

LLB 3years IV Sem  
Paper III Law of Evidence  
Study Material/ Unit II

Admission, Confession and Dying declaration

Note: This Study material has been prepared for the LL.B 3years IV sem students in the circumstances created by the COVID 19. This can be used for the limited circulation of students enrolled in the Faculty of Law University of Lucknow strictly.

Admission: Sec 17 – 23 and sec 31 of the Indian Evidence Act

Confession: Sec 24-30 of the Indian Evidence Act

Dying Declaration: sec 32(1)

### **Admission**

Sec 17 of the Indian Evidence provided “ **an admission is a statement “oral or documentary or contained in electronic form, which suggest an inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, herein after mentioned.”**

A statement made by a person mentioned in the sec 18 of the Evidence Act and in the circumstances mentioned in sec 18- 30 of the evidence act, which suggest an inference about the any fact in issue or relevant fact is an admission. It can be understood as anything a party has ever communicated either in speech, writing or in any other way in reference to the party at the trial is an admission. It is a positive act of acknowledgement of a fact or is a confession. It is not mere inference which is drawn by the any other act such as silence or implied consent. It must be conscious and deliberate act. Thus

Example 1. Omission of answer to the notice by itself cannot be treated as truth of the allegations of the notice. The allegations can be proved only by the conscious and deliberate admission in express terms.

Example 2. A files a suit against B alleging that B is the last male owner's daughter's son and that he(A) is the last male owner's *sapinda*. B files a document in which A admits that B to be the daughter's son of the last male holder. That document is the admission made by the A.

### **Essentials of an Admission**

- I. It must be a statement oral written or electronic documents
- II. It must suggest an inference about fact in issue and relevant fact
- III. It must be made by the following persons

- i. **Party to the proceeding(sec 18)**

Party here means not only those who appear as party in the proceedings but also those who did not appear on record as party but are interested in the subject matter of the suit. But does not includes those who are appear as 'party' but has no

interest in the subject matter of the suit. For example statement of the guardian is not admission in a suit filed by such guardian for a minor.

**ii. Agent authorized by such party(sec 18)**

Statement made by an agent (expressly or impliedly authorized by the principle as his representative) is admissible against their principles if made during the existence of the agency. Point to be noted here that in an admission of an agent in the criminal cases is not admissible except in case of sec 30 where both the agent and the principle are jointly tried for the same offence.

Admission made by pleaders, attorneys and counsels on the matter of fact, not on the matter on law is binding to the client.

**iii. Party's representatives i.e. party suing or sued in a representative character making an admission(sec 18)**

Statement made by the trustee, executor, administrator or the like are admissible in this clause as admissions of the representatives in the particular capacities. If the statements made before or after the incumbency it is not admissible.

**iv. Persons who have proprietary or pecuniary interest in the subject matter of the proceedings(sec 18)**

Where a joint interest is exist, admission of the one is the admission of the other, if it is made during the continuance of such interest.

**v. Persons from whom parties to the suit has derived any interest in the subject matter of the suit(sec 18)**

Statement of one person is binding upon the other only when later derives his title through the former. For example, A is an owner of the house and possession of it. He makes an statement that he has mortgaged the house to B for rupees 1000/-. Afterwards A sells the house to C. B files a suit to recover the rs 1000/- from the sale of the house. C, contended that house was never hypothecated to B. Here B can prove the statement of A as admission against C, because C derive his interest from the A and such statement was made against his own interest.

Example 2. In case where A admits in judicial proceeding that his deceased brother widow adopted a son C and he(C) is entitled to the property left by his brother. After the death of the widow of the deceased brother A's son filed a suit for a declaration that his uncle died no son and that he is the reversioner. At the trial C tried to prove the admission of the A. but admission of A is not binding because A's son is claiming their own right not through their father(Gopal singh v Hukum Singh AIR 1959 all 644)

**vi. Statement made by the strangers sec (19 and 20) an exception to the general rule of sec 18 that admission can be made by the parties to the suits or their representatives)**

**Persons whose position and liability it is necessary to prove as against any party to the suit(sec 19)**

The statement of the third party is admissible as admission when such statement is relevant as against such person making a statement related to such position or liability in a suit brought by or against them, when such person occupies such position or is subject to such liability.(read illustrations of sec 19)

**For example** where liability of an agent to his Principle depends upon the liability of a third party with in whom the agent's contracted on the Principle's behalf. Any statement by the third party about his position is an admission against the parties. Person to whom a party to the suit has expressly referred for information in reference to the matter in dispute(sec 20)

When a party refers to a third party for some information or some opinion on a matter in dispute the statement of the third person is admissible as an admission against the party referring. For example if A says to B "I will pay Rs 200/- to you if C says I owe it to you" on reference C says " a owes Rs 200 to B". This statement of C is admission against A is admission.

### **When admission is relevant**

#### **I. Against the person who makes it**

**Sec 21** provides that an admission may be used against the person who makes them or his representatives in interest but generally cannot be used by a person who makes it for his own use. As a general rule man is not allowed to give evidence in his own favour. An admission cannot be proved on behalf of the person who make it.

There are three exceptions to this principle

- (i) Statements relevant under sec 32
- (ii) Statements as to existence of state of mind or body
- (iii) Statements relevant otherwise than as admission

#### **II. In case of oral evidence as specified in sec 22**

**Sec 22** provides that oral evidence as to contents of documents is inadmissible(because the contents of the documents has to be proved by the production of the documents only) unless

- (i) Party proposing to give such evidence can make out a case for admission of secondary admission under sec 65(2)
- (ii) Genuineness of a document produced is in question

#### **III. Admission in Civil Cases**

**Sec 23** provides that in civil cases if a person admits the liability upon an express condition that evidence of such admission should not be given or if it is made in such circumstances that the Court can infer that there was some sort of agreement that the admission will not be proved.

**Admission which are made** by the parties without prejudice cannot be proved as admission against them later.

### **Evidentiary value of the admission**

**Sec 31** provides "Admissions are not conclusive proof of the matters admitted but they operate as estopples under the provisions herein contained".

Admissions under Indian Evidence Act 1872 (sec 17-23) are only piece of evidence. They are not conclusive proof of the fact admitted but they operate as estoppel under sec 115-117 of the Indian Evidence Act. Admission are only the prima facie evidence against the party making the statement and shift the burden of proof.

- a. It constitutes only a substantive piece of evidence in the case and for that reason can be relied upon for proving the truth of the facts incorporated therein.
- b. It has the effect of the shifting the onus of proving to the contrary on the party against whom it is produced with the result that it casts an imperative duty on such party to explain it. In the absence of satisfactory explanation it is presumed to be true.
- c. An admission to be a competent and have the value and effect as an evidence must be clear, certain, and definite without any ambiguity, vagueness or concession. *Vathsala Manickchand v N. Ganeshen*(2013)9SCC152(para 22)

Admission is a substantive evidence though they are not conclusive proof of matter. If the admissions are not explained by the person by whom it was made it is very strong piece of evidence against the matter.

In *Mritanjay Seth v Jadunath Basak*(2011)11SCC it was held that an admission made in court of law is a valid and relevant piece of evidence to be used in other legal proceedings.

Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced it is a best possible form of evidence.

In *Ahmed Sahib Sayed Ismail AIR 2012 SC 3320*, it was held that admission of the party in the proceeding either in the pleadings or oral is the best evidence and same does not need further corroboration.

**Distinction between Admission and estoppel**

Admission is a statement written or verbal which gives inferences to the rights and liability of parties' i.e fact in issue while estoppel is rule of evidence and it prevents a person from retreating his earlier representation.

Admissions are not conclusive evidence it can be rebutted by the positive proof, while estoppel is conclusive in nature.

In some circumstances admission of the third person binds the parties to the suit (sec 19 and sec 20 of the Evidence Act) while estoppel operates only against person making representation and his legal representatives.

### **Confession:**

Sec 24-30 of the Indian Evidence Act (substantive law on confession)

Sec 163,164,364,533 of the code of criminal procedure(procedural law on confession)

Sec 24-26 lays down when confessions are not relevant and sec 27-29 provided the limitation of the operation of the principle of sec 24-26.

### **Definition**

Confession is not defined in the Indian Evidence Act, but the term 'confession' mentioned in the sec 24 of the Act. Sec 24 is under the category of the admission. Hence, Confession

is a one of the species of the admission. A definition given by the Stephon is ***“Confession is an admission made anytime by a person charged with a crime stating or suggesting the inference that he committed that crime.***

Thus it can be defined as an statement of an accused is confession if

- a. He states that he has committed a crime he is charged with, or
- b. He states something from which inferences can be drawn that he might have committed the crime.

The first part of definition is clear, when a statement made by the accused is voluntary, direct, unambiguous, not vague, and is like that ‘ I have committed it’. It is confession.

The second part is not simple in the definition. In *Pakala Narayan Swami v King Emperor* (AIR 1939 PC 47), it was held that “no statement that contains self-exculpatory matter can amount to confession if the exculpatory part of the statement is of some fact which if true would negative the offence alleged to be confused.

“An admission of gravely incriminating fact is of not itself a confession i.e an admission that an accused is an owner of and is in recent possession of the knife or revolver which cause the death with no explanation with any others man possession is not confession event though it very strongly suggest that the accused has committed the offence.

Wigmore gives another definition

“A confession is an acknowledgement in express words by the accused in the criminal case of the truth of the guilty fact charged or of some essential part of it. It is to this class of statements only that the present principle of exclusion applies”.

In *Pulvinder Kaur v State of Panjab* AIR 1952 SC 354 it was held that “a confession must either admit in terms the offence or at any rate substantially the facts which constitute offence”.

**For example** in case where A makes a statement that he has killed B. such statement is confession.

In case where A makes a statement that B abused him, and he hold the neck of B and drowned in the tank. Such statement is confession.

In case where A makes a statement he was with B. C came there. B and C were quarreled. He tried to stop C but he stabbed B.

By such statement an inference can be drawn about the implication of A in the murder of B. The statement atleast shown that A was present at the time of the murder of the B. But such statement is not confession because he neither admits the guilt, nor substantially admits facts which constitute the offence.

The statement here means both oral or written or in any other form.

It is not required a statement to be a confession must in form of ‘communication to other’. It may be like ‘uttering to himself’ to other in confidence, uttered something in soliloquy. It may be form of note in writing. All these are not ‘statement’ but if such statement is admission of guilt, it is confession.

Further mere conduct is not confession. An act or conduct to be a confession, must amount to assertion. For example, absconding is not a confession and mere giving specimen of handwriting for comparison of the hand writing is neither a confession nor a statement.

Exculpatory statements are not confession, for example, if an accused makes such statement which excludes him from the liability of committing an offence is not confession.(read the facts of Pakala Narayan Swamy and Pulvinder Singh Case.) In Aghnoo Nagesia v State of Bihar(1966)1SCR 134.it was held that a statement which contains self exculpatory matter cannot amount to a confession if the exculpatory statement is of the same fact which if true would negative the offence alleged to be confessed.

Where statement made by the accused regarding any fact which is partly inculpatory and partly exculpatory the Court is bound to consider the confession as a whole.

## **Types of Confession**

### **Judicial Confessions and Extra Judicial Confessions**

**When a confession is made by the offender before a magistrate or in a Court in the due course of legal proceeding, it is called judicial confession.** When an accused before trial confess the guilt before magistrate, and magistrate records it under sec 164 of the Cr.PC, or he confess guilt at committal of trial before the magistrate, or at the trial, all such confession are judicial confessions. Thus a judicial confession can be understood as voluntary 'plea of guilty' by the accused before the Court, in fit state of mind.

When a confession is made to any other person and elsewhere the court, it is called **extra judicial confession**. It is not required that such confession is addressed to someone, it may be in the form of 'utterance, or prayer, or letter to relative, etc.It may be to any one, known, unknown, intentional, unintentional, oral or documentary.

When an accused repudiated the confession in the trial, which he made before the trial, such confession is called **retracted confession**.

## **Relevancy of a Confession**

### **Confession when Irrelevant (Sec 24-26)**

Following confessions are irrelevant and inadmissible

- I. It is caused by the inducement threat or Promise(sec 24)
- II. It is to the Police Officer(sec 25) read with the provisions of the Sec 27
- III. It is in the custody of the Police Officer(sec 26)

### **Confession caused by the Inducement threat of promise is irrelevant (sec 24)**

*A confession made by an accused person is irrelevant in criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.*

Sec 24 provides that if a confession appears to be caused by the inducement threat or promise it becomes involuntary and is irrelevant as evidence. To apply the sec 24 following conditions must satisfied

- i. The confession made by an accused to a person in authority
- ii. It must appear to the Court that confession has been caused or obtained by reason of any inducement, threat or promise proceeding from a person in authority
- iii. The inducement, threat or promise must have reference to the charge against the accused person
- iv. The inducement, threat or promise must be such that it would appear to the Court that the accused, in making the confession, believed or supposed that he would, by making it, gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

#### **Confession made to Police officers cannot be proved (sec 25)**

Sec 25 provides “**No confession made to a Police officer shall be proved against a person accused of any offence**”.

The purpose of the sec 25 is to prevent the extraction of confession from the accused by the police officers by using malpractice such as force, fear or torture. Confessions made to the Police Officer any time either before or after investigation are inadmissible except so far as provided under sec 27. The person accused of any offence here means ‘against whom evidence is sought to be led in criminal proceeding, whether or not he was so when he made the statement’.

A police officer means a person has power to investigate an offence with a power to initiate a prosecution under the provisions of the Cr.P.C. (power to submit police report under sec 173 of the Cr.P.C). For example Superintendent of Excise is Police officer (See *Abdul Rashid v State of Bihar* AIR 2001SC 2422), while Custom Officer, forest Officer, Chaukidar, Village Mukhia are not Police Officer.

Confession here required to made to Police Officer, When Police officer is casually be there or overhere, sec 25 not apply. But in case, such police officer is spy or is a secret agent of the police for the purpose of taken confession, sec 25 will apply.

Sec 25 is not apply to the special legislation such as Terrorist and Disruptive Activities Act (TADA), 1987 and Prevention of Terrorism Act, (POTA) 2001. (See the *Lal Singh v State of Gujarat* (2001) 3 SCC 221 and *Abdulvahad Skeikh v State of Gujarat* (2007) 4 SCC 257.)

#### **Confession in Police Custody (sec 26)**

**Sec 26 provides “No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person”.**

Sec 26 provides that confessions made in the custody of the Police officer cannot be proved against him unless it is made before a Magistrate. This is an extension to the principle of the sec 25 i.e confession to any other person in police custody is also inadmissible. The purpose is to provide a protection to an accused person from the influence of the Police in

the custody. Police custody provides an easy opportunity of coercion for extorting confession from the accused person.

Custody for the purpose of sec 26 is not limited to 'formal custody by the police officer' or mere 'physical custody of the accused' but it includes 'police control over the liberty of the accused'. It may be at home, at open place in journey, or elsewhere not restricted to the four walls of the prison. The test is 'restriction over the movement of the person' making confession, means he is not allowed to go any where , and such restrictions imposed by the police officer indirectly.

For example:

1. Confession of the woman to the villagers, when she was left to the custody of them and the Chaukidar who arrested her went the Police Station to call police is irrelevant under sec 26(see facts of the case Emperor v Jagia AIR 1938 Pat 308).
2. In case where accused was left alone with the tanga Driver by the Police Officer, and he confessed to the Tanga Driver. Such confession is irrelevant.(see the case R. Lester , IIR 1895 20 Bom 165).
3. Where the accused was take to the medical examination by the Police and confession made to the Doctor while Police was out of the room. Such confession id irrelevant.(SeeEmp v Mellangauda 11 Bom LR 6823)

Exception to the sec 26

If the confession made in the immediate presence of the Magistrate, it become admissible, as presence of the magistrate ruled out the presumption of the torture, fear or use of coercion.

### **Distinction between sec 25 and 26**

Sec 25 provides a principle of the exclusion of the confession on the ground 'to whom it was made' if to the police officer, is inadmissible. On the other hand sec 26 applies the rule of exclusion of the confession on the ground 'under what circumstances it was made', if it was made in the police custody, unless magistrate is present is inadmissible.

Further sec 25 raises an embargo as regards proof of the confession before a Police officer, while sec 26 raises a bar as regards the admissibility of such confession made in the police custody by the accused even to the person who is not a police officer.(for detail see, M . Moneer, Law of Evidence, page no 125.)

### **Confession to the Police Officer or in the Police custody is relevant**

- I. When a statement is made in the immediate presence of the magistrate under sec 26, and
- II. When the statement leads to the discovery of a fact connected with the crime under sec 27.

### **Confession when Relevant(sec 27-29)**

Confessions under following circumstances are relevant and admissible



- I. When any fact is discovered as discovered in consequence of information received from the accused person in the custody of the Police officer (sec 27)
- II. Confession made after removal of threat, inducement or promise (sec 28)
- III. Confession otherwise relevant not to become irrelevant because of promise of secrecy (sec 29)

**When any fact is discovered as discovered in consequence of information received from the accused person in the custody of the Police officer (sec 27)**

**Sec 27 provides “ provided that , when any fact is discovered as discovered in consequences of information received from the person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved”**

Sec 27 is an exception to the sec 25 and 26. It is based on the principle that if confession of the accused is supported by the discovery of a fact, it produces some guarantee of truth and not to be extracted by the police. In general, sec 27 applied in the case where a person in the police custody produces some objects, such as weapon used in the offence, dead body, or any other thing, from some place, where it was concealed by the accused at the time of the commission of the offence or after the commission of the offence, which is connected with the offence for which accused is informant.

It provides that in case where evidence is led to the effect that some fact is discovered in response to the information given by the accused in the police custody, such information can be proved as an evidence, irrespective of the fact it is confession or statement.

Two conditions required for the application of sec 27

- a. Such discovery of the fact, concerned with the offence is by the reason of the information given by the accused in the custody.
- b. Such information distinctly relates to the discovery.

Both of these conditions must be satisfied for the admissibility of such statement under sec 27.

Only such part is accepted which is immediate, direct or approximate cause not the remote cause of the discovery of the fact. It can be explained as “what offender did to the weapon(discovered thing)” not “what offender did with the weapon(discovered thing)” because the later part is remotely connected with the fact.

**For example;** A statement “I will produce the knife concealed in the roof of my house with which I stabbed B’. This statement does not lead to discovery of a knife. But it leads to the discovery of the fact that knife is concealed at the place known to the informant and if it is proved that same knife is used in the commission of the offence, the discovered fact is relevant under sec 27.

How much such statement is admissible is explained in the (Kottaya v Emperor, AIR 1947PC 47). The Court held from the whole statement except the passage “I

hid the spear and my stick in the rick in the village. I will show if you come” is admissible, and rest is inadmissible as only this part of the statement connect the object discovered with the offence(read the facts of the Kottaya v Emperor, AIR 1947PC 47 Prabhu v State of UPAIR 1963SC 1113.)

#### **Confession made after removal of threat inducement etc(sec 28)**

**“ If such a confession as is referred to in sec 24 is made after the impression caused by the inducement threat or promise has in the opinion of the Court been fully removed”.**

Sec 28 deals with the validity of the confession which is made after the effect of inducement(effect of inducement over through the lapse of time) is already over thus confession which are rendered irrelevant under sec 24 become relevant under sec 28.

#### **Confession otherwise relevant not irrelevant because of promise of secrecy (sec 29)**

If a confession is otherwise relevant does not become irrelevant merely because it was made

- a. Under a promise of secrecy
- b. In consequence of a deception practiced on the accused person for the purpose of obtaining it or
- c. When the accused was drunk, or
- d. In answer to questions he need to have answered, or
- e. When the accused was not warned he was not bound to make such confession and that evidence of it be given against him(except judicial confession under sec 164).

#### **Confession of Coaccused(sec 30)**

**“ When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved , the Court may take in to consideration such confession as against such other person as well as against the person who makes such confession”**

Sec 30 of the Indian Evidence Act provides an exception to the general rule of the confession as an evidence that it can be used against only the person making it not the others. It provides that that where more persons than one are tried jointly for the same offence, the confession made by one of them is admissible against all of them. Sec 30 will apply when

- i. The person confessing and the others are **tried jointly**
- ii. They are tried for the **same offence**
- iii. The confession must **affecting all**

Joint trial can be understood, where A, B and c commit a Murder of D. Only A was arrested, B and C absconded. A makes a confession, tried and convicted. Afterwards, B and C was arrested and tried. At their trial confession of is not admissible, because they are not tried jointly.

Same Offence means ‘identical offence’ not the ‘offence of same kind’. It means an offence having same definition and arising out of same transaction. For example where the trial is

not for the same offence such as one is charged for the theft and other is for receiving stolen property, the confession is not admissible against other. (Bishnu Banwar v Emperor 1 CWN 35)

Confession of the co accused must implicate himself as well as some others. The confession of the maker implicate him substantially to the same extent as others. (Balbir Singh v State of Panjab AIR 1957 SC 216).

### **Evidentiary value of the Confession**

#### **Judicial Confession**

Judicial confession is a substantive evidence and conviction can be based on that solely. It is well settled that if confession is made voluntarily and truthfully, is a efficacious proof of guilt and further corroboration is not required.

#### **Extra Judicial Confession**

It is very weak piece of evidence and has to be received with care and caution. It can be relied only when it is clear, consistent and convincing. To use extra judicial confession as an evidence Court requires some material, independent or satisfactory corroboration. It should not suffer from any material discrepancies and inherent improbabilities. When the foundation of conviction based on the extra judicial confession it is required to prove three things

- i. Confession was made
- ii. Evidence has to be given that it was made voluntarily
- iii. It is true.

An extra judicial confession is required to prove like any other fact and in accordance with law. The value of the confession is based on the veracity of the witness to whom it is made.

#### **Retracted Confession**

It is unsafe to base the conviction on the retracted confession unless it is corroborated by the trustworthy evidence. The court may take in to account the retracted confession, after examining the reason of making it and also the reasons of the retraction to determine that whether retraction affects the voluntary nature of the confession or not. (State (NCT of Delhi) v Navjot Sidhu (AIR 2005 SCW4148)). See the case Pyre Lal Bhargya v State of Rajasthan AIR 1963 SC 1094

#### **Confession of Co accused**

It is settled principle of law that confession of Co accused person cannot be treated as substantive piece of evidence and can be pressed into a service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible therefrom (Mohtesham Mohd. Ismail v. Spl. Directorate, (2007) 8 SCC 254 para 190.

In Kashmira Singh v State of Madhya Pradesh AIR 1952 SC 159 “the confession of a co accused is not evidence” with the meaning of that term as defined in sec 3 of Indian evidence Act. It is not required to be recorded on oath and it cannot be tested by cross

examination. It is an evidence of very weak kind and is much weaker even the evidence of an approver or an accomplice.

However the general practice applied in the high courts of India to require the corroboration for confession of a co accused. The Corroboration must be on material particulars, such as point out the indubitably the identification of person charged with the particular act with which the confession of accused connects it. For example: merely pointing of a stolen property some months after the theft is not sufficient corroboration of such a confession on a charge of house breaking.(Q.E v dasu Jiva 10 bom 231) Secondly corroboration must be by independent evidence and not by the testimony of an accomplice nor by the confession of anther accused, such a confession carries an inferior evidentiary value.(Shariff v E.1944 Lah 172).

### **Distinction between Admission and Confession**

- i. A confession is a statement of a person which is sought to be proved against him in criminal proceeding to establish the commission of an offence, while an admission is a statement which is defined under sec 17 and made by the persons mentioned in sec 18, 19 and 20 of the Indian Evidence Act 1872, respectively.
- ii. Confession is a conclusive piece of evidence if made voluntarily and recorded as per the procedure provided (judicial confession), on the other hand admission is not conclusive proof but operate as estoppel under sec 31 of the Indian Evidence Act.
- iii. Confession is always used against the person who make it, while an admission is used on behalf of the person who make under the exception provided in sec 21 of the Indian Evidence Act
- iv. Confession of an accused can be taken in to consideration against others co accused if they are tried jointly for the same offence, while admission by one of the several defendants in suit is no evidence against other defendants.
- v. In Ram Singh v State it was held that the acid test is where conviction can be based on the statement alone, it is a confession and where some supplementary evidence is for the conviction, it is admission. (For detail see Batuk Lal, Law of Evidence, page no 144-145)

### **Dying Declaration (sec 32(1))**

Sec 32 and 33 of the Indian Evidence Act provides an exception to the hearsay rule. Sec 32(1) is one of that exception under which a statement of deceased is admissible if it is related to cause of his death or the circumstances which resulted in his death, in a case when cause of death of such person is in question. Such statement is called as 'dying declaration'. Sec 32(1) provides

***“When a statement is made by a person as to 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 make them was or was not, at the time when they were made under expectation of death or and whether may be nature of the proceeding in which the cause of his death comes into question.”***

#### **Essentials of the Dying declaration to be relevant**

**i. Person making statement must die and cause of his death is in question before the Court**

As dying declaration is a statement of a person about the cause of his death' or 'circumstances which resulted in his death' in case where his death is in 'question'. The death may be caused by either homicide or suicide. Therefore if a person survived after making such statement, such is not dying declaration. Statement of deceased is dying declaration. Therefore the death of the person making statement must be proved before the Court to use the statement of the person making it as 'dying declaration' under sec 32(1). If such person survived after making statement as 'dying declaration' such statement later may be used to corroborate the testimony of the person making it under sec 157 of the Indian evidence Act or to contradict him under sec 145 of the Indian Evidence Act.

Statement about the death of another person is not dying declaration

**(ii) Statement must relate to the cause of his death or the circumstances of the transaction which resulted his death**

The expression 'cause of death' is concerned with reason of the death of the person making the statement. For example, A makes a statement that B assaulted him with spear and died. Such statement of A is admissible as 'dying declaration' in the case where cause of death of A is in question. The immediate death is not required, If A dies after some time, it don't affect the nature of 'dying declaration' because cause of the death was the injury given by the B. As held in *Moti Singh v State of UP* AIR 1964 SC 900 the death of the person making statement caused by the injury

he received in the incident for which accused is being prosecuted. If death is caused by any other reason, such statement would not be admissible as dying declaration. For example, A was tried for the murder of B. B narrated the story of his death to the Police. But in medical examination the reason of the death was 'tetanus'. The statement of the B is not admissible as dying declaration.

The expression 'circumstances of the transaction which resulted in his death' is a wide application. It is not restricted to 'caused the death of the maker of statement' but includes all 'proximate relation to the actual occurrence'. For example, statement made by the deceased that he was proceeding to the spot where he was in fact killed, or statement of the deceased that is reason of the proceeding to the particular spot, or he was going to meet the particular person, all such statements are dying declaration as these includes 'circumstances of the transaction which resulted his death' (read the fact of the Pakla Naraiyan swamy Case).

The circumstances must have some proximate relation to the actual occurrence. (Kans raj v State of Panjab AIR 2000 SC 2324. **For example**, a married woman had been writing to her parents and other relatives about her critical condition at the hands of her inlaws. She lost her life after four months later. Her letters were held to be admissible as dying declaration. (Sharda Birdhi chand Sharda v State of Maharastra AIR 1984 SC 1622).

### (iii) **Statement can be made with or without expectation of death**

If the statement has direct relation to the cause or the occasion of the death of a deceased, it is immaterial that it made before the person has received any injury or before the cause of death raised or before the deceased has any reason to anticipation of being killed. For example

Where the fact in issue was whether A had committed murder of B. Statement of B before he was assaulted that A has taken cash and ornament form him and that he going there to demand , is admissible as dying declaration. (Jainand v Rex AIR 1976 ALL 291)

### **Forms of Dying declaration**

There is no particular form to be required in making dying declaration. It may be in oral or writing, or even may be partly oral or partly writing. It may be if form of signs or gesture by the deceased. (Queen Empress v Abdullah, ILR(1885)7 All 385. There is no particular form or procedure prescribed for a dying declaration nor it is required to be recorded by the Magistrate. (Ashabai v State of Maharastra AIR 2013 SC 341). Not even any format is required to record the dying declaration such as question answer or otherwise. The presence of magistrate, certificate of the doctor as to mental or physical status of the person making the declaration, were all developed by judicial pronouncements ( read the case Ram Bihari Yadav v state of Bihar AIR 1998 SC1850).

In case an injured person lodged the FIR and died, it is dying declaration. (K. Ramchand Reddy v Public Prosecutor (1976) 3SCC 104. Same in case where complaint made to police is relating to cause of death or circumstances of the transaction which resulted death of the maker is dying declaration (Jai Prakash v state of Haryana 1999 Cr LJ 837 SC ).

### **Evidentiary value of Dying declaration**

Dying declaration is admissible in evidence being hearsay as an exception to the general rule of evidence that hearsay evidence is not admissible. Admissibility of dying declaration is based on the maxim "*Nemo Moriturus Prassumttur Mentire*" which means the man will not meet with his maker with a lie in his mouth. Mathew Arnold said "truth lies upon the lips of dying man". It is also said by Richard II "where words are scarce, They are seldom spent in vein; They breath the truth, That breath their words in pain". (See M. Monir, law of evidence, page 164). In *Ravi Kumar v State of Tamilnadu* AIR 2006 SC 1448 it was held by the Supreme court that dying declaration is admissible upon the consideration that declarant has made it in extremity when maker is at the point of death and when every hope of this world is gone, when every motive of the falsehood is silence and mind is induced by the most powerful consideration to speak the truth.

Therefore, much weight is given to the dying declaration as an evidence. But as maker of the dying declaration is not subject to the cross examination, Court always scrutinize that it must be of such nature as inspires the Court with its correctness. It can be said that Court must be satisfied that dying declaration is not product of tutoring, prompting and imagination, or conducive.

Further, it is not absolute rule of law that a dying declaration cannot form sole basis of conviction unless corroborated. The rule requiring corroboration is rule of prudence (*Panneerselvam v state of Tamil nadu* (2008 ) 17 SCC 190). A dying declaration which is truthful, consistent, coherent and without any infirmity don't need corroboration. A dying declaration which was recorded by the competent magistrate in the proper manner such as question and answer, and as practicable in the words of the maker of the declaration, stands on much higher footing than a dying declaration which depends upon oral testimony. The Court has to examine the circumstances, such as opportunity of the dying man of observation, whether the capacity of the man to remember the facts stated, had not impaired at the time of making statement, that the statement is consistent, if maker has several opportunity of making it, and it has been made at earliest opportunity and is not result of tutoring by the interested parties. (read the facts of *Kushal rao v State of Madhya Pradesh* AIR 1958 SC 22). In *Paniben v State of Gujarat* (AIR 1992 SC 1817) Supreme court laid down certain guidelines while dealing with dying declaration.

- (i) With all mentioned above about the evidentiary value of dying declaration it is held that
- (ii) In case dying declaration is suspicious it should not be acted upon without corroboration.
- (iii) Dying declaration which suffers from infirmity cannot be the basis of conviction.
- (iv) Merely the dying declaration does not contain details, is short, is not to be discarded
- (v) Where there are more than one version of dying declaration, the first in point of time be preferred.

Where the dying declaration is incomplete by the reason of death but clear and makes a clear accusation against the accused, it can be relied for conviction.

Case Referred:

1. *Pakala Narayan Swami v King Emperor* AIR 1939 SC 47
2. *Palvinder kaur v State of Bihar*

3. Om Prakash v State of UP AIR 1960 SC 409 AIR 1952SC 354
4. Nishi Kant Jha v State of Bihar AIR 1969 SC422
5. Badri rai v State of Bihar AIR 1958 SC 953
6. A.Nagesia v State of Bihar AIR 1966 SC 119
7. Bhagwan Singh v State of Haryana AIR 1976SC1939
8. Ballbir singh v State of Panjab AIR 1957SC 216
9. Phulkumari Kottaya v Emperror AIR 1947 PC 47
10. State of UP v Deomami AIR 1960SC1125
11. Kashmira Singh v State of Madhya Pradesh AIR 1952 SC 159
12. Khushal Rao v State of Bombay AIR 1958 SC 22