E-content.

SECTION 101: Burden of proof.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

Section 101 define burden of proof. This section says on whom burden of proof lies. While as section 102 puts it in negative terms. The burden of proof lies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it. This rule of convenience has been adopted in practice, not because it is impossible to prove a negative, but because the negative does not admit of the direct and simple proof of the existence of a fact, should be called upon to prove his own case. The party on whom burden of proof lies must , in

order to succeed , establish a prima facie case. He cannot, on failure to do so, take advantage of the weakness of his adversary's case. He must succeed by the strength of his own right and and the clearness of his own proof. The expression burden of proof has to meanings: 1) the legal burden i.e, the burden of establishing case.2) the evidential burden , i.e, the burden of leading evidence. In criminal cases burden of establishing the charge against the accused lies on the prosecution. Here it is not the accused who has to prove his innocence because he is presumed to be innocent till his guilt is proved. That is why prosecution has to prove his case and section 101 comes into operation. In civil cases burden of proof is on the party who asserts. But the standard of proof required in civil cases is not that the plaintiff must prove a fact beyond any shadow of doubt. In ascertaining which party is ascerting affirmative , the court looks to the substance and not the language used. Whoever complains against the railway administration that the provisions of section 28 have been contravened must establish that there has been preference between himself and his goods on the one hand and the competitor and his goods on the other was held in Raigarh Jute Mills Ltd. v/s Eastern Railway AIR 1958 SC 525.Section 101 of the Evidence Act has clearly laid down that the burden of proving a fact always lying upon the person who asserts the f**acts**. Until such **burden** is discharged, the other party is not required to be called upon to prove his case was held in Raj

Kumar Verma V/s Nandan Kumar & Ors. In Narayan Govind Gavate Etc vs State Of Maharashtra on 11 October, 1977 court said, The result of a trial or proceeding is determined by a weighing of the totality of f**acts** and circumstances and presumptions operating in favour of one party as against those which may tilt the, balance in favour of another. Such weighment always takes place at the end of a trial or proceeding which cannot, for purposes of this final weighment, be split up into disjointed and disconnected parts simply because the requirements of procedural regularity and logic, embodied in procedural law, prescribe a sequence, a stage, and a mode of proof for each party tendering its **evidence**. What is weighed at the end is one totality against another and not selected bits or scraps of **evidence** against each other. In absence of any reasonable proof that defendant was the actual owner of the property, and plaintiff was only a name given does not prove that respondent was owner and plaint maker was only a name given to the property was held in Rama Kanta Jain v. M.S. Jain, AIR 1999 Del 281. What to be proved by prosecution is well settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defence. Nor can the court on its own make out a new case for the prosecution and convict the accused on that basis; Narain Singh v. State, (1997) 2 Crimes 464 (Del)."

SECTION 102: On whom burden of proof lies.—The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A.

(b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore the burden of proof is on B.

This section lays down the general test of the burden of proof .Accordingly, burden of proof lies on the party whose case would fail if no evidence were given on either side. Actually section tries to locate on whom burden of proof lies .Illustration shows that the section deals with legal burden of proof. Sometimes evidence coming from the side of the respondents, in the form of either their admissions or conduct or failure to controvert , may strengthen or tend to support a petitioners or plaintiffs case so much that the heavier burden of proving a case as distinguished from the mere duty of introducing or showing the existence of some evidence on record stated in section 102 is itself discharged. It relates to the leading of evidence and "decides the controversy between the

parties as to who is to lead evidence first and so it is only procedural matter.” A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B’s father. Here A must prove the will of C. If no evidence were given on either side B would be entitled to retain his possession of the land. [Illustration (a)].In an election petition the petitioner failed to prove as to what proportion of the total votes cast in favour of a wrongfully accepted candidate. The Supreme Court rejected the election petition. When a party to a suit does not give evidence and does not offer himself for cross-examination, a presumption would arrive that the case set up by him is not correct. The plea that the structure were to be excluded, the onus would be on person alleging such exclusion.In C.P. Sreekumar (Dr) v S. Ramanujam ’ it was held that onus of proving medical negligence lies on the complainant. Mere averment in complaint is not evidence. Complaint has to be proved by cogent evidence. The complainant is obliged to provide facta probanda as well as facta probantia. In Sanjay S. Jaipuria, Mumbai vs Department Of Income Tax on 12 April, 2012"On the f**acts** and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the additions made by A.O. on Sundry Creditors of Rs. 2,34,247/-, ignoring that as per section 102 of the **Evidence Act**, the **burden** of proof lies on the assessee to prove before the A.O."

Section 103: Burden of proof as to particular fact.—The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration

(a)] A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Section 103 of the **Evidence Act** provides that **burden** of proof of any particular f**act** lies on the person who wishes the court to believe in its existence. In State of Haryana v. Sher Singh, AIR 1981 SC 1021:. When accused takes Plea of alibi it is he who has to prove it. In Ramadhar And Anr. vs Raj Narain And Ors. on 16 July, 1929 court held that. Under **Section** 93, Evidence Act, e**vidence** may not be produced to show what was the meaning of the parties. The clause therefore remains ineffectual, so far as its application to the interest is concerned. The defendant bases his plea of limitation on this clause, alleging that owing to a breach of the covenant for the payment of interest the cause of **action** arose more than twelve years before the date of suit. Under Section 103, Evidence Act, the burd**en** of proof that this was a term of the contr**act** lay on the defendant. The defendant has failed to discharge that **burden** of proof. His plea of

limitation therefore fails. The lower appellate Court has dismissed the appeal of the plaintiff on the ground of limitation only. Accordingly the decree of the lower appellate Court should be set aside and the appeal remanded for disposal. In Union Of India Thru General ... vs Smt. Ram Jhari Devi And 2 Ors on 13 July, 2010 (i) a railway servant on duty : and

(ii) a person who has purchased a valid ticket for traveling , by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.) In the present case since it is the appellant who claims defence under the exception of **Section** 124 A with submission with regard to existence of the related f**act**, **burden** lies on the appellant to establish with cogent and trustworthy **evidence**. Appellant had not discharged its **burden** under Section 103 of the **Evidence Act**, hence plea with regard to exception seems to be not available. The railway **act** is a beneficial provision and it is settled law that while dealing with the beneficial provision when two views are possible the one of which favours the beneficiary should be adopted vide 2004 (10) SCC 201, State of West Bengal Vs. Kesoram Industries Ltd; AIR 2000 SC 109 Mathuram Agarwal Vs. State of M.P.; 1999 (7) SCC 106, Mysore Minerals limited M.G. Road, Bangalore Vs. CIT Karnataka Banglore. Thus, the **burden** to prove that the accidental case falls within the exception of 124 A of the Act rest on the shoulder of railways.

SECTION 104 : Burden of proving fact to be proved to make evidence admissible.—The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

Whenever it is necessary to prove any fact, in order to render evidence of any other fact admissible, the burden of proving that fact is on the person who wants to give such evidence. In illustration a dying declaration of deceased to be proved but before that death of victim is to be established/proved. Section 104 of **Evidence Act** mandates that the **burden** is on the person who takes up the plea of adverse possession as that plea goes to the root of the title of the plaintiffs. It is to be remembered that a person who takes up a plea of adverse possession must necessarily admit the title of the adversary. Without there being an admission of the title of the adversary, there cannot be a plea of adverse possession. Apart from this,

the plea of adverse possession is a weak plea, more especially, when the parties are closely related. Assuming that the pleading in the plaint has reflected adequate details of fraud, it needs to be examined as to whether the plaintiff and defendants 1 and 2 have proved them. It hardly needs any mention that apart from the general **burden** on a plaintiff to prove the f**acts** pleaded by him, Section 104 of the Evidence Act squarely puts the burden upon the person, who pleads fraud or other similar f**act**ors, to prove them, without even giving any scope for shifting of the onus, much less **burden**.

SECTION 105: Burden of proving that case of accused comes within exceptions.—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 other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations

(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, (45 of 1860), provides that whoever, except in the case provided for by section 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.

This section is applicable to criminal cases. An accused is presumed to be innocent till his guilt is proved and burden lies on prosecution to prove his guilt. But when accused raise the benefit of exceptions burden lies on him to prove exceptions. When accused takes the Plea of self-defence and When the prosecution has established its case, it is incumbent upon the accused, under section 105 to establish the case of his private defence by showing probability was held in Samuthram alias Samudra Rajan v. State of Tamil Nadu, (1997) 2 Crimes 185 (Mad). The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of material on record; Rizan v. State of Chhattisgarh, AIR 2003 SC 976.

In Parbhoo And Ors. vs Emperor on 16 September, 1941 . The first question to consider is whether or not the expression "burden of proving" in Section 105, Evidence Act, bears the meaning which would ordinarily attach to these words, namely the burden of satisfying the Court that such circumstances existed at the time when the act was committed as would entitle the accused person to the protection which is afforded by Section 96, Penal Code or any other exception-or whether, as held by the Full Bench of the Rangoon High Court Emperor v. U Damapala ('37) 24 A.I.R. 1937 Rang. 83, the burden will be discharged if the accused person, either by his own statement or by facts elicited in the evidence for the prosecution or by evidence adduced by himself or by all or some of these means, has been able to engender a reasonable doubt in the mind of the Court. "Burden of proof" may in some circum-stances mean the burden of introducing evidence.If the Court considers that the fact that A caused B's death is not proved in accordance with the terms of the definition, then it will decide that A did not cause B's death because the burden of proof is on the prosecution and the prosecution has to prove the fact that he did so. The same principles would apply to the question whether A intended to cause B's death. On the other hand, when the Court has to decide whether A, at the time of doing the **act** which caused B's death was, by reason of unsoundness of mind incapable of knowing its nature, it will, under the

provisions of Section 105, Evidence Act, throw the burden of proof upon the accused. If it is not satisfied that A was of unsound mind or that it was not probable that A was of unsound mind that a prudent man would suppose that he was, then it will hold once and for all upon this issue that the f**act** that A was of un-sound mind is not proved and it will consequently **act** upon the supposition that he was of sound mind. It cannot record different findings or come to different conclusions upon the issue. If the burden of proving the proposition that A was of unsound mind is upon the accused, then the accused must prove it In K.M. Nanavati v. State of Maharashtra, [1962] Suppl. 1 SCR 567 it is observed that: "In India, as it is in England, there is a presumption of innocence in favour of the accused as a general rule, and it is the duty of the prosecution to prove the guilt of the accused; to put it in other words, the accused is presumed to be innocent until his guilt is established by the prosecution. But when an accused relies upon the General Exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, Section 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that Section the Courts shall presume the absence of circumstances bringing the case within any of the exceptions, that is, the Court shall regard the nonexistence of such

circumstances as proved till they are disproved... But the section does not in any way affect the burden that lies on the prosecution to prove all the ingredients, of the offence with which the accused is charged; that burden never shifts. The alleged conflict between the general burden which lies on the prosecution and the special burden imposed on the accused under Section 105 of the Evidence Act is more imaginary than real. Indeed, there is no conflict at all."

SECTION 106: Burden of proving facts especially within knowledge.

When any f**act** is especially within the knowledge of any person, the burden of proving that f**act** is upon him.

Illustrations:

(a) When a person does an act with some intention other than that which the character and 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 is on him.

This section lays down the principle that where a fact is specially within the knowledge of a party, the burden of proving that fact lies upon him. The fact may be affirmative or negative character. In Grand Vasant Residents Welfare ... vs Dda & Ors. on 5 March, 2014 reference was made of the

decision reported as (1974) 2 SCC 544 Collector of Customs, Madras vs D. Bhoormull, proceedings were initiated under Section 167(8)(c) of the Customs Act for confiscation of contraband or smuggled goods and it was observed:- Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the accused, it is not obliged to prove them as part of its primary **burden**. On the principle underlying Section 106 **Evidence Act**, the **burden** to establish those facts is cast on the person concerned; and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive **evidence** adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty."

SECTION 107 : Burden of proving death of person known to have been alive within thirty years.—When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

This section is based on the principle of the continuity of the things. Once a state of things is shown to exist, the law presumes that it constinues to exist for a period for which such state of things ordinary lasts. This principle also applies to continuity of the life atleast for 30 years. In Lilly Packiamani

Aruldoss vs The Accountant General (A&E) on 23 February, 2011"The above case was registered by Puthiamputhur Police. Now after due investigation, a final report was filed and the case as Un Report perused. There is no material to interfere give the finding of the investigating officer. So the report is accepted and the case is referred as UN." At this stage, this Court pertinently points out that Section 107 of the Indian **Evidence Act**, 1872, refers to the **burden** of proving death of person known to have been alive within thirty years. As a matter of f**act**, the ingredients of Section 107 of the Indian **Evidence Act**, 1872 are as follows: "When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the **burden** of proving that he is dead is on the person who affirms it."

SECTION 108: Burden of proving that person is alive who has not been heard of for seven years.—[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it.—[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if

he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it."

Section 108 is proviso to section 107.The presumption under section 107 is rebuttable, that is if it is shown that he has not been heard of for last seven years by those who, if it had been alive, would naturally have heard of him. ". In the matter of similar question had arisen for determination of this Court and this Court while placing an interpretation on the said provisions and their applicability to the matter at issue held that the presumption about the death of the person can at the earliest be drawn when the dispute is brought to the Court and the presumption cannot be given a further retrospective effect. This Court has further held that it is so because the occasion for drawing a presumption under the provision arises when the dispute regarding the death of a person who has been unheard of for seven years is raised in a Court of law and it is only then that the question of burden of proof would arise under the Evidence Act. Section 108 obviously relates to the question of burden of proof in a matter before a Court of law. In Gurdit Singh And Ors. Etc vs Munsha Singh And Ors. Etc on 29 November, 1976" court held that the plain f**act** of the matter is that no proof is forthcoming of Kishan Singh continued existence since 1945. Since the judgment of the High Court in 1951, where it was held that the death of Kishan Singh had not been not proved, 8 years have elapsed. There can be no. escape

from the conclusion now that Kishan Singh's death must be presumed". The learned Single Judge had also observed: "The decision of the High Court in 1951 should provide a suitable ground for extension of time under provisions of Section 14 of the Indian Limitation Act. The whole basis of the judgment of the Courts below, in my opinion, is erroneous. It is not a requirement of section 108 of the Indian Evidence Act that the date of death of the person whose death is presumed must be established. All that is said is that if a person is not heard of for a period of seven years, his death may be pre- sumed. There is no presumption as to the time of death at any particular time within that period

SECTION 109 : Burden of proof as to relationship in the cases of partners , landlord and tenant, principal and agent_ When the question is whether persons are partners, landlord and tenant or principal and agent, and it has been shown that they have been acting as such , the burden of proving that they do not stand , or have ceased to stand , to each other in those relationship, respectively , is on the person who affirms it.

Section 109 lays down the principle dealing with the presumption of the continuity of relationship between persons or a state of things. When persons acted as partners or as landlord and tenant or as principal and agent, the burden of proving that such relationship does not exist, lies on the person

who affirms it. According to this section when a person stands a relationship of partners of a firm or landlord and tenant or principal and agent it is presumed that such relationship continues unless the contrary is proved. When certain persons have been shown to be related to each other, the presumption is that the relationship continues and if one of them says that they are no more related, he must prove the non-existence of relationship. The burden of proving sub-letting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, then the onus is shifted to the tenant to prove that it was not a case of sub-letting. The burden to prove relationship of landlord and tenant and denial of ownership of alleged landlord lies on the party who denies the relationship and ownership.

SECTION 110: Burden of proof as to ownership.—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner

This section gives weight to the principle that possession is primafacie evidence of complete title, anyone who intends to oust the possessor must establish a right to do so It is an evidence of complete title. Section 110 has incorporated this principle. But this principle does not apply when possession is

obtained by fraud or force. Mere wrongful possession is insufficient to shift the burden of proof. According to this section when a person is shown to be in possession of any property, the presumption is that he is the owner of that property. If anybody denies his ownership, burden lies on him to prove that he is not the owner of the property.The possession of property, real or personal is presumed prima facie to be full owner of it. The policy of law is to allow a person to continue his possession until a rival claimant proves his title. Thus, the presumption under section 110 would apply only if two conditions are satisfied, viz.—(i) that the possession of the plaintiff is not wrongful, and (ii) that the title of the defendant is not proved. Example: A is in possession of a cycle. B claims the cycle as his, B has to prove that he purchased it and burden lies on B.In Chuharmal S/O Takarmal Mohnani vs Commissioner Of Income-Tax, ... on 2 May, 1988 maintained the order of high court wherein The High Court had held that: (i) by virtue of the search in the house of the petitioner the watches were seized and a Panchnama was prepared, that under Section 110 of the Indian Evidence Act,it clearly establishes that the possession of the wrist watches was found with the petitioner, that as the petitioner did not adduce any evidence, he had not discharged the onus by proving that the wrist watches did not belong to him, the Tribunal had rightly held that the value of the wrist

watches is the income of assessee, and (ii) that in view of the Explanation to section 271(1)(c) the Departmenthad discharged the burden of establishing concealment. The reference was accordingly answered against the assessee.

SECTION 111 : Proof of good faith in transactions where one party is in relation of active confidence.—Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations

(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.

This section imposes a duty of good faith upon the person occupying the position of trust and confidence.The law requires that the party enjoying confidence must act in good faith towards the other, and the burden lie upon him to prove that he did act in a good faith. The active confidence means and indicates "the relationship between the parties must be such that

one is bound to protect the interest of other." A relationship of active confidence stands between the contracting parties when one imposed the duty of good faith upon another who occupies position of trust and confidence. Such relationship exists in cases such as, father and sons; advocate and client; doctor and patient; husband and wife etc. In all such cases the law imposes a duty of good faith upon person occupying the above positions. There an exception to this rule where a fiduciary or confidential relationship subsists between the contracting parties.Where there is valid transaction between the parties and one of them is accruing benefit from the transaction without acting in good faith or is taking advantage of his position. In such cases the burden of proving good faith of the transaction is on the transferee or beneficiary and the relationship of active confidence must be proved. The burden of proving good faith in transaction would be on defendant, dominant party i.e. the party who is in position of active confidence."Active confidence indicates that the relationship between the parties must be such that one is bound to protect the interests of the other".Where a confidence is imposed by one party to another during the course of transaction, the fiduciary relationship may arise if there arises conflict of interests between the parties. "Where a fiduciary or quasi-fiduciary relationship exists, the burden of sustaining a transaction between the parties rests with the party who stands in such relation and is benefited by it." In a transaction entered into by a pardanashin lady in favour of her managing agent, every onus in upon the agent to show conclusively that the transaction

was honest and bona fide. “The rule applies only to strictly pardanashin woman, women who live in complete seclusion and do not appear in public according to the customs and manners of their country and who on account of their ignorance or want of contract with outside would have not the capacity of understanding business transactions and incapable of managing their own affairs are also entitled to the protection of the court.”—SARKAR.In Jawahar Lal Wali v/s J. and K 1993 SCC court held that where a person who claims to have acted in a good faith has to appear in person before the court to establish his claim through examination and cross examination. The opinion and feelings of other witnesses may not be sufficient on that point.

SECTION 111A : Presumption as to certain offences:

(1) Where a person is accused of having committed any offence specified in subsection (2), in—

(a) any area declared to be a disturbed areas under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) Any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely:—

(a) an offence under section 121, Section 121A Section 122 or Section 123 of the Indian Penal Code (45 of 1860);

(b) criminal conspiracy or attempt to commit, or abatement of, an offence under section 122 or Section 123 of the Indian Penal Code (45 of 1860).

This section was inserted by the Terrorist Affected Areas (Special Courts) Act, 1984 which came into force on 14.7.1984. Presumption can be drawn against any person for having committed offences laid down in sub-section 2 of this section.

SECTION 112 : Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no

access to each other at any time when he could have been begotten.

The section is based on maxim pater rest quern nuptioe (he is the father whom the marriage indicates.Presumption under this section should be drawn by all courts, civil , criminal, and revenue governed by the evidence act. Section is based on English rule that the child born in wedlock should be treated as the child of the man who was then the husband of the mother.The effect of the provision 112 is that a child born to a married parents is conclusively presumed to be their child. The same effect / presumption arises where the marriage was dissolved and the child was born within 280 days after dissolution, the mother remaining unmarried in the meantime. The sprit behind Section 112 is that once valid marriage is proved there is strong presumption about the legitimacy of children born during wedlock.When the above requirements are satisfied the presumption of legitimacy is a conclusive presumption of law. Child born during wedlock is sufficient proof of legitimacy. In Nandlal Wasudeo Badwaik ….. v/s Lata Nandlal Badwaik & andna test shows that husband is not the father of daughter of wife – Apex court held that In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former. Although the presumption of

legitimacy is conclusive presumption it is equally based upon certain facts which must be present in favour of legitimacy. But this is rebuttable presumption where the evidence may be adduced to show that there was in fact no access. “Whether the presumption has been rebutted by proper evidence that such access did not take place as by the law of nature is necessary for a man to be in fact the father of the child, is essentially a question of fact. The period of gestation mentioned is this section is 280 days. It does not mention any maximum period of gestation. If a child born after 280 days and after dissolution of marriage, “the effect of the section being merely that no presumption in favour of legitimacy is raised, and the question must be decided simply upon the evidence for and against legitimacy.” A child born within 280 days of the husband’s death is a legitimate child. The Supreme Court has expressed most reluctant attitude regarding application of DNA technology in resolving paternity determination. In Goutam Kundu v The State of West Bengal the prayer for establishing legitimacy and maintenance by a child through blood test was not accepted. Their Lordships held that there must be a strong prima facie case that the husband must establish non-access in order to dispel the presumption arising under section 112 of the Evidence Act. “This presumption can be displaced by a strong preponderance of evidence and not by a mere balance of probabilities. When a child was born within 5 months after

the disillusionment of marriage presumption of legitimacy of the child arises,. The burden shift on the husband to prove that it was impossible to have access with the divorced wife and so it is a illegitimate child. In the case of **Sharmila Devi v Shankar Das**, the two spouses had access to each other after marriage for a number of days and the child was born after six months of the marriage. The Himachal Pradesh High Court held the child' as legitimate child. A Mohammedan child born during the continuance of a valid marriage between its parents would be presumed to be legitimate, even before the ruksati ceremony. The prayer for blood test was not accepted by the court. The court held that it cannot compel the father to submit himself DNA Test.

SECTION 113: Proof of cession of territory.—A notification in the Official Gazette that any portion of British territory has 1[before the commencement of Part III of the Government of India Act, 1935 (26 Geo. 5, ch. 2)] been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.—A notification in the Official Gazette that any portion of British territory has 2[before the commencement of Part III of the Government of India Act, 1935 (26 Geo. 5, ch. 2)] been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

A Government notification as to cession of territory to any other state is a conclusive proof that a valid cession of such territory has taken place at the date mentioned in such notification.

SECTION 113A: Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).

Many cases have come to the knowledge in past where newly married woman commits suicide or has been burnt by her husband and in_laws. In the absence of sufficient proof, it was very difficult for the prosecution to prove to prove that it was not a suicidal case or if it was, then it was the result of the abetment by husband or in-laws. Under this section

presumption is raised against accused if the conditions laid in provision is fulfilled. The section 113A was inserted by Criminal Law (second amendment) Act 46 of 1983. This was introduced because there was increasing number of dowry death, which was in fact a matter of serious concern. don In the case of Harikumar v State of Karnataka the court has said that by a plain reading of the provision it permits to draw the instances of cruelty even to prior to the date of concealment of this provision. The legal provision provided that under this section clearly concludes the past instances of cruelty spread over a period of seven years from the date of marriage the victim. Therefore it is permissible to the court to inquire into a case . In another case, Gurubachan v Saptal Singh the Supreme Court has held that s113A does not create any new offence, nor does it create through the court he has to prove the existence of certain factual situation. In the same way in order to attract the provision of s113A of the Indian Evidence Act the burden of proving the fact lies on the person who affirms it. This principle of burden of proof is applicable to all matrimonial offences, and needs to prove: 1..Suicide must be committed by a married woman2. Suicide must have been abetted by husband or any relative of her husband
3. Suicide must be committed with in seven years of the marriage
4. She must have been subjected to cruelty (as defined in 498A

of Indian Penal Code) by her husband. (The term cruelty shall mean the same as defined in 498A section of India Penal Code)

SECTION 113B: Presumption as to dowry death. -When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.

Explanation- For the purposes of this section 'dowry death' shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)

Dowry death is defined in section 304 I.P.C .It covers a kind of a death which is not natural, occurring within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Section 113B uses the word "shall" and not 'may' so it is a presumption of law .On proof of the essentials mentioned above, it becomes obligatory on the court to raise a presumption that the accused caused the "dowry death". The court has no discretion to draw

the presumption under this section if the essential ingredients are proved then they are bound to draw this presumption under s113B of the Indian Evidence Act. The legislature has made this presumption a mandatory presumption of law, of course, rebuttable, Though this may sound to be a violent departure from the accepted norms of criminal law. The legislature thought that the presumption under Section 113B should be a mandatory presumption if the evil of dowry deaths is to be eradicated from the roots of our society.

In the case of **Keshab Chandra Pandey v State** the presumption under s 113B of the Indian Evidence Act shall be raised only on the proof of the following essentials:
(i) Whether the accused has committed the dowry death of a woman. So the presumption can be raised if the accused is being tried for an offence under s.304B, Indian Penal Code.
(ii) The woman was subjected to cruelty or harassment by her husband or his relatives.
(iii) Such cruelty or harassment was for or in connection with the any demand for dowry.
(iv) Such cruelty or harassment was soon before her death. In another case **Mangal Ram & Anor v State of Madhya Pradesh**, the wife committed suicide within five years of her marriage. She was living with her parents for about two-three years. Within one month of returning to her matrimonial home, she jumped in to a well, and committed suicide. Harassment by

husband and her in-laws during this month has not been proved beyond reasonable doubt. In these circumstances, the presumption cannot be raised against the husband.

SECTION 114: Court may presume existence of certain acts

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can accounts for his possession.

(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration.

(d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) That judicial and official acts have been regularly performed;

(f) That the common course of business has been followed in particular cases;

(g) That evidence which could be and is not produced would, if produced, be unfavorable to the person withholds it.

(h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavorable to him;

(i) That when a document creating and obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:-

As to illustration (a) –A shop- keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

As to illustration (b)–A person of the highest character is tried for causing a man’s death by an act of negligence in arranging certain machinery. B, person of equally goods character, who also took part in the took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

As to illustration (b)-A person of the highest character is tried for causing a man’s death by an act of negligence in arranging certain machinery B, person of equality goods character, who also took part in the arrangement,

describes precisely what was done, and admits and explains the common carelessness of A and himself;

As to illustration (b)–A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

As to illustration (c) – A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was young and ignorant person, completely under A’s influence;

As to illustration (d) – It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course.

As to illustration (e) – A judicial Act, the regularity of which is in question, was performed under exceptional circumstances;

As to illustration (f) – The question is, whether a letter was received, it is shown to have been posted, but the usual course of the post was interrupted by disturbances;

As to illustration (g) - A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feeling and reputation of his family;

As to illustration (h) – A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

As to illustration (i) – A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

Under this section , the presumption is discretionary and rebuttable. The courts have very wide powers to presume or not to presume because the word is may presume.The

court is free to consider other facts and circumstances for this purposes.

Section 114 gives authorizes the court to make certain presumptions of fact. They are all presumptions which may naturally arise, but the legislature by the use of the work may instead of shall both in the body of the section and in the illustrations, shows that the court is not compelled to raise them but is to consider whether in all the circumstances of the particular case they should be raised.

Illustration (a) of section 114 raises a presumption about the person in possession of stolen goods soon after the theft is either 1)the thief or (2)has received the goods knowing them to be stolen

In the case of Sapattar Singh vs State on 28 February, 1952 court after relying on the section 114(a) held that no presumption can be raised wherin the applicant admitted that the she-buffalo was recovered from inside the 'gher'; but he alleged that he had not kept her there, that she might have been tied there by somebody and that he had no knowledge about it. There is nothing on the record to show that the applicant had kept the she-buffalo there, and, from the f**act** that the she-buffalo was recovered from inside the 'gher' of the applicant, the courts below have raised a presumption, under Section 114, illustration (a), Evidence Act, that the applicant was in possession of the she-buffalo and had received the same knowing it to be stolen property. **Evide**ntly, the courts below did not consider the

explanation offered by the applicant sufficient. Learned counsel for the applicant has, in this revision, contended that having regard to the circumstances of the case no presumption, **illustr**ation (a), Evidence under Section 114 Act, could or should have been raised. He has pointed out that, according to the **evidence** available on the record, the 'gher' was open and accessible to everyone; and in support of this contention reliance has been placed upon the f**acts** found by the courts below that Malkhan Singh, while passing by the 'gher', had noticed the she-buffalo tied inside it and that the Sub-Inspector was able to recover the same. He has also pointed out that the 'gher' was pr**actic**ally abandoned; that it was not alleged that the Sub-Inspector had, before recovering the she-buffalo, to make any effort to have the 'gher' opened; and that a bad char**acter** occupied the 'gher' adjoining the gher from which the she-buffalo was recovered. Even if the explanation offered by the applicant were not proved by any convincing **evidence**, it could have been considered as probable and reasonably true, and sufficient to raise a doubt in the mind of the Court as to the guilt of the applicant. It was for the prosecution to establish all the circumstances upon which a presumption could be raised under Section 114, **illustr**ation (a), Evidence Act, and there was no question of burden being shifted on to the applicant at any stage. He was only bound to account for his possession and offer an explanation which might reasonably be true. The contention put forward on behalf of the applicant that the presumption under Section 114, illustration (a), Evidence Act, could and should not have been raised in the circumstances of this case must, therefore, be upheld. If the presumption under Section 114, illustration (a), Evidence Act, cannot be raised in the circumstances of this case, there is no other **evidence** on the

record on which the conviction of the applicant under Section 411, Penal Code, can be rested. In this view of the matter, this revision is allowed, the conviction of, and the sentence imposed upon the applicant are set aside.

Illusration (b) of section 114

An accomplice is one who is a guilty associate in crime.Where a witness sustains such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice. The Court may presume that an accomplice is unworthy of credit, unless he is corro**b**orated in material particulars The words are "the Court may presume" (not "the Court shall presume") "that an accomplice is unworthy of credit, unless he is corro**b**orated in material particulars." **B**ut it then adds a caution to show that the presumed unworthiness is not a rule of universal application. It styles the presumption "a maxim," not a rule of law, and says, "**b**ut the Court shall also have regard to certain f**acts**' in considering whether such maxim does or does not apply to the particular case **be**fore it." It then refers to the case of a person of the highest char**acter** giving **evidence** of an offence committed **by** the negligence of himself and another person of equally high char**acter**. The witness is an accomplice, and he is not corro**b**orated in any particular, still less in material particulars, yet the Court should have regard to various circumstances, viz., the high char**acter** of the witness, and of the accused, and the nature of the offence alleged, and would **be** at li**ber**ty to refuse to draw any presumption against the credi**b**ility of the witness, even though his **evidence** stood alone and uncorro**b**orated. The opinion of the majority of the courts that the **evidence** of an accomplice need not **be** corro**b**orated in material particulars

before it can **be acted** upon, and that it would **be** open to the court to convict on the uncorro**b**orated testimony of an accomplice if the court was satisfied that the **evidence** was true, requires to **be** further considered; and it requires to **be** further considered whether Section 133 of the Indian **Evidence Act** read with **Section 114.**In Queen-Empress v. Bepin Biswas (1884) I.L.R. 10 Cal. 970 I do not think they can **be** taken as laying down as matter of law that previous statements of accomplices cannot amount to sufficient corro**b**oration of their testimony, and if they do I think they go too far. A direction to that effect **by** a Sessions Judge was made the ground of an appeal against acquittal **by** the **Be**ngal Government in 1898, Empress v. **B**haira**b** Chunder Chucker**b**utty (1898) 2 C.W.N. 702 **b**ut the case went off on another point. Reading Section 133 of the Evidence Act along with Section 114(b) it is clear that the most important issue with respect to accomplice evidence is that of corroboration. The general rule regarding corroboration that has emerged is not a rule of law but merely a rule of practice which has acquired the force of rule of law in both India and England. The rule states that: A conviction based on the uncorroborated testimony of an accomplice is not illegal but according to prudence it is not safe to rely upon uncorroborated evidence of an accomplice and thus judges and juries must exercise extreme caution and care while considering uncorroborated accomplice evidence.

An approver on his own admission is a criminal and a man of the very lowest character who has thrown to the wolves his erstwhile associates and friends in order to save his own skin. His evidence, therefore must be received with the greatest caution if not suspicion. Accomplice evidence is held

untrustworthy and therefore should be corroborated for the following reasons:

1. An accomplice is likely to swear falsely in order to shift the guilt from himself.

2. An accomplice is a participator in crime and thus an immoral person.

3. An accomplice gives his evidence under a promise of pardon or in the expectation of an implied pardon, if he discloses all he knows against those with whom he acted criminally, and this hope would lead him to favour the prosecution.In Mohd. Husain Umar Kochra etc. v. K. S. Dalipsinghji and Another etc., (1969) 3 SCC 429 and it was held :-- ".... The combined effect of Sections 133 and 114, Illustration (b) is that though a conviction based upon accomplice evidence is legal, the Court will not accept such evidence unless it is corroborated in material particulars. The corroboration must connect the accused with the crime. It may be direct or circumstantial. It is not necessary that the corroboration should confirm all the circumstances of the crime. It is sufficient if the corroboration is in material particulars. The corroboration must be from an independent source. One accomplice cannot corroborate another."

Illustration (c) section 114 says about the presumption of consideration in negotiable instruements. In Harish Bin dal vs

State Of Nct Of Delhi on 2 August, 2011. Court held that There is yet another presumption under **illustr**ation (**c**) of Section 114 of Indian **Evidence Act**, a**cc**ording to whi**c**h the **c**ourt may presume that a bill of ex**c**hange, a**cce**pted or endorsed was a**cce**pted and endorsed for good **c**onsideration. This presumption is like presumption under Se**c**. 118 (a) of the **Act**. It is needness to point out that as per Se**c**. 6 of the **Act** a **c**heque is a bill of ex**c**hange, drawn on spe**c**ified banker and in**c**ludes the **c**heque in the ele**c**troni**c** form. Therefore, the presumption under **illustr**ation (**c**) of Se**c**. **114** of the Indian Evidence Act, is also available to the petitioners with regard to dishonoured **c**heques, that the dishonoured **c**heques were issued for good **c**onsideration.

Illustration (d) Section 114 says about the existence of things as was also discussed In United India Assurance Co. Ltd. vs Sri Satyanarayana Ghee Trading ... on 26 July, 1999 The crucial question as to whether the stock purchase**d** upto 3-6-1981 was in existence on the **d**ate of the acci**de**nt an**d** eventually have been burnt in the sai**d** acci**de**nt. The learne**d** Counsel for the respon**de**nt conten**ded** that since the stock ha**d** been prove**d** to be in existence by 3-6-1981 an**d** as the fire acci**de**nt occurre**d** on the interventing night of 5/6-6-1981 the presumption can be **d**rawn Under Section 114(d) of the Evidence **Act** about the continuance of the things as existe**d** on 3-6-1981. There is every force in the contention of the learne**d** Counsel. **Illustr**ation (**d**) to Section 114 of the **Evidence Act** says that a thing or state of things which has been shown to be in existence within a perio**d**

shorter than that within which such things or state of things usually cease to exist, is still in existence. Since the period interregnum between the last date of purchase and the date of fire accident is shorter, the illustration (d) to Section 114 of the Evidence Act can be invoked in this case. A presumption of continuity can therefore be drawn. As against this evidence, as afore discussed, there are Exs.B-7 and B-8 on the side of the respondent. In Ex.B-8 statement, which has been given by P.W.14, it has been clearly mentioned at the end that the loss sustained on account of the accident was slightly more than Rs. 40,000/- and that by the time the fire force has arrived at the spot the flames have been extinguished and the remaining bags of chillies in the godown have been segregated. This statement no doubt shows that apart from the bags that have been damaged in the fire accident the remaining bags have been segregated and the loss has been estimated at about Rs. 40,000/-. This document is some what against the case of the respondent-firm. As against this Ex.B-7 is the report of the Surveyor-D.W.1. This document shows that the entire stock in the godown was badly burnt and damaged without leaving any salvage of commercial value and thus resulting in a total loss. There is no reason to disbelieve that statement of the Surveyor who has been examined in this case as D.W.1. The statement in Ex.B-8 made by P.W.14 cannot be accurate and has been made at the time when there was an agony and anguish on account of the loss of property in the fire accident. The same is not the case in respect of Ex.B-7. In the wake of Ex.B-7 the recitals mentioned in Ex.B-8 to the effect that the remaining bags have been segregated cannot be given much credence and weight. It is obvious from Ex.B-7 report being relied upon by the

appellant-insurer that it is a case of total damage and the eventual loss.

Illustration (e) was discussed in State vs Bhanwar Lal Bansal on 4 December, 1972 presumption under illustration (e) to Section 114, Evidence Act. Illustration (e) provides: The Court may presume that judicial and official acts have been regularly performed; The presumption under illustration (e) is a discretionary one. The Court concerned may or may not raise such a presumption. When a statutory authority makes an order, a presumption can be raised that it had followed the prescribed procedure. There is a presumption of regularity in respect of judicial and official acts and it is for the party who challenges such regularity to plead and prove his case. The illustration does not say that, it may be presumed that any particular judicial or official act has been performed. The prosecution shall have to prove that an official act was done. When such an act has been performed and there is no other evidence on the record, it may be presumed that that particular judicial or official act was done regularly. In other words, before any such presumption can arise, it must be shown that the statutory act was duly performed. The illustration thus permits a presumption to be drawn in the matters of procedure. This provision does not permit a presumption to be drawn where the question does not relate to the manner of doing an official or judicial act but cuts to the root of validity of the act. Appellant cited K. K. Pookunju v. K, K. Rama-Krishna Fillai, 1969 Cri App Rule 15 (SC). In that case the Public Analyst under Rule 7 of the Prevention of Food Adulteration Rules was required to compare the seal on the

container and the outer cover with the specimen impression received separately, on receipt of the package containing the sample for analysis. The High Court considered that the Public Analyst acted in accordance with the rules and he must have compared the specimen impression received by him with the seal on the container. In that case a copy of the memorandum and the specimen impression of the seal were proved to have been sent to the Public Analyst separately by post. The Public Analyst did not mention in his report that he compared the specimen impression on the seal with the seal on the packet of the sample. It was observed by their Lordships of the Supreme Court that it should be presumed that the Public Analyst acted in accordance with the rules and he must have compared the specimen impression received by him with the seal on the container. Thus, the above authority supports the view that illustration (e) to Section 114. Evidence Act. deals with the procedure. learned Counsel then relied upon I, T. Commissioner v. Suraj Lai , K. Rajaram v, Koranne ; Swaroop Ram v. State and Municipal Corporation of Delhi v, Om Prakash 1970 Cri LJ 1047 (Delhi). In all these authorities, it has been laid down that presumption can arise in the matter of procedure and if there is non-mention in respect of following the proper procedure according to the rules, such non-mention is not of vital importance. . Here the sealing on the seized articles has not been satisfactorily proved, (After discussing the evidence the judgment proceeded:) The above facts throw a considerable doubt in the fairness of the investigation of the case and in the aforesaid circumstances it would be hazardous to raise a presumption under illustration (e) to Section 114. Evidence Act, that the goods alleged to have been seized from the accused were duly sealed, that the seals were not tampered with till they

reached the hands of the experts. Even if a presumption of the kind is raised, the circumstances, indicated above, rebut it effectively.

Illustration (f) . In Sukumar Guha, v Naresh Chandra Ghosh and Anr the Hon'ble High Court of Calcutta has observed, "It is reasonable to hold that presumption under Section 114, Evidence Act Illustration (f) when raised, shall be of that nature and no more. Both the presumptions are, however, rebuttable. When the cover containing the notice has been returned to the sender by the postal authorities, then that fact is direct proof of the fact that the notice sent by post was not delivered to the party to whom it was addressed. Whether it was tendered and, if so, to whom tendered, remain a matter to ascertain on evidence. If acceptable evidence is available, that it was tendered to the party personally, then such facts may bring the service of notice within the 2nd mode abovementioned. If however, tender or delivery is not to the party personally but to a member of his family or a servant, then it may be effective tender or delivery only when the notice was addressed to the residence of the party. Such personal tender or vicarious tender may be effective even if it was through the agency of post office, and proof of that tender comes from testimony of any person present at the event, and not only by examining the C.C. No: 122/11 postman. Upon examining the evidence led by the accused no.1, in light of the aforesaid observations, I find that the accused no.1 has not brought any credible evidence to rebut the presumptions provided in Section 114, Illustration (f) of the Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897. In my view, the mere denial3 by the accused no. 1 that the legal demand notice dated 28.01.2002, Ex. CW1/G was not served,

does not discharge the burden imposed on the accused no. 1 on account o**f** the presumptions drawn in Section 114, Illustration

Illustration (g)

In Bijoy Kumar Karnani vs Lahori Ram Prasher on 17 March, 1972 Dr. S. Das contends that the plaintiff has not called the accountant Kundu whose name appears in the voucher. The plaintiff also did not himself **g**ive **evidence** before this Court. Dr. Das submits that the plaintiff and the accountant of the plaintiff are the most important witnesses. Dr. Das submits that his client's case is that the promissory notes were executed at No. 23/21 **G**ariahat Road, outside the jurisdiction of this Court and when the defendant raised the issue that this Court had no jurisdiction to entertain and try this suit, the plaintiff himself should have **g**iven **evidence** and also should have culled the accountant Kundu whose name appears in the voucher. Dr. Das referred to **Section 114 illustr**ation (**g**) of the Indian Evidence Act and also cited a number of decisions. Section 114, illustration (g) of the Indian Evidence Act provides that the Court may presume that **evidence** which could be and is not produced would, if produced be unfavourable to the person who withholds it. Dr. Das submits that the plaintiff is an essential witness. He knows the whole circumstances of the case and he should have **g**iven **evidence**. Dr. Das submits that the plaintiff's case is that the promissory notes were executed in Calcutta within the jurisdiction of this Court. Therefore, the plaintiff is a material witness to prove this f**act**. He further submits that the plaintiff should have **g**iven **evidence** to contradict the defendant's case that the promissory notes were executed at his

residence at **G**ariahat Road and also to prove that the money due under the promissory notes has not been paid. The ar**g**ument made by Dr. Das, if accepted, would mean that the plaintiff should have been called to disprove the defendant's case. Court held that there is no question of invokin**g** presumption of Section 114, illustration (g) of the Indian Evidence Act and the principles laid down in the said Privy Council decision, cannot apply in this case.

ILLUSTRATION (h)Section 114 says about refusal to answer and presumption is leveled against him .In Dipanwita Roy vs Ronobroto Roy on 15 October, 2014 T**her**e is an ancient presumption under section 114, illustration (h), of the Evidence Act, dating from at least 1872, that official acts have been regularly performed. Strange as it may seem t**h**is applies to Governments as well as to lesser bodies and officials, and ancient t**h**oug**h** it is t**he** rule is still in force. True, t**he** presumption will **h**ave to be applied wit**h** caution in t**h**is case but **h**owever difficult t**he** task it is our duty to try and find a lawful origin for as many of t**he acts** of t**he** appellant's Government as we can. We would, **h**owever, w**h**ile up**h**olding t**he** order passed by t**he H**ig**h** Court, consider it just and appropriate to record a caveat, giving t**he** appellant-wife liberty to comply wit**h** or disregard t**he** order passed by t**he H**ig**h** Court, requiring t**he h**olding of t**he** DNA test. In case, s**he** accepts t**he** direction issued by t**he H**ig**h** Court, t**he** DNA test will determine conclusively t**he** veracity of accusation levelled by t**he** respondent-**h**usband, against **her**. In case, s**he** declines to comply wit**h** t**he** direction issued by t**he H**ig**h** Court, t**he** allegation would be determined by t**he** concerned Court, by drawing a presumption of t**he** nature contemplated in Section

114 of t**he** Indian **Evidence Act**, especially, in terms of **illustr**ation (**h**) t**her**eof. Section 114 as also **illustr**ation (**h**), referred to above

illustration(i) Section 114.

The court may presume that an obligation has been discharged where the document creating obligation is in the hands of the obliger. Where the instruement of debt and the security for it are in the hands of the debtor, the presumption , on the face of things, would be that the debt must have been discharged and for protecting his interest the debtor obtained the document and the security after discharging the debt. In Shankar Chauhan vs Sunil Kumar Goel on 6 January, 2011, Section 114 of the Indian Evidence Act, 1872 and as per the illustration (i) thereto, when a document creating an obligation is in the hands of the obligor, the obligation would stand discharged. On the basis of this provision, it is argued that once the original document as per the stand of the appellant had come in his possession on the agreement being discharged, the same was destroyed and therefore no right can subsist thereunder i.e. the argument is that the receipt/agreement is given at the time of entering into the transaction to the person who gives the amount viz the buyer who pays the moneys is the person in whose possession the receipt/agreement has to be if the transaction is subsisting, and since, the original receipt/agreement is not with the buyer/respondent the same

is because the document was given back to the appellant/defendant showing that the transaction was by mutual consent brought to an end/cancelled. It is also urged that it cannot be seriously disputed that respondent/plaintiff received the amount in cash because even under the original agreement/receipt dated 10.3.1996, the amount which was paid by the respondent/plaintiff to the appellant/defendant was also in cash, meaning thereby that payment of cash is not an unusual method of payment in this case. And the court held that The relief of specific performance is discretionary and in the facts of the case where cash is said to have been exchanged both at the time of the original transaction and also at the time of the subsequent accord and satisfaction, the present is not a fit case where relief of specific performance ought to have been decreed. Uncertain situations and uncertain existence of agreements are not really envisaged in the grant of specific performance relating to valuable immovable property.

S. 114-A In a prosecution for rape under cl.(a0 or cl.(b) or cl.(c) or cl. (d) or cl. (e) or cl.(g) of sub section (2) of section 376 of the I.P.C where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Presumption as to absence of consent in certain prosecutions of rape – even if there had been a doubt about the medical evidence regarding non rupture of hymen the same would be of no consequence as it is well settled by now that the offence of rape would be held to have been proved even if there is an attempt of rape on the woman and not the actual commission of rape. –Thus, if the version of the victim girl is fit to be believed due to the attending circumstances that she was subjected to sexual assault of rape and the trauma of this offence on her mind was so acute which led her to the extent of committing suicide which she miraculously escaped, it would be a travesty of justice if we were to disbelieve her version which would render the amendment and incorporation of Section 114A into the Indian Evidence Act as a futile exercise on the part of the Legislature which in its wisdom has incorporated the amendment in the Indian Evidence Act clearly implying and expecting the Court to give utmost weightage to the version of the victim of the offence of rape which definition includes also the attempt to rape. The following three conditions must be satisfied before the presumption contained in S. 114-A can be raised:(a) It should be proved that there was sexual intercourse. (b) The question before the court should be whether such intercourse was with or without the consent of the woman.(c) The woman must have stated, in her evidence before the court that she had

not consented to the intercourse.This presumption would apply not only to rape cases, but also to cases of attempted rape, as for instance, when the victim was disrobed and attempts were made to rape her, which, however, could not materialise because of intervening circumstances. (Fagnu Bhai v. State of Orissa, 1992 Cri. L.J. 1808)