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The word Presume, according to grammar is verb transitive and intransitive both and mean for granted, to take for granted, to assume beforehand. The presumption, is noun according to grammar and means supposition, a ground for presuming, that which is supposed to be true without direct proof, the conclusion or inference that a fact exists. The term presumption as - is a rule of law, statutory or judicial in its largest and most comprehensive signification may be defined, where in the absence of actual certainty of the truth of a fact or proposition, an inference affirmative of that truth is drawn by a process of probable reasoning from something which is taken for granted or proved. According to Black's Law Dictionary a presumption, is a rebuttable assumption of fact, resulting from a rule of law which requires such fact to be assumed from another factor group of facts found or otherwise established in the action that need to be expressly proved. The burden of proof deals with presumption. A presumption is not evidence in itself. It is either rebuttable or conclusive. Every rebuttable presumption is either: a presumption affecting the burden of producing evidence or a presumption affecting the burden of proof. Section 113A: S. 113-A. presumption as to abetment of suicide by a married woman (Presumption of fact): 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. It states that upon proof of the relevant facts predicate, a court in an abetment of suicide case 'may presume, having regard to all the other circumstances of the case,' that the victim's suicide was abetted by the defendant. The use of the phrase 'may presume' in section 113-A signifies the presence of a Section 4 presumption of fact. Presumptions of this kind reflect "those natural inferences which the 'common course of natural events,' human conduct, and public and private business suggest to us. Discretion has been given to the Court to presume a fact or refuse to raise such a presumption. If it refuses to exercise discretion, then it may call upon the parties to prove the fact by leading evidence or if the Court finds that it is a fit case for raising presumption, in that event, such fact stands proved unless and until it is disproved by other side or may call for further proof of it. In this respect, it is "permissive, optional and discretionary. The presumption raised under Section 113-A does not necessarily shifts the burden of persuasion; it necessarily shifts only the burden of going forward with evidence. Presumption of fact requires a court, in the absence of evidence to the contrary, to draw the conclusion specified in the statute. But, if evidence to the contrary is presented, the presumption does not compel a particular result. It is permissive in this respect. The function served by the presumption of fact is this: it compels a party who might otherwise remain silent to speak. If the party against whom the presumption is raised wishes not to have the point decided against him, he must come forward with evidence. Section 113 B: Presumption as to dowry death as to presumption of law: Under Section 113B of Evidence Act, the legislature has chosen to use the expression 'shall presume' is a presumption of law, which indicates that it is mandatory and obligatory for the Court to draw the inference and no option is left. But it is rebuttable, though at the same time it is not lightly to be repelled. The evidence for the purpose of rebutting or repelling it must be strong, distinct, satisfactory and of a conclusive nature. As per section 4 of the Indian Evidence Act, whenever word conclusive proof is used then it can be interpreted that, when one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. And thereby allocated burdens of persuasion in prosecutions under section 304-B. The Court is bound to take the fact of dowry death where it is shown that a woman was subjected to cruelty in connection with demand of dowry before her death as proved until very strong, cogent and positive evidence is given in rebuttal by the accused, that the person has not committed dowry death. Where the death of the wife was concurrently found to be unnatural viz. by strangulation, and there was demand for dowry and also there was cruelty on the part of the husband, the presumption under sec. 113B must be held to be rightly drawn. (Hemchand vs. State of Haryana AIR 1995 SC 120). Burden of proof: The concise Dictionary of Law, Oxford Paperbacks has defined 'burden of proof' as- Burden of proof means the duty of a party to litigation to prove a fact or facts in issue. Generally the burden of proof falls upon the party who substantially asserts the truth of a particular fact (the prosecution or the plaintiff). If distinction is drawn between the persuasive (or legal) burden, which is carried by the party who as a matter of law will lose the case if he fails to prove the fact in issue; and the evidential burden (burden of adducing evidence), which is the duty of showing that there is sufficient evidence to raise an issue fit for the consideration of the Trier of fact. As to the existence or non-existence of a fact in issue. The responsibility to prove a thing is called burden of proof. When a person is required to prove the existence or truthfulness of a fact, he is said to have the burden of proving that fact. In a case, many facts are alleged and they need to be proved, before, the Court can base its judgment on such facts. The burden of proof is the obligation on a party to establish such facts in issue or relevant facts in a case to the required degree of certainty in order to prove its case. Case laws: Ram Gopal v State of Maharashtra (1972) 4 SCC 625: Facts: The appellant Ram Gopal was charged with the murder of Zingrooji Sita Ram. It was established that Sita Ram was poisoned and died on his way to the hospital. The prosecution argued that Ram Gopal had administered the victim some insecticide in kerosene oil either with tea or in water and it was a result of the poisonous insecticide that Sita Ram died. The post-mortem report suspected death by poisoning and a chemical analyst's report confirmed the presence of an organo-chloro compound in the viscera of the deceased. The prosecution argued that the defendant's motive to murder Sita Ram was established by the fact that prior to his death, Sita Ram had sold a piece of land to Ram Gopal. However Ram Gopal had not paid him anything but had promised to pay the amount within six weeks of the execution of the sale deed. Despite constant pestering, Ram Gopal kept putting off Sita Ram on some pretext or the other. Case History: The prosecution's case relied on the post-mortem chemical analysis of the viscera which showed the presence of an organo-chloro compound. It argued that the deceased had sickened and died after a visit to the accused. Opportunity and the means of death had been established. Ram Gopal was sentenced to death by the Sessions Judge Nagpur and this was confirmed by the High Court of Bombay (Nagpur Bench). In appeal to the Supreme Court against the death sentence the Apex Court stated that the prosecution's case had too many gaps. There was no evidence to show that the accused was ever in possession of any organo-chloro compound. It was improbable that such a large dose of a kerosene-based poison that was fatal could have been consumed by the victim without noticing it and other possibilities like suicide had not been ruled out. This was sufficient to give the accused the benefit of doubt and the Apex Court reversed the verdict of the lower courts. The case is illustrative of the need to keep in mind that not only must every fact be established along with the mens rea required, but that the prosecution must be able to link the sequence of events and rule out other probable causes for the occurrence. Here the Supreme Court felt that there may have been other causes for the death of the victim and therefore the beyond reasonable doubt degree of proof had not been met. Kali Ram v State of Himachal Pradesh AIR 1973 SC 2773: Kali Ram was convicted of two murders. He appealed his conviction in the Supreme Court. The prosecution's case rested on three pieces of evidence. First, a witness testified that Kali Ram had spent the night near the victims' residence, and on the evening of the crime was seen heading toward the victims' house. Second, the prosecution asserted that they had a written confession from Kali Ram which he had mailed to the police station. Third, the prosecution asserted that Kali Ram made an oral confession to a witness. Noting that the accused was entitled to the presumption of innocence requiring the prosecution to establish guilt beyond a reasonable doubt, the Supreme Court reviewed the prosecution's evidence. First, the Court concluded that the evidence that Kali Ram was headed toward the victims' house on the night of the crime was unreliable because the testifying witness had waited for over two months to come forward, despite knowing of the incident, since the crime's occurrence. The Court found that the prosecution did not offer a cogent explanation as to why the witness was silent for so long. Second, the Court held that the prosecution had not verified the authenticity of the letter of confession nor displaced the possibility that it could have been fabricated. It was necessary for the prosecution to do that before the letter of confession had evidentiary value. Third, the Court found the testimony of the witness regarding the oral confession highly questionable, as the police had hired this witness to testify. Having found all the prosecution's primary evidence questionable, the Court reversed the conviction, explaining that the prosecution did not rebut the accuser's presumption of innocence. In Shamlal vs. State of Haryana: AIR 1997 SC 1830: The Supreme Court had occasion to deal with sec. 113-B. It stated that it is imperative, for invoking the presumption under sec. 113-B, to prove that 'soon before her death' she was subjected to such cruelty or harassment. Where the prosecution could only prove that there was persisting dispute between the two sides regarding the dowry paid or to be paid, both in kind and in cash, and on account of the failure to meet the demand for dowry, the wife was taken by the parents to their house about one and a half years before her death and further that an attempt was made to patch up between the two sides for which a panchayat was held in which it was resolved that she would go back to the nuptial home pursuant to which she was taken back by the husband in his house about 10-15 days prior to the occurrence, but there was nothing on record to show that she was either treated with cruelty or harassed with the demand for dowry during the period between her having been taken to the parental home and her death, it is not permissible to take recourse to the legal presumption under sec. 113B. Irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed dowry death provided the ingredients of the section have been proved. Gurbachan Singh vs. Satpal Singh: 1990 CrLJ 562 (SC), the circumstantial evidence showed that the wife was compelled to take the extreme step of committing suicide as the accused person had subjected her to cruelty by constant taunts, maltreatment and also by alleging that she had been carrying an illegitimate child. The suicide was committed within seven years after the marriage. The Supreme Court held that presumption under sec. 113-B could be drawn. Written By: Kaustubh Singh







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