

PRESUMPTION – A RULE OF EVIDENCE

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According to Merriam Webster - Presumption is synonymous to a belief that something is true, even though it has not been proved and is defined in law as an act of accepting that something is true until it is proved not true and the willingness to believe”. The first and foremost cardinal principal of criminal jurisprudence in Indian Law is the Presumption of innocence and more categorically envisaged as a legal right.

The Universal Declaration of Human Rights, 1948, at Paris has declared by its Article 11, Presumption of innocence to be a legal right, until, proved guilty according to law in a public trial. Undoubtedly, the prosecution has to produce clinching and compelling evidence to convince a trial court, with actual and admissible evidence, that a person accused of guilt, is guilty beyond reasonable doubt. Hence, in other words explicit reasonable doubt could be proved with presumption.

(i) Merriam - Webster online dictionary

(ii) The Universal declaration of Human Rights.

“ Ei cumbit Probatio qui dicit, non qui negat” is more or less law, is the legal maxim which asserts “Proof lies on him who asserts and not on him who denies. Interestingly, in Early Rome, there was a practice that the accused would prove his innocence by having, twelve people swear that the accused could not have done what he was accused of.

The extended maxim,

“Ei cumbit Probatio qui dicit, non qui negat, cum per rerun naturam factum negantic probation nulla sit” - meaning-

The proof lies on him who affirms and not on him who denies, since by the nature of things, he who denies a fact cannot produce any proof, meaning thereby, one cannot produce negative evidence.

(1) Watson, Alan ed (1998) The Digest of Justinian, Philadeliplia

(2) F.Nan Wagoner (197-06-01), Wagonerlaw. com

The duty of the prosecution to prove beyond reasonable doubt was famously and earliest referred by Lord Chancellor Sankey in Woolmington Vs DPP (1935) AC 462, as “it is the duty of the prosecution to prove the prisoner’s guilt subject to the defence of **insanity** and any statutory exemption.

Arguably, Presumption and Suspicion are contradictory to each other, and there is no law to raise a suspicion of a guilt. There is no authority or citation proposing ratio decidendi to show a man to have be convicted or sentenced for suspicion of committing on offence Indian law favoured presumption of innocence of accused unless proven guilty in Criminal trial.

(1) Woolmington Vs DPP (1935) AC 462

Presumption as exception to the Indian Evidence Act,

Exceptionally, presumption, though treated as a legal right and as a golden rule favouring a person accused of guilt, is a rule of evidence, to presume the commission of offences too. In the Indian Evidence Act, if Section 101 and Section 102 statute the Burden of proof and on whom the Burden of proof lies, it does envisage Section 105 as the Burden of proof on the accused.

A discreet reading would show:

It is embodied In, Section 105 “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 (45 of 1860), or within any special exception or proviso contained in any part of the same code, or in any law defining the offence, is upon him (the accused) and the court shall presume, the absence of such circumstances”.

If Section 105 was that, then once again, a compelled reading of Section 4 of the Indian Evidence Act is a nuance.

Section 4 - 1. “ **May presume**” Whenever it is provided by this Act, that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

2.” **Shall presume**” Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

Of Circumstances

Even further, the concept of presumption is used as a rule of evidence in Section 113 A where there is a presumption to abetment of suicide by a married woman and, when a woman commits suicide within a period of seven years from the date of her marriage and the question is whether her husband, or such relative of her husband had subjected her to cruelty, the court may presume, that such suicide had been abetted by her husband or by such relative.

This is a presumption of circumstance given the set of facts for the juror to decide. The adducive section 113B of Indian Evidence Act is another rule of Evidence when a question arises regarding dowry death and it is shown that soon before her death, the victim was subjected to cruelty or harassment in connection with or demand

for dowry, the court shall presume that such person caused dowry death.

The legislature in all wisdom has rightly envisaged “may presume” in Section 113 A and “ shall presume” in Section 113 B. Making the proposition of the prosecution case by the agency to be more vigorous in Section 113 A of the Act. Interestingly though, both presumptions are presumptions of circumstances and not facts. It is well understood that Indian Evidence Act, has inculcated the courts clearly, that facts in a criminal case can never be presumed.

Of Offences

Advertently, the Indian Evidence Act has rather permitted presumption of certain offences. The statute embodies, that under Section 111A of Indian Evidence Act, a person accused of having committed the offences U/s 121, 121A, 122 or 123 of the Indian Penal Code, or for abetment of offence U/s 122 and 123 of the Indian Penal Code and it is shown that such a person had been at a place in such area, it shall be presumed, unless the contrary is shown, that such person, had committed such offence. Hence, the presumption is of the offence itself, and proving the contrary is once again rebuttal of the presumption, and the theory of probability and preponderance of

probability is for the juror to decide. Of course, evidently the court can presume the court and has, a right to presume. This right of presuming certain offences and circumstances has been granted rightly by the Indian Evidence Act.

Of Facts

The Negotiable Instruments gives the courts, a statutory right to presume facts too.

Section 118 and Section 139 of Negotiable Instruments Act statute presumption of facts. Here, the court is allowed to presume certain facts, as a law. Needless to say, that the court has to first decide upon section 9, before it presumes, as a condition precedent, that the holder is a holder in due course of the instrument.

Court's Right not to Presume:

Hence, a generalization of the concept of presumption cannot be made. Just as how a court can presume, the court also has an option not to presume. The proof of the contrary, and the preponderance of probability, are the divine keys in the hands of a court, giving the option “not to presume.”

The proof of contrary or disproving the prosecution is directly proportionate to the court's right not to presume offences or circumstances. Preponderance of probability could be the reasonable explanation, for supplementation.

So, once again if the contrary were put forth, the court has a right not to believe or not to presume. Seemingly the difference between persuasive burden of proof of an issue and the burden of adducing credible evidence varies on perpetual yet hypothetical line, synonymous yet contradicting, leaving, the court with a right to presume or not to presume.

The propositions of law, unknown to many but followed in daily proceeding in court, when suggestion are put to a person U/s 161(2), a person shall be bound to answer truly all question put to him, other than the question that which would expose him to criminal charge and likewise Sections 313(3) that an accused shall not render himself liable to punishment by refusing to answer such question or by giving false answers.

In Other Words, the Phrase-

“ May draw inference”, is the right to presumption of the court, and the right not to presume too. Hence once again, the Juror or court is behest, in presuming if the accused is honest or the case.

The clinching commentary of presumption is seen by the verdict of the Hon’ble Supreme Court in M.S. Narayan Menon Vs State of Kerala (2006) 6 SCC 39, as

“Presumption drawn under a statute has only an evidentiary value. Presumption are raised in terms of the Evidence Act. Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another”

And in Hiten P Dalal Vs Bratindrath Banerjee (2001)6 SCC 16 Pal.J. opined.

“Presumptions are rules of evidence and do not conflict with Presumption of innocence”.

Reference to Hon'ble Justice Krishna Iyer's golden words in Nandini Satpati Vs P.L. Dani in 1978(2) SCC 424 emphasizing the silence of the accused before and during trial, sure guarantees and upholds the rights against self incrimination of a person under Article 20(3) of Indian Constitution would be apt to measure the judicious nature of the proceedings in India.

Hence just as the right of accused to defence or to keep silent itself as a defence, the court and the jurors, do still have the right to make statutory presumptions or not to make statutory presumption, as a rule of evidence.

i) Criminal Procedure Code

ii) Indian Evidence Act - 1872

iii) Negotiable Instruments Act - 1882

iv) M.S. Narayan Menon Vs State of Kerala (2006) 6 SCC 39.

v) Hiten P Dalal Vs Bratindrnath Banerjee (2001)6 SCC 16 Pal.J.

vi) Nandini Satpati Vs P.L. Dani in 1978(2) SCC 424

References

- i) Merriam - Webster online dictionary
- ii) The Universal declaration of Human Rights.
- iii) Watson, Alan ed (1998) The Digest of Justinian, Philadelphia
- iv) F.Nan Wagoner (197-06-01), Wagonerlaw. com
- v) Woolmington Vs DPP (1935) AC 462
- vi) Criminal Procedure Code
- vii) Indian Evidence Act - 1872
- viii) Negotiable Instruments Act - 1882
- ix) M.S. Narayan Menon Vs State of Kerala (2006) 6 SCC 39.
- x) Hiten P Dalal Vs Bratindrath Banerjee (2001)6 SCC 16 Pal.J.
- xi) Nandini Satpati Vs P.L. Dani in 1978(2) SCC 424