

bear on the declarant and...he... [should] not [be] prompted or aided in any way in making his statement" (Nem Singh 1934). Dying declarations recorded in presence of deceased's relatives are generally accorded less value owing to the possibility of promptness or tutoring. In Nazim Khan (1984), dying declaration was recorded at Police Station in presence of deceased's relatives. The court refused to attach any evidentiary value to it. In another case (Wahiduddin 1977), the court has categorically held that dying declaration recorded at Police Station in presence of deceased's relatives is "suspect and certainly less worthy of credence than one recorded by a Magistrate after excluding the relatives."

On the other hand, it should be kept in mind that mere presence of relatives at the time of recording of a dying declaration does not always lead to the presumption of being tutored. The court has observed in *The State* (1986) that "in present society particularly in rural areas people consider it highly improper and immoral to leave a dying man unattended. In such a situation the scribe of the dying declaration is required to ensure that nobody should prompt or tutor him while his statement is being recorded and see that he makes the statement freely without any extraneous influence." The court also admitted that absence of deceased's relatives at the time of recording the statement would add to its value, "but it cannot be made a rule of general application that even if it satisfies all the essential requirements of its genuineness it must be discarded simply for the reason that at the time of its recording some of the relatives of the deceased were present near him..." The reason for discarding the statement made in presence of deceased's relatives is possibility of tutoring and exchange of common caution, and mere presence might not lead to that situation. So, if it is proved that common caution took place between the relatives and the declarant then the statement becomes unsafe to be relied upon for conviction (Abdul Majid 1989).

IV. Dying Declarations Contained in F.I.R.:

According to Section 154 of Criminal Procedure Code 1898, any information relating to the commission of a cognizable offence is to be reported to Police Station. Such information is termed as "First Information Report", though this phrase is not employed in the Code but it is understood to refer to information recorded under this Section. The main purpose of this report is to bring the investigating agency into operation. Thus, the Section does not envisage that such report may be used as a substantive piece of evidence, but there are circumstances in which it may be treated as such. For instance, when first information is lodged by the victim who happens to die afterwards, then such a report can be converted into a dying declaration and regarded as a substantive piece of evidence (Abdul Rehman 1995).

In *Fazar* (1951), after the occurrence of the incident, the victim was taken to the Police Station where he lodged the F.I.R. Thereafter, the victim was sent to the hospital as he was in a serious condition. The victim died in the hospital, whereupon the prosecution used his report as a dying declaration. An objection was raised on the use of F.I.R. as such by the accused. It was held by the court that "the use of F.I.R. as dying declaration was not improper" as the law applicable envisages all kind of statements made by the deceased as to his cause of death and does not specifically exclude the statement recorded in F.I.R.