

CIRCUMSTANTIAL EVIDENCE • THE STANDARD
OF PROOF REQUIRED IN CRIMINAL CASES

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PREFACE

Circumstantial evidence is among the most fascinating branch of the Law of Evidence. It is fascinating because an accused is brought to trial and is either convicted or acquitted as a result of circumstances which point to his guilt or innocence; not because other people actually saw him committing the crime or not. But its fascination is not always readily apparent to practitioners or to students of law who try to master its intricacies. Indeed, they often regard it as technical and dull.

I have written on this topic with a view of exposing and attempting to solve the confusion that has arisen in convicting an accused where the evidence against him is circumstantial. It was initially thought that the standard of proof required in convicting an accused in such a situation was higher than the usual standard of proof beyond reasonable doubt. However, later decisions held otherwise, but these decisions have led to a confusion that exist till today. It is this confusion that I attempt to solve. Whether that objective is attained, or even possible, will be for others to say.

ABSTRACT

This paper primarily deals with the standard of proof in criminal cases where the evidence against the accused is wholly circumstantial. The first chapter is the introduction to the Paper. In that chapter, the distinctions between direct, indirect and circumstantial evidence are laid out. The second chapter deals with the principle as enunciated by Alderson B. in R.v.Hodge in where the evidence against the accused is wholly circumstantial, the jury must be satisfied not only that those circumstances were consistent with his having committed the act, but they must also be inconsistent with any other material conclusion than that the prisoner was the guilty person. That direction was followed by earlier Malaysian cases. In that chapter too, the relationship between circumstantial evidence and corpus delicti is also discussed. Chapter III deals with the case of McGreevy v. Director of Public Prosecutions which held that no such special direction is required. The chapter also features the criticisms made against McGreevy's case by the Australian and New Zealand courts. The position adopted by the Malaysian Courts after McGreevy's case is also discussed. Chapter IV inter alia deals with the case of Jayaraman & Ors v. Public Prosecutor which followed McGreevy's case. The "irresistible conclusion test" as stated by Othman F.J.

in the High Court in Jayaraman's case is also discussed.

Finally, Chapter V lays down suggestion as to the standard of proof actually required in criminal cases when the evidence against the accused is wholly circumstantial.

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