

Section 32

Section 32 is a quite lengthy section, dealing with another exception to hearsay evidence. The general rule is that hearsay evidence is not acceptable that only he who has seen, heard or perceived a fact can bear witness to it, however the underlying principle of S.32 is that; when a person who is the actual witness to a crime i.e. he has actually seen, heard or perceived the fact, is for certain reasons unable to attend court, maybe due to death or disability, another third person to whom he has deposed the fact he witnessed, can bear witness to it on his behalf.

Illustration:-

A had seen B murder C, because of A's illness he was unable to attend court but he told his wife regarding the crime, by virtue of this section she can give evidence in court.

This section will come into play under the following circumstances:-

- ✓ If the person is dead
- ✓ Missing
- ✓ Has become incapable of giving evidence
- ✓ Attendance of his would lead to unwanted delay or expenses.

What is unwanted delay/expense has to be determined by the court.

PRITHI CHAND v. STATE OF HP

It was held that where the doctor who prepared the report could not attend court because she was on maternity leave, another doctor could on her instructions bear witness.

The section has eight sub-clauses, dealing with the following issues wherein the statement of such a person as mentioned above can be used:-

1. When the matter relates to cause of death of the transaction which led to death
2. When statement made in ordinary course of business
3. When the statement is against interest of the maker
4. When statement is an opinion as to public right or custom
5. When statement relates to existence of relationship
6. The statement regards will or deed relating to family affairs
7. Or in relation to section 13(a)
8. The statement is made by several persons expressing their opinion or feelings relevant to the matter.

When the matter relates to cause/transaction leading to death:-

The first clause of S.32 mentions that when a statement given by such a person who has been incapacitated in the manner mentioned above (mention the points), refers to two things:-

- ✓ The cause of his death
- ✓ The transactions leading upto his death

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