

370774 - Can a video clip be regarded as evidence to prove a claim?

the question

Abu Maalik bought from Abu Noor 2000 dollars for 16,000 Turkish lira (TL). Abu Maalik sent Abu Ahmad to carry out the transaction. Abu Ahmad handed over the Turkish money and took the 2000 dollars from Abu Noor and counted them. Then he came back and gave the money to Abu Maalik. Without counting the money, Abu Maalik handed it over in its entirety to someone else. Then an hour later, Abu Noor realised, from looking at the security cameras in the shop, that he had given Abu Ahmad 2100 dollars. He confirmed that by checking the cash register, from which 100 dollars was missing. He asked Abu Maalik to return the money to him. Please note that the video clip very clearly shows that the amount was 2100 dollars, and that Abu Noor and Abu Ahmad made a mistake in counting the money, because there was 100 dollars on the table which got added to it, but was not counted. How can they resolve the problem between them? Please note that they are all trustworthy men, who do not tell lies or cheat others.

Detailed answer

Firstly:

The case here is between the seller [Abu Noor] and the one who received the money from him, namely Abu Ahmad. The latter [Abu Ahmad] can make a claim against the purchaser [Abu Maalik] and the purchaser can make a claim against the one who collected the money for him [Abu Ahmad].

Secondly:

The video clip is evidence which may be taken into account to prove something. It is not definitive proof, but the qaadi (judge) may base a ruling on it – in issues that are not subject to hadd punishments – if he is certain that there is no tampering or forgery involved, and it is very clear and cannot be open to misinterpretation.

See: Ahkaam at-Tasweer fi'l-Fiqh al-Islami by Dr. Muhammad ibn Ahmad Waasil (p. 532), where he quotes from Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) and Shaykh Saalih ibn 'Abd ar-Rahmaan al-Muhaymid, Vice-President of the Courts in Buraydah.

Ibn al-Qayyim (may Allah have mercy on him) said with regard to basing a ruling on circumstantial evidence: If the judge does not have the ability to read people and see signs that indicate something, or to derive evidence from a person's situation and what he says, to the same extent as he has knowledge and understanding of Islamic rulings, then he will cause a lot of people's rights to be lost, and he may issue a verdict that people know is wrong and have no doubt about that, because he bases his verdict on what appears to be the case, without trying to examine the matter in depth and take circumstances into consideration." (*At-Turuq al-Hukmiyyah* 1/6).

As for the correct verdict in this case, if Abu Ahmad trusts what the video clip shows, and it is clear that he received the extra hundred dollars, then he is obliged – according to Islamic teachings – to return it to the seller [Abu Noor].

Then he has the right to ask Abu Maalik to pay it back, but Abu Maalik is not obliged to give it to him, for lack of proof, unless he believes him when he says that he gave him the money as he received it, and Abu Maalik has the right to ask the one who took the money from him. If he admits it, all well and good, otherwise he does not have to give it to him because there is no proof.

If Abu Ahmad does not trust the video clip, or it is not clear, then he does not have to give the hundred dollars.

Thirdly:

If the matter is referred to the judge or an arbitrator, he may rule on the basis of the video clip, by way of ruling on the basis of what the evidence appears to indicate. If he does not rule on the basis of the video clip, because he does not believe in ruling on the basis of such evidence, or because the video is not clear and the seller [Abu Noor] has no proof from two witnesses or from a witness and an oath, then he may ask Abu Ahmad to swear an oath

stating that he did not receive the extra hundred dollars. If he does not swear an oath, the judge may rule that he should pay it because of his refusal to swear an oath, because of the report narrated by at-Tirmidhi (1341) from 'Amr ibn Shu'ayb, from his father, from his grandfather, that the Prophet (blessings and peace of Allah be upon him) said in his khutbah: "The burden of proof is on the one who makes the claim, and an oath is required from the one against whom the claim is made." Classed as saheeh by al-Albaani in *Saheeh at-Tirmidhi*.

And Allah knows best.