

# [If a dying declaration, but it might be](https://assignbuster.com/if-a-dying-declaration-but-it-might-be/)

If the person making the dying declaration chances to live, his statement is inadmissible as a dying declaration, but it might be relied on under S. 158 to corroborate his testimony when examined. (Emp. v. Rama, (1902) 4 Bom. L. R. 434).

Such a statement can also be used to contradict him under S. 145. Section 60 lays down that oral evidence must be direct. S.

32 and the following section are exceptions to the general rule that hearsay evidence is not admissible. Hearsay evidence is excluded on the ground that it is always desirable, in the interests of justice, to get the person whose statement is relied upon, in the Court for his examination in the regular way, in order that any possible sources of inaccuracy and untrustworthiness can be best brought to light and exposed, if they exist, by the test of cross-examination. The exceptions to the rule of hearsay evidence have been directed by necessity. This rule excluding hearsay evidence is relaxed so far as the statements contained in Ss. 32 and 33 are concerned.

The general ground of admissibility of the evidence referred to in these sections is that no better evidence can be produced. A statement of the deceased would, in its literal and natural sense, mean a statement in the words of the deceased, and whenever it is practicable to record the statement in those words, there can be no valid excuse for not doing so. When the Sub-Inspector or the Magistrate recording the statement does not know the script of the language spoken by the deceased, though he understands and speaks that language, he may record the statement in English, and if it is recorded as the result of the question put to the deceased and the answers given by the deceased, those questions and answers must always be recorded to enable the Courts to understand the full significance of the statement. When the statement is the result of the replies to certain questions, it is not possible to assess fully the value of the replies without knowing what the questions were, since the replies are always given with reference to the questions put. It is, therefore, essential to record the questions in the precise words in which the questions are put, and take down the answers in the actual words in which the answers are given, when the statement is the result of questions put and answers given. (Sherinath Durgaprasad v. State, 59 Bom.

L. R. 221) The Supreme Court had held that if a deceased fails to complete the main sentence (as for instance, the genesis or motive for the crime) a dying declaration would be unreliable. However, if the deceased has narrated the full story, but fails to answer the last formal question as to what more he wanted to say, the declaration can be relied upon.

(Kusa v. State of Orissa, (1980) 2 S. C.

C. 207) In Kusa v. State of Orissa (above), the Supreme Court also laid down that if a dying declaration is believed by the Court, a conviction can be based upon it without any further corroboration. In another case decided by the Supreme Court, the deceased who had made the dying declaration was seriously injured, but was conscious throughout when making the statement.

The Court held that minor incoherence in his statement with regard to facts and circumstances would not be sufficient ground for not relying on his statement, which was otherwise found to be genuine. (State of U. P. v.

Suresh, (1981) 3 S. C. C. 635) It is no objection to the admissibility of a dying declaration that it was made in answer to a leading question or obtained by earnest and pressing solicitation.

Any method of communication between mind and mind may be adopted that will develop the thought, such as a pressure of the hand, a nod of the head or a glance of the eye. Where a woman whose throat had been cut, made, in answer to questions put to her by the Sub-Inspector, certain gestures, from which the latter inferred that she accused her husband of the assault, it was held that the gestures were admissible in evidence, but that the opinion of witnesses as to the meaning of the gestures was not admissible. This is so because the interpretation of the gestures is for the Court alone, and the opinion of the witnesses as to the meaning of such gestures is not evidence. If something in a dying declaration is false, the whole declaration must not necessarily be disregarded.

As a dying declaration is not made on oath and is not the subject of cross-examination, it is a weaker type of evidence than the evidence given by a witness in the witness-box. If a Judge thinks that part of a dying declaration is deliberately false, he should not act upon the other parts without definite corroboration. The Gauhati High Court has held that when the interested witnesses were attending on the deceased when he was making a dying declaration, and because of the injuries, the deceased was neither physically or mentally fit, no reliance could be placed on the dying declaration, in the absence of evidence to show that the deceased was physically and mentally capable of making the dying declaration, and was not the victim of any tutoring. (Gopal Chandra Bardhan v. State, 1980 Cr. C. J.

NOC 30) Grounds for Admitting Dying Declaration: The three main grounds on which dying declarations are admitted are: (1) Death of the declarant; (2) Necessity: The victim being generally the only eye-witness to the crime, the exclusion of his statement would tend to defeat the ends of justice; and (3) The sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which dying declarations are admitted is that they are declarations made in extreme conditions, when the party is at the point of death, and when every hope of this world is gone, when every motive to speak falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. The reason for admitting dying declarations is well-reflected by Shakespeare in Richard II, where he said— “ Where words are scarce, they are seldom spent in vain, They breathe the truth that breathe their words in pain”. The same theory is reflected in Mathew Arnold’s “ Sohrab and Rustom” where he says— “ Truth sits upon the lips of dying men.

” Method of Proving Dying Declaration: Statements relating to dying declarations, whether oral or written, must be duly proved. If the statement is oral, persons who heard the statement should depose what they have heard. In the case of written statements, it must be proved by the evidence of the person who recorded it. If a dying declaration is made to a Magistrate, whether such a statement itself can be admitted as evidence without calling the Magistrate as a witness, has been subjected to a great deal of controversy.

The more accepted view is that Section 80 of the Indian Evidence Act is not applicable to a dying declaration made to a Magistrate. Therefore, the Magistrate must be called to prove it. It was observed, in one Calcutta case, that the writing made by a Magistrate could not be admitted to prove the statement made by the deceased. The statement must have been proved in an ordinary way by a person who heard it made. It was further observed, in another Calcutta case, that the statement is not admissible in evidence when made in the absence of the accused.

The oral statement of the deceased, and not the record of such a statement, must be proved by the person who recorded it or heard it made. But in an Allahabad case, it was held that a dying declaration recorded by a Magistrate can be tendered in evidence without the Magistrate who recorded it, being called, by virtue of Section 80 of the Indian Evidence Act. But this view of the Allahabad High Court has not been generally accepted by other High Courts. Section 32(2) makes a statement of a person who had died relevant, only when that 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. When the person making the statement is not proved to have died as a result of the injuries received in the incident, his statement cannot be said to be the statement as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. (Moti Singh v. State of U. P.

, A. I. R. 1964 S. C.

900) If the statement made by the deceased does not relate to his death, but to the death of another person, it is not relevant. (Ratan Gond v. State of Bihar, A.

I. R. 1959 S. C. 18) It may also be noted that a dying declaration cannot be proved, unless the death of the person, who made the declaration is also proved. (See Section 104) English Law: There are two vital points of distinction between the English and the Indian law on the point of admissibility of dying declarations: (a) Firstly, in England, a dying declaration is relevant only in criminal cases where the cause of death is in question.

(b) Secondly, under English law, to be relevant, a dying declaration must have been made in the expectation of death. (There is no such requirement under the Indian law.) The Evidentiary Value of Dying Declaration: In Ramnath v. State, (1953 S. C.

420), the Supreme Court has observed that it is a settled law that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration, without further corroboration, because such a statement is not made on oath, and is not subject to cross-examination, and because the maker of such a statement might be mentally and physically in a state of confusion and might well be drawing upon his imagination when he was making the declaration. However, these observations of their Lordships in the above case were held to be in the nature of ‘ obiter dicta’ in Khusal Rao v. State of Bombay, (A. I. R. 1958S. C.

22), and the following principles were laid down: (1) It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction, unless it is corroborated. (2) Each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made. (3) It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence. (4) A dying declaration stands on the same footing as any other piece of evidence, and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence. (5) A dying declaration which has been recorded by a competent Magistrate, in the proper manner, that is to say, in the form of questions and answers, and as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony, which may suffer from all the infirmities of human memory and human character. (6) In order to test the reliability of a dying declaration, the Court has to keep in view several circumstances, like the opportunity of the dying man for observation, etc.

Hence, in order to pass the reliability test, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused, who had no opportunity of testing the veracity of the statement by cross-examination. But once the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and assailants of the victim, there is no question of further corroboration. If, on the other hand, the Court after examining the dying declaration in all its aspects and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration, it cannot form the basis of a conviction, Thus, the necessity for corroboration arises, not from any inherent weakness of a dying declaration as a piece of evidence, but from the fact that the Court, in a given case, has come to the conclusion that a particular dying declaration was not free from the infirmities referred to above or from other infirmities as may be disclosed in evidence in that case. [This view was reaffirmed by the Supreme Court in Harbans Singh v.

State of Punjab, (A. I. R. 1962 S. C. 439)].

It has also been held, in Pompiah v. State of Mysore, (A. I. R. 1965 S.

C. 939), that if the Court finds that the declaration is not wholly reliable, and that an integrate portion of the deceased’s version of the entire occurrence is untrue, the Court may, having regard to all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration.