

# LAW CAPSULE

## For Law Competitive Exams DYING DECLARATION



Raj Singh Niranjani

### Section 32 of the Indian Evidence Act

Section 32 of the Indian Evidence Act states that written and verbal declaration when made by a person

- Who is dead
- Who cannot be found
- Attendance cannot be procured without an amount of delay or expenses which under the circumstances of the case, appears to the Court unreasonable are relevant facts under following circumstances:-
  - When it related to the cause of his death
  - Made in course of business
  - Made against the interest of the maker
  - Gives option as to - (*Ante-litem mortem*)
    - public right
    - custom
    - matter of general interest
  - Relates to existence of relationship (*Ante-litem mortem*)
  - Made in will or deed relating to family affairs (*Ante-litem mortem*)
  - Documents relating to transaction mentioned in section 13(a)
  - Made by several persons, and expressed feelings to the matter in question
- It is substantive evidence and requires no corroboration.

### Elements of Dying Declaration

- Statement made by a person as to cause of his death
- Statement as to circumstances of the transaction which resulted in his death
- Cause of that person's death in question
- Was or was not under expectation of death [In England only a person under expectation of death is said to have deposed dying declaration]

### Principle behind Dying Declaration

- **Sense of impending death** produces in man's mind the same feeling as that of conscientious and virtuous man under oath
- *Nemomoriturus Praesumitur Mentire* – Man will not meet his maker with a lie in his mouth
- Declarant died of injury to be proved
- Circumstances of the transaction – this is not **analogous** to "Circumstantial evidence" and is narrower than the concept of *res gestae*
- Circumstances resulting in death must have proximate relation to actual occurrence
- Intention to use statement as dying declaration not necessary.

In the landmark case of *Khushal Rao v. State of Bombay*, AIR 1958 SC 22 the Supreme Court held that it also does not limit the application of this rule to any particular proceeding (Civil and Criminal). In the leading case of *Pakala Narayan Swami v. Emperor*, it was held that the cause of death must be proximate and not remote cause.

### Forms of Dying Declaration

- Oral
- Writing