International Journal of Aquatic Science
ISSN: 2008-8019
Vol 15, Issue 01, 2024

A Study on Burden of Proof in Criminal Cases -New Trends.

Dr. S. Gajendra Raj

M.Com., M.L., Ph.D. (Law), LL.D. (Law) Principal, Erode Law College, Erode

Abstract: India is rightly categorized as a common law country which has adopted the adversarial system of trials. In criminal cases, both the prosecution and the defense are represented by legally qualified persons. It is for them to command to their aid all the information in favour of the respective parties before another legally qualified person, the trial Judge, who is the pivot of the criminal justice system. Under both the adversarial system and the inquisitorial system of trial it is the trial Judge who has been given enormous powers to conduct the trials properly. The Public Prosecutor under the adversarial system is statutorily authorized to represent the prosecution while the defence counsel is authorized to do so on being permitted by the Judge. Also, the defence counsel may be allowed to put only such questions to the witnesses as may be permitted by the trial Judge. This is also the position under the inquisitional system. And it is generally asserted by both the systems that there is presumption of innocence and the burden of proof is on the person who asserts the statement. Under the adversarial system it is usually the prosecutor who makes the accusation and as such it is for him to discharge the burden of proving the accusation beyond reasonable doubt. The defence is also required to prove the facts if it has asserted them. Thus, both the systems have common features and rules of procedure. This paper tries to analyze the undue adherence to the fundamental principles and also throws light on the need for a change of outlook on presumption of innocence.

1. Introduction

In English law it was generally believed that the burden on the prosecution to prove its case beyond reasonable doubt was sacrosanct, that even if the burden is shifted to the defendant what is expected to be proved was to establish a case on balance of probabilities and the trial starts with the presumption that the accused is innocent whereas under the inquisitional system this presumption gets weakened because of the dossier prepared by the investigating judicial officer. Since the organized power of the State has been at the command of the prosecution, it was generally the impression that if there is any doubt on the veracity of the prosecution case the benefit of doubt should go to the defendant who is the weaker between the two.

The courts in the common law countries have been insistent in following those principles and this attitude has created an impression that many culprits escape the clutches of law. The system responded to this impression differently. Some jurisdictions excluded the mens rea component of crimes; some shifted the burden from the prosecution to the defendant. And still there has been a general feeling among the courts that the system has been unduly adhering to the above principles to the detriment of the society. This has not been a permanent trend, however, some judges, Appellate Judges in particular — who are over conscious about the security of society develop this trend and after their retirement the system gets back to its original position. Then after sometime again the trend sets in. This shows the vitality of the common law system. It is proposed to examine this phenomenon as signified in some decisions to point out that it is perhaps not a permanent feature and that it serves the purpose of administering caution

periodically so that the system may maintain its balance. If this trend is not arrested the system may develop chinks that can have devastating impact on the credibility of the system. It is, therefore, necessary that we undertake such a study periodically to help monitor the trend.

Objective:

This paper tries to analyze the,

- ❖ Fundamental principles behind the very concept of burden of proof.
- ❖ To explain the Golden thread of administration of justice.
- ❖ To throw light on Judge's power to put questions or order production.

Hypothesis:

The Indian legal fraternity rightly stands by the adversarial system and the Supreme Court should not try to rewrite the fundamental principles of criminal justice administration as it does not have the mandate for doing so.

- ❖ The record of our Supreme Court would indicate that if one of its Benches had rendered a decision with potential to tilt the balance on legal question, another Bench would come up with another one subsequently, to maintain equilibrium.
- ❖ Sometimes there could be conflicts of views. And they may be resolved by the Judges themselves. Such a tendency will indicate the vitality of the system.

Limitation:

This paper covers all the basic ideas about burden of proof, opinion and comments by learned judges and the concept behind it is limited only to INDIAN EVIDENCE ACT 1872 and it does not go through the arenas of any other acts or international standards.

Reserch Problem:

There are many loop holes in our Indian judicial system where a provision is used either to for side and the same is applied in a different way to the other side also, thus there is no equilibrium in proving the burden. This paper tries to find answer for such questions as to How long should we wait to have a Judge like Justice Khanna to come up with a bold explanatory judgment to allay the fears of liberal-mind legal practitioners in India? And this paper throws some of the rich instances with the help of case laws which carries some glaring examples of upholding the justice.

2. Review of Literature:

Law of evidence- Avatar Singh.

This book is a comprehensive overview of burden of proof and contains all the relevant study material which is needed for succeeding in the questions of burden of proof. This new edition has been reorganized and re-categorized within the challenging new framework of the Indian evidence act 1872. It explains in detail the Act and Rules and provides various examples of burden of proof from given claims and background, as well as examples relating to the presumptions of burden of proof. The book features objective, descriptive and interpretative type questions that need to be tackled in the examination. The authors have included the latest data, case studies and statistics, and provided the readers with an in-depth understanding of the various aspects of burden of proof. The book will prove to be an invaluable resource to both industry professionals and those who aspire to make a career in the complex but fascinating world of prosecution.

Law of evidence- Krishnamachari
This book bridges the Lab to market gap for scientists and researchers who excel in their core areas. The author not only lucidly illustrates the concepts in evidence law , but also provides a step-by-step guide as to how a prosecutor will need the help of the concept of burden of proof. The book draws the rich experience from various different concepts in evidence law. The book goes beyond an analysis of abstract evidence law, into a comprehensive and practical discussion of the role of burden of proof in prosecution. The book provides a map that is easy to adopt in routine work schedules and research projects integrating data assimilation and creative data blending to generate monetisable evidence

Law of evidence- S.R.Myneni
Law of evidence - Myneni satiate a long felt need of a comprehensive work that answers all the questions related to evidence and is one of its kind in India. A perusal of the book shows that the labour bestowed on it by the editors has not been spent in vain. Every page exhibits evidence of the industry, learning and judgment with which the work has been compiled. Treatment of the subject requires as much legal acumen as treatment for any other branch of law. The author has given an exhaustive and analytical exposition of the law as laid down in judicial decisions with his own comments.

I. Undue adherence to the fundamental principles.
"The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. Otherwise any practical system of justice will then break down and lose credibility with the community."

Justice Krishna Iyer was so perturbed by the strict adherence of our trial Judges to the principle that he went to the extent of advising them thus:"We must observe that even if a witness is not reliable, he need not be false and even if the police have trumped up one witness or two or has embroidered the story to give a credible look to their case that cannot defeat justice if there is clear and unimpeachable evidence making out the guilt of the accused."
Justice Khanna who was a party to this decision was quick to clarify the position in the subsequent decision This was also a three-Judge Bench consisting of H.R. Khanna, Alagiri Swami and R.S. Sarkaria, JJ. The observations of Justice Iyer sent out a wrong message and Khanna clarified thus:

Observations in this decision of the Court, to which reference has been made during arguments were not intended to make a departure from the rule of the presumption of innocence of the accused and his entitlement to the benefit of reasonable doubt in criminal cases. One of the cardinal principles, which has always to be kept in view in our system of administration of justice for criminal cases, is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused.

II. Golden thread of administration of justice.

The golden thread which runs through the web of the administration of justice in criminal cases is that 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 favorable 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. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt."

The learned Judge located the abovementioned principles' rationale thus: It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilized society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable."

It is apparent that strict adherence to the basic principles of presumption of innocence and burden of proof require delicate balancing of the trial procedures by the impartial and independent Judge. Our system reposes much faith in the impartiality of the Judge inasmuch as it confers on him many powers with potential for abuse. Section 165 of the Evidence Act enacts such a provision.

III. Judge's power to put questions or order production.

The Judges may, in order to discover or to obtain proper proof of relevant facts, ask any question they please, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved: Provided also that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

Justice K.T. Thomas (as he then was) declared:"The contention that the trial Judge cannot be permitted to put questions to fill up the lacuna in the prosecution evidence is equally fallacious because it is the duty of the Judge to put all necessary questions to discover or obtain proof of all relevant facts. Even if it results, sometimes, in filling the lacuna in prosecution evidence, the trial Judge is not inhibited from putting such questions. It is only an exhibition of judicial weakness if a trial Judge points out in his judgment that the cause suffers due to failure of the prosecution of the defence counsel in eliciting proof of relevant facts."

The Court justified the act of the Sessions Judge "In this case when the Sessions Judge found it necessary to put questions to the defence, she is justified in exercising her power and no matter that she did not put cross-questions to prosecution witnesses."This is clear from the words relevant or irrelevant in Section 165. Neither of the parties has any right to raise objection to any such question."

IV. About the need for a change of outlook on presumption of innocence

The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

In this case when the prosecution succeeded in establishing the afore-narrated circumstances, the court has to presume the existence of certain facts. Presumption is a course recognised by the law for the court to rely on in conditions such as this.

These words echo the words of Justice Iyer in 1973 in and there is not yet a decision like *Kali* Ram to balance the situation. Justice Thomas continue to maintain the position taken by Justice Krishna Iyer, though the explanation given by Justice Khanna remains in oblivion.

Justice Thomas also dwelt on the role of the trial court in the reasoning process. He said: When it is proved to the satisfaction of the Court that Mahesh was abducted by the accused and they took him out of that area, the accused alone knew what happened to him until he was with them. If he was found murdered within a short time after the abduction, the permitted reasoning process would enable the Court to draw the presumption that the accused have murdered him. Such inference can be disrupted if the accused would tell the Court what else happened to Mahesh at least until he was in their custody.

3. Conclusion:

Thus concluding, the Judge gave the appellant the benefit of Exception 1 of Section 300 IPC which he never contemplated or planned as a defence. He got off with conviction under Part I of Section 304 IPC with a sentence of 6 years' RI.

It is not known how Justice Thomas makes out a story which the prosecution or the defence failed to categorically make. In fact he accepts a piece of evidence rejected by the Public Prosecutor saying that he did not treat the witness as hostile. What impact this story may have on the children of the deceased when they grow up should have been considered. If such a story is made out as part of the defence they may ignore it as it is usual for the defence to set up such stories to escape punishment. It makes a difference when it is made by the court. It is pertinent to note that the provisions in IPC and CrPC were made in the context of a stage of development of fundamental concepts about the roles of judiciary and the police. If one ventures to look into various provisions in CrPC one becomes aware of the enormous powers conferred on the judiciary. These powers have tremendous scope for abuse. However, we retain this power with the judicial officers because of our impression that a judicial officer with sufficient experience in legal matters may not abuse the powers. And our judicial officers at the district level have, generally speaking, lived up to this expectation. We do not get frequent complaints about the judicial officers not insisting on production of arrested persons within 24 hours of the arrest, nor do we come across often a judicial officer who has helped a prosecutor after going through the case diary. In the case of granting bail also our judicial officers have been, generally, exercising their discretion in accordance with law and well-established practice. This does not simply mean that it is because our law is very clear that the judicial officers function well. On the contrary, it is definitely because of the good relations the Bench and the Bar have been developing and maintaining as in the case of other common law countries. The legal culture we have evolved has helped us to develop certain conventions and practices bordering ethics and law. Our laws are made in this cultural context. To read them out of this context would

make them dogmatic and unworkable. This becomes evident if one examines the provisions in our law.

A look into the various provisions of the Indian Evidence Act may indicate that the provisions have been enacted with the understanding that neither the Judge nor the lawyer would go beyond a limit set by the practitioners during the last two centuries despite the malleability of the provisions. For example, if one looks into the meaning of Sections 8 and 9, this aspect becomes clear. An imaginative Judge could stretch Section 9 to make anything relevant. Likewise what is not admitted in evidence under a provision could be brought in as an aspect relevant under Section 8. However, because of our lawyers' background they may not stretch these provisions beyond the breaking point. Indeed, our criminal justice system has not been successful in ensuring conviction in all cases. Critics used to say that this is due to the sacred adherence of our Judges to the presumption of innocence and the requirement of proving the mental element. There is no harm in reversing the trend of frequent acquittals on technicalities. But this reversal should not be at the cost of losing the credibility and reputation of the Judges as impartial functionaries. In reality Judges may be impartial and independent, but their credibility depends upon how they function. If by any chance there is an impression that there is no harm in a Judge filling up the lacuna in a prosecution case, he cannot give the impression that justice has been done even though he has done justice. This will have a very dampening impact on our system. The decision in Lakhmi's case though a bold one in the present context, does not strike the balance. It does not take the legal culture out of which the criminal procedure law and evidence law emerged into consideration. These laws closely associated with practice would have vivacity only if they are interpreted in their cultural context. That is the main reason why our system insists on appointing only persons with judicial experience as Judges. Appellate Judges in our country usually do not resort to appreciation of evidence done by the Supreme Court. If this sort of interpretation is adopted practically there will be no difference between the adversarial system of trial and an inquisitorial system. The Indian legal fraternity rightly stands by the former and the Supreme Court should not try to rewrite the fundamental principles of criminal justice administration as it does not have the mandate for doing so. The record of our Supreme Court would indicate that if one of its Benches had rendered a decision with potential to tilt the balance on legal question, another Bench would come up with another one subsequently, to maintain equilibrium. Sometimes there could be conflicts of views. And they would be resolved by the Judges themselves. Such a tendency indicates the vitality of the system as pointed out earlier. After *Shivaji* Sahabrao came *Kali* Ram, *Ram* Chandra decisions. But, after *Lakhmi* and *Ani* there is no decision yet to correct the balance.

Sources:

Books Referred:

- Law of Evidence-Avatar Singh
- Law of Evidence-Krishnamachari
- Law of Evidence-S.R.Myneni

Websites Referred:

- www.manupatra.co.in
- hanumant.com
- www.advocatekhoj.com
- www.legalservices**india**.com
- lawcommissionof**india**.nic.in
- www.legally**india**.com
- www.lawnotes.in

4. References

[1] Singamsetty, S. (2020b). Retinal Twins: Leveraging Binocular Symmetry with Siamese Networks for Enhanced Diabetic Retinopathy Detection. tojqi.net. https://doi.org/10.53555/tojqi.v11i4.10607

[2] FUZZY-OPTIMIZED LIGHTWEIGHT CYBER-ATTACK DETECTION FOR SECURE EDGE-BASED IOT NETWORKS || Journal of Critical Reviews. (n.d.). https://jcreview.com/archives/volume-6/issue-7/13156

[3] Singamsetty S, (2021), "Neurofusion: Advancing Alzheimer's Diagnosis With Deep Learning And Multimodal Feature Integration", International Journal of Education & Applied Sciences Research ,Volume 08, Issue 1, 2021, pp 23-32. DOI : https://doi.org/10.5281/zenodo.14889013

[4] Singamsetty S, (2022), "Advanced Crop Recommendation System: Leveraging Deep Learning And Fuzzy Logic For Precision Farming", International Journal of Advances in Engineering & Scientific Research,Volume 09, Issue 2, 2022, pp 01-08. DOI : https://doi.org/10.5281/zenodo.14888482

[5] Saisuman Singamsetty. (2024). HEALTHCARE IOT SECURITY: EXAMINING SECURITY CHALLENGES AND SOLUTIONS IN THE INTERNET OF MEDICAL THINGS. A BIBLIOMETRIC PERSPECTIVE. Journal of Population Therapeutics and Clinical Pharmacology, 31(8), 1761-1806. https://doi.org/10.53555/7j8dhs24