

CASE COMMENT ON SRIKANT VS. STATE OF MADHYA PRADESH

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Introduction:

Evidences are soul of any case and that is what makes criminal law to be more interesting. The case is based on mainly 3 sections of the Indian Evidence Act which involves Section 32 (dying declaration), Section 45 (expert opinion), and Section 113B (Presumption as to dowry death).

Dying Declaration is a statement made by the victim stating the exact cause of death or as to any of the circumstances of the transaction which resulted in his death. It should clearly state the cause of death. It can be verbal or written. The same dying declaration becomes a dying deposition if the dying man makes it on oath to Magistrate. Under the Indian law, for dying declaration to be admissible in the court, it is not necessary that person making the declaration should be under the shadow of death. If there are more than one dying declarations by the person it is necessary that all of them would be same; if declarations states the cause of death differently than they are not admissible in the court. Dying declarations are substantive in nature. However, a dying declaration can form the sole basis for conviction though the court may look for corroboration.²⁷⁰

Expert Opinions are exceptions to the rule that opinions of third parties are irrelevant. Generally, court is disinterested in anyone's opinion, however eminent he may be, but only in facts; and it is the court that forms its opinions on the proved facts.²⁷¹ An expert is a person who has mastery or special knowledge over a particular subject matter. Expert opinions should corroborated by other evidences. If there are expert opinions from both prosecution and defense, both the opinions will not be appreciated in the court.

Section 113B lays ground for Presumption as to dowry death of a woman. This section is directly related to Section 304B of Indian Penal Code. If all the grounds are proved by the prosecution the Court presumes that the accused is guilty for the offence.²⁷² Than the onus of

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²⁷⁰ *State of M.P. v. Mohan Lal*, (1996) 9 SCC 18

²⁷¹ Sarathi Vepa P., *Law of Evidence*, 6th Edition, pg. 199, Eastern Book Company

²⁷² Manohar V.R., *Ratanlal & Dhirajlal: The Law of Evidence*, 24th Edition, 2011

proof shifts on the defence, now defence has to prove that the accused is not guilty. If defence fails to do so conviction is given.

Brief Facts:

The case is related to dowry death. The victim (deceased), Mamta Bai, was married to appellant Srikant in 1986. After some time of the marriage husband started demanding dowry and started harassing the wife for the same. Badri Prasad, brother of the deceased, helped the appellant to open up a hotel but it was closed shortly as appellant was unable to run it. After some time another Rs.2500 was given by Badri Prasad to the appellant for starting a stationary business. After this also appellant continued to ask for the dowry and forced the victim to write letters to her parents and brothers for the same. Appellant continued to harass his wife as his demands for dowry were not fulfilled by the victim's parents and brothers. During the wedlock of their marriage, a girl was also born. On 25th July, 1989, wife poured kerosene over herself and her daughter and set both of them ablaze. The burn injuries resulted in the death of both the mother and daughter.

Before dying, victim gave two dying declarations to two different persons. The first dying declaration was given to Makhan Singh, Principal of Government Higher Secondary School, Vikrampur. The second dying declaration was given to Mr. C.L. Yadav, Naib Tahsildar and Executive Magistrate. Dr. S.K. Khare and Dr. R.M. Mishra conducted the postmortem of the deceased and gave their expert opinions.

Both District Court and High Court found husband (appellant herein) guilty for the offence of dowry death.

Judgment:

The Apex Court recorded the following findings:

- Oral testimonies by all the three brothers of the deceased. All the three brothers said that appellant was used to harass their sister for the dowry. Ravishankar Gupta, one of the brothers of the deceased, also produced the letters written by the appellant's brother regarding dowry. Purushottm Lal Vaishya, another brother of the deceased, said that his sister used to complain him about the harassment done by the husband.
- Prosecution established the presumption under Section 113B that it was husband who did the offence. Prosecution proved all the grounds of Sec 113B which are required by court to have presumption that accused is guilty of the offence.

- There were 2 dying declarations recorded by two different persons at different times. In the first dying declaration which was given to Makhan Singh, deceased said that during the cooking the oil container got overturned on her dress and due to this she caught fire. The other version of dying declaration, given to Mr. C.L.Yadav, states that because her daughter kerosene accidentally fell on her and she caught fire. This was the main defense given by the appellant as he said that the dying declaration given by the victim clearly states that the fire was accidental and he was not involved in the act.
- The two expert opinions given by the doctors were in favor of prosecution. The doctors were of the belief that the death was caused by shock which was caused from burn injuries. Both also opined that the particular case is not of accidental fire. It was so because the smell of kerosene was coming out from the body of the deceased which can only be possible by pouring the kerosene over the body and setting the fire.

The Supreme Court on the above findings dismissed the appeal and confirmed the conviction of the appellant.

Analysis:

For proving that accused is guilty of the offence under Section 113B of the Indian Evidence Act, prosecution has to prove all the grounds mentioned under it. On proving all the grounds, Court **shall presume** that accused is guilty. Than the onus of proof shifts on the defense that he has to prove his innocence. Here, shall presume means that court will rest on the grounds proved by the prosecution until defense disprove them. If defense fails to do so prosecution wins.

The presumption by the Court can only rise on proving the following grounds:²⁷³

- i. The question before the Court must be whether the accused had committed the dowry death of a woman;
- ii. The woman was subjected to cruelty or harassment by her husband or his relative;
- iii. Such cruelty or harassment was for or in connection with, any demand for dowry; and

²⁷³ *Kaliyaperuma Land Anr. vs. State of Tamil Nadu*, AIR 2003 SC 3828

iv. The woman was subjected to cruelty or harassment soon before her death.

Section 304B of Indian Penal Code, tells about the essentials of the dowry death which are: (i) The death of a woman was caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) Such death have occurred within seven years of her marriage; and (iii) Soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband.

In the following case the death had occurred within 7 years of the marriage which proves 2nd ground. As the death was due to burn the first ground was also proved by the prosecution. Now the third ground which talks about "soon before" the death needs to be understand clearly. Soon before is subjective and may vary from cases to cases. In this case wife was continued to being harassed by the appellant for the demand of dowry. She was even forced to write letters to her father and her brothers about the demand. After the help provided by one of her brother to appellant also the harassment didn't stop. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death.²⁷⁴ That's why all these circumstances prove that accused is guilty of the offence. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'.²⁷⁵

There were 2 defenses given by the appellant in this matter. First being that the burn was accidental and cannot come under the phrase "otherwise than under normal circumstances". Court rejecting this plea said that if one of the essential ingredients is proved that the death of the women is caused by burns, it is not necessary for the prosecution to prove that death occurs otherwise then normal circumstances, as death due to burns comes under otherwise then under normal circumstances. Oral testimonies given by all the three brothers of the deceased corroborated that the fact that victim was continuously harassed by her husband.

The second defense was related to dying declaration. Appellant alleged that the dying declaration clearly states that death was accidental and thus he is innocent. Court rejecting this plea also stated that the dying declarations given by the deceased cannot be admitted in the Court as both of them are different and states different cause of the death. The Court referred the case *Punjab v. Parveen Kumar*²⁷⁶, where there were three dying declarations;

²⁷⁴ *State of A.P. vs. Raj Gopal Asawa and Anr.*

²⁷⁵ *Ibid*

²⁷⁶ 2005 9 SCC 769

the SC held none of them reliable as all the declarations were inconsistent with each other as each version disclosed different role of the accused in the offence. This was the same reason that both the trial Court and the High Court discarded the dying declarations.

The Expert opinions given by both the doctors stated that the fire was not accidental as the smell of kerosene was coming out from the body of the deceased which can only be possible by pouring the kerosene over the body and setting the fire, which was corroborated by the fact established under Sec 113B.

The presumption made by the court under Section 113B was totally against the accused and accused also failed to disprove any of the fact established under Section 113B. Also, no witness was there from the defense side. The Supreme Court was right in dismissing the appeal and confirming the conviction of the accused.

Conclusion:

To seek justice and make a just and fair society is the ultimate goal of any legal system. Law and society are ends of each other. When a crime is done it is not done against a person but against the whole society; against the state. To make accused guilty or to prove his innocence is complicated and complex in the trials. At this position there is need of tools that can help Court to seek justice and to punish the culprit. The Indian Evidence Act, 1872, provides that help to the court as to find whether the accused is guilty or not. In the present case only, Court through different tools like the presumptions of the dowry death, expert opinion and dying declaration of the Evidence Act reached on the decision that accused is guilty of the offence and justice was delivered to the family of deceased; to the soul of deceased.