

evidence for the conviction of the makers and co-accused. [PLD 2009 Pesh. 1] It is a settled law that one corroborative piece of evidence cannot corroborate and other piece of evidence of same nature. The corroboration must come from independent and credible source. [PLD 2006 S.C. 538]

**44. Accused persons to be liable to cross-examination.** All accused persons, including an accomplice, shall be liable to cross-examination.

#### NOTES

Historical background stated. [PLD 1991 SC 787]

**45. Admission not conclusive proof but may estop.** Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter continued.

#### NOTES

**Admission in written statement—Not conclusive—May operate estoppel.** [1992 ALD 482]

#### Statements by persons who cannot be called as witnesses

**46. Cases in which statement of relevant fact by person who is dead or cannot be found, etc, is relevant.** 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 the following cases:

(1) **When it relates to cause of death.** 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 into question such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.



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(2) **Or is made in course of business.** When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) **Or against interest of maker.** When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose or would have exposed him to a criminal prosecution or to a suit for damages.

(4) **Or gives opinion as to public right or customs, or matters of general interest.** When the statement gives the opinion of any such person, as to the existence of any public right custom or matter of public or general interest, of the existence, of which if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

(5) **Or relates to existence of relationship.** When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge and when the statement was made before the question in dispute was raised.

(6) **Or is made in will or deed relating to family affairs.** When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tomb stone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) **Or in document relating to transaction mentioned in Article 26, paragraph (a).** When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in Article 26, paragraph (a).

(8) **Or is made by several persons and expresses feelings relevant to matter in question.** When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

### Illustrations

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or  
The question is, whether A was killed by B under circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(b) The question is as to the date of A birth.  
An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day, he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Peshawar on a given day.  
A statement in the diary of deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Peshawar, for the purpose of conferring with him upon specified business, is a relevant fact.



- (d) The question is, whether a ship sailed from Karachi harbor on a given day. A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Karachi harbor, is a relevant fact.
- (e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's order, is a relevant fact.
- (f) The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances, that the celebration would be a crime, is relevant.
- (g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.
- (h) The question is, what was the cause of the wreck of a ship. A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.
- (i) The question is, whether a given road is a public way. A statement by A, deceased headman of the village, that the road was public, is a relevant fact.
- (j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased Banya in the ordinary course of his business, is a relevant fact.
- (k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son is a relevant fact.
- (l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.
- (m) The question is, whether and when, A and B were married. An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.
- (n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libelous character. The remarks of a crowd of spectators on these points may be proved.

## NOTES

1. **Dying declaration.** Sanctity is attached to the dying declaration, because a dying man is not expected to tell lies, but being weak kind of evidence it requires close scrutiny and corroboration. The statement must be genuine and ringing true the test being whether the dying man was capable of making it, whether it was from outside prompting and is not inconsistent with other evidence and facts and circumstances of the case. [2009 P.Cr.L.J. 797; PLD 2006 S.C. 255] Dying declaration normally is to be considered to be a strong piece of evidence; and at the same time it also requires corroboration. Time elapsed between injury and death of deceased would not affect the validity of the F.I.R. as dying declaration. [2011 P.Cr.L.J. 1455] Last incriminating statement made by the accused can be legitimately treated as dying declaration. [PLD 1992 S.C. 211] Dying declaration appearing truthful [1991 MLD 1937] is a substantive piece of evidence—Test. [1992 P.Cr.L.J. 2222] Recorded in presence of relative of deceased be taken with a pinch of salt. [1999 P.Cr.L.J. 707, 1992 KLR (Cr.L.) 383] Dying declaration—A week kind of evidence requires close scrutiny and corroboration. [1995 P.Cr.L.J. 1753] Dying declaration cannot be lightly ignored. [PLJ 2000 Sh. Cases. 17] Statement of deceased when injured is admissible and relevant. [2001 P.Cr.L.J. 1014] Dying declaration, not suffering from infirmity sufficient to warrant conviction. [2001 P.Cr.L.J. 268] Statements can be used as dying declaration whether person making it was or was not under expectation of death. [PLJ 2001 Cr. C. Lah. 1072] Dying declaration recorded by Magistrate and counter signed by doctor, strongest piece of corroboration. [2013 MLD 1879]

Statement of a deceased (then injured) in the form of statement under S. 161, Cr.P.C., could be treated as a dying declaration and same was admissible under Article 46 of Qanun-e-Shahadat Order, 1984 if proved, same could be made a basis for sustaining conviction of accused on capital charge, but to make a basis for conviction, prosecution was required to establish; *firstly*, that the deceased, while recording his statement as dying declaration, was in full senses and was conscious and alert to surroundings and was able to make a coherent statement; *secondly*, the dying declaration rang true, and



**Test for determining genuineness of dying declaration.** Test for determining genuineness of a dying declaration was, whether intrinsically it range true; whether there was any chance of mistake on the part of the dying person in identifying or naming his assailants, and whether it was free from prompting by any outside quarter and was not inconsistent with other evidence and circumstances of the case. [2013 P.Cr.L.J. 578 (DB)]

**Statement rendered by injured person.** Even a statement rendered by an injured person under S. 161, Cr.P.C. to a Police Officer, could be considered as a dying declaration, in case the 'maker' thereof later died; and the said statement had a ring of truth emanating therefrom and was corroborated with other material evidence. No legal prescribed form, mode and manner of recording a 'dying declaration'. When a person rendered any statement regarding the injuries caused to him, which later resulted in his death, was not only relevant, but admissible and crucial piece of evidence. [PLD 2015 Pesh. 23, PLD 1992 S.C. 211, 2001 SCMR 1474 rel.]

2. **Evidence of relations.** Relations are good witnesses when fact in issue is question of relationship of one person with the other. [1990 ALD 726]

3. **Pedigree table.** In Article 46 it is mandated that the statement is admissible when made in respect of pedigree, death, family history not known by all but few which is incapable of direct proof and person making the statement having the peculiar means of knowledge and having no interest to misrepresent of declarant member of the family having the greatest interest in seeking the best opportunities of obtaining and no motive for falsifying information on such subjects. [PLD 2012 Pesh. 80]

4. **Relationship.** On a question of pedigree, family conduct is admissible to prove relationship and in this connection the treatment of friends and neighbours may be receive as presumptive proof of marriage... [PLD 2012 Pesh. 80]

5. **Age.** Entries in NIC carries presumption of truth. [2012 YLR 161]

**[46-A. Relevance of information generated, received or recorded by automated information system.** Statements in the form of electronic documents generated, received or recorded by an automated information system while it is in working order, are relevant facts.] [In terms of S. 29 of Electronic Transactions Ordinance, LI 2002, for the purpose of Ordinance LI 2002 the Qanun-e-Shahadat Order, 1984 shall be read subject to the amendments specified in the schedule to this Ordinance LI of 2002, Inserted by Ordinance LI of 2002, w.e.f. 11<sup>th</sup> September, 2002]

**47. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.** Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable;

Provided that;

the proceeding was between the same parties or their representatives-in-interest; the adverse party in the first proceeding had the right and opportunity to cross-examine; the question in issue were substantially the same in the first as in the second proceeding.

**Explanation.** A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this Article.

### NOTES

1. **Scope.** Article 47 Qanun-e-Shahadat is based on the principle that the best possible evidence must always be considered for deciding the fate of the party. This Article would be applicable if the proceeding is between the same parties or their representative in interest, if the witness has the right and