

Exclusion of Hearsay Evidence

- **Section 60: Oral Evidence Must be direct**
- “must”, “in all cases whatever”, be direct
- Specific instances
- Proviso 1: expert opinions expressed in treatises – production of such treatises/books etc – if author is dead, can’t be found, become incapable of giving evidence, or unreasonable delay and expense involved
- Proviso 2: any material thing other than a document is involved, the Court may require the production of such material thing for its inspection



- The exclusion of hearsay evidence is one of the most cardinal principles in the law of evidence
- It revolves around the trustworthiness and the reliability of a witness, and the simple presumption is that a person who has not perceived or heard a fact themselves directly cannot be relied upon. Even an effective cross-examination cannot be done of a person who simply says they heard someone else say something.
- Cardinal as the rule of exclusion of hearsay evidence/the rule of 'oral evidence must be direct' is, it is not absolute. It admits to the following exceptions:
 - Res gestae – Sections 6, 7, and 8
 - Dying declaration – Section 32(1)

E.g.: A tells C that he was stabbed by B and A dies later. C did not see the event but comes to the court and deposes that A told him that he was stabbed by B.

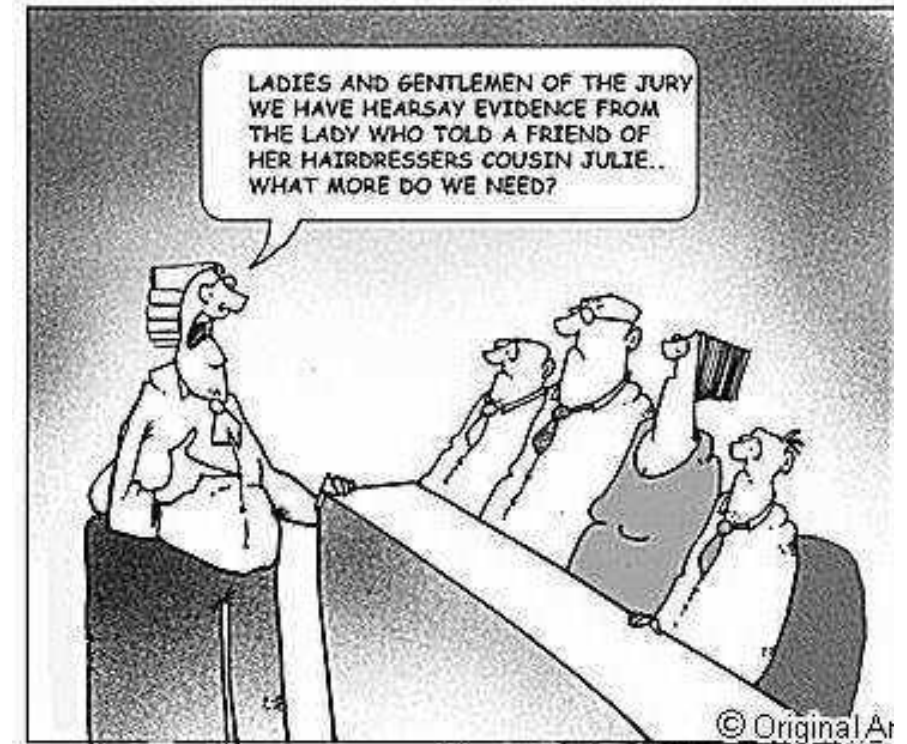


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- Admissions and confessions – Section 17 to 30

E.g.: A tells C that he killed B, and C appears as a PW and deposes to the fact that A told him that he killed B. This confession can be proved as it is a self-incriminating/self-harming confession

- Statements of persons who are dead or are missing or cannot be brought to the court otherwise than on account of unreasonable delay and expense – Section 32 (2) to (8)
- Evidence in previous judicial proceedings / prior testimonial evidence under S. 33.
- Statements or entries made in the books of accounts – Section 34
- Opinions of third persons who are experts – Section 45 to 51
(opinion is relevant, may not go into the grounds/documents it is based upon – use of poison; unsoundness of mind ;
forgery/handwriting etc.)



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Section 6: Relevancy of facts forming part of the same transaction

- Facts though not in issue
 - but so connected with the facts in issue
 - as to form part of the same transaction
 - are relevant
 - whether they occurred at the same time or place, or at different times or places
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- “the same transaction”: Section 6 relates to cases where the fact in issue has taken place but there are some other facts surrounding the fact in issue, spontaneously preceding or succeeding the fact in issue. They arise contemporaneously with the facts in issue. The fact in issue and other facts are naturally connected. The spontaneity is an important requirement as it ensures there can be no fabrication, and the facts preceding and succeeding the fact in issue naturally followed.
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- Both civil and criminal cases (civil – libel eg – illustration c)
 - Exclamations of hurt, disbelief, caution etc
 - R v Beddingfield – overruled in Andrews
 - **Ratten v R**, [1971] 3 All ER 801: the victim (wife) had called the police for help but before operator could connect her to the police, her call was disconnected. Later the police found her dead body from her house from where the call was made, and the time of death and the time of phone call was almost the same. The call made to the police came under the purview of section 6 and thereby defeated the accused husband’s defence that he accidentally fired at his wife.

Sukhar v State of U.P. (1999) 9 SCC 507

- One Nakkal was travelling on the road and was attacked by the appellant Sukhar (both had a history of conflict over cultivating a land) by firing a pistol shot at his back. N got injured and shouted for help; the appellant made his escape; and two witnesses rushed to Nakkal. He then narrated to them what had happened.
- Held, the injured's statement to the witnesses would be admissible under Section 6 of the Evidence Act as a relevant fact.
- The court reiterated the importance of the statement being “almost contemporaneous” with the act to qualify as being part of the same transaction.

Gentela Vijayavardhan Rao and another v State of Andhra Pradesh, (1996) 6 SCC 241

- Facts: The two appellants were tried and convicted for setting on fire a bus in which 23 passengers were killed, besides a number of other passengers sustaining serious burns. They were motivated by lust for wealth by robbing the passengers. A handful of the passengers wriggled out of the blazing vehicle, and one of them (Baburao) was chased by the first appellant and was caught. His trousers contained some cash in the pocket which was forcibly grabbed. During the same time the second appellant chased another passenger and robbed him of his wrist-watch and cash. Some of the victims who sustained burn injuries made statements regarding the occurrence of the acts of incendiarism. At the time of making the statements they were under the fear of death but ultimately survived.
- Hence, this was not dying declaration, but could this statement have been res gestae?

Held:

- “The principle of law embodied in section 6 of the Evidence Act is usually known as the rule of res gestae recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue “as to form part of the same transaction” becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of res gestae”
- “In the present case there was some appreciable interval between the acts of incendiarism indulged in by the miscreants and the Judicial Magistrate recording statements of the victims. That interval, therefore, blocks the statements from acquiring legitimacy under Section 6 of the Evidence Act.”
- So, not a dying declaration, and also not admissible under section 6. Does it mean not admissible at all? Can still be used to later corroborate testimony in court (157 IEA).
- The trial court had awarded the death penalty, and the High Court had confirmed the same. The Supreme Court upheld the sentence, as well.

The Court also observed regarding res gestae:

- “Section 6 and some of the succeeding sections embody the rule of admission of evidence relating to what is commonly known as res gestae. They are in the nature of exception to “hearsay” rule. Section 6 permits proof of collateral statements which are so connected with the facts in issue as to form part of the same transaction. Whether the statement made by a witness was a part of the same transaction or not is to be considered in the light of the circumstances of each case. The principle is that it should be so intimately connected with the fact in issue as to be a spontaneous utterance inspired by the excitement of the occasion or a spontaneous reaction thereof, there being no opportunity for deliberately fabricating the statement. In other words, the statement which is a part of res gestae does not narrate a past event, but it is the event itself speaking through a person thus excluding the possibility of any design behind it”

***Kapoor Singh Rana v State of Delhi*, 2005 SCC OnLine Del 1199**

- Facts: the appellant had along with another person came to the victim's house at around 9:30 a.m. when her father was away to his duty and her mother had gone to get her younger brother admitted to school. She was present at the house with her younger sister of only 4 years. The appellant was known to her and the members of the family as he had an office of security guards where she had been working as a telephone operator. Even though the office had been closed and she had not been going there for about a month, the appellant had been visiting her nonetheless. He asked her to come to his house on the pretext that she had been called by his wife. She refused and instead offered to come with her mother upon her return. On this, the appellant went to the toilet and in a glass brought something which looked like water and threw the same on her face which caused her severe burns.
- She screamed on account of the burns. The two men left the house closing the main door from the outside. The neighbours came to her rescue and poured water on her. In the meantime the mother arrived, spotting the two men leaving the house in a perplexed state. In her statement to the police the mother stated that she saw the two men exiting the house. As she entered, she found her daughter crying and asked her what had happened, upon which she had told her that it was Kapoor Singh Rana (the appellant) who had poured acid on her face and she had become blind. The daughter had, unfortunately, passed away before the commencement of the trial.
- Held, the testimony of the mother in respect of what the victim told her immediately on her arrival at the spot can read as evidence under the doctrine of res gestae

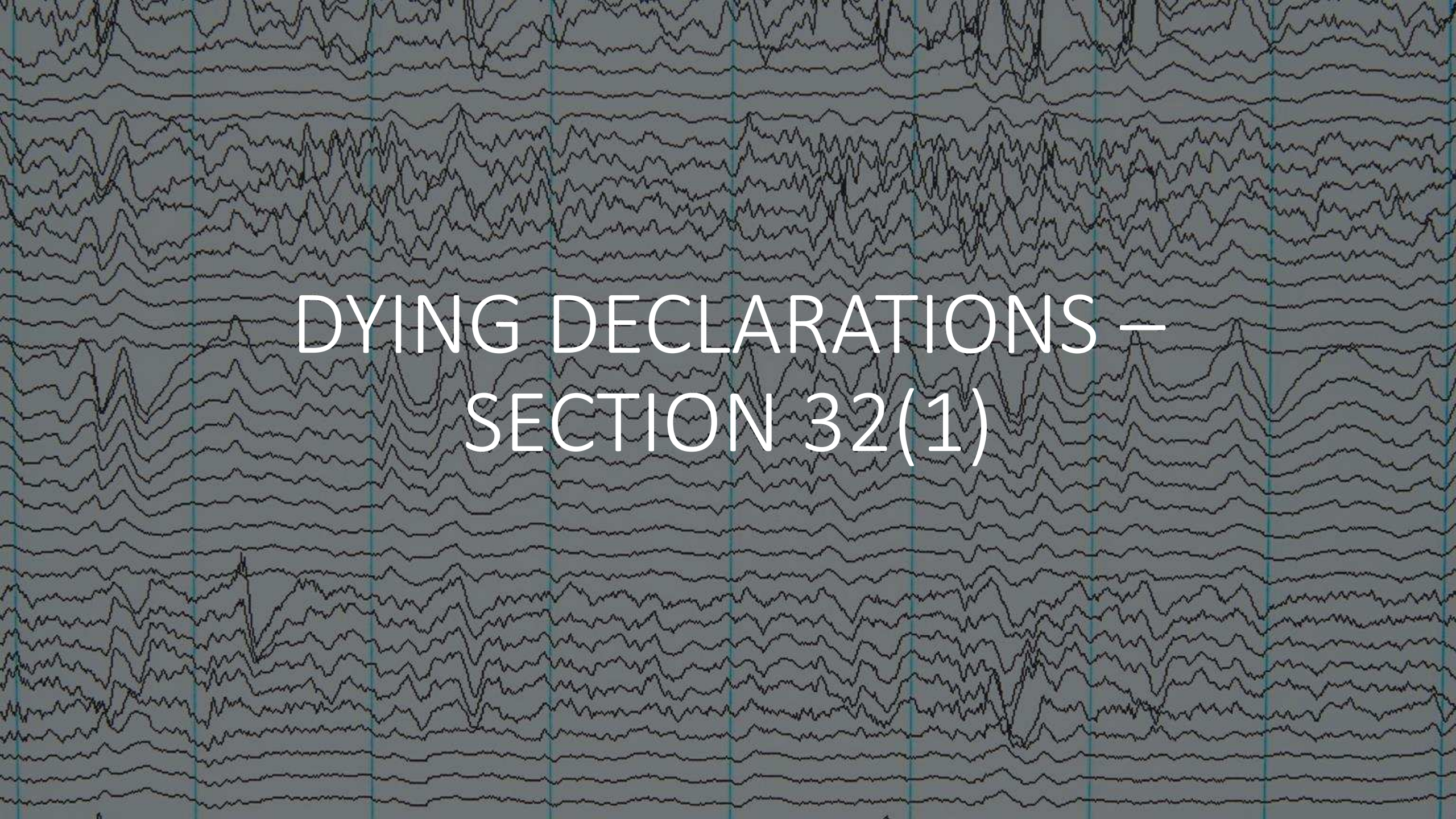
Section 7: Facts which are the occasion, cause or effect of facts in issue

- occasion, cause, or effect
- immediate or otherwise
- of relevant facts or FII
- or which constitute the state of things under which they happened
- or which afforded an opportunity for the occurrence
- are relevant

Illustration (a) – occasion – also hearsay (but an exception)

illustration (b) – effect

illustration (c) – occasion/opportunity



DYING DECLARATIONS – SECTION 32(1)

Section 32: Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

- ***General conditions in Para 1, followed by specific cases under these conditions from sub-sections (1) to (8)***
- ***General conditions:***
 - 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 cases described under sub-sections (1) to (8)

Now, sub-section deals with a statement made under above conditions ***“when it relates to cause of death”***, and provides that:

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

- The general conditions of Section 32 IEA incorporate the ***doctrine of necessity***. The person who died was the best placed to state the actual cause of their death, but since they are dead, it is out of necessity that their past statement is declared relevant and admissible in a suit or a proceeding, according to section 32(1) IEA
 - Exception to the rule against hearsay evidence.
 - ***Nemo moriturus praesumitur mentire*** – In England the rule is that a person dying would not die with a lie in their lips. Their last spoken words, therefore, are presumed to be genuine. A person apprehending death would not lie – is the common understanding behind this maxim. It is for this reason that a dying declaration is relevant and admissible under English law.
 - However, in India, it is not essential to prove the actual apprehension of death at the time of making the declaration, as section 32(1) expressly declares that the statement will amount to a dying declaration irrespective of such apprehension.
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Pakala Narayana Swami v King-Emperor, 1939 SCC OnLine PC 1 [Lord Atkin, Lord Thankerton, Lord Wright, Lord Porter and Sir George Rankin, JJ]

Facts: The accused and his wife were in need of money and the accused's wife borrowed from the deceased man at various times and in relatively small sums an amount of 3,000 Rupees at interest at the rate of 18 p.c. per annum over the course of a year in 1936. About 50 letters and notes proving these transactions signed by the accused's wife were found in the deceased man's house at Pithapur after his death.

On Saturday 20th March 1937, the deceased man received a letter the contents of which were not accurately proved but it was reasonably clear that it invited him to come that day or next day to Berhampur. It was unsigned. The widow of the deceased said that on that day her husband showed her a letter and said that he was going to Behrampur as the appellant's wife had written to him and told him to go and receive payment of his dues. She deposed that on the 21st when he was leaving their house the deceased stated that he was going to the accused's house. This evidence was admitted under Section 32(1) of the Indian Evidence Act.

Held:

- “the statement made by the deceased to his wife that he was setting out to the place where the accused lived was clearly a statement as to some of the circumstances of the transaction which resulted in his death and was hence admissible under S. 32(i) of the Evidence Act. For the admissibility of the statement, it was not necessary that there should be a known transaction other than that the death of the declarant had ultimately been caused, and the statement might have been made before the cause of death had arisen or before the deceased had any reason to anticipate being killed.”
- The court also found that there was ample evidence of the presence of the deceased at the accused’s house – the fact which alone the statement sought to establish.
- The court also noticed that the accused man was found to have been in possession of a trunk in which was the mutilated body of a man recently murdered : a trunk which he purchased a little more than 12 hours before the trunk was placed in the train. “He gave no explanation : and contented himself with a denial that he knew the man, or that the man had visited his house, or that he had seen the trunk. All these statements were untrue. In these circumstances it is impossible to say that the proceedings which ended with a conviction for murder resulted in a failure of justice.”

NB - Any incident of death will occur only as part of a series of incidents which takes place before the actual death. There will always be a particular incident which initiates the chain of events culminating into death. The victim may make a statement about anyone or any of the events or circumstances, even though while making the statement they could be unaware of the final outcome of their death – thereby making the statement when there is no apprehension of death. But, nonetheless, if the statement alluded to was a part of the circumstances leading to death in the future, it would be admissible under section 32(i) of the IEA.

- “The words ‘resulted in death’ do not mean ‘caused his death’. While the phrase ‘cause of his death’ conveys close causal relationship between the injury inflicted on the victim and his death, ‘circumstances of the transaction which resulted in his death’ widen the scope of the enquiry and comprehend a chain of fact situations that might have commenced much before even the injury and led to the culmination in final event” (Nageshwar Rao, p. 465)

Recording of a dying declaration

- A dying declaration can be made by anybody and to anybody. Held in ***Ramesh v State of Haryana (2016)***: It is immaterial to whom the declaration is made. The declaration may be made to a Magistrate, to a Police Officer, a public servant or a private person. It may be made before the doctor; indeed, he would be the best person to opine about the fitness of the dying man. Videography of the dying declaration is only a measure of caution and in case it is not taken care of, the effect of it would not be fatal for the case.
- It was held in ***Surendra Kumar v State of Punjab, (2012) 12 SCC 120*** that it is not mandatory that only a Magistrate should record a DD and it can be recorded by anybody – whether a private person, a Magistrate, or a police officer or a doctor. In ***Natha v State of MP, 2003 (1) Crimes 502***, it was clarified that it is not necessary that a DD should be reduced to writing and the statement can be verbal. Nageshwar Rao opines that “at any rate, the fact that the declaration was oral and not written might affect its reliability but not its relevance”.

The Supreme Court in ***Purshottam Chopra and another v State (Government of NCT of Delhi), (2020) 11 SCC 489*** usefully summed up some of the principles relating to the recording of dying declarations and their admissibility and reliability as under:

1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.
2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.
3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence
4. When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.
5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

5. Although the presence of a Magistrate is not absolutely necessary for recording of a dying declaration, but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.
6. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.
7. If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction in its basis even without corroboration.

Also note the decision in ***Pradeep Biso @ Ranjit Bisoj, (2019) 11 SCC 500, para 16:***

- “The view expressed by the three-judge Bench in *Paparambaka Rosamma v State of AP, (1999) 7 SCC 695* that in the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration, does not lay down a correct law...”

Further note the five-judge Constitution Bench's decision in *Laxman v State of Maharashtra, (2002) 6 SCC 710*:

Facts: In the instant appeal, the conviction of the accused-appellant was based on the dying declaration of the deceased recorded by the Judicial Magistrate. The Magistrate in his evidence had stated that he had put some questions to the victim to find out whether she was able to make the statement; whether she was set on fire; whether she was conscious and able to make the statement and on being satisfied he had recorded the statement of the deceased. There was a certificate of the doctor indicating that the patient was conscious. The appellant contended that since the certificate of the doctor was not to the effect that the patient was in a fit state of mind to make the statement, the dying declaration could not form the sole basis of conviction. A three-judge Bench of the Supreme Court found two earlier three-judge Bench decisions on that point to be somewhat contradictory and referred the question to a five-judge Bench.

Held: “It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he had recorded the dying declaration.”



Other holdings:

1. The court ... has to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant
2. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable.
3. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case.

4. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor, the dying declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful.
 5. ***A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.***
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“whatever may be the nature of the proceeding in which the cause of his death comes into question”

- Under English law, dying declarations are peculiar to criminal law, and homicide in particular. The cause of death must be called in question in criminal cases relating to homicide, i.e. murder/manslaughter only.
- Section 32(1), however, makes a clear departure from English law by providing that the dying declaration would be relevant “whatever may be the nature of the proceeding in which the cause of his death comes into question”.
- Thus, Section 32(1) could be pressed into service in civil as well as in a criminal proceeding provided that the cause of the death came into question in that proceeding.

How can the cause of death come into question in a civil proceeding?

- Take, for instance, Section 25 of the Hindu Succession Act, 1956 which provides: “**25. Murdered disqualified.** – A person who commits murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of murder”.
- Thus, where A murders B, his father, section 25 of the 1956 Act bars the former from benefitting by his own crime and disqualifies him from inheriting the property of his victim. Thus, in a civil suit regarding inheritance of the property of B, his other successors could show that A is disqualified under s. 25, HMA. In proof of murder, the dying declaration of B implicating A as the culprit would be admissible u/s. 32(1).

Verbatim record

- The person recording the dying declaration should try to reproduce the words actually used by the declarant to the extent possible (***Vinayak Dutt v State, AIR 1970 Goa 96; Pritam Singh v State, 1972 AWR 521***). Thus, the actual words of the deceased should be used and not just the substance.
- As observed in ***Najjam Farouqui v State of West Bengal, 1992 CrLJ 2574***, the dying declaration recorded in the language used by the defendant acquires added strength and reliability.
- This, of course, adds strength to the declaration, but doesn't mean that if it is recorded in any other language then it should be discarded on that basis alone.

In Question-Answer Form

- When a magistrate records a dying declaration, it is desirable that it is recorded in a question-and-answer form (***Ravi Chandra v State of Odisha, AIR 1980 SC 1738***). This is intended “to enable the Court to see how much was suggested by the examiner and how much spontaneously produced by the declarant” (Phipson, *On Evidence*, 10th Ed, 1056)

- These questions can be put, and answers elicited, for two purposes: (1) for checking the fitness of the declarant; and (2) for recording the declaration

- For obvious reasons, a declaration not recorded in question-and-answer form even by a Magistrate cannot be rejected because it all depends on urgency of the condition of the particular declarant and on whether the Magistrate had the time to focus on form than on the substance of the declaration.

(Ganpath Mahadeo Mane v State of Maharashtra, AIR 1995 SC 1180)

- However, if the declaration otherwise meets all requirements of section 32(1) and is found to be worthy of credence, it is not to be rejected only on the ground that it was not recorded in the form of questions and answers. ***(Prem Kumar Gulati v State of Haryana, 2014 (87) ACC 885)***. What matters is substance over form.

Multiple Dying Declarations

- Particularly in cases of dowry deaths and dowry suicides, reported cases reveal that the deceased woman would have made two or more declarations to different persons like the doctor, police, Magistrate, and relatives. It is, however, not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution's case (***Amol Singh v State of M.P., (2002) 5 SCC 468***).
- If the declarations are consistent and not contrary, they may be relied upon [***Vithal v State of Maharashtra, 2007 CrLJ 310 (SC)***].
- In some cases, it has been observed, that sometimes the first DD is made spontaneously and truthfully, mentioning the names of certain persons, but the second and subsequent declarations add or omit certain names because of prompting by her relatives. In such cases no specific rule can be laid down that only the first declaration should be considered. Rather, the correct approach would be that courts be careful in looking for corroboration before they proceed to rely upon either of the declarations (***Raju Devade v State of Maharashtra, 29-06-2016, SC***).
- In ***Sharda v State of Rajasthan, AIR 2010 SC 408***, the deceased made three dying declarations, the first to a doctor, second to a Sub-Inspector, and the third to an Executive Magistrate. The first two declarations said that the cause of death was the stove-burst and third said that it was the mother-in-law who poured kerosene and set the deceased ablaze. The Court observed, in regard to the third dying declaration:

- “No doubt, it is true that the same is in question-answer form but perusal of the original record clearly shows that it has many overwritings and some dates have been scored out to put new dates. This itself creates a doubt in mind with regard to correctness and veracity thereof. It is also to be noted that this was recorded on 19-9-1999, whereas the two earlier statements ... were recorded on 16-8-1999 in quick succession, soon after the incident”
- Also, the court noted that the father of the deceased (his daughter) had signed one of the earlier two DDs, and had at that point not raised any objection that it was not the statement given by his daughter/deceased. “When he was confronted with his signatures on it at the time of his cross-examination, he gave an explanation that since many papers were being signed at the time of discharge, he signed it without knowing the contents thereof. Apparently, this appears to be a false and baseless explanation, which at this point of time is certainly not acceptable and would amount to an afterthought. No prudent man would put his signatures on any document without going through the same.”

In ***Nallam Veera Satyanandam and others v Public Prosecutor, High Court of A.P., (2004) 10 SCC 769***, where the trial court had used one dying declaration to reject another dying declaration, the Supreme Court held that “... in the case of multiple dying declarations each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there is 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”