

statement. The court held that it is against the dispensation of justice to treat the F.I.R. as a dying declaration in such circumstances. In another case (Ghulam Rasool 1989) of the same fate, the appellant with his brother allegedly caused death of two persons. The F.I.R. was lodged by one deceased while the other was in coma at that time. It was proved during the proceedings that persons inimical to the accused were present in the Police Station at the time of recording of the F.I.R. It was observed by the court that prompting/tutoring to the deceased from outside quarters could not be ruled out in the circumstances of the case; thus, the F.I.R. does not have any evidentiary value as a dying declaration.

V. Dying Declarations during Police Investigation:

During the investigation of crimes, statements amounting to dying declarations may be recorded by Police Officer/Investigation Officer. Such statements are not used in trial before the courts. According to Section 161 of Criminal Procedure Code 1898 (hereafter referred to as Cr.P.C.), Police Officers are competent to examine the witnesses but this record can only be used for limited purposes as mentioned in Section 162(1) of the same Code. Those who make such statements are not required to sign them nor can these statements be used for any purpose at any inquiry or trial. Section 162(2) provides that the restriction embodied in the Section 162(1) does not apply to dying declarations which means that such statements may be used as dying declarations if they are proved to be authentic. The same was held in Muhammad Abbas (1984). In this case, the declarant made the statement to the Police during investigation which was treated as a dying declaration. The defense counsel assailed the use of such statement owing to the fact that it was recorded by the Investigation Officer under Section 161 Cr.P.C. It was asserted that such statement cannot be treated as a substantive piece of evidence as it was a mere *Zimni*. It was held by the court that mere fact of recording the statement of the deceased by the Police Officer during investigation did not make it inadmissible in trial as the Section 162(2) specifically excludes dying declarations from the restrictive application of Section 161(1).

The afore-mentioned decision of the Federal Shariat Court was challenged before the Shariat Bench of the Supreme Court in Muhammad Abbas (1984). It was contended on the basis of the view taken by a learned Single Judge of the Lahore High Court in Abdul Majid (1976) that "the statement of deceased recorded by the A.S.I... could not be used as dying declaration as it was merely a statement under Section 161 Cr.P.C. It was not recorded in the presence of the doctor nor did the A.S.I. care to get it recorded through a Magistrate or any other independent official and the prosecution never pressed it as a piece of evidence against the accused/appellant." However, the same High Court expressed the contrary view in Muhammad Nawaz (1979) wherein it was stated that a statement recorded under Section 161 Cr.P.C. can be treated as a dying declaration if the maker of the statement dies after making the statement. After going through the apparently contradictory decisions, the Supreme Court, in Muhammad Abbas (1984), held categorically that a dying declaration recorded by the Investigation Officer "without addition or omission" was a relevant document which may be relied upon for conviction affirming the above-referred decision of the Federal Shariat Court.

In Ali Gull (1980), a dying declaration was recorded by the Police in a hospital. It was contended by the appellants that the dying declaration was not worthy of reliance as when it was recorded the deceased was not expecting to die. It was further questioned