

Citation analysis

Sharad Sarda vs State of Maharashtra AIR 1984 SC 1622

Manju was married to Sharad on 11th of February 1982. It was an arranged marriage. After marriage Manju resumed cohabitation with her husband. She was harassed and treated cruelly by her in laws and husband. She continued cohabitation with a hope that the behaviour of her husband and in-laws will improve with the passage of time. She found that she is treated as an unpaid maid servant and compelled to do all odd jobs. Her husband said her that he hates her and he is in relation with another girl. Manju has written letters to her sister where in she mentioned about the cruel treatment of her husband and in laws but request to her not to reveal all these facts to her parents. Subsequently Manju has informed her friend and her parents about the ill treatment to which she is subjected by the accused. On 12th of June 1982 Manju was found dead in her room at the house of the accused.

It is the case of prosecution that Sharad was not interested in Manju and he had extra marital relations with another lady. He therefore killed Manju by administering her poison and tried to dispose of her corpse. The prosecution sought conviction of the accused under section 302 of the Indian Penal Code as more exhaustive provisions to deal with acts of domestic violence were then unavailable in the Indian Penal Code. Section 498 A of the Indian Penal Code making punishable the act of cruelty to a married woman punishable was introduced with effect from 25th of December 1983. Death of a married woman within seven years of her marriage in suspicious circumstances with evidence that she been subjected to cruelty by her husband or in laws is made punishable as dowry death under section 304B of the Indian Penal Code was introduced on 19th October 1986. Presumptions to abetment of suicide and presumption as to dowry death were introduced in the Evidence Act respectively in the year 1983 and 1986 by the same Amendment Act by which

the Penal Code was amended. The accused came with a defence that Manju was highly sensitive and committed suicide out of depression.

The trial court as well as the High Court believed the circumstantial evidence and medico-legal evidence and found the accused guilty of murder.

Letters written by Manju to her sister and friend and oral statements made by her to her parents regarding the circumstances prevailing at the house of the accused creating apprehension in her mind that she will be eliminated by the accused were placed before the court as dying declaration. The Supreme Court by considering its previous decisions laid down following ratio regarding interpretation of section 32 clause 1 of the Evidence Act.

“Thus, from a review of the authorities mentioned above and the clear language of s.32(1) of the Evidence Act, the following propositions emerge: -

(1) section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to death. In this respect, as indicated above, the Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of s.32 to avoid injustice.

(2) the test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the

death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under s.32.

(3) the second part of cl.1 of s.32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring. (4) it may be important to note that s.32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of s.32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.'

The supreme court reappreciated circumstantial evidence relied by the trial court and the High Court and found that these courts havenot properly appreciated the circumstantial evidence. The supreme court laid down following principles for appreciation of circumstantial evidence.

"a close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must

be or should be proved' as was held by this court in Shivaji Sahabrao Bobade & anr. V. State of Maharashtra(¹) where the following observations were made:

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. They should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

Note - in the decade of 80s there were several incidents of deaths of married women. Various women organizations agitating regarding these incidents and were asking for stringent laws to deal with such deaths. Death of Manju within four months of marriage provided ammunition to agitators which led to amendment in penal law as well as in the Evidence Act creating presumptions. In my opinion if these presumptions would have been existing in the law the circumstantial evidence lead by the prosecution would not have been interpreted in the way it was interpreted by the Supreme Court in this case. So, while relying on ratio in the present case regarding crime of dowry death or abetment to suicide one should consider the legal aspects in the light of present legal structure dealing with domestic violence.
