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A detailed Study on Dying Declaration under Law of Evidence

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*Evidence plays the most important role in Court proceedings and delivery of justice to the aggrieved parties. The Law of Evidence is the procedural law that contains the rules of evidence. The Law of Evidence prevents the valuable time of the court and helps in determining which evidence is relevant and which one is irrelevant. When a person dies due to some offences like murder, manslaughter, etc., then the words said by him before the death become significant and acceptable as evidence. These words narrate the cause of his death or any circumstances of the transaction that caused his death. This whole thing depends on the maxim *Leterm Mortem*, (meaning- 'the words said before the death'). This is also recognized as a dying declaration. The purpose behind writing this paper is to highlight the concepts of the dying declaration such as its definition and forms under the Law of Evidence. Further, this paper deals with the recording of the dying declaration, its admissibility, the ways through which it can be proven, etc. This paper also analyses relevant provisions such as section 32(1) of the Indian Evidence Act 1872, significant case laws, and some recent Supreme Court judgments.*

Keywords: *dying declaration, evidence, admissibility, corroboration.*

INTRODUCTION

The dying declarations are statements related to the cause of a person's death or any circumstances of the transaction that causes his death. "Though such a statement is a piece of

indirect evidence being a species of hearsay evidence, this is still against the rule of hearsay evidence."¹ The dying declarations are deemed to be trustworthy evidence resting on faith that the persons who know they are about to die do not lie. But there is one condition that the person must die after making a dying declaration. If there is the slightest hope of his recovery and he survives, then the statement made by him as the dying declaration is not permissible as evidence.

A person making the statement must be competent (mentally fit); otherwise, that statement will be inadmissible. Before using the statement of a person as the dying declaration, it is compulsory to prove that the person died because of the injury he had acquired in the occurrence for which the offender is on trial. The court has to examine such declaration considering the circumstances of a particular case.² These declarations are used in civil as well as criminal cases. The only material point is that the cause of a person's death (whose statement is to be proved) comes into question irrespective of the nature of the proceeding, and that statement will be admissible.

CONCEPT AND PROVISION RELATED TO DYING DECLARATION

The Indian Evidence Act, 1872 does not define the term "dying declaration". But reading section 32 as well as sub-section (1) of section 32, this term may be defined as follows:

*"A dying declaration is a statement made by a person who is dead; as to cause of his death or any circumstances of the transaction which resulted in his death, and his death comes into question, then such statement is relevant under Section 32 of Indian Evidence Act, 1872 whether the person who made there was or not, at the time when they were made, under an expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question."*³

¹ Batuk Lal, *The Law of Evidence* (20th edn, Central Law Agency 2018) 288

² *Umakant v State of Chhattisgarh* AIR 2014 SC 2943

³ Indian Evidence Act 1872, s 32(1)

Section 32 is against the rule of hearsay evidence. It makes the statement of a dead person admissible where the death is homicidal or suicidal.⁴ Before admitting such a statement under this section, it is compulsory to prove that the maker of this statement is either dead or, for any other reasons, is not available as a witness. A dying declaration should not be the result of compulsion, or pressure, or even imagination.

FORMS OF THE DYING DECLARATIONS

The dying declarations are in written or verbal form. Moreover, they are also in the form of signs and gestures. Unless one is sure about the accurate words of a deceased, the court cannot rely on verbal (oral) dying declarations. The Chhattisgarh High Court has found that a written dying declaration is preferred over an oral dying declaration when there is any conflict between the two of them.⁵ The dying declaration cannot be rejected simply because the very words of the deceased are not written.⁶

In *Ram Bihari Yadav v the State of Bihar*,⁷ the Supreme Court has made these observations regarding the form and acceptance of a dying declaration:

“Generally, the dying declaration is recorded in question and answer form, but sometimes it consists of only a few sentences and is in actual words of the maker. The mere fact that it is not in question and answer form cannot be ground against its acceptability or reliability.”

REASONS FOR ADMITTING THE DYING DECLARATIONS AS EVIDENCE

The legal philosophy, which indicates the value of the dying declarations, is subject to the maxim *Nemo moriturus praesumitur mentire*. It means that “no one at the time of death is presumed to lie and will not meet his maker with a lie in his mouth”.⁸ Since the victims are sole eyewitnesses, rejection of their evidence defeats the ends of justice and may lead to a grievance. The person

⁴ *Sharad v State of Maharashtra* AIR 1984 SC 1622

⁵ *Sanjay Sahu v State of Chhattisgarh* Crim App No 222 of 2021

⁶ *Bakshis Singh v State of Punjab* AIR 1957 SC 904

⁷ *Ram Bihari Yadav v State of Bihar* AIR 1998 SC 1850

⁸ *Shakuntala v State of Haryana* AIR 2007 SC 2709 at 2711

who is no more in this world cannot be called in a Court to testify. In section 32(1), there are two categories of statements that are acceptable as evidence. These statements are related to:

- i. Cause of the death, and
- ii. Any circumstances of the transaction that lead to death.⁹

DYING DECLARATIONS IN ENGLISH AND INDIAN LAW

- i. In English law, the dying declarations are acceptable only in criminal cases wherever the causes of the death come into question. In Indian law, such declarations are acceptable in civil and criminal cases; they are acceptable even though the trials are not for persons' death.
- ii. In English law, these declarations are acceptable only in the sole cases of homicides i.e, murders or manslaughters. In Indian law, the cases of 'suicides' are also dealt with.
- iii. In English law, such declarations must have been made under the expectation of death. A statement made without the apprehension of instant or upcoming death is not acceptable. In Indian law, there is no such rule. If the person giving the statement has died, and that statement explains the circumstances surrounding his death, then his statement is admissible.
- iv. In English law, a deceased must have completed his statement before dying. In Indian law, if a deceased has told the whole story other than responding to the final formal question of "what more he wanted to say," then the court may rely on such declaration.

CONDITIONS FOR THE ADMISSIBILITY OF THE DYING DECLARATIONS

These are the necessary conditions for the admissibility of the dying declarations:

- i. The person must die after making the declaration.
- ii. The statement should be related to the cause of death or circumstances causing death.
- iii. The cause of death must be in question.
- iv. The statement must be complete.

⁹ *Patel Hiralal Joitaram v State of Gujarat* AIR 2000 SC 2944

- v. The maker of the statement must be mentally fit.¹⁰If the court has any confusion regarding the mental condition of the maker, then the statement would be inadmissible.

While two deaths occur in the same incident. Moreover, if the circumstances causing the death of one person is closely connected with the circumstances causing the death of the other person. Then in such a case, the statement of one person is admissible for deciding the cause of death of another person.¹¹ If the statement made by a deceased is not related to the cause of his/her death or any circumstance of the transaction causing his/her death, then such statement is not permissible as per section 32(1) of the Evidence Act.¹²A dying declaration would not lose its worth on the ground that the deceased who made the statement died after a long time. The Supreme Court has clarified that a court cannot disregard a dying declaration merely because parents and other relatives of the deceased were there in the hospital during recording the statement.¹³ *Chacko v State of Kerala*¹⁴ is the landmark judgment in which the Supreme Court has pointed out the factors which create doubt over the authenticity of the dying declarations.

These factors are:

- A high percentage of burns,
- Age of the declarant,
- The time gap between the injury and recording of the statement,
- Non-availability of the certificates of fitness.

Recently the Supreme Court has clarified that dying declarations are the solitary piece of evidence in the murder trial.¹⁵

¹⁰ *State of Haryana v Harpal* AIR 1978 SC 1530

¹¹ *Tejram Patil v State of Maharashtra* AIR 2015 CrLJ 1829 at 1835

¹² *Babubhai Bhimbhai Bokhiria v State of Gujarat* AIR 2014 SC 2228 at 2230-32

¹³ *Satpal v State of Haryana* Crim App No 261 of 2021

¹⁴ *Chacko v State of Kerala* (2003) 1 SCC 112

¹⁵ *Jayamma & Anr v State of Karnataka* Crim App No 758 of 2010

RECORDING OF THE DYING DECLARATIONS

The following persons can record dying declarations:

- A. Judicial Magistrates, or
- B. Doctors, or
- C. Police Officers, or
- D. A normal person.

A). Judicial Magistrates

The dying declarations recorded by Judicial Magistrates have greater evidentiary value because they are supposed to be familiar with the procedure to record the dying declarations. Moreover, they are neutral persons.¹⁶ The dying declarations cannot be disbelieved simply because a Magistrate has not recorded them.¹⁷

B). Doctors

The doctors can record dying declarations. Such declarations are trustworthy and adequate to declare the offender guilty. Mere non-examination of the doctor who was there during the recording of the declaration does not affect its reliability if it is corroborated by the evidence of injured witnesses and other witnesses. A Division Bench of the Supreme Court in *Surendra Bangali @ Surendra Singh Routele v the State of Jharkhand*¹⁸ has observed that the dying declaration is not disregardable merely because the doctor doesn't have a certificate of fitness of the declarer. Herein, the evidentiary value of that declaration relies on the facts and surrounding circumstances of the case.

¹⁶ *Samadhan Dhudaka v State of Maharashtra* AIR 2009 SC 1059 at 1062

¹⁷ *Balbir Singh v State of Punjab* AIR 2006 SC 3221

¹⁸ *Surendra Bangali @ Surendra Singh Routele v State of Jharkhand* Crim App No 1078 of 2010

Moreover, a dying declaration is acceptable even though there was no certificate of fitness of the declarer when the eyewitnesses stated that the deceased was mentally sound to make the declaration.¹⁹ Such a certificate is a rule of prudence.

C). Police Officers

The police officers can also record the dying declarations. Such declarations cannot be rejected when they are clear and corroborated. But the condition is that if the *doctors* or the *police officers* record the dying declarations, then the appearance of one or two persons as a witness is mandatory at the place of recording the statement.

D). A normal person

When there is not sufficient time to call any of the aforesaid persons, then a normal person can also record the dying declarations. The court cannot reject such declarations if the person clearly shows that the declarer was mentally fit and aware in the course of making the statement.

HOW ARE DYING DECLARATIONS PROVED?

The written dying declarations are proven by examining the person before the court, and he will prove the written declaration. Here, the expression “the person” means that person who has written the statement. While the oral dying declarations are proven by examining the person in the presence of whose statements were made? In other words, the verbal (oral) dying declarations are proven by examining the person who has heard them.

DYING DECLARATIONS AS SOLE BASE OF CONVICTION

The dying declarations may be the sole base of conviction without any further corroboration if they are found to be accurate and voluntary. And, its truthfulness cannot be doubted. *Surinder*

¹⁹ *Jose v State of Kerala* AIR 2013 SC 2284 at 2286

*Kumar v the State of Haryana*²⁰ is the landmark judgment in which the Supreme Court has pointed out some conditions which must be fulfilled for the dying declaration to be the basis of conviction without any corroboration. These conditions are as follow:

- It should be coherent and consistent,
- It should be trustworthy and voluntary,
- It should be free from any attempt to provoke the declarer to give wrong statements,
- It should be free from the effect of tutoring, prompting, or imagination.

In the landmark judgment of *Sampat Babso Kale v the State of Maharashtra*,²¹ the SC has ruled that though the dying declarations can form a solitary base of conviction, corroborative evidence is compulsory when there is any doubt concerning the mental health of the declarer. The Kerala High Court has recently held that consistent and reliable dying declarations are enough to prove the guilt of the accused.²²

FIR AS A DYING DECLARATION

If a person injured in the incident dies after lodging an FIR, it would be relevant as a dying declaration.

OATH & CROSS-EXAMINATION IN A DYING DECLARATION

The Supreme Court has made the following observations:

*“During the recording of the statement of a person, he should not be compelled to take an oath. But the court can check the sanctity of the statement made by the person with the help of cross-examination.”*²³

SIGNATURE & THUMB IMPRESSION OF DECLARER

²⁰ *Surinder Kumar v State of Haryana* (2011) 10 SCC 173

²¹ *Sampat Babso Kale v State of Maharashtra* (2019) 4 SCC 739

²² *Thankappan v State of Kerala & Ors* Crim App No 480 of 2017

²³ *K Ramchand Reddy v Public Prosecutor* (1976) 3 SCC 704

If the dying declarations have no signature or thumb impression of the deceased, the court cannot disregard those declarations. It is nothing but a trivial defect. Moreover, if such declarations are proved by adequate evidence, then the court cannot reject them.²⁴

MULTIPLE DYING DECLARATIONS

In multiple dying declarations, the court should separately evaluate each declaration on its worth. The court should assure itself which one of them reveals the actual situation.²⁵ If the multiple dying declarations have discrepancies and contradictions, the court cannot rely on them in the absence of other reliable evidence as a basis to record conviction.²⁶

DYING DECLARATION DURING SEVERE BURN INJURIES & DOWRY DEATH

1. During Severe Burn Injuries

If a victim has suffered a brain injury and cognitive dysfunction, then the court cannot rely upon the statement made by him.²⁷ There is no absolute rule that a person who has 80% burn injuries cannot give a dying declaration.²⁸ In the case of burn injuries, the percentage and degree of burns would not be important factors for the credibility of a dying declaration. The important factors would be the quality of evidence related to the fitness and conscious state of the person to make the declaration.²⁹

*P.V.Radhakrishna v the State of Karnataka*³⁰ is one of the landmark judgments in which the SC has observed that the percentage of burns alone is not an important factor to decide the possibility of making the dying declaration by a person. These are the significant factors:

- Nature of burns,
- Affected body parts,

²⁴ *Narender Kumar v State of NCT of Delhi* AIR 2016 SC 150 at 155-56

²⁵ *Nagabhushan v State of Karnataka* Crim App No 443 of 2020

²⁶ *State of Rajasthan v Shravan Ram* AIR 2013 SC 1890

²⁷ *State of Rajasthan v Teja Ram* AIR 1999 SC 1776

²⁸ *Pawan Kumar v State of Himachal Pradesh* AIR 2017 SC 2459

²⁹ *Purshottam Chopra v State (Govt of NCT Delhi)* Crim App No 194-95 of 2012

³⁰ *PV Radhakrishna v State of Karnataka* (2003) 6 SCC 443

- Effect of burns on the ability to think and express the ideas or facts that spring to mind.

2. *During Dowry Death*

In alleged dowry death leading to suicide, the dying declarations must be entirely trustworthy for conviction. In case of any doubt, the court should prefer corroborative evidence.³¹

CONCLUSION

By interpreting and analyzing the topic, the authors conclude that the dying declarations are the exceptions to the law of hearsay evidence. Such declarations are communicated by a person orally or in a written form or even through some signs or gestures. Sometimes, it can be partly oral and partly writing. The dying declarations recorded by Judicial Magistrates are more reliable than those recorded by any other person in authority.

Corroboration of the dying declarations is merely a rule of caution. If the dying declarations are true and voluntary, then there is no need to corroborate them. During making the statement, the person must be of sound mind. Otherwise, the court cannot rely on his statement. Moreover, there can be multiple dying declarations by one person. In such cases, the court has to separately evaluate each declaration and find out which one reveals the truth. There is no fundamental rule that a person having 80% burn injuries cannot make the dying declaration. Moreover, if a victim suffers from severe burn injuries (even 100%), and despite this, he is mentally fit to make such a declaration, then his statement can be admissible as evidence. And, the court cannot ignore his statement.

³¹ *P Mani v State of Tamil Nadu* (2006) 3 SCC 161