Presumption of Innocence
Burden of Proof
Standard of Proof
Distinguished
A presumption is an assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the action. Measured by this standard, the presumption of innocence is not a true presumption as has been explained out in Rules 13 and 16 of Uniform Rules of Evidence, American Law Institute, and in the well-known work of Wigmore on Evidence, Third Edition, Note 2511. But then it happens to be a rule fixing the nature of the burden on the prosecution not only of producing the evidence but also of persuasion, as held in Carr v. State 192 Miss 152. It is a procedural aid which compels the prosecution to assume and maintain the burden of proving guilt.

The presumption of innocence is generally not regarded as evidence, although there is a strong minority view expressed in Coffin v. United States, 156 United States 432. A distinction shall have to be borne in mind between the doctrine of "presumption of innocence" and the doctrine of "proof beyond a reasonable doubt". The cardinal principle invariably followed as an important rule of Law of Evidence is that the accused in a criminal trial, however, degraded or debased he may be, must always be presumed innocent of the crime for which he is indicted until the guilt is proved beyond a reasonable doubt. Nothing need be proved;
nor is any evidence needed a basis for this assumption. The doctrine is based upon a well recognised fact which the Courts judicially notice that men generally obey the rules of the Criminal Law and upon the impossibility of obtaining and the consequent injustice of requiring, affirmative proof from the accused that he has done so in the particular case. The presumption is merely stating concisely the rule that any party desirous of redressal for an injury rushing to the Court has the burden of proving the existence or non-existence of the facts he alleges. The defendant or the accused is presumed to possess the ordinary human faculties, intelligence and understanding also that he is honest and innocent. The presumption of innocence is always rebuttable. The evidence to rebut this presumption must be sufficient to convince the Jury upon all the facts beyond a reasonable doubt that the accused is guilty of the crime he is charged with. The responsibility of the State, however, is not that enormous to prove that it is impossible for the crime to have been perpetrated by any other person than the accused. Where two conclusions reasonably possible, one compatible with the innocence and the other with the guilt, the presumption of innocence must prevail.

The presumption of innocence attends the accused and accompanies him throughout the trial before the Court, with or without a Jury, and it remains till a verdict of
guilt is pronounced against him. The presumption of innocence disappears after conviction and the Appellate Court then will presume the accused guilty. There are number of other presumptions operating during the course of a trial and sometimes such other presumptions may come in conflict with this presumption of innocence too. We need not probe into that aspect for the purpose of this work.

Burden of proof, strictly speaking, belongs to the domain of procedure. In English and American law a distinction between burden of proof and burden of evidence has been recognised. In criminal cases the burden of proof never shifts but the burden of evidence may shift -- frequently, (Bradford v. United States, 130). The principle that the accused is innocent until the Court or the Jury has pronounced him guilty upon all the evidence and the rule that regulates the burden of proof are distinguishable inasmuch as the presumption of innocence is a rule of substantive law before any evidence is offered accompanying the accused throughout the trial. As against this, the burden of proof designed mainly as rule of procedure requires the prosecution in the first instance to make out a prima facie case proving the essential facts involved in the criminal transaction alleged, including the intent. Irrespective of the fact whether the accused person leads evidence to rebut or meet the evidence of the prosecution, the State is under obligation to prove the fact by
discharging requisite burden of proof which must be sufficient to overcome the presumption of innocence. Many a times, it is held, such proof should be of such a higher degree that the guilt against the accused must be proved beyond a reasonable doubt. There is no shifting of the burden of proof so laid on the shoulders of the prosecution during the trial and in no case the burden shifts to the side of the accused. So much so that any failure on the part of the accused to explain out the circumstances operating against him, may not in itself be sufficient to hold him guilty. The State or the prosecution has to prove by its own evidence the guilt beyond reasonable doubt.

The English or American rule regarding the proof of making out an exception in favour of the accused is again very strict and it does not say that the prosecution has to discharge the burden by showing that the accused is not qualified for the exception, but the burden lies on the accused to bring himself within an exception to the general law, in his favour.

As to the burden of proving a negative fact also, it is for the State or the prosecution to establish the non-existence of fact in the first place. But, if a fact is peculiarly within the knowledge of the accused, for example, his own age when he pleads non-age as a defence, or that he has licence to carry on an otherwise prohibited business, or to do a forbidden act, the burden of proof is
on him as he has much better means of proving the negative fact alleged than the prosecution has of proving the contrary. The principle, to a great extent, is based on the convenience and the possession of better means to prove the fact while the negative of it being difficult to prove by the State.

Where specific intent is required to make an act criminal, the burden is on the State to prove such intent beyond a reasonable doubt, as observed in Albamaburk v. State 22 Ala.App.107. The accused may be permitted in such cases where evidence regarding motive or intent is led by the prosecution to explain out his intention or motive in committing the act in question. Evidence, both direct and circumstantial, may be deployed by either side in meeting the situation.

The principle of BURDEN OF PROOF in England and other Common Law countries appears to have been conceived under two different shades of interpretation. Throughout there has been a distinction meticulously observed between EVIDENTIARY BURDEN and the LEGAL BURDEN, former limiting itself to mere responsibility of introducing the evidence while the latter standing for the persuasion requisite for establishing a fact. A subsidiary principle rather about shifting of the onus from one end to the other in the course of receiving and
leading evidence before the Court appears to have emerged
out of such duplicate sense or meaning attached to the
phrase BURDEN OF PROOF. Without entering into the possible
controversy as to whether in this process of shifting of
the onus or burden from one end to the other, the rule of
degree or standard of proof gets entangled with it, when
we look at the provisions of Section 101 to 114 of the
Indian Evidence Act,1872, hardly we come across any
indication or a possibility of this theory of duel burden,
if we may say so, finding place or accommodation in these
unambiguous provisions of the Act.

True, Section 105 and also 106 of the Evidence
Act do refer to the sharing by or imposition of, the burden
of proving certain facts, on the accused and the person in
whose exclusive knowledge the fact lay. The limits of
sharing of such burden (by and between the prosecution and
the defence) are well defined with no scope to shuttle and
shift the burden from one end to the other during the
process of proving a certain fact within the limits laid
down in and under each of these Sections. It is significant
to note that in the long period of stability of the
enactment over a century in the past, the apparent anamoly
between the English Law and the provisions contained in
the Indian Code was not brought to surface. The provisions
of the Indian Act, it appears, have all along been tried to
be understood and interpreted as if they are in harmony with the English Law or Common Law rules of evidence on the point. The well recognised rule of the English Common Law of non-discrimination between the STANDARDS OF PROOF to be observed by the accused and the prosecution, was not followed and applied while appreciating or evaluating the evidence led by the defence in support of his claim or defence to bring the case within the general exception as referred to in Section 105. The authority on the point is Government of Bombay v. Sakur A.I.R. 1947 Bombay 38. This view was further upheld in State v. Siddhanath Rai and others A.I.R. 1959 Allahabad 233, and Vijayee Singh and others v. State of U.P., A.I.R. 1990 Supreme Court, 1459 to endorse that the standard of proof for the accused for discharging the burden was lesser than the one required for the prosecution to prove the case against him. Proof meeting the standard based on preponderence of probabilities popularly known as 'Civil Standard' was held to be sufficient.

Thus, without probing further into the position regarding burden or burdens of proof and the rules thereof, let it be noted that the Courts in India did not insist on following the rules of English Common Law. Similarly, the rule laid down in Section 106 of the Indian Evidence Act also appears to have not been seriously taken while determining the limits of the burden of proof in a criminal case. Technically the criminal intention suffered by a person accused of an offence belongs to the
arena of his exclusive knowledge till it is expressed out at some stage or the other before the trial. But then, despite silence or a refusal of the accused to disclose such knowledge, the prosecution, taking the practical view, was asked to prove the Actus Reus as well as the Mens Rea. It may not be out of place to just refer to the proposition made by Sir Michael Foster calling upon the accused at one stage of the trial to share and discharge the burden regarding the nature of offence.

Let us now advert to the rule regarding the standard of proof. A judicial decision-making depends on an assessment of probabilities. The question is what degree of probability is required to sustain a conviction of crime or a finding for the plaintiff in a civil case. It is, of course, impossible to put a mathematical value on the level of probability required in either case. The level of probability, however, varies according to the circumstances of each case and also the kind of evidence placed before the Court though ordinarily it is incapable of being quantified. What the Courts have been able to do, therefore, has been to device a verbal formula for the instructions of Jury or for the guidance of the Judge or Magistrate himself, if he is deciding a case without a Jury. Once the evidential burden imposed on the shoulders of a party to the litigation is discharged to justify consideration of a particular issue, it becomes
necessary for the party bearing the legal burden on that issue to persuade the trier of fact that it should be decided in his favour. If his evidence is less persuasive than that of the opponent, he must inevitably fail. If it is more persuasive, the question is, whether he must equally inevitably succeed. Answer to that question demands consideration of the requisite standard of proof. It is generally accepted that English Law applies two main standards through their precise connotation, formulation and application, the possibility of a third standard and their relationship through precisely quantified evidence has given rise to debatable issues. Suffice to bear in mind for the purpose of the present stage that the degree or degrees of proof for establishing a particular fact are not the same thing as the burden of proof, evidentiary or legal.

Initially with the elevation or increase in the degree of proof for the prosecution to prove it's case against the accused in a criminal trial endorsed by the decision in the case of Woolmington v. Director of Public Prosecutions (1935) A.C. 462, two different standards of proof came to be recognised in England and the Common Law countries. These two, in the popular sense, came to be regarded as Criminal standard and Civil standard the former requiring the proof beyond a reasonable doubt while the latter being satisfied by the proof of a lesser
degree equated with mere preponderence of probabilities. Lord Denning in Miller v. Minister of Pensions (1947) 2 All E.R. 372 put a seal of recognition on these two standards. Yet another standard being an intermediate standard between the normal criminal and civil standard emerged not in England but in America. Suffice to say for the purpose of the present stage that more than one standards of proof came to be recognised in English or Anglo-American Law.

In contrast with this the provisions of the Indian Evidence Act, 1872, without bearing even a shade of any of these standards of proof evolved in England and America prescribe and lay down the standard of proof to be adopted for all purposes in civil as well as criminal cases through the unambiguous expressions PROVED, DISPROVED and NOT PROVED. Thus, there is a clear distinction between the responsibility to prove a fact which may amount to the commission of a crime too, known as 'burden of proof' and the quantum and quality both together of evidence required to prove or establish such a fact. The latter is known as the 'standard of proof'. That places us in a position to differentiate between these three different principles or doctrines from PRESUMPTION OF INNOCENCE, BURDEN OF PROOF and the STANDARD OF PROOF.

Shortly, while the principle of PRESUMPTION OF
INNOCENCE is a mere rule not based on or arising from evidence but a statutory protection to one and all against the criminal charge in the absence of evidence, the standard of proof speaks about the requisite amount of evidence to displace and rebut this presumption, the burden of proof being only a responsibility to lead and adduce such evidence.