

DYING DECLARATION- AN ANALYSIS

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Abstract

A dying declaration is a statement made by a dying person as to the cause of his death or as to any circumstances of the transaction that resulted in his death. It is an evidence under Section 32 of the Indian Evidence Act. Dying Declaration can be recorded by a magistrate, a doctor, a police officer or even a village head. It should be recorded in presence of at least two witnesses. The dying declaration may be the basis of the conviction if the Court is satisfied that the dying man had a good opportunity recognising the truth when the declaration was made. Doctor's role is very important and complicated in cases when dying declaration is needed. Section 32(1) of the Indian Evidence Act, 1872 recognizes the principle of *Leterm Mortem* which means words before death, the section states " 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.

Introduction

Dying Declaration means a statement written or verbal of relevant facts made by a person, who is dead. It is the statement of a person who had died explaining the circumstances of his death. The purpose of this research is to identify the principle of ' *Leterm Mortem*' which means 'words said before death' and in a legal term it is called Dying Declaration. The word Dying Declaration itself tells the meaning. But this project highlights those questions, which have a great value in legal field relating to Dying Declaration. The study tells about those statements which converted into Dying Declaration on different forms of dying Declaration, which are admissible by law its importance in the law and clears that has it some value or not? And if it has, then what are the exception of it? A statement by a person who is conscious and knows that death is imminent concerning what he or she believes to be cause or circumstances of death that can be introduced into evidence during a trial in certain cases.

A dying declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that they are about to die do not lie. As a result, it is an exception to the Hearsay rule, which prohibits the use of a statement made by someone other than the person who repeats it while testify during a trial, because of its inherent untrustworthiness. If the person who made the dying declaration had the slightest hope of recovery, no matter how unreasonable, the statement is not admissible in evidence. A person who makes dying declaration must, however be competent at the time he or she makes a statement otherwise it is admissible.

Law relating to Dying Declaration

Section 32(1) of the Evidence Act states “ 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 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.

Illustration (a) to Section 32 of the Act states: “ 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 B. The question is, whether she was ravished by B; or the question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Who are entitled to record the Dying Declaration?

(1) Recording by Magistrate

Though it is not essential that a dying declaration should be made only before a Magistrate; yet ordinarily, wherever an injured person is in precarious condition, the investigating officer should requisition the services of a Magistrate for recording the dying declaration.

(2) Recording by Investigating Officer (Police Officer)

The investigating officer who is naturally interested in the success of investigation, himself record the statement of the victim, who is in a precarious condition, without requisitioning the services of the Magistrate. In *Munna Raja v. State of Madhya Pradesh* [AIR 1976 SC 2199], the Supreme Court has held that such practice of recording by the investigating officer was bad and should not be encouraged.

In *Charipalli Shankara Rao vs Public Prosecutor AP High Court* [AIR 1995 SC 777], where the Head Constable attempted to procure the services of the Magistrate but the Magistrate was not available, the Head Constable was held to be competent to record the Dying Declaration in such circumstances.

(3) Recording by Duty Doctor

Where the dying declaration was made by the deceased to the doctor in the hospital, in absence of any material to suspect that the doctor had any animus against the accused the statement of the doctor who was a responsible officer and an uninterested witness, could not be discarded. Such a dying declaration is a reliable one.

Where the deceased narrated to the duty doctor at the time of her admission in the hospital as to how she received burn injuries and the doctor recorded it, it was held admissible as dying declaration. In *Kanaksingh Rai Singh Rav vs State of Gujarat* [2003(1) Crimes 168(SC)], it has been held that when a Judicial Magistrate was shown to be unavailable, the dying declaration recorded by the doctor in the absence of any extraneous pressure can be relied upon for sustaining the conviction.

(4) Recording by any other person

In *Meharban Singh vs. State of Madhya Pradesh* [AIR 2002 SC 299], where the injured died on the way while he was being taken to hospital in the Bullock cart by the prosecution witnesses. On the way he disclosed to the said witnesses that he has been assaulted by the accused persons to the effect of which they deposed by the Court which was supported by medical evidence and the surrounding circumstances convincingly. The dying declaration made to the witnesses was accepted.

Procedure of Recording Dying Declaration**(1) Certification by the Medical Officer as to the mental and Physical fitness of the declarant:**

No attempt be made to get the statement recorded by Magistrate unless the doctor had made a certificate that the deceased was in a fit state to give statement. This certificate may be on the Dying Declaration itself or it may be on a separate form but it must be fulfilled in spirit and substance.

(2) Should be conscious and voluntary:

The person records a dying declaration must be satisfied that the dying declaration was making a conscious and voluntary statement with normal understanding and responsibility of the Court is greater in holding that it was so made especially when it is formed that the man will die in a few minutes after recording the dying declarations.

(3) Should be precise and complete:

Dying Declaration should be short, concise and to the point. It is not the requirement of law that the person making the dying declaration should make an elaborate and exhaustive statement so as to cover each and every aspect of the incident and narrate the whole history of the case. It must be complete as incomplete dying declaration is not admissible.

(4) Must be made soon after the alleged incident:

If a dying declaration is made by a person soon after the incident of attack on him then it can have greater evidentiary value. In State of Karnataka vs Nellawwa [AIR 2002 Kant HCR 2296] it has been held that in dowry death cases, the dying declaration must be recorded as quickly as possible after the victim reaches the hospital, without any time being lost as the condition rapidly deteriorates with the set of time and the doctor must certify that the victim was personally asked about the incident and that too independently of all those accompanying her and that the correct answer given must find place in medico-legal register.

(5) Must have been recorded in the exact words in which it is made:

As far as possible, the dying declaration must have been recorded in the exact words in which it was spoken by the declarant. Where the dying declaration is recorded in the language of the declarant, it acquires added strength and reliability. Any suggestion that the deceased had said something by mistake cannot be entertained.

(6) Signature or thumb-impression of the declarant be taken:

In State (Delhi Administration) vs Lakshman Kumar [AIR 1986 SC250] it has been held that the declaration was not acceptable as it was not signed by the declarant, although she was literate, and it was not proved that she was incapacitated by reason of the burn injuries.

(7) Should be in question and Answer form:

Dying Declaration should preferably be in question and answer form, but the same is not laid down as universal rule. Generally dying declaration ought to be recorded in question and answer form but if it is not elaborate and consists of only a few sentences and is in the actual words of the maker, the mere fact that is not in question and answer form cannot be a ground against its acceptability or reliability.

(8) Should follow the Rule 33 of Criminal Rules of Practice:

In Bhaskar vs State of Andhra Pradesh [2005 CrLJ 48,53 (para22) (AP)], it has been held that where the Magistrate has not followed the procedure contemplated under Rule 33 of Criminal Rules of practice while recording the dying declaration, it cannot be given evidentiary value.

(9) Must be signed by the scribe of the dying declaration:

Where there was no certification of the scribe of the dying declaration that whatever he had scribed was the correct statement of the deceased, such a dying declaration couldnot be relied upon to sustain conviction.

Proof of Dying Declaration

When the dying declaration is verbal it can be proved by examining the person in whose presence the statement was made. But where the dying declaration is recorded the person

recording the statement is to be examined before the Court, and he will prove the writing before the Court.

The dying declaration may be proved by the evidence of a witness who heard it being made. In *Nisar Ahmad FajmohmedKaji vs State of Gujarat* [(1998) 9 SCC 23], where the declarant mentioned the name of the accused in the presence of the doctor who gave him preliminary treatment and the doctor's evidence was found to be very clear and unshaken in any manner in the cross examination, the dying declaration was held to be reliable.

When the dying declaration cannot be taken into consideration

- (1) **Incomplete** : A dying declaration is inadmissible in evidence if it is incomplete due to his coma from which he could not recover and no one could tell what the deceased was about to add.
- (2) **False**: If the accused proves by evidence that the deceased gave false statement, with the ill intention to implicate the accused in the case, then the dying declaration cannot be taken into consideration.
- (3) **Suspicious Circumstances**: Where the prosecution case purely based on dying declaration which is impregnate with so many suspicious circumstances creating a doubt as to its genuineness, such evidence of dying declaration would not be taken into consideration.
- (4) **Tutoring**: If it is proved that there was discussion between the injured person and interested persons before giving the dying declaration or the person giving such declarations was tutored, then the dying declaration cannot be considered.
- (5) **Delay**: If unduly delay has occurred in recording the dying declaration, the veracity of it may be affected.
- (6) **Cross cases**: Where in a fight between two parties or rival groups, several persons died on both sides and cross-cases for death of either party were started. In such circumstances, the dying declaration of one could not be used against members of his own party.
- (7) **Infirmities**: Where there were infirmities in dying declaration regarding state of deceased to make oral dying declaration and unnatural conduct of witness to

whom dying declaration was allegedly given by the deceased which was disclosed to the police after two days of deceased, the accused was entitled to the benefit of doubt.

(8) Death of another person: A dying declaration of one person is not a relevant fact with regard to the question about the death of another person.

(9) FIR: The statement given by the injured to the Investigating Officer and also the FIR lodged by him, was held to be not admissible as dying declaration under Section 32 of the Evidence Act because there was no evidence to connect his death during trial to the injuries caused to him in the same occurrence.

Conclusion

The dying declaration is not specifically mentioned in our penal law under Section 32(1) of IPC. It is the statement made by the person who is going to die, and that statement will be considered as evidence in court, how his death caused and who is the mugger. There are many conditions that relied upon the dying declaration that it should be in adequate manner as dying declaration is the weapon who convicted the accused and stood as strong evidence. The admissibility of dying declaration accepted in our Indian Court because the law presumes that is *LetermMortem* i.e : in his last parting words the man will never lie as anyone will meet his maker with a lie on his lips. This is because a man who is going to die, end with all his needs, wants and his interest is no more passionate for self deeds so he seldom lies. However, the dying declaration is found to be maliciously made then the Court has the right to reject the statement. Or there are other situations and circumstances which coupled with dying declaration for its admissibility which discussed above.