CHAPTER-8

BURDEN OF PROOF AND
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Presumption of innocence of the accused and the burden of proving the guilt lies with the Prosecution. According to Sec. 3 of the Indian Evidence Act 1872 "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." And, therefore, in criminal jurisprudence the edifice erected as a cardinal principle is that the innocence of an accused is presumed unless or otherwise the guilt is proved. It is the duty of the prosecution to prove the accused's guilt subject to any statutory exception. Our jurisprudential enthusiasm for presumed innocence of the accused must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents.

While turning the pages of the Indian Evidence Act provisions envisaged with regard to the burden of proof could be retraced from Sections 101 to 105.

101. Burden of Proof: - Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies: - The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
103. Burden of proof as to particular fact: - The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

104. Burden of proving fact to be proved to make evidence admissible: - The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

105. Burden of proving that case of accused conies within exceptions: - When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

The established principle of criminal jurisprudence is that the burden always, lies on the prosecution to prove all the ingredients of the offence charged and that the burden never shifts on to the accused to disprove the charge framed against him. The burden of proving an offence is always on the prosecution; it never shifts. Intention, when it is an essential ingredient of an offence, has also to be established by the prosecution. The criminal courts holding trial under the Criminal Procedure Code have to bear in mind the provisions of Sec. 342-A of the Code and to see that their mind is not influenced by such failure on the part of the accused. The Court would, of course, be well advised in case of circumstantial evidence to be watchful and to ensure that conjectures or suspicions do not take the place of legal proof. The chain of evidence to sustain a conviction must be complete and admit of no reasonable conclusion consistent with the innocence of the accused. The cherished principles or the golden thread of proof beyond any reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand men may go free but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts have to be given weight age for the accused.
The Malimath Committee has also deliberated an this crucial issue of CJS in India and has recommendation vital measures to restore dynamism to the delivery of justice. They are reproduced below:

Presumption of innocence and burden of proof

There is no provision in the Indian Evidence Act prescribing a particular or a different standard of proof for criminal cases. However, the standard of proof laid down by our courts following the English precedents is proof beyond reasonable doubt in criminal cases. In several countries in the world including the countries following the Inquisitorial system the standard is proof is on “preponderance of probabilities”. There is a third standard of proof which is higher than “proof on preponderance of probabilities” and lower than “proof beyond reasonable doubt” described in different ways, one of them being “clear and convincing” standard. The committee after careful assessment of the standards of proof came to the conclusion that the standard of proof beyond reasonable doubt presently followed in criminal cases should be done away with and recommended in its place a standard of proof lower than that of “proof beyond reasonable doubt” and higher than the standard of “proof on preponderance of probabilities” the committee therefore favors a mid level standard of proof of “courts conviction that it is true”. Accordingly the committee has made the following recommendations.

1. The committee recommends that the standard of “proof beyond reasonable doubt” presently followed in criminal cases shall be done away with.

2. The committee recommends that the standard of proof in criminal cases should be higher than “preponderance of probabilities” and lower than “proof beyond reasonable doubt”.

3. According the committee recommends that a clause be added in section 3 on the following lines.
“In criminal cases unless otherwise provided, a fact is said to be proved when after considering the matters before it, the court is convinced that it is true”.

4. The amendments shall have effect notwithstanding anything contained to the contrary in any judgment order decision of any court.