

Illustration: accused
beyond reasonable
doubt. this general
burden



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Illustration: (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

(b) A, accused of murder alleges that by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A. (c)

Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by S. 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325. The burden of proving the circumstances, bringing the case under section 335 lies on A. The fundamental principle of criminal jurisprudence is that an accused is presumed to be innocent, and the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. This general burden never shifts, and it always rests on the prosecution. Under S. 105, the burden of proving the existence of circumstances bringing the case within any exception lies on the accused, and the Court presumes the absence of such circumstances. The accused has to rebut the presumption that circumstances did not exist, by placing material before the Court sufficient to make it consider the existence of the said circumstances so probable that a prudent man would act upon them.

The accused has to satisfy the standard of a prudent man. If the material before the Court satisfies the test of a prudent man, the accused will have discharged his burden. The evidence so placed may not be sufficient to discharge the burden under this section, but it may raise a reasonable doubt in the mind of a judge as regards one or other of the necessary ingredients of the offence itself. If the judge has such reasonable doubt, he has to acquit

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the accused, for in that event, the prosecution will have failed to prove conclusively the guilt of the accused. There is no conflict between the general burden, which is always on the prosecution and which never shifts, and the special burden that rests on the accused to make out his defence of insanity: *Dahyabhai v.*

State of Gujarat, A. I. R. 1964. S.

C. 1563. 2. The burden of proving any fact which is especially within the knowledge of any person is upon him. (S. 106) Illustration: (a) When a person does an act with some intention other than that which the character and the circumstances of the act suggest, the burden of proving that intention is upon him. (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket lies on him.

3. The burden of proving that a person is dead, who has been shown to have been alive within 30 years, lies on the person who affirms that he is dead. (S. 107) If a man is shown to have been alive within thirty years, the burden of proving him to be dead lies on the person affirming it. The section provides that if it appears that a person, whose present existence is in question was alive within thirty years and nothing whatever appears to suggest the probability of his being dead, the Court is bound to regard the fact of his still being alive as proved. But, as soon as anything appears which suggests the probability of his being dead, the presumption disappears, and the question has to be determined on the balance of proof.

4. The burden of proving that a person is alive who has not been heard of for 7 years, by those who would naturally have heard of him, lies on the person
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who affirms that he is alive. (S. 101) If a person has not been heard of for seven years, there is a presumption of law that he is dead, and the burden of proving that he is alive is shifted to the other side. But at what time within that time he died is not a matter of presumption, but of evidence, and the onus of proving that the death took place at any particular time within the seven years lies upon the person who claims a right to the establishment of which that fact is essential. There is no presumption that he died at the end of the first seven years or at any particular date or at any subsequent period.

5. The burden of proving that persons who stand in the relationship of (i) partners, (ii) Landlord and tenant, or (iii) Principal and agent (and who have been acting as such), do not stand, or have ceased to stand, to each other in those relationship respectively, lies on the person who affirms that they do not stand in such relationships. (S. 109) 6. The burden of proving that a person is not the owner of anything of which he is shown to be in possession is on the person who affirms that he is not the owner.

(S. 110) This section, gives effect to the principle that possession is prima facie evidence of a complete title. Any person who intends to oust the possessor must establish a right to do so. This is to be presumed from lawful possession until the want of title, or a better title, is proved.

7. The burden of proving the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, is on the party who is in a position of active confidence. (S. 111) Illustration: (a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on

the attorney. (b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son.

The burden of proving the good faith of the transaction is on the father.