the procedure, either before passing the sentence or after that, it is evident that the judicial authority on the case of the conflict between the adjuration and the confession should investigate about the latest confession, and its details, and about that there is no bogus confession. Next, based on the case, he will prefer one of the reasons.

The conflict between adjuration and evidence

Sometimes after the adjuration and passing the verdict, based on it, the plaintiff and the accused on the rejected charges of alleged evidences are represented. Providing evidence by the plaintiff is a double emphasis on the factuality of the adjuration; which, in the theory it creates no conflict (1) But, in most of the cases, the accused provides the evidence and the preference of his evidence is that he has not been present in the time and the place of the murder; then, the murder is not attributed to him. For example, the murder has occurred at 11:00 O'clock on Friday in Semnan, while, the accused by providing evidence proves that at the time of the murder he has been in Tehran. In such a case, there is a conflict of prove and disprove between the adjuration, and the evidence (Salehi, and Samadi, ibid, p.13). Prove and disprove are realized via the adjuration, and testimony evidence.

The verdict of the problem is according to the judicial and jurisprudence standards. The preference is the significance of the testimony evidence and the failure of adjuration, because the evidence is stronger than adjuration (Najafi, ibid, p.273). Next, the

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1- I asked Imam Sadegh about the adjuration. He said: "the adjuration is right and is written before us; and, if there was no adjuration, the people would kill each other. The adjuration is to save the people" (HorrAmeli, ibid, p.114).

2- Article 69 of the Islamic penal code on this subject explicitly states that: «the confession is valid if the confessor has the attributes of maturity of wisdom, possession, and intent». This concept denotes that in the analysis of the evidence the bodily totality of the witness and the accused should not be attacked. Also, the attack on physical and mental health guarantees the vividness of the acquired reason, and it will be followed by the guarantee of criminal and disciplinary sanctions, i.e. if the authority acquiring the judicial reasons hit and injure the accused or the witnesses, he will be dealt with according to the judicial law and the disciplinary rule of dealing with transgressions. In the Iranian judicial system, chapter 10 of the Islamic penal code, articles 570, 579, and 580 has criminally reacted to the attacks to the physical totality of the accused or witnesses by the official principles. Then, confession, notice, testimony or adjuration acquired by torture or threatening is legally invalid, and the conviction based on such a confession is subject to invalidation (Noorbaha, 2007, p.189), and the court is obliged to arrange it. The reluctance and coercion of the accused during interrogation are clear examples of violating the right so of defendants. The reluctance and coercion of the accused for acquiring confession take place by applying the physical or mental tortures. The torture of the defendants is strictly forbidden in domestic law and international and regional documents, and it has been foreseen to guarantee criminal procedure, regardless that the judge should not decline himself to committing illegal actions and fraud, because this is contrary to the authority of the judiciary (Goldouziyan, 1992,p.118).

1- The word "torture" based on the first Article of the international convention against Torture and Other Cruel, In human Behavior has been defined as: «any intentional action by which sever pain or injury, whether physical or mental is imposed on the victim for reasons such as acquiring notice or confession of the victim or a third party for the action the victim or the third party has committed or is accused of. The intimidation or putting under pressure of the victim, or the third party for any reason based on discrimination…when such a pain or injury takes place by an official principal or under his supervision whit his consent or silence in his official capacity imposed on the person. The definition does not involve the pain or injury that is merely resulted from the inherent pain or injury of the warranty of legal procedures, or their following consequences» (Amir Arjomand, 2002, vol.1, p.495). The convention against Torture, is and international convention, and is a applicable under any circumstances. Almost all international documents emphasize the prohibition of torture. According to Article 5, the Universal Declaration of Human Rights holds that: «No body can be mentally or physically tortured». Article 7 of the International Convenant on Civil and Political Rights also states that: «no body can be subject to inhuman or derogatory tortures. » The Convenant in pargraph3 of Article14 determines that: if some one is suspected of a crime, she/he will be guaranteed that she/he is not forced give confession against himself/herself, or to confess to be guilty. Article20 of the Islamic Declaration of Human Rights and the UN all order the prohibition of torture, and observing the respect for human dignity during detention and interrogation. In the domestic law, Article38 of the Islamic Republic of Iran constitution frankly prohibits the use of torture for acquiring confession or notice, or forcing the individual to testimony, confession, or adjuration, and considers such a testimony, confession or adjuration as void and invalid. Paragraph9 of the Single Article of «Law of Respecting Legitimate Freedoms and Protecting Citizen's Rights» also has recalled the prohibition of torture for acquiring confession or the coercion of the suspected person in to other matters. With respect to absolute ban on torture in the constitution, its criminal execution has also been guaranteed in Article578 of the Islamic penal Code: «any judicial and non-judicial public servants for making an accused to confess, if irritates him physically, besides retribution or payment of blood-money according to the case, will be sentenced to imprisonment from6 month to one year; and, on the condition that somebody had passed an order on this matter, only the ordered will be convicted to the mentioned punishment of imprisonment; and, if the accused dies of the tortures, the steward will be punished as murderer, and the ordered will be punished as the ordered of murder.»

conflict between the evidence and the adjuration causes the judge to change his opinion which has been the basis for executing the adjuration, and he will be doubtful. The occurrence of doubt in such a situation requires that they turn to the general principle of "the accuser should provide the evidence". So, if the provided evidence is along with the significance of the adjuration, the adjuration will be valid, and on the case it is contrary to the adjuration, the adjuration will fail and the evidence will be preferred.

The conflict between adjuration and adjuration

The conflict between adjuration and adjuration is possible in 2 ways. The first case is when the passed sentence based on the adjuration becomes objectionable by the revision authority; and, the file is returned to the court of first instance for making corrections, and reliving the contradiction. The court following the order of the supreme authority will call back to the court those who have been participating in the adjuration ceremony, and the adjuration will be repeated in away the significance of the present adjuration differs from that of the previous adjuration. For example, in the first adjuration5people each has sworn 10 times that X alone has killed Y. The same persons will swear that X in companion with other person jointly is murderers. The conflict between the adjuration alters the reliability of the adjuration, because we have knowledge that one of the adjurations is void, and because the void adjuration is not clear from the correct adjuration, so, both of the adjurations will be invalid. The second case occurs when the next of keen before the alteration of the Islamic penal code on the adjuration, have brought to cort3 person of the relatives, and by swearing for50 times have become successful to prove the case as intentional murder. Then, the file is sent to the Supreme Court following the request by the murderer, and for some reasons, the passed verdict is prescribed based on the contradicting adjuration, and the re-executing of the adjuration. But, at this time, the court of first instance based on the new rule ofthe Islamic penal code on executing the adjuration asks the next of keen to introduce 50 men of the murderer's relative for executing the adjuration (Article 248 of Islamic penal code). Also, the next to keen can not introduce 50 men for the adjuration ceremony, and upon executing the adjuration, the accused will be acquitted. In such a case, there is a conflict of prove and disprove between the significance of the first adjuration that stated the accused is the murder, and the significance of the second adjuration that stated the acquittal of the murderer.

The conflict between the adjuration, and the judge's knowledge

By the implication of Article 105 of Islamic Penal code the Judge can act on the God's right, and the right of people based on his own knowledge. This verdict is derived from Imam Khomeini's TahlylolVasllah (Mousavi Khomeini, 1982, vol.2, problem7) which is in accordance with the views of the Imami Jurists (Najafi, 1981, vol.40, p.89), because the Quranic verses "cut off the hands of the male and female rubbers" and "the male and female adulterers…" address the judges; and, when the judge acquired the knowledge of the guilt (2),[5] they are obliged to put the knowledge into practice, and, there will be no difference between the sanctions and other things, regardless of the way the judge has acquired the knowledge (4). The judge after the adjuration ceremony acquires some information that create the knowledge for him (5), while may be his knowledge be in contradiction and conflict with the significance of adjuration; then, the judge's knowledge is preferred; because, the judge's knowledge is the primmest evidence (6), and certainty, contrary to the adjuration that creates suspicion. [6]

The conflict between the evidence of testimony and other evidences

The evidence of testimony is not valid but by two just Muslim witnesses of the murder (SheykhMofid, Bita, P.736). The words of testimony means the attendance, the examination, and the notice (JaafariLangroudi, 1989, p.394) and in terminology, it is that one person or more notice the occurrence or presence of a tangible event in the present or past time, so that the intended notice is not against the notice-bear (jaafari Langroudi, 1997, vol.5, p.179).

The conflict between two evidences of testimony

The conflict between two evidences of testimony is an example of the conflict between the proving evidences. The Islamic penal Code has remained silent on this subject, while the jurisprudence resources have provided the verdict in case of such a conflict. Two people bear witness that the murder is attributed to X, and two other persons bear witness that the murder is attributed to another person. Now, the question is that whether the conflict between the two evidences of testimony will create besmear, and the adjuration ceremony, or both of the evidences become invalid, or one evidence of testimony is preferred to the other one? Are the next of keen, the same as the conflict between two confessions, free to choose one of the evidence of testimony? The writer of Jawaher believes that there is no standard of preferring one evidence to the other one, and it not the location of drawing a lot, because based on the evidence of testimony both persons are murderers, and it is not doubt of extension to draw a lot; because, the conflict between the evidences creates doubt, and the doubt prevents nemesis, since on the matter of bloods should act cautiously. Then, due to the conflict between the evidences the nemesis will be put a side. This can not be compared to the verdict in case of the conflict between confessions, because in Shi'ah jurisprudence in such a case the analogy is not acceptable (1).[7]

1- The reason for the reliability of the evidence is its discovery of prof.

2- It is evident that we argue that the first adjuration invalidates and rocks stripping of the conflict of the executed adjuration by the accused. Therefore, the second adjuration will be valid, and should be preferred. But, by this discussion, we aim to approximately conceptualize the conflict order.

1- The judge is allowed that without evidences of testimony, confession, and adjuration act on the right of people, and God's rights based on his own knowledge; but, he is not allowed if the evidence was contrary to his knowledge, or the swearer is a liar in his opinion, to pass sentence based on them. Yes, the curator of the judiciary and arbitration is allowed not to enter into such a case, if the authority of the case is not exclusive and appointed to him». (Mousawi Khomeini, ibid, Problem7).

2- Doubtless, by the judge's knowledge, it is meant, while the examining magistrate's knowledge or the attorney general's knowledge have no authority for the court, and are not definite reason (Theory no. 1363/4/31-7/1124 the legal Department of the judiciary).

3- The claim of consensus and reputation exceeds the authority of the judge's knowledge (Dhekh Ansari, 1994, p.91), but the writer of Jawaher considers all evidences as invalid, and states the consensus is the strongest evidence (Najafi, 1981, vol.40, p.88). The claim of such a reason is evident based on «TamimKashf» (Discerner) on the discussion of the carnal authority. Accordingly, the reason for the validity of the carnal authority is that the holy religion regards the incomplete and dubious detection of the carnal reason for worshiping; then, we will account it as worshiping knowledge, and it will be the same as the authority knowledge before us (Khorsandiyan, 2004, p.66).

4- Of such cases, these can be mentioned: examination by judge, threaded evidence that the judge acquires from the statements by the parties to the conflict, scientific detection of the crimes and forensic statements, and the established religious principles such as carnal bed. However, quoting the apparent evidences, and using scientific rationalization, it should be mentioned that by knowledge, it is meant the common knowledge, The common knowledge is a knowledge that is derived from common causalities, so that any instead of the judge, will acquire the same knowledge. So, the knowledge from a confession by the accused can not have authority. At present time, the acquired knowledge in most of the criminal cases is the result of the incomplete confession by the accused that afterwards has been denied (Qeyasi, 1996, p.149).

1- Dome believe in the adoption of every reason, counterpart or carnal to effect the spiritual faith in the judge about the crime or the accused's acquittal (Aknondi, 2007, vol.2, p.82), and even the Theory of the Legal Department of the Judiciary dated 22 June 1962 also dose not deny this matter. The theory holds that: «in criminal affairs, the documents and evidences are not to be counted and limited, and the examining magistrate or the magistrate of the criminal

But, to avoid overwhelming a Muslim's blood, the blood -money is the obligation of every two people, and both murderers according to the evidence of testimony are equally responsible for paying the blood-money. This view is also confirmed by the customary criminal law, if in the process of the conflict between the two evidences of testimony the detailed judicial research can not solve the problem of the conflict. Inevitably, the sentenced is passed to pay the blood-money, and the nemesis will fall; and, the resolution of next of keen selection to choose the significance of one of the evidences should be avoided.

The conflict between the evidences of testimony and confession

On the subject of murder, the conflict between the significance of the evidence of testimony, and confession is possible. The Islamic penal code has not stated the verdict in the case of the conflict between the evidence of the testimony, and confession. But, in Shiaah jurisprudence the verdict of the problem is stated. Late writer of Jawaher on the verdict of the problem has stated that the right is provided for next of the keen to execute the one against who is the evidence. In this case, the confessor should pay one half of the blood-money of the one against who is the evidence, to his heirs; and, if the next to keen selected the confessor to be executed, the one against whom the evidence is, has no responsibility to pay one half of the appointed blood-money. Also, the next to keen are allowed to execute both convicted persons, and confessors after paying one-half of the blood-money to the one against whom is the evidence; and, if the next to keen are satisfied with the blood-money, the confessor, and the one against whom is evidence, are obliged to pay one half of the blood-money. In the conflict between the testimony, and confession, the next to keen selection compass is wider than that of the conflict between two confessions, because the next to keen can execute the confessor, or the one against whom is the evidence, or both of them; while, in the case of the conflict between the confessions, the next to keen can choose one party of the confession to be executed, and after doing the selection, they can not see back to the confessor. The verdict of the above problem holds if the next to keen can not determine whether the one against whom is the evidence is the murderer, or the confessor; so that if they claim the one against whom is the evidence, is the murderer, they can not see back to the confessor and vice versa. In the above problem this question arises that if the next to keen selected the one against whom is the evidence, and the confessor, why only one half of the blood-money is paid to heirs of the one against who is the evidence? Do the confessor's heirs have no right to receive the blood-money? In the anecdote by Zarareh, Imam Sadegh has stated that the one who has confessed to the murder, has acquitted the one against whom is the evidence from the murder, while the one against whom is the evidence has not acquitted the confessor from the murder. Then, the confessor's responsibility is greater than the one's responsibility against whom is the evidence (2) (Najafi, ibid, p.224).

Conclusion

In the conflict between the adjuration, the testimony, and the confession, the theory of selection dominates. But nowadays, the findings of modern code of criminal justice in the customary criminal law shows that adopting the proposed selection theory does not provide not provide a good resolution of the conflict, because the conflict between the evidences implies that one of the evidences is corrupt and invalid, and it is not possible that both evidences be correct. So, how can the next to keen on such conditions be propagated the selection right to choose every one of them for execution? The resolution of the conflict is to regard both of the evidences as void, and the investigations be carried on, and by using psychological and criminological findings identify the causes of the conflict, and the confession incentive-based, and the witnesses testimony; and, we should physiologically and medically diagnose the confessor and the witnesses to understand that the witnesses have no visual or audial problem, and that the confessor is not afflicted with a specific mental illness. Today, in code of criminal procedure, finding a resolution of the conflict by the parties to it by themselves has been abandoned. And, by doing detailed researches, the judge should resolve the conflict between the criminal evidences; and, this method is of the effects of public justice which dose not allow the active role of the parties to the conflict in the criminal affaire.

court in the way to discover truth, and acquire certainty, and gain the fact can use every thing and trace as an evidence and a document; and, the value of the evidences in accordance with the specific condition on every case is dependent on the judge's opinion. For example, he may interpreted a frank and assertive confession by the accused as hypnotic and unrealistic confession; on the contrary, on an other case, he may accept the testimony by an immature child in accordance with the conditions to be proving some accusation.»

2- There are different views among the jurists on the validity of the judge's knowledge of God's rights, and the rights, and the rights of people; but, according to the common view, the judge's knowledge in the violations of God's rights, and the right of people is acceptable.

3- (Najafi, ibid, p.219)

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