

**'PROOF BEYOND REASONABLE DOUBT'-**  
**A crucial aspect in deciding criminal cases**

By Justice A.V.Chandrashekar

Whenever a person accused of serious charges like murder, robbery, rape, etc. is acquitted by a criminal court, people raise their eyebrows and at times feel that our criminal justice system has failed. A common man is not conversant with the first principles of criminal jurisprudence and the crucial aspect of appreciation of evidence in criminal cases by the judges. He expects that the guilty must be punished at any cost. Most of the accused will be acquitted not because of their innocence or non-participation in the crime, but because of the lack of a certain degree of proof. Therefore, it is pertinent to know the law relating to evidence, applicable to civil or criminal cases. The statute dealing with evidence is INDIAN EVIDENCE ACT, 1872. Though this is a pre-Constitutional law, we have adopted the same since it is not inconsistent with Part III of the Constitution.

Indian Evidence Act, 1872, is a masterpiece legislation and has not undergone any major changes except some consequential

amendments because of the introduction of Information Technology Act, 2000, and few amendments to Sections 113 and 114 relating to death of a married woman within 7 years from the date of marriage, under unnatural circumstances. Section 3 of the Indian Evidence Act, 1872, defines the concepts 'proved', 'disproved' and 'not proved.' This section mainly deals about the standard of proof statutorily prescribed to decide any dispute brought before any court of law.

The standard of proof statutorily required as per Section 3 is one of 'preponderance of probability.' Section 3 does not speak of anything about 'proof beyond reasonable doubt' though the degree of proof required in a criminal case in India is higher than 'preponderance of probability.' 'Preponderance of evidence' is succinctly explained in *Black's Law Dictionary*, 1891 6<sup>th</sup> Abridged Edition, 1991, and the same is as follows:

'Preponderance of evidence is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.'

The word 'proved' means that a fact is said to be proved when after considering the matters before it, the court either believes it to exist, or considers its evidence so probable that a prudent man ought under circumstances of the case to act upon the supposition that it exists. No conclusive proof is required to state that a fact is proved. The process involved is one of weighing the probabilities. Hence preponderance of probability is the basis for a decision in civil case. But even without Section 3 of the Evidence Act, prescribing any higher degree of proof for a decision in criminal cases, criminal courts in India have been insisting for a degree of proof which is higher than the one required for a decision in civil cases. Hence proper understanding of this aspect is required.

In a civil case, a plaintiff who approaches the civil court seeking certain reliefs will succeed in spite of certain factors emerging against him in the evidence, if preponderance of probability is in his favour. But that approach is deviated, though not substantially, while deciding a criminal case. We have followed the common law of England where the criminal courts insist such a degree of proof in deciding criminal cases which is definitely higher

than the one required to decide a civil case. Even in England, their Evidence Act does not prescribe any higher degree of proof to decide a criminal case. But over a period of time, several judicial pronouncements have insisted proof beyond reasonable and that is how even in India we have been insisting 'proof beyond reasonable doubt.'

Whether the existence of 'preponderance of probability' and 'reasonable doubt' are incompatible with each other, is the question. In fact, they are not incompatible with each other. Hence a judge who decides a criminal case is first expected to assess the evidence on the touchstone of 'preponderance of probability.' Then only the judge has to come to a conclusion as to whether it is to be accepted or not by sitting on the chair of a prudent man (arm's chair theory) and to decide whether the same is to be believed or not.

Insofar as the burden of proof is concerned, the burden is always on the prosecution to prove that the accused is guilty. If there is any reasonable doubt, the benefit of doubt should always go to the accused. The first principle of criminal jurisprudence is that an accused is always presumed to be innocent till he is proved guilty. If

the prosecution is successful in discharging the initial but heavy burden, then the onus shifts on the accused to counter the same either by effective cross-examination, or examining himself as a witness, or somebody on his behalf. If he has given any plausible explanation in his examination under Section 313 of Cr.P.C., the judge while considering the overall evidence, would hold either the case is proved beyond reasonable doubt or not. If evidence so adduced is not one of proof beyond reasonable doubt, benefit of doubt would be extended to the accused.

If the accused has taken any plea as found in General Exceptions of Indian Penal Code (IPC) like serious mental illness as per Section 84 of IPC or self defence under Section 104 of IPC, the burden of proving such pleas is always on the accused as per Section 105 of the Evidence Act which speaks about the burden of proving special pleas. Of course under such circumstances, an accused is not expected to prove such plea(s) by adducing ***proof beyond reasonable doubt*** as is insisted from the prosecution; but on the basis of 'preponderance of probability.'

Glanville Williams in his book 'Criminal Law' Second Edition has opined that the phrase '**reasonable doubt**' is virtually indefinable. This concept of '**reasonable doubt**' is explained by Justice Cookbur, as follows:

***'It is business of the prosecution to bring home the guilt of the accused to the satisfaction of the minds of the jury; but the doubt to the benefit of which the accused is entitled to must be such as rational thinking, sensible man fairly and reasonably entertain, not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle skepticism. There must be doubt which a man may honestly and conscientiously entertain.'***

In the case of **STATE OF U.P. .v. KRISHNA GOPAL & ANOTHER** reported in **AIR 1988 SC p.2154**, Hon'ble Supreme Court has succinctly explained the concept '**Reasonable Doubt**' as follows:

***'.....There is an unmistakable subjective element in the evaluation of the degree of probability and quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and ultimately on the trained intuitions of the judge. While the protection given by the criminal***

***process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.'***

This decision is subsequently followed by the Hon'ble Supreme Court in the case of **STATE OF MADHYA PRADESH .v. DHARKOLE @ GOVIND SINGH & OTHERS** reported in **[2004] 13 SCC p.308**, reiterating that doubts would be called reasonable if they are free from a zest of abstract speculation and that reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based on reason and common sense. **'Reasonable Doubt'** must grow out of the evidence in the case or from the lack of it as opposed to mere vague apprehensions. As explained in the case of *KRISHNAGOPAL*, though criminal courts insist for a higher degree of proof, it is not an absolute standard.

Way back in 1973 itself, Late Justice V.R.Krishna Iyer in the case of **SHIVAJI SAHABRAO BOBADE & OTHERS .v. STATE OF MAHARASHTRA (AIR 1973 SC p.2622)** has held that 'in an anxiety to apply the jurisprudential presumption of innocence of an accused, court should not forget to moderate the same by a pragmatic need to

make criminal justice potent and realistic.’ The caution so given in the case of SHIVAJI RAO BOBADE is relevant and the same is extracted below:

*‘Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expenses of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating time and escape. The judicial instrument has a public accountability. The cherished principle 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. The excessive solicitude reflected in the attitude that a thousand guilty men may go, but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise, any practical system of justice would then break down and lose credibility with the community. The evil of acquitting a guilty person lightly as a learned author (Glanville in proof of guilt) has saliently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals becomes general, they tend to*

*lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons, it is true to say, with Viscount Simon, "miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic."*

It is true that one of the first elements of criminal jurisprudence is that even if a hundred guilty persons are let free, not even a single innocent person should be punished. But at the same time all efforts must be made by the court to find out the real guilty. Though the consequence of an erroneous conviction has a serious impact on the accused, letting out the real guilty will have a serious repercussion on the society. The Committee constituted by the Central Government with Dr. Justice (Late) V.S. Malimath as Chairman to make recommendations in order to fine tune the

criminal justice system in India, has observed that the motto of the justice system is to find out the truth i.e. 'Quest for Truth.'

A thorough and competent investigation, effective prosecution of the case before the court and cautious and meaningful trial of the case followed by proper appreciation of oral and documentary evidence in the background of some well established principles like:

- (a) corroboration is only a rule of prudence and not evidence,
- (b) it is not the quantity but the quality of evidence adduced that is relevant,
- (c) a man who is in his death bed will not lie,
- (d) missing of an important link in the chain of circumstances is normally adverse to the prosecution,
- (e) an injured is the best witness in a criminal case since he will not leave out the real accused in order to rope in person unconnected with the case, etc.

is an absolute requirement.

National Judicial Academy at Bhopal and State Judicial Academies established by the respective High Courts have been organizing meaningful and continuous legal education programmes

to the judges and the stakeholders in the criminal justice system to sensitize them about the seriousness and sincerity with which criminal cases must be disposed of. In the latest conference of Chief Justices and Chief Ministers organized by the Supreme Court in April 2016, it is unanimously resolved to strengthen the Judicial Academies at the state level by integrating their work with National Judicial Academy. On the same lines, thorough and effective legal education to police officers and prosecutors and other stakeholders of the criminal justice system is an absolute necessity. Steps must be taken to establish vibrant Academies at all levels to sensitize these stakeholders on various issues concerning investigation and prosecution.

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