

Presumption of innocence



Presumption of Innocence

- Innocent unless proven guilty coined by Sir William Garrow (1760 -1840)
- Golden thread in criminal law.
- Proof having been met if there is no plausible reason to believe otherwise.



Presumption of innocence

- The prosecution must prove the guilt of the accused
- Accused is presumed to be innocent unless proved guilty
- Accused has the right to remain silent and cannot self incriminate (exceptions examples, photos can be taken, samples such as blood etc can be collected, fingerprints taken etc)



General features of presumption

Babu v. State of Kerala, (2010) 9 SCC 189

- Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction.



Reversal of burden

(praesumptio iuris tantum)

Assumption of a fact unless someone comes forward to contest it and prove otherwise.

One example, presumption of sanity in the commission of a crime unless the plea of insanity is raised as a defense



Shifting of burden of proof

- Same acts burden shifts Eg in a civil case the plaintiff has to prove that the defendant had borrowed the money
- Under 138 Negotiable Instruments Act the burden shifts on the defendant if a negotiable instrument is drawn
- Prevention of Corruption Act, where burden is shifted under section 7, 11, 12, 13 (clause a or b of sub section 1) or 14 (clause b)
- Other examples, Excise and Customs laws evidential burden imposed on accused who has special knowledge of transactions.

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- the Terrorist and Disruptive Activities (Prevention) Act, 1987,
 - In all these statutes guilt is presumed if the circumstances provided in those statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution.

Understanding rebuttal presumption

**Kali Ram Vs Himachal Pradesh, (AIR 1973 SC 2773
Justices HR Khanna, Hans Raj, T Alagirisamy,
Sarkaria and Ranjit Singh)** there are certain cases in
which statutory presumptions arise regarding the guilt
of the accused but the burden even in those cases is
upon the, prosecution to prove the existence of facts
which have to be present before the presumption can
be drawn."



Kali Ram continued

- if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence."



Kali Ram

“If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.”

Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled.

Presumption under the PC Act

- Under section 20, once the prosecution has proved that the accused has received any gratification, for the offences cited therein the presumption is raised and the onus shifts to the accused to explain the same.

While the statute does not use the word preponderance of probability, this concept in common law has been recognised by courts.

V.D Jhingan vs State of U.P (AIR 1966 SC 1672)

Other statutes on shifting of burden of proof NDPS, POCSO

- 35 (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
- Explanation- In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.
- (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Additional requirements for reverse burden

- Under Section 313 Cr.PC., the object is to afford an opportunity to the accused to explain the circumstances appearing in the evidence against him. The failure to elicit an answer from the accused on a crucial aspect against the accused will cause serious prejudice to the accused, particularly when the Court is required to raise a statutory presumption against the accused on his failure to explain such circumstance. (Avtar Singh vs state of Punjab 2002 (4) SCC pg 719



Avatar Singh continued

- This duty of the Court assumes great significance whenever the Court is to raise any such statutory presumption making an inroad into the traditional criminal jurisprudential concept of the accused's right of silence.
- Although such statutory presumptions are held to be constitutional, it will be unfair to the accused to raise statutory presumptions like the one under Section 25 or Section 35 of the NDPS Act without putting appropriate questions to the accused under Section 313 Cr.PC., (especially when he has not examined himself as a witness or led any evidence) and without cautioning the accused that in view of the statutory presumption failure to answer questions on crucial aspects being put to the accused may result into conviction of the accused for the offence for which he is being tried.



Noor Agha vs State of Punjab

- 2008 SCC (16) 417
- "In determining whether a reverse burden is compatible with the presumption of innocence regard should also be had to the pragmatics of proof. How difficult would it be for the prosecution to prove guilt without the reverse burden? How easily could an innocent defendant discharge the reverse burden?"



Noor Agha

- However, in our opinion, limited inroad on presumption would be justified. We may consider the question from another angle. The doctrine of *res ipsa loquitur* providing for a reverse burden has been applied not only in civil proceedings but also in criminal proceedings. [See *Alimuddin Vs. King Emperor* (1945 Nagpur Law Journal 300)]. In *Home vs. Dorset Yacht Company* [1970 (2) ALL E.R. 294], House of Lords developed the common law principle and evolved a presumptive duty to care.



Noor Agha

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- Pragmatism will have greater sway where the reverse burden would not pose the risk of great injustice - where the offence is not too serious or the reverse burden only concerns a matter incidental to guilt. And greater weight be given to prosecutorial efficiency in the regulatory establishment.

Surjit Biswas vs state of Assam, May 2013

- It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. audi alterum partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation.

<http://indiankanoon.org/doc/168007417/>

Phula Singh vs H.P AIR 2014 SC 1256

- At the stage of questioning, the accused may choose to remain in silence or in complete denial, but the court will be entitled to draw an inference against the accused as permissible in accordance with law.

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- raghubir singh vs state of Haryana 1974 4 SCC 560
 - N Narisinga rao vs state of andhra pradesh 2001 (1) scc 691
 - Suraj Mal vs state Delhi administration 1979 (2) SCC 725
 - Hazari lal vs delhi 1980 (2) SCC 390
 - Madhukar Joshi vs state of maharashtra JT 2000 (supple 2) SC 458