LALITA

VERSUS

VISHWANATH & ORS.

2025 Supreme Court

Pertains to – Abetment to suicide section 306 IPC

When does a presumption under section 113A IEA raised?

How can FIR be proved? Will it make any difference if the maker of the FIR is dead?

Factual matrix

Father of Dev Kanya got an FIR registered alleging that she was married to Vishwanath for around 1.5 years. That Dev Kanya that her daughter committed suicide as she was incessantly harassed by her husband, father-in-law, mother-in law and first wife of the husband.

It is the case of the appellant that her daughter committed suicide by jumping into a well. The clothes and other articles were collected in the course of the investigation and were sent to the Forensic Science

Laboratory for chemical analysis.

Upon appreciation of the oral as well as documentary evidence on record, the Trial Court held all the four accused persons guilty of the offence enumerated above and sentenced them to undergo 10 years of rigorous imprisonment with fine of Rs.1000/-.

High Court on appeal reversed the finding of the sessions court.

The State did not deem fit to challenge the Judgment and order of acquittal passed by the High Court.

Although the first information report was lodged by father of the deceased yet before the trial commenced, he passed away.

Hence the case is contested by the mother of the victim.

Supreme court observations

For abetment to suicide

21. There is no cogent or any reliable evidence on the basis of which it could be said that the accused persons abated the commission of suicide.

22. Mere harassment or cruelty is not sufficient to infer abetment. There has to be some credible evidence that the

accused persons aided or instigated the deceased in some manner to take the drastic step of putting an end to her life.

23. We do not rule out the possibility of the husband pressurizing the deceased to transfer the land once again on his name. However, even such instances, by themselves, may not be sufficient to come to the conclusion that the deceased was left with no alternative but to commit suicide.

Use of section 113A Evidence Act(117 BSA)

Ram Pyarey v. the State of Uttar Pradesh, Criminal Appeal No. 1408 of 2015, decided on 09.01.2025

We quote the relevant observations:

"It is relevant to note that under Section 113B, the Court shall presume dowry death unlike Section 113A where the provision says that Court may presume abetment of suicide. This is the vital difference between the two provisions which raises presumption as

regards abetment of suicide. When the Courts below want to apply Section 113A of the Evidence Act, the condition precedent is that there has to be first some cogent evidence as regards cruelty & harassment. In the absence of any cogent evidence as regards harassment or abetment in any form like aiding or instigating, the court cannot straightway invoke Section 113A and presume that the accused abetted the commission of suicide."

26. Even with the aid of presumption under Section 113A of the Evidence Act, it is

difficult to say that the accused persons abetted the commission of suicide. It is possible that the deceased might have felt bad because the first wife came back to the matrimonial home and being hyper sensitive might have taken the extreme step to commit suicide.

How to prove FIR?

The question before the court was if the first informant has passed away before stepping into the witness box, then whether the contents of such First Information Report can be proved through the evidence of

the Investigating Officer and read into the evidence?

28. In the case on hand, as noted above, the First Information Report was lodged by the father of the deceased. However, before the father could step into the witness box, he passed away. In such circumstances, the Trial Court permitted the Investigating Officer to prove the contents of the First 6 Information Report Exhibit-35 and read into evidence as per Section 67 of the Evidence Act.

29. The basic purpose of filing a First Information Report is to set the criminal law into motion. A First Information Report is the initial step in a criminal case recorded by the police and contains the basic knowledge of the crime committed, place of commission, time of commission, who was the victim, etc.

Generally, the evidentiary value of the FIR is that it can be used for both corroborative purposes under section 157 IEA(160 BSA), and for contradiction

under section 145 IEA(148 BSA).

It may happen that the infor mant is the accused himself. In such cases, the First Informa tion Report lodged by him cannot be used as an evidence against him because it is embodied in the basic structure of our Con situation that a person cannot be compelled to be a witness against himself.

In certain cases, the First Information Report can be used under Section 32(1) of the

Evidence Act or under Section 8 of the Evidence Act as to the cause of informant's death or as a part of the informant's conduct.

Damodar Prasad v. State of U.P. [(1975) 3 SCC 851

If the informant dies, the First Information Report can be, unquestionably, used as a substantive evidence. A prerequisite condition must be fulfilled before the F.I.R. is taken as a substantive piece of evidence i.e. the death of the informant must have nexus with the F.I.R. filed or somehow

having some link with any evidence regarding the F.I.R.

34. Another important thing is that for an F.I.R. lodged by a deceased person to be treated as substantial, its contents must be proved. It has to be corroborated and proved for there to be any value of the same in the case.

The F.I.R. can be used by the defence to impeach the credit of the person who lodged the F.I.R. under Section 154(3) of the Evidence Act.

In case the death of the informant has no nexus with the complaint lodged i.e. he

died a natural death and did not succumb to the injuries inflicted on him in relation to a matter, the contents of the F.I.R. would not be admissible in evidence.

In such circumstances, the contents cannot be proved through the Investigating Officer. The Investigating Officer, in the course of his deposition, should not be permitted to depose the exact contents of the F.I.R. so as to make them admissible in evidence. All that is permissible in law is that the Investigating Officer can, in his deposition, identify the signature of the

first informant and that of his own on the First Information Report and he can depose about the factum of the F.I.R. being registered by him on a particular date on a particular police station.

38. We have to our benefit a very lucid and erudite judgment of the Madhya Pradesh High Court in the case of Umrao Singh v. State of M.P. [1961 Criminal L.J. 270]. In this case, the petitioners Umrao Singh and Kunwarlal were convicted of the offence punishable under Section 323 of the Penal Code

and sentenced to two months rigorous imprisonment. The case of the prosecution was that on 27th August 1959, the petitioners named above belaboured Barelal who had gone out to graze his cattle, and who was blamed by the accused to have caused damage to their crops. Barelal, however, died a natural death after six months of the occurrence, but before he could be examined as a witness.

It was contended that the F.I.R. lodged by Barelal could not be considered by the Courts below and that the evidence of the

solitary witness, Pannala was unreliable, as he was not mentioned in the list of witnesses filed by the prosecution. In this set of facts, the Court observed as under:

"4. It is true that the first information report is not by itself a substantive piece of evidence and the statement made therein cannot be considered as evidence unless it falls within the purview of S. 32 of the Evidence Act. It is an admitted fact that Barelal did not die because of the injuries caused by the petitioners. Section 32 was inapplicable.

5. It is true that in the list of witnesses Pannalal's name has been mis-spelt as 'Dhannalal', but this doubt is removed when the first information report is looked into. There, Pannalal's name is mentioned. Shri. Dey contends that it is not permissible to look at the F.I. R. at all. In my opinion this argument cannot be accepted. It is proved by Ram Ratan P.W. 6 that he recorded the report which was lodged by Barelal There is a distinction between factum and truth of a statement.

It has been aptly pointed out by Lord Parker C.J. in R. v. Wil lis (1960) 1 W.L.R. 55 that evidence of a statement made to a witness by a person who is not himself called as witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish what is contained in the statement; it is not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement but the fact that it was made.

According to Ram Ratan, Barelal mentioned Pannalal's

name to him. Applying the above dictum, Ramratan's evidence is inadmissible to prove that Pannalal was in fact present at the time of the occurrence; but Ram Ratan's statement is admissible to prove that Barelal.

Decision

39. In the overall view of the matter, we are convinced that no case is made out for interference.