

**STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS
WITNESSES**

OR

STATEMENTS BY PERSONS UNAVAILABLE

SECTION 32 & 33

S. 32. Cases in which statements of relevant fact by person who is dead or cannot be found etc. is relevant—

Statement, written or verbal,

--of relevant facts made by a person

--who is dead, or

--who cannot be found, or

--who has become incapable of giving evidence, or

--whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case appears to the Court unreasonable,

--are themselves relevant facts in the following cases:

1. When it relates to cause of death—

When the statement is made by a person as to the cause of his death, or as to any or the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

2. Or is made in course of business—

When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

3. Or against interest of maker---

When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

4. Or gives opinion as to public right or custom, or matters of general interest—

When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

5. Or relates to existence of relationship—

When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

6. Or is made in will or deed relating to family affairs—

When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or

in any family pedigree¹, or upon any tombstone, family portrait² or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

7. Or in document relating to transaction mentioned in section 13, clause(a)³-

When the statement is contained in any deed, will or other document which related to any such transaction as is mentioned in section 13, clause (a).

8. Or is made by several persons and expresses feelings relevant to matter in question—

When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations—

a) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that on a given day, he attended A's mother and delivered her of a son, in relevant fact.

c) The question is, whether A was in Calcutta on a given day.

¹PEDIGREE, descents. **A succession of degrees from the origin**; it is the state of the family as far as regards the relationship of the different members, their births, marriages and deaths; this term is applied to persons or families, who trace their origin or descent. **Ancestry.**

²A photo that consists of a mother, a father, and their children (although grandparents may apply). Except when an orphan takes them they are called selfies.

³**S. 13: Facts relevant when right or custom is in question—**

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

A statement in the diary of a deceased solicitor, regularly kept in the course of business that, on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

- d) **The question is, whether a ship sailed from Bombay harbor on a given day.**

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbor, is a relevant fact.

- e) **The question is, whether rent was paid to A for certain land.**

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

- f) **The question is, whether A and B were legally married.**

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

- g) **The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by hi is dated on that day is relevant.**

- h) **The question is, what was the cause of the wreck of a ship.**

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

- i) **The question is, whether a given road is a public way.**

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

- j) **The question is, what the price of grain was on a certain day in a particular market. A statement of the price, made by a deceased *baniya* in the ordinary course of his business, is a relevant fact.**

- k) **The question is, whether A, who is dead, was the father of B.**

A statement by A that B was his son, is relevant fact.

- l) **The question is, what the date of birth of A.**

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

- m) **The question is, whether, and when, A and B were married.**

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

- n) **A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libelous character. The remarks of a crowd of spectators on these points may be proved.**
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The section is one of those provisions that provide exceptions to the principle of excluding hearsay evidence.

The exceptions to the hearsay evidence have been directed by necessity. This rule excluding the hearsay evidence is relaxed so far as the statements contained in S. 32 & 33 are concerned.

The general ground of admissibility of the evidence referred to in these sections is that no better evidence could be produced.

The phrase 'hearsay evidence' is not used in the Act; because it is inaccurate and vague. Before such evidence is let in, the Court must arrive at a finding on evidence formally and regularly taken and recorded that one or other of the grounds specified into eh section exists. The admission of such deposition in evidence without such finding is illegal.

In other words, the principle of the section is that a person who has the first-hand knowledge of the facts of a case, but who, for reasons stated in the section, such as death or disability, is not able to appear before the court, then his knowledge should be transmitted to the court through some other person. If he recorded his knowledge somewhere, for example, on a portrait or register, that record may be produced or if he told his knowledge to another person that other person may appear to testify of what he was told.

The reason for the exception is obvious. The law wants the best evidence in each case. The best evidence is a document or the personal knowledge of a witness, and if the document has been lost or that witness is unable to appear before the court, then those who have either seen that document or shared that knowledge of that person will be considered as the best evidence.

The section comes into play when the person whose statement is sought to be proved has died, or cannot be found, or has become incapable of giving evidence or whose attendance can be procured at an amount of delay or expense which under the circumstances of the case appears to the court to be unreasonable. Proof of these facts will have to be offered in the first instance to make the evidence relevant.⁴

Thus if the ground of relevancy is the death of the person concerned, his death must be proved, for if he is still alive, he must appear in person.

⁴ This is the effect of S. 104 of the Evidence Act.

Incapacity to give evidence may be due to any cause, for example, the person may be too old or ill to move or his capacity has been emaciated by age or he may be insane. Temporary illness should not have the same effect.

Cases in which statement of relevant fact by person who is dead or cannot be found etc. is relevant:

S. 32 of the Evidence Act states that cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant:-

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense, which under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

1. When it relates to cause of death; or
2. Is made in course of business; or
3. Against interest of maker; or
4. Gives opinion as to public right or custom, or matters of general interest; or
5. Relates to existence of relationship; or
6. Is made in will or deed relating to family affairs; or
7. In document relating to transaction mentioned in S. 13, clause (a) or
8. Is made by several persons and expresses feelings relevant to matter in question.

Persons who cannot be called as witnesses:

Following are the classes of persons who cannot be called as witness under S. 32 and their statements are allowed to be proved in their absence.

1. Persons who are dead:-

Before admitting evidence under S. 32 the death of the person whose statement is to be proved must strictly be proved. Death is universally considered to be sufficient to satisfy the necessity of the principle. The statements of dead persons are admitted as relevant upon the principle that by the death of the person the better evidence cannot be laid. Where person making a dying declaration survives, his

statement will not be admitted under S. 32. It may be admitted in any other section of the Act.

According to S. 108 of Evidence Act where a person is not heard of for a period of seven years by those who would naturally have heard of him had he been alive, the presumption is that he is dead. But no such presumption can be raised in respect of fugitives from justice.

In order to make the statements made by persons prior to their death, admissible under S. 32 it is necessary that the fact of death of the person must be proved unless the fact of death of the person can be presumed under S. 108 of the Evidence Act.

2. Persons who cannot be found:

A person may be said to have been not found when it is known who he was but in spite of reasonable search he could not be found. In this case there must be proof of a diligent search for that person and it must be proved to the satisfaction of the Court that all efforts have been made to locate the witness and the efforts failed.

3. Persons who have become incapable of giving evidence:

Attendance of the persons can be waived and their statements can be allowed to be proved on the ground of medical evidence that they have become incapable of giving evidence due to mental derailment or serious illness.

However, temporary illness or mere confinement without illness have been held to be not amounting to incapacity where the fact of incapacity is questioned it has to be proved with the help of medical opinion.

Where a person has become mentally deranged, any statement made by him prior to his mental disease relevant to the matter in issue, can be proved without calling such person.

4. Persons whose attendance cannot be procured without an amount of delay or expense:

Attendance of witnesses can be dispensed with and their statements can be allowed to be proved in their absence by showing that their attendance cannot be

procured without an amount of delay or expense which under the circumstances of the case appear to the Court unreasonable.

For example, where a witness in foreign country and the Court is of the opinion that the delay and expense involving in calling such witness are unreasonable, it may dispense with the attendance of such witness and allow his statement to be proved in his absence taking the circumstances of the case into consideration.

DYING DECLARATION

WHAT IS DYING DECLARATION?Section 32(1)

A dying declaration is a declaration or statement written or verbal made by a person as to the cause of his/her death, or as to any of the circumstances of that transaction which resulted in his/her death.

It is a statement, which must have been made by the deceased before his death.

Dying declaration are statements made by a dying person as to the injuries which culminated in his death or the circumstances under which the injuries were inflicted.

For example:-

If A assaulted by B and A dies. A shortly before his death makes a declaration holding B responsible for the injuries inflicted on him with spear. This statement of A is admissible as it relates to the cause of his death as a dying declaration at the trial against B.

Statements made by a deceased long period to the occurrences resulting in death are not dying declarations and not admissible under the S. 32(1) of the Evidence Act.

Section 32 makes admissible, the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death or deals with circumstances leading to death.

Law Relating to Dying Declaration:-

S. 32(1):-

When it relates to cause of death:-

“When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question”.

Illustration: - (a)to the section 32 of the Act states:

“The question is whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished B. the question is, whether she was ravished by B; or

the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts”

Essentials or Conditions for the relevancy and admissibility of dying declaration:-

1. The declarant must have died:--

The first condition is that the person who made the declaration must be dead. If the person making a dying declaration chances to live, his statement is inadmissible as a dying declaration under S. 32(1), but it might be relied on under the provision of S. 157, to corroborate his testimony when examined and also under S. 155 for the purpose of contradiction or can be used as an admission under S. 23 of the Evidence Act, or is relevant and admissible as res gestae under S. 6 of the Evidence Act.

Where the police recorded a statement of the victim while he was being treated in the hospital and that statement was treated as an FIR and later the declarant survived, and then such statement could not be a dying declaration under S. 32(1) and could be used only to corroborate or contradict the declarant's testimony in Court. If the declarant dies, then that statement would become substantive evidence under S. 32(1).

2. The dying declaration must be a statement: Written or verbal:-

The word 'statement' means that which is stated. It may be in written or oral form.

The dying declaration is not a statement which requires to be in writing. Oral evidence would prove the declaration 'verbal' means by words. It is not necessary that the words should be spoken, but also includes gestures, signs etc. such as a nod or a shake of the head made by a dying man, unable to speak, in answer to questions put to him.

The questions put to the injured person who is unable to speak and the signs made by him in reply taken together amount to “verbal statements” within the meaning of this section.⁵

3. Injuries are the cause of his death:-

Before the statement of a person as to cause of his death may be used as dying declaration it must be proved that his death was caused by the injury he received in the incident for which accused is being prosecuted. If a person dies not on account of injuries which are inflicted on him but on account of some other reasons or ailment the dying declaration would not be admissible.

In Chandra Bhan Singh vs. State⁶

The deceased Shaitan Singh himself lodged report in which he narrated the story of incident. After the medical examination the deceased developed tetanous and died of it. Hence it was held that the statement of deceased could not be used as dying declaration.

In Moti Singh vs. State of UP⁷

Gaya Charan received gunshot injuries. He was admitted into a hospital. His declaration was recorded. He went out of the hospital and afterwards died. It was not proved that he died of the injuries received at the incident. His evidence did not amount to be a dying declaration and was excluded.

4. Circumstances of the transaction which resulted in his death:-

The words ‘resulted in his death’ to not mean ‘cause his death’. The expression “any of the circumstances of the transaction which resulted in his death” are wide enough to include the motive of the alleged Crime. When motive was tried to be inferred by the prosecution from the statement made by the deceased, if it was held, in

Public Prosecutor vs. Munigan⁸

⁵Sudama vs. King-Emperor, (1949) Nag 301.

⁶[1971] Cr. LJ. 94.

⁷AIR 1964 SC 900.

⁸ AIR 1941 Mad. 359.

That such statement was not admissible, since general expressions including suspicion or fear, not directly related to the cause of death, are not admissible.

Pakala Narayana Swami vs. Empror⁹

“The wife of the accused was indebted to the deceased in the sum of Rs. 3,000/- which she had borrowed at 18% interest from the deceased on account of their needs about a year before the tragedy. A number of letters signed by the accused’s wife and which were discovered from the deceased’s house clearly proved this fact. On 20th March, 1937, the deceased whose name was K.N. received a letter, which was not signed by anybody but which, it was reasonably clear had come from the accused’s wife, invited him to come that day or next day to Berhampur. K.N.’s widow told the court that on that day her husband showed her a letter and said that he was going to Berhampur as the Swami’s wife had written to him inviting him to come to receive payment of his dues. K.N. and the wife of the accused were known to each other as she was the daughter of an officer in whose office K.N. was employed as a peon. K.N. left his house the next day in time to catch the train to “Berhampur. On Tuesday, 23rd March, his body, cut into seven pieces, was found in a steel trunk in a third class compartment of a train at Puri, where the trunk had been left unclaimed.”

The accused was convicted of murder and sentenced to death. The evidence against him was, firstly, his indebtedness to the deceased, secondly, the statement of the deceased to his wife that he was going to the accused, thirdly, the steel trunk was purchased by a *Dhobie*(washerman) for and on behalf of the accused. Some other details about the arrival of the deceased at the accused’s house, discovery of blood-stained clothes and transportation of the trunk at the station were also proved. The accused appealed to the Privy Council on the grounds that the statement of the deceased to his wife that he was going to the accused was wrongly admitted under S. 32(1) and that the statement of the accused to the police that the deceased arrived at his place was admitted in violation of S. 162, the Cr.P.C. referring to the first argument.

LORD ATKIN said, “A variety of questions has been mooted in the Indian “Courts as to the effect of this section (S. 32(1)). It has been suggested that the

⁹AIR.1939 P.C. 47.

statement making it must be at any rate near death, that the “circumstances” can only include acts done when and where the death was caused.

Their Lordships are of opinion that the natural meaning of the words used do not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction; general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person or that he had been invited by such person to meet him, would each to them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused.

“Circumstances of the transaction” is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in “circumstantial evidence”, which includes evidence of all relevant facts. It is on the other hand narrower than “res gestae” circumstances must have proximate relations to the actual occurrence.”

Applying these to the facts of the case their Lordships pointed out that the transaction in the case was one in which the deceased was murdered on 21st March and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on 20th March that he was setting out to the place where the accused was living, appeared clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. Thus the statement was rightly admitted.

The SC. has emphasized the need for effort by courts, as far as possible, to include a statement within the scope of S. 32(1).

Hence, statements as to any of the circumstances of the transaction which resulted in the death would be included. But not where the statement has no such relationship.

In a case before the SC. there was a telephonic conversation between the deceased and one of the witnesses. It did not relate to the cause of his death or to any of the circumstances of the transaction which resulted in his death. The court said that the statement did not come within the purview of S. 32(1)

The deceased stated in his letter that in the event of his death, the accused (appellant) should be held responsible as he intended to kill him. The court said that it was only an apprehension expressed by the deceased. It did not refer to any circumstances of a transaction which resulted in his death. The evidence was not admissible as a dying declaration.¹⁰

The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed.

The circumstances must be the circumstances of the transaction; general expressions indicating fear or suspicion, whether of a particular individual or otherwise and not directly related to the occasion of the death, will not be admissible.

The expression means only such facts or series of facts which have direct or organic relation to the death. The circumstances must have some proximate relation to the actual occurrence. Any statement made by the deceased long before the incident of murder will not be admissible. There need not necessarily be a direct nexus between 'circumstances' and 'death'.

It is enough if the words spoken by the deceased refer to any circumstance which has connection with any of the transactions which ended up in the victim's death.

The words 'statements as to any of the circumstances' are by themselves capable of expanding the width and contours of the scope of admissibility. When the word 'Circumstances' is linked to transaction which resulted in his death', the subsection casts the net in a very wide dimension anything which has a nexus with his death, proximate or distant, direct or indirect can also fall within the purview of this section.

¹⁰BabubhaiBhimahaiBokharia vs. State of Gujarat, (2014) 5 SCC. 568.

Evidence cannot be given of circumstances unless they are proximately connected, i.e., closely connected with the actual occurrence of the event.

The words “as any of the circumstances of the transactions which resulted in his death” appearing in section 32 must have some proximate relations to the actual occurrence and in other word it means that the statement must be sufficiently or closely connected with the actual transaction.

The problem of proximity was for the first time raised before the SC. In **Sharad vs. Maharashtra**¹¹

It has been held that the test of proximity cannot be literally issued and practically reduced to a cut and dried formula of universal application. Distance of time would depend on or vary with the circumstances of each case.

For example, where death is a logical consequence of a continuous drama long in process and in a way a finale the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would above to be read as an organic whole and not torn from the context.

Where death takes place within a short time of the marriage or the distance of time is not spread over more than three to four months, the statement may be admissible.

The SC. Has, further, held that there were two possibilities namely it may be a cause of suicide or murder and the expression ‘Cause of death’ applies to both.

Sometimes letters written even 5 years prior to the event are admissible under section 32(1).

In Ranjith Singh vs. State of Punjab¹²

It has been held that the letters written even 5 years prior to the event are admissible under S. 32(1) as dying declaration because they alleged of the circumstances that brought about his death.

¹¹AIR 1984 SC 1622.

¹²AIR 1952 HP 81.

In Sudhakar vs. State of Maharashtra¹³

It has been held that where the statement of the prosecutrix was recorded by the police 11 days after she was raped and she committed suicide after more than five and half months, her statement, not being in the circumstances which resulted in her death, could not be related as a dying declaration.

In Gkulchandra vs. State¹⁴

One Swarnalata was maltreated by the family members of her father-in-law and mother-in-law. Being sick of their treatment she committed suicide by being run down by a train. The in-laws were prosecuted for abetting Swarnalata to commit suicide and the letters written by Swarnalata were produced as circumstances relating to her death as dying declaration. But the Court held that these letters are not proximate by connected with the occurrence and therefore they are not admissible under S. 32(1).

5. The Cause of the death of the declarant must be in question:-

A dying declaration would be relevant in any proceedings, Civil or Criminal, where the cause of death comes into question. Wherever the cause of the person's death is a point at issue, the statement will be admissible.

The statement as to the cause of death or as to any circumstances of the transaction which resulted in his death is relevant.

The nature of the proceeding in which the cause of his death comes into question need not necessarily be a charge of murder or homicide. It may be a charge of a different nature or it may be a civil action. The only material point is that the cause of deceased's death must come into question irrespective of the nature of the proceeding in which it comes into question. The mere facts that the charge of murder failed would not make the statement inadmissible.

¹³AIR 2000 SC 2602.

¹⁴ AIR 1950 Cal. 306.

In order that a dying declaration may be admissible in evidence it is necessary that the cause of the death of the person making the dying declaration must be in issue, but not the cause of the death of some other person.

In Ratan Goud vs. State of Bihar¹⁵

It has been held that the statement of the deceased did not relate to the cause of her death or any of the circumstances related to her death; on the contrary the statements related to the death of her sister and they were not admissible under S. 32(1) of the Evidence Act.

However, in

Kashinath vs. State of Maharashtra¹⁶

It has been held that in certain circumstances about death of another is relevant.

6. The declaration must be complete:-

A dying declaration must be complete, from the point of view of the declarant. If he had said all that he wanted to say it would be relevant. But it happens that after making some statements he is about to state something more when he becomes unconscious and dies, the statement would be incomplete dying declaration and therefore will not be relevant.

In Cyril Waugh vs. King¹⁷

It was held that that dying declaration was inadmissible because on its face it was incomplete and no one could tell what the deceased was about to add. But however the incomplete dying declaration unmistakably points out the guilt of the accused then there is no harm on relying on such incomplete declaration.

In Abdul Sattar vs. State of Mysore¹⁸

¹⁵ AIR 1959 SC 18.

¹⁶ 1984 Cr.LJ 1447.

¹⁷ 1950 ALJ 412 (PC).

¹⁸ AIR 1956 SC 168.

It has been held that if the statement though incomplete in the sense that the declarant could not state all what he wanted to state, yet whatever he stated is complete in respect of a certain fact the statement would not be excluded on the ground if it's being incomplete.

In Muniappan vs. State of Madras¹⁹

It has been held that the incomplete dying declaration is admissible because it unmistakably points out the guilt of the accused.

7. Declaration be taken as a whole:-

Though there is a controversy on this point, in some cases it has been held that it must be taken as a whole.

In Tafiz Parmanik vs. Emperor,²⁰

It has been held that if a statement is admissible, it must either go in a whole or not at all.

In re Maneem Edukondalu²¹

It has been held that parts of the statements made here and there cannot be divested from there context for the purpose of propping up the prosecution Case.

However, in Lala Ram vs. State,²²

It has been held that if a portion of a dying declaration is untrue the rest of it cannot be necessarily rejected and if part of it is shown to be false, the court may declare to believe the rest without corroboration.

8. Declaration should be precise:-

Dying declaration should be short, concise and to the point. Detailed statement covering the minutest details could not be expected from the declarant who is under

¹⁹ AIR 1962 SC 1252.

²⁰ AIR 1930 Cal. 229.

²¹ AIR 1957 AP 729.

²² AIR 1953 MB 249.

a severe stress and agony. The mere fact that the dying declaration did not contain the detailed version of the occurrence was no ground to disbelieve it.

9. The declarant must be competent:-

The person who is making a dying declaration must be competent. Even a dying declaration made by an infant is admissible but the competency of the minor has to be determined in terms of section 118²³ of the Evidence Act.

10. The declarant must be in a fit condition:-

Before a dying declaration is sought to be proved under S. 32(1), it must be shown that the declarant was in a fit state of mind to make the dying declaration, that the declarant was conscious of the surroundings and of the person who attacked him.

Multiple dying declarations:-

In Nallam Veera Satyanandam vs. Public Prosecutor, High Court of AP²⁴

In the case of multiple dying declarations, each dying declaration had to be considered independently on its merit as to its evidentiary value. One cannot be rejected because of the contents of the other.

Where there are more than one dying declaration, it is the duty of the Court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

If there are two dying declarations giving two different versions, a serious doubt arises about truthfulness of the declarations.

The victim woman stated in her first statement that she caught fire accidentally, but in her second statement she accused her mother-in-law of throwing a burning kerosene lamp on her. She received 57% burn injuries and died. She changed her statement when her parents came in and she mustered courage to record

²³ S. 118 -Who may testify.

All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answer to those questions, by tender years, extreme old age, disease, whether of body and mind, or any other cause of the same kind.

²⁴ AIR 2004 SC 1708.

the truth. There was history of torture by in-laws. In these circumstances the court held the second version to be reliable.²⁵

Reasons (or Justification) for the admissibility and validity of dying declaration:-

The reasons for so accepting a dying declaration may best be stated in the words of poets.

Matthew Arnold says in Soharab and Rustum:

“Truth sits upon the lips of dying men”

This is cited in Babulal vs. Sate of MP.,²⁶

And Shakespeare, in Richard II, says:

“Where words are scarce they are seldom spent in vain,

They breach the truth that breathe their words in pain”

The admissibility of dying declaration is based on the maxim “**Nemo mortiturus praesumitur mentire**” which means “**No one at the point of death is presumed to lie**”. Or “**a man will not meet his creator or maker with a lie in his mouth.**”

The presumption is that when a person is conscious of his impending death, when he is confident of his fast dissolution or when he has resigned from the hope of survival, then in such cases he would not lie because a man will not meet his maker with a lie in his mouth.

In Ram Mani Yadav vs. State of UP,²⁷

It has been held that a dying declaration made by the victim in a fit mental condition and on the verge of death has a special sanctity; at the solemn moment, a person is most unlikely to make an untrue statement, the shadow of impending death

²⁵ Sayarabano vs State of Maharashtra, (2007) 12 SCC. 562.

²⁶ AIR 2004 SC 846 Para 7)

²⁷ 2003, CrLJ 4131.

is itself the guarantee of the truth of his declaration as to the causes or circumstances leading to his death; a dying declaration is almost sacrosanct.

In R. vs. Woodcack²⁸

It has been decided that dying declarations are statements made in extremity when the person is at the point of death; when every motive for falsehood is silenced and when every hope of this world is gone and when his mind is induced by the most powerful spiritual considerations to speak the truth.

The dead person cannot come and be a witness. The reasons for admitting the evidence of dying declaration are (a) that it is the best evidence available, and (b) the occasion is solemn, and the dying man has to face his Maker without any motive for telling a lie.

In Radhakrishna vs. State of Karnataka²⁹

The dying declarations are admitted mainly of its necessity as the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the end of justice. Secondly they are the declarations made by a person with the sense of impending death, which creates a sanction equal to the obligation of an oath.

In Najjani Faragai vs. State of West Bengal³⁰

It has been stated that although it is pointed out that when a person is expecting his death to take place he would not be indulging in falsehood, but that does not mean that such a statement loses its value if the person died long after the making of dying declaration.

Experience shows that very often the dying man takes that last opportunity to implicate all his enemies and thus wreak a sweet vengeance on them. Hence, the dying declaration should be admitted with utmost care when accepting as evidence.

²⁸ 1789, 1 Leach 500. 168 E.R. 352.

²⁹ AIR 2003 SC 2859 (para 11)

³⁰ AIR 1998 SC 682.

The judicial Standards for appreciation of Evidentiary or Probate Value of Dying Declaration:-

Importance of Dying Declaration:-

The probative value of dying declaration as an evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case.

A dying declaration made by a person who is dead as to cause of his death or as to any of the circumstances of the transaction which resulted in his death, in case in which cause of his death comes in question, is relevant under S. 32 of the Evidence Act and is also admissible in evidence.

Though dying declaration is indirect evidence being specie of hearsay, yet is an exception to the rule against admissibility of hearsay evidence.

Indeed, it is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused.

There are different opinions on the evidentiary value of dying declaration. One opinion is that a dying declaration is not a weak type of evidence.

Another opinion is that a dying declaration is a weak type of evidence and it must be corroborated by other evidence.

Principles governing dying declarations:-

The Courts have laid down in several judgments the principles governing dying declaration, which can be summed up as under:

- i. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.
- ii. If the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it, without corroboration.

- iii. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.
- iv. Where dying declaration is suspicious it should not be acted upon without corroborative evidence.
- v. Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.
- vi. A dying declaration which suffers from infirmity cannot form the basis of conviction.
- vii. Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.
- viii. Equally, merely because it is a brief statement it is not to be discarded. On the shortness of the statement itself guarantees truth.
- ix. Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.
- x. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

Some other recent decisions needing notice are:

Surinder Kumar vs. State of Haryana³¹

This was also a case of bride burning and deceased has suffered 70% burs. Dying declaration of the deceased was challenged on the basis of the evidence of doctor admitting the deceased in the hospital and recorded that the deceased had suffered burn injuries while cooking. The evidence was held not sufficient to discredit dying declaration.

In surajmal vs. State of Punjab,³²

The Medical Officer had during cross-examination stated that he was not sure if the prosecution version of the incident was correct and hence he did not attest the statement. This statement was used to submit that dying declaration was unreliable. The Court rejected the submission and held that the sporadic admission of Medical Officer could not in any way affect the veracity of the statement in dying declaration.

In Gangotrisingh vs. State of UP.³³

The challenge to an otherwise proper dying declaration was made on the basis of statement of Medical Officer that the patient had told him that some unknown person had shot at him. Since the Court found that the dying declaration was recorded by an Executive Magistrate and there was no evidence of tutoring, the same could not be rejected only because of the aforesaid state of Medical Officer.

It may, therefore, be taken to be well established that though the Court would subject the dying declaration to a close scrutiny to ascertain whether it was honest and truly the statement was made by the deceased, it would not reject the same on extraneous consideration such as admissions made by Medical Officer during cross-

³¹ AIR 992 SC 2037.

³² AIR 1992 SC 559.

³³ AIR 1992 SC 948.

examination or the like. Indeed once the Court holds that the dying declaration contains the statement of the deceased as to the cause of death and if the same was recorded before anyone had the opportunity to tutor the deceased, the same will be accepted and relied upon.