

Standard of burden of proof law general essay

Law



**ASSIGN
BUSTER**

First of all, as the saying goes, "innocent until proven guilty," has been heard by almost everyone. This phrase is a basic principal of criminal law which is actually referring to the standard of burden of proof. The burden of proof is a definite responsibility of one party in a case to make sure that the judge or jury is convinced to their version of facts is true. Besides that, the defendant does not have to prove that he is wrong because the burden of proof is on the prosecution. The burden of proof is so much greater in criminal cases than in civil cases. This is because the defendant losses many of his civil liberties and usually faces jail time. The prosecution must prove that their version of facts is beyond a reasonable doubt when a defendant is facing with criminal charges. It is meant that every concept of the crime that is charged against the defendant must be proved beyond a reasonable doubt. The definition of beyond a reasonable doubt means that to prove his innocence, there should be evidence that he would be willing to depend and act upon without hesitation in his own affairs. And it doesn't mean an absolute certainty as well. Practically, to prove the case beyond reasonable doubt will be the duty of the prosecution together with the accused to cast a reasonable doubt. This can be seen in the case of PP v Saimin¹, where:

" a ' reasonable doubt' is a doubt which makes one hesitate as to the correctness of the conclusion that one reaches ... it is the doubt that settles in one's judgment and finds a resting place there. Or as sometimes said, it must be a doubt so solemn and substantial as to produce in the minds of the jurors some uncertainty as to the verdict to be given. A reasonable doubt must be a doubt arising from the evidence or want of evidence and cannot be an imaginary doubt or conjecture unrelated to evidence."

There are two types of general elements that the prosecution must prove in a criminal case. The first element will be the criminal act or that the committed acts done by the defendant that puts up a question in the crime. These particular acts can be done either knowingly, or purposely, negligently or recklessly. Even more so, in the cause of the event, if the prosecution fails to act, it can also be a crime when there is a duty to do so, for example, when a parent has a duty to protect its child. The other element that the defendant must prove is that whether he acted with a criminal intent or not. The definition of criminal intent greatly relies on the crime charged and that there are some crimes that defeat the need to prove if the defendant had a criminal intent. Furthermore, there are burden of proving defenses as well. Usually, when there is evidence to support when the defendant raises a defense to the prosecution's proof, the burden is on the prosecution to contradict it. If the defense were to be a positive defense, for example, entrapment or duress or self-defense, etc, thus the burden is already on the defendant to make supporting evidence to himself. 1 [1971] MLJ 16 Usually a positive defense is one that won't really challenge the facts which are being presented by the prosecution but more of excuses which are used and it will

be deemed unlawful. The burden of proof which is to go forward with a case differs in other type of jurisdictions. For example, in New York, in a positive defense where the defendant has to prove, it should be by a 'preponderance of evidence'². If it were to be compared with Massachusetts where, after a positive defense has been raised satisfactorily by the defendant, the prosecution must make sure that it should not be beyond a reasonable doubt. In the case of *Tan Kim Khuan v Tan Kee Kiat (M) Sdn Bhd*³, the burden of proof which stands during the trial only on the party where the burden lies. The burden of proof which lies on the party has discharge it, then the appearing burden lies within the other party. What changes is the authority of affirming the evidence to release the burden if he does not affirm any evidence when the burden has changed to him, then he will definitely fail. Whereas in the case of *Wong Sieng Ping v PP*⁴, who was charged with cheating. The Magistrate held that:

" I am satisfied beyond reasonable doubt that accused failed to establish a case which at least would raise doubt as to his guilt and entitle him to an acquittal. Contention: it was wrong to say the burden of proof had shifted to the appellant legal burden never shifted to the accused ' to give an explanation' or ' to establish a case' which would be inconsistent with the presumption of innocence."

In the case of *Mat v PP*⁵, Suffian J (as he then was) said that, the magistrate has every right for not believing the story of the defence which did not bring any reasonable doubt in his mind. Where in other words, if the court confirmed of the accused person's guilt which is the case " proved beyond reasonable doubt". As for the case of *Chong Teng v PP*⁶, it was held that,

although the word 'burden' was more preferable to be used which is to make it clear that this kind of burden on the accused is fairly discharged if the sense of reasonable doubt was left with the jury to the existence or non-existence of the details supporting the particular defence, as in conclusion of the case, a reasonable jury might not have failed to appreciate that there was at least a small difference between the burden on the accused and the burden required of the prosecution. 2 the standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probably than not also³ [1998] 1 MLJ 6974 [1967] 1 MLJ 565 [1963] MLJ 2636 [1960] MLJ 153