

Summary of Business conducted in the workshop
dated 25th October, 2015

1. The workshop dated 25/10/2015 was held on two topics, one was Civil and another was Criminal. The civil topic was "LAW RELATING TO PRESUMPTION AND BURDEN OF PROOF IN THE INDIAN EVIDENCE ACT" and the criminal topic was "SCOPE AND APPLICABILITY OF SECTION 34, 149 AND 120-B OF THE INDIAN PENAL CODE".

2. The Hon'ble Lordship Shri. Justice A.R. Joshi Saheb inaugurated the workshop by performing pooja of Goddess Saraswati and by lighting the traditional lamp. Thereafter the workshop continued by Welcome and Introductory speech by Hon'ble Principal District Judge, Shri. B. U. Debadwar followed by the valuable inaugural speech by Hon'ble Lordship Shri. Justice A.R. Joshi Saheb. Thereafter the business of the workshop commenced.

3. In the first phase Shri. R. D. Deshpande Jt. Civil Judge, Senior Division, Ratnagiri read over the summary on civil subject, along with ratio laid down by Hon' ble Supreme Court and Hon'ble Bombay High Court in different rulings referred in summary. Thereafter, discussion was held on the civil subject, various questions were raised during the discussion and answers of these questions were given by the Judicial Officers. Some of these questions and answers are as follows :-

Q. 1 What is meaning of presumption?

Ans. The Black's Law Dictionary (5th Edition) defines the word “presume” as-to believe or accept on probable evidence; and “presumption” as - is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted.

The term presumption in its large and comprehensive sense, may be defined as an inference affirmative or disaffirmative of truth or falsehood of a doubtful fact or proposition drawn by a process of probable reasoning from something proved or taken to be granted. The burden of proof deals with presumption. It is an inference that the Court is directed to draw from certain facts of certain cases. It can also be said that the proof of certain facts; the law will sometimes confer the existence of another fact that need to be expressly proved.

Q. 2 What are the kinds of presumption?

Ans. There are four kinds of presumption, which are as follows;

1. Presumption of fact.
2. Presumption of law
3. Irrebuttable presumption.
4. Rebuttable presumption.

Presumption of fact are those presumptions which are based on facts averred and contended by both parties of the suit or

proceeding. Presumption of law are those presumptions which allowed the Court to presume that a certain facts exists. Irrebuttable presumption is presumption which can not be rebutted. One category of irrebuttable presumption is a presumption under Section 112 of the Indian Evidence Act which is in other words can be called as conclusive proof.

Q. 3 What is meaning of term 'may presume' and 'shall presume'?

Ans. Here it is necessary to illustrate interpretation of the work “may presume and shall presume”. Section 4 of the Indian Evidence Act deals with such a interpretations. As per section 4 the word “may presume” can be interpreted in the way that whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it. The word “may presume” deals with rebuttable presumption.

The word “shall presume” can be interpreted that, whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved. This is also one kind of rebuttable presumption. The basic difference between word “may presume” and “shall presume” is that, whenever the word may presume is used in the statute, then, it has to be taken as a directory/discretionary and not mandatory. But, whenever the word “shall presume” is used it has to be taken as a mandatory.

Q. 4 What is meaning of terms “conclusive proof”?

Ans. 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. Section 112 of Evidence Act i.e. Birth during marriage, conclusive proof of legitimacy comes under the category of conclusive proof. First of all there must be proof of one fact and then on the basis of proved fact the another fact can be held as a conclusive proof. Therefore, for application of section 112 of Indian Evidence Act it must be proved first that the child was born during continuance of a valid marriage or within 280 days after its dissolution, that too, the mother remains unmarried, then and then only only legitimacy can be said conclusive. First of all, access between parties must be proved to attract the presumption under Section 112 of the Evidence Act. It can be disproved by showing non access.

Q. 5 What is burden of proof?

Ans. 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. There are two kinds of burden of proof, which are legal burden and evidential burden.

4. In the second phase Smt. R.M. Shinde, Jt. Civil Judge, Senior Division Ratnagiri read over the summary on criminal subject, along with case laws on the relevant subject. Thereafter, discussion was held on the aforesaid criminal subject. Various questions were raised during the discussion and answers to those questions were given by Judicial Officers. Some of those questions and answers are as under;

Q. 1 “Actus Non Facit Reum Nisi Mens Sit Rea”

Ans. “Actus Non Facit Reum Nisi Mens Sit Rea” is a Latin maxim which means that an act to be illegal, the person should do it with a

guilty mind. Conviction of a crime requires proof of a criminal act and intent. A crime generally consists of two elements, a physical, wrongful deed (the “actus reus”), and a guilty mind that produces the act (the “mens rea”). A crime ordinarily is not said to be committed if the mind of the person doing the act is innocent. This Latin phrase is often given as a pinnacle of the common law criminal justice system and was valued by jurists. It was an essential component to all criminal cases.

Q. 2 Ingredients of common intention.

Ans. There should be criminal act - A criminal act means either committing the act or omitting to commit the act, which is an offence.

That criminal act is done by several persons - For the section to apply, it is necessary that the act is done by more than one person as if the act is done by only one person this section does not apply.

That criminal act is done in-furtherance of common intention of all - It means that the persons should have decided in advance about the commission of the act and every one of them have acted keeping in mind that common intention.

Liability on each as if act done by him alone - It is explicit that when such act in furtherance of common intention is done, each involved is responsible as if the act is done by him alone.

S. 34 of I.P.C. is not a substantial offence but a rule of evidence. There should be participation in some way or other in the commission of the act. The persons cannot be held liable if they have

decided what to do and then they have not done that thing. Every person who is a part of the group should have done something so as to participate in the commission of the act. But it does not mean that the accomplice must have done some overt act in commission of the offence. Mere standing aside the principal offender in support during happening of the act or giving him strength by watching or provoking also comes under the purview of sharing common intention.

Q. 3 Ingredients of unlawful assembly as envisaged under Section 149 of the I.P.C.

Ans. Ingredients :- The section has the following essentials -

- 1) Commission of an offence by any member of an unlawful assembly.
- 2) Such offence must have been committed in prosecution of the common object of the assembly; or must be such as the members of the assembly knew to be likely to be committed and that their number is five or more and that they act as an assembly to achieve that object. Section 34 of the Indian Penal Code refers to cases in which several persons both do an act and intend to do that act, it does not refer to cases where several persons intend to do an act and some one or more of them do an entirely different act. In the latter class of cases S. 149 of the Code may be applicable but S. 34 is not.

Q. 4 Distinction between common intention and common object.

Ans. Though both these sections relate to the doctrine of 'vacarious liability and sometimes overlap each other there are Substantial points of difference between the two. They are as under :-

i) Section 34 does not by itself create any specific offence whereas section 149 of Indian Penal Code does so.

ii) Some active participation, especially in a crime involving physical violence is necessary under Section 34, but section 149 does not require it and the liability arises by reason of mere membership of the unlawful assembly with a common object and there may be no active participation.

iii) Section 34 speaks of common intention but section 149 contemplates common object.

iv) Section 34 does not fix a minimum number of persons who must have shared the common intention whereas Section 149 requires that there must be at least five persons who must have the same common object.

Q. 5 Elements of Conspiracy.

Ans. Conspiracy is conceived as having three elements:

1. agreement
 2. between two or more persons by whom the agreement is effected;
- and

3. a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished.

The anchoring of the workshop was done by Shri. R.N. Majgaonkar, Civil Judge, Senior Division, Ratnagiri. After having successful discussion on above two subjects the business of workshop came to an end with the votes of thanks expressed by Shri. B.D. Shelke, District Judge-2 and Asst. Sessions Judge, Khed.
