

Where the deceased was burnt by pouring kerosene oil on her and was brought to the hospital by the accused and his family members, the Court noticed that she had made two varying dying declarations and held thus :

“9. The doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means “a man will not meet his Maker with a lie in his mouth”. The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as “the Evidence Act”) as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide Khushal Rao v. State of Bombay, AIR 1958 SC 22, Rasheed Beg v. State of M.P., (1974) 4 SCC 264, K. Ramachandra Reddy v. Public Prosecutor, (1976) 3 SCC 618, State of Maharashtra v. Krishnamurti Laxmipati Naidu, 1980 Supp SCC 455, Uka Ram v. State of Rajasthan, (2001) 5 SCC 254, Babulal v. State of M.P., (2003) 12 SCC 490, Muthu Kutty v. State., (2005) 9 SCC 113, State of Rajasthan v. Wakteng, (2007) 14 SCC 550 and Sharda v. State of Rajasthan, (2010) 2 SCC 85”.

Lakhan v. State of Madhya Pradesh, (2010) 8 SCC 514