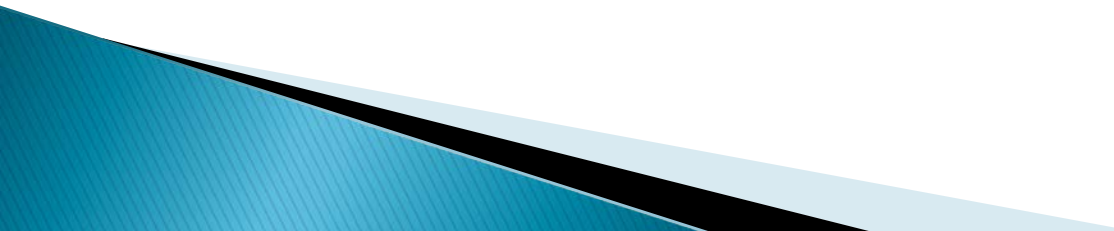


EVIDENCE TO SUBSTANTIATE CASE

BY
NIAZ MUHAMMAD KHAN



MAIN ACTORS

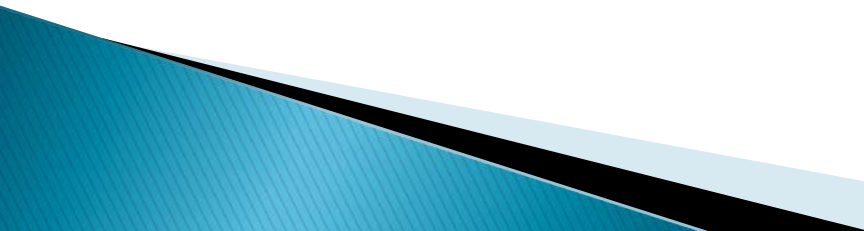
- ▶ PROSECUTOR.
 - ▶ DEFENCE COUNSEL.
 - ▶ PLAINTIFF COUNSEL.
 - ▶ DEFENDANT COUNSEL.
 - ▶ JUDGE.
- 

CASE 1 (K)

- ▶ Mr A is charged for the murder of Mr B & the following is proved;
- ✓ Mr A was armed immediately before causing injury.
- ✓ Mr A was seen at the place of occurrence. immediately after occurrence.
- ✓ Mr A was seen by eye witness to cause death of Mr B.

Q. Whether evidence is sufficient to substantiate the case?

CASE 2

- ▶ Mr A is tried for murder of Mr B and the following are proved;
 - ✓ Two eye witnesses deposed that they saw Mr A firing at Mr B which resulted in his death on the spot.
 - ✓ Weapon recovered from the spot did not match with the arm used for murder.
 - ✓ Marginal witnesses to the recovery memo of the weapon deposed that they signed the memo on the direction of his superiors and no nothing about the weapon. (Cont)
- 

Cont

- ▶ The forensic report about the matching of hair of accused recovered from the spot is in positive and proved.
- ▶ Q .Whether the evidence is sufficient to substantiate the case

CASE 3

- ▶ Mr A is charged for the murder of Ms B and the following is proved.
- ✓ The weapon used for offence is proved to be a sharp edged weapon and according to Mr C, a shopkeeper, a knife was purchased by Mr A from him some three days back .
- ✓ A car of high value only used by few in the city similar to Mr A was seen parked near the site of occurrence by a witness at about the alleged time of occurrence.

(Cont)

Cont

- ▶ Mr A was not attending a call from his friend at home at about the time of alleged occurrence.
 - ▶ Forensic report confirmed the DNA matching with the accused. (But defence proved that the sample for DNA was mishandled in transit and in the lab)
- (Cont)

Cont

- ✓ Ms B was divorced by Mr A some 1 year back.
- ✓ A driver of a taxi who was to pick the accused from his residence for airport at about 15 minutes after the alleged occurrence deposed that he did not see the said car of the accused parked outside the gate of his residence as allegedly recovered by prosecution .

Q . Whether the evidence is sufficient to substantiate the case?

CASE 4

- ▶ In a case Mr A allegedly assaulted Mr B by show of force and attempted to attack Mr B and the following is the evidence produced.
- ✓ Two witnesses deposing that Mr A attacked Mr B equipped with fire arm.
- ✓ The previous enmity is established.
- ✓ One witness deposed that Mr A attacked Mr C and not Mr B.

Q. Whether the evidence is sufficient to substantiate the case?

CASE 5

- ▶ In a case Mr A has allegedly trespassed on the land of Mr B and the following is proved.
- ✓ Two reliable witnesses deposed that Mr A entered the land possessed by Mr B threatening Mr B of dire consequences.
- ✓ It is proved that Mr A has been claiming the possession of property from Mr B in the recent past.
- ✓ One reliable witness deposed that Mr A only crossed near the land of Mr B on his way to his home.

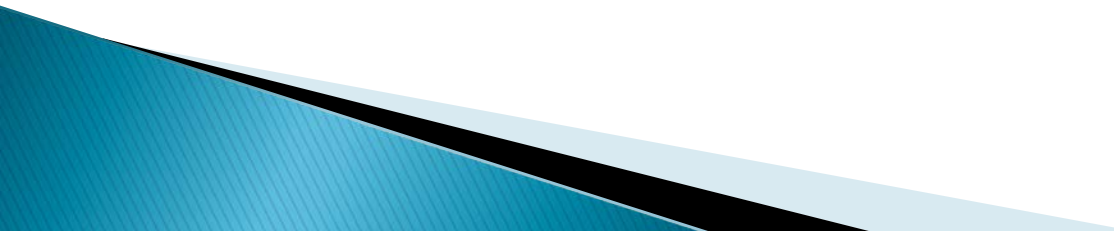
Q. Whether the evidence is sufficient to substantiate the case?

CASE 6

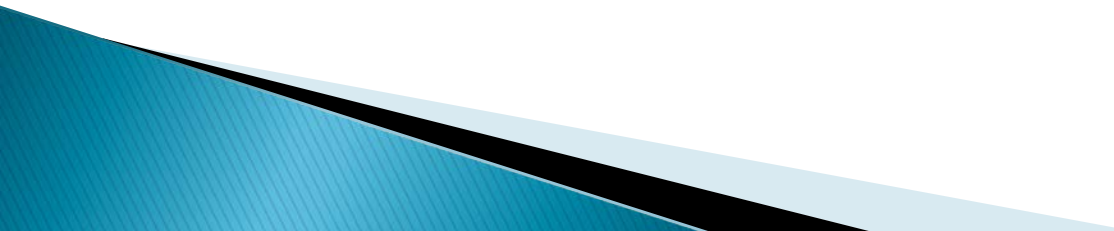
- ▶ In a case Mr A has allegedly defrauded Mr B and the following is proved.
- ✓ Two reliable witnesses deposed that Mr A knowing the goods to be stolen represented those to be his ownership . That Mr B on this purchased the goods and suffered loss.
- ✓ One reliable witness deposed that Mr A was not in the knowledge of the goods being stolen. .

Q. Whether the evidence is sufficient to substantiate the case?

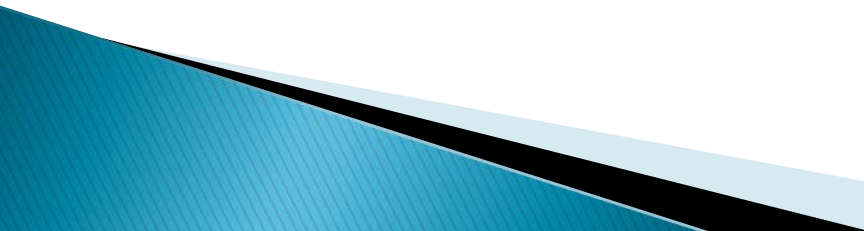
STANDARD OF PROOF

- ▶ In criminal cases the ultimate proof must be beyond reasonable doubt & not beyond a shadow of doubt as is understood generally.
 - ▶ In civil cases the ultimate proof is based on preponderance of evidence.
 - ▶ In criminal cases, too, the individual facts are evaluated on the preponderance standard.
- 

REASONABLE DOUBT & DOUBT

- ▶ Every doubt is not fatal unless it is reasonable; means when a man of ordinary prudence would believe that there can be an immediate probability and not remote probability of a vital circumstance to be otherwise as proved.
 - ▶ All doubts as to trivial, incidental or secondary matters are not to be considered.
- 

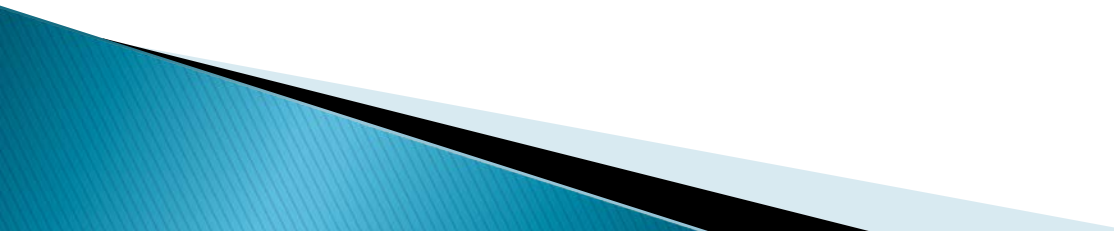
PREPONDERANCE OF EVIDENCE

- ▶ No definite quantifier can be raised.
 - ▶ Mere volume is not preponderance.
 - ▶ It is the proof of essence which is to prevail.
 - ▶ In order to evaluate this preponderance the successful discharge of sequential(evidential) burdens, the relevancy, admissibility, cogency, the presumption of facts, of law, credibility of witnesses & overall synthesis of the material taken together is to be looked into.
- 

CASE NO 1 (BURDEN OF PROOF)

- ▶ Mr A is tried for murder/Qatl–Amd of Mr B. What burden is on the prosecution to discharge?
- **300. Qatl–i–Amd.** — Whoever, with the **intention** of causing death or with the **intention** of causing bodily injury to a person, doing an act which in the ordinary course of nature is likely to cause death, or with the **knowledge** that his act is so imminently dangerous that it must in all probability **cause death**, causes the death of such person, is said to commit qatl–i–amd. (Cont)

Cont

- ▶ How “intention” & “knowledge” are be proved.
 - ▶ Whether “actus reus” is sufficient to establish “mens rea”. It may be in some cases.
 - ▶ To what extent accused is burdened to rebut this or other on going proof of facts (fluctuating burdens).
 - ▶ Whether accused can be burdened to prove certain facts .
- 

BURDEN OF PROOF(ORIGINAL/ULTIMATE)

- ▶ **Test ;**
- If no evidence at all is produced who is to lose?

TESTING THE TEST;

- Plaintiff requests for probate and defendant challenges the testamentary capacity of testator. If no evidence at all is to be produced who is to lose?
- The test is for evidential burden and not the legal burden.

LEGAL BURDEN & EVIDENTIAL BURDEN

- ▶ Legal burden is also called probative, persuasive, ultimate and burden of proof & evidential burden is called provisional or tactical burden of proof.
- ▶ Legal burden is one which a law enjoins primarily to be proved by the party coming for relief. However in some cases it may rest upon by law on opposite party. The legal burden on opposite party is only when some exception, exemption or immunity is claimed or the law specifically says so as Section 4 of The Prevention of Corruption Act 1947 or Section 14 of NAB Ordinance 1999.(Cont)

Cont

- ▶ The evidential, tactical or provisional burden is one which is transferred to other party during proof of certain facts. The test of this burden is the response of the party against whom a particular evidence is brought.
- ▶ The discharge of a legal burden does not mean the conclusive proof but, at least, the prima facie linkage must be established.
- ▶ In those jurisdictions where cases are sent to jury the judge is to see whether on the face of record such linkage is established or not. The same is the stage of framing the charge.

CASE NO 1 (INTENTION & KNOWLEDGE)

- ▶ All elements of a definition of penal clause including mental state except negatives (exceptions, special knowledge etc) are the legal burden of prosecution and must be **alleged** & proved through any of the mode including presumptions of facts and laws , confessions, inferences though not conclusively.

CASE 7 (PREPONDERANCE)

- ▶ In a suit where agreement to sell is to be proved, the following is proved;
- ✓ Out of two only one alive marginal witness deposed in favour of execution of agreement deed, the scribe is also dead.
- ✓ Three brothers of plaintiff deposed that they are not in the knowledge of any such agreement and that on inquiry once after the date of execution, the plaintiff denied the execution of such deed.

Q. Which way the preponderance lies?

CONCLUDED

THANK YOU

