

Dying declaration and the medical practitioner: A review

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Abstract

The dying declaration is a statement made by a person explaining the circumstances of his death. The meaning of the word dying declaration is self-explanatory. This is the statement given by the person who knows that the death is eminent, and tells what he believes the cause or circumstances of his death. The dying declaration is considered credible and trustworthy statement. It is based on the general belief that most of the people who are about to die “do not lie”. **Section 32(1) of the Indian Evidence Act** deals with the admissibility of dying declaration. **Rule 33 of Criminal Rules of Practice** deals with the manner to be followed by the Magistrate while recording Dying Declarations. It is mandatory that the deceased must be in a fit state of mind and capable of making the statement at the time of recording the dying declaration (**AIR 2001 SC 2383**). Prior to recording of dying declaration the medical practitioner shall do the professional assessment of deceased and declare his fitness about giving the statement, (**1998 CrL LJ 585**). Great importance is attached to the dying declaration because the victim is generally the only eye-witness to the crime. The sense of impending death, which creates a sanction equal to the obligation of an oath in a court.

Keywords. Dying declaration, Cause of death, section 32(1) of Indian evidence act, rule 33 of criminal rule of practice, Landmark judgement, corroboration.

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I. Introduction

It is defined as a statement written or verbal of relevant facts made by a person, who is dead. (Section-32(1) of Indian evidence act, 1872) [1]. It is a statement of a person who died explaining the circumstances of his death. It is based on the maxim “**Nemo mariturus presumuntur**” meaning thereby that a man will not meet his maker with a lie on his mouth. The general rule under Section 60 of the Act is that all oral evidence must be direct- he heard it, saw it, or perceived it. The Indian law recognizes the fact that “a dying man seldom lies” or “the truth sits upon the lips of a dying man” Here the victim is the only eye-witness to the crime, so it is the exception to the principle of excluding here says evidence rule. (**P. V. Radhakrishna V. The state of Karnataka**) [2]. In **Uka Ram v. State of Rajasthan** [3] Apex Court held that “when a statement is made by a person as to cause of his death or as to any circumstances of the transaction which resulted into his death, in the case in which the cause of his death comes in question is admissible in evidence, such statement in law is compendiously called dying declaration.”

II. Admission of Dying Declaration:

The admissibility of the Dying declaration is based on two broad rules.

- 2.1. The victim being generally the only principal eye-witness to the crime.
- 2.2. The sense of impending death, which creates a sanction equal to the obligation of an oath in a court.

III. Recording the Dying declaration

Rule 33 of the criminal rule of practice [4] casts the duty on Magistrate to record the dying declaration. Sub Rule (d) of Rule 2 of Criminal Rule of Practice says “Chief Judicial Magistrate” which includes Chief Metropolitan Magistrate and special magistrate. However, the Executive Magistrate is empowered to record the dying declaration.

The dying declaration can be recorded by the Police officers and also by the medical officers in case of urgency and non-availability of Magistrate, and it is acceptable by the court. (**2010 AIR SCW 5494**) [5] This leniency permitted is because the Dying declarations are the “primary piece of evidence to prove the genesis of occurrence”. The only requirement to record this declaration is to ensure that the victim has volunteered the statement and during giving the statement he was in a fit state of mind to give a declaration. (**AIR 2001 SC 2383/ AIR 1983 SC 164**) [6] As far as possible the dying declaration should be recorded in the language used by the victim. (**1999)3 Mah. LJ 581 (DB) Bombay**) [7]. The magistrate who has recorded the dying declaration

and the doctor who has certified about the condition of the victim is summoned as a witness in the court. (2000(2) ALT (CrL) 448) [8].

IV. The language of declaration

There is no particular format for dying declaration. But it must be functioning as a piece of evidence with proper identification. The dying declaration is recorded in the question-answer format. If it is recorded in the narrative form also, it cannot be discarded since it is in the version of the victim as perceived by him. If the victim cannot speak due to injuries, he can make the dying declaration by sign and gesture as held by a full bench of Allahabad High Court in the case of **Queen-Empress V. Abdullah**. [9] The Apex Court has observed in another case that "the value of the sign language would depend upon as to who recorded the signs, what gestures & nods were made, what were the questions asked, whether simple or complicated & how effective & understandable the nods & gestures were." The statement made in a language other than Hindi or English is also admissible in the court, provided that it is explained to the patient. In the case of **K. Ramchand Reddy V. Public Prosecutor**, [10] the victim died after lodging an FIR. It was held as a dying declaration. It is for the court to ensure that the Dying declaration inspires full confidence because the maker of the dying declaration is not available for cross-examination. The court should also satisfy themselves that there is no possibility of torturing, prompting, or it to be a product of imagination.

V. Exceptions of Dying Declaration

The statements made by dying persons are not admissible:

5.1. If the cause of death of the deceased is not in question. If the deceased has made the statement before his death anything except the cause of his death, that declaration is not admissible as evidence.

5.2. The declarant must be a competent witness. The declaration of a child is not admissible. In **Amar Singh vs. State of Madhya Pradesh**, 1996 Cr L J (MP) 1582, [11] it is held that without the proof of mental or physical fitness, the dying declaration is not reliable. The inconsistent dying declaration also has no evidential value.

5.3. Doubtful feature: In the case of **Paniben v. the State of Gujarat (AIR 2002 SC 2996)**, [12] the injured died 7-8 hours after the incidence. Four dying declarations were recorded, but none carried the certificate of medical officer about her mental fitness, the declaration was not acted upon.

5.4. The Dying declarations which are influenced, untrue or incomplete are also not admissible. If the statement made by the deceased does not relate to his death, but the death of another person, it is also not relevant. If it is inconsistent with the case of the prosecution it is not admissible. It is not relied upon if the statement is made by the person of unsound mind.

The court has to ensure that the dying declaration inspires full confidence because the maker of the declaration is not available for the cross-examination. (**The State of U.P. v. Madan Mohan**) [13]

VI. Need for Corroboration (Supporting Evidence):

Several judgments have noted that it is neither rule of law nor prudence that dying declaration cannot be acted upon without corroboration. If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence because a dying declaration does not contain the details as to the occurrence. It is not to be rejected, equally merely, because it is a brief statement. On the contrary, the shortness of the statement itself guarantees truth. In the case of **Barati V. State of U.P.**, [14] the dying declaration made to the relatives of the deceased when properly proved can be trusted. In this case, the deceased was killed by an acid attack. She made the statement first to her brother and son, repeated it at the police station, and again at the hospital charging the accused. The court held the statement as worthy of credit. A lot of the evidentiary value is attached to the dying declaration. However, the court applies the scrutiny and the closest circumspection to the statement before acting upon it. The court is always on guard against the statement as a result of either tutoring, prompting, or a product of his imagination. The court must satisfy themselves that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify his assailants and that he was making the statement without any influence or rancour. Once, the court is satisfied that the dying declaration is true and voluntary, it is sufficient to found conviction even without further corroboration. (**K. R. Reddy V. Public prosecutor**). [15] In **Khushal Rao v. State of Bombay (1958 SCR 552)**, [16] Hon'ble Apex Court held this observation to be like obiter dicta and observed that "*It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of the conviction unless it is corroborated.*" In **Harbans Singh V. State of Punjab (1962 Workshop Core Paper on Dying Declaration 7 AIR 439)**, [17] the Hon'ble Supreme Court held that "It is neither a rule of law nor of prudence that a dying declaration requires corroboration by other evidence before a conviction can be based thereon." In **State of U. P. v. Ram Sagar Yadav (1985 AIR 416)** [18] Hon'ble Supreme Court observed that "The primary effort of the court is to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if

the circumstances surrounding the dying declaration are not clear or convincing then the court may, for its assurance, look for corroboration to the dying declaration”.

VII. Validity of Medical Opinion

Normally the court, to satisfy whether the deceased was in a fit mental condition to make the dying declaration, can look up the **medical opinion**. But where the **eye witness has said that the deceased was in a fit and conscious state** to make this dying declaration, the **medical opinion cannot prevail**. If the doctor has certified the mental fitness of the victim and her ability to give an independent statement, it is held that the magistrate doesn't need to make an independent inquiry as to the fitness of the victim.

VIII. Conclusion

The ground for the admission of the dying declaration is death, and generally, the only eye witness is the victim of such crime, the exclusion of such piece of evidence will defeat the ends of the justice. The sense of impending death creates a sanction equal to the obligation of an oath. (**Dashrath V. The State of M.P., (2007) 12 SCC 487**).^[19] The general principle on which this species of evidence is admitted is that they are declarations made in extremity when the party is at the point of death and every hope of the world is gone. Any and every motive to falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. It is a situation so solemn and so awful that it is considered by the law as creating an obligation equal to the oath administered in a court of justice. The dying declaration is a statement verbal or written made by a person relating to the cause of his or her death or any of the circumstances of the transaction resulting in death. The declarant must be in a sound state of mind (*Compos Mentis*). The medical practitioner is required to certify that his patient is in a sound state of mind to make the statement before it is recorded. The endorsement of the doctor as regards the mental status of the deceased is a rule of prudence and not the ultimate test as to whether or not the same was truthful or voluntary. (Modi jurisprudence) A dying declaration is admissible in all criminal and civil cases, where the cause of death is under inquiry.

Landmark judgments:

IX. The landmark Judgements

This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in *Smt. Paniben v. State of Gujarat (AIR 1992 SC 1817)*:

9.1. “There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.” (See *Munnu Raja & Anr. v. The State of Madhya Pradesh (1976) 2 SCR 764*).^[20]

9.2. “If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration”. (See *State of Uttar Pradesh v. Ram Sagar Yadav and Ors. (AIR 1985 SC 416)* and *Ramavati Devi v. State of Bihar (AIR 1983 SC 164)*.^[21-22]

9.3. “The Court has to scrutinize the dying declaration and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration”. (See *K. Ramachandra Reddy and Anr. v. The Public Prosecutor (AIR 1976 SC 1994)*.^[23]

9.4. “Where dying declaration is suspicious, it should not be acted upon without corroborative evidence”. (See *Rasheed Beg v. State of Madhya Pradesh (1974 (4) SCC 264)*)^[24]

9.5. “Where the deceased was unconscious and could never make any dying declaration the evidence about it is to be rejected”. (See *Kaka Singh v State of M.P. (AIR 1982 SC 1021)*).^[25]

9.6. “A dying declaration which suffers from infirmity cannot form the basis of conviction”. (See *Ram Manorath and Ors. v. State of U.P.) (1981 (2) SCC 654)*^[26]

9.7. “Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected”. (See *State of Maharashtra v. Krishnamurthi Laxmipati Naidu (AIR 1981 SC 617)*).^[27]

9.8. “Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth”. [See *Surajdeo Oza and Ors. v. State of Bihar (AIR 1979 SC 1505)*^[28]

9.9. “Normally the Court to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail”. (*Nanahau Ram and Anr. v. State of Madhya Pradesh (AIR 1988 SC 912)*).^[29]

9.10. “Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon”. [See *State of U.P. v. Madan Mohan and Ors. (AIR 1989 SC 1519)*]^[30]

Citations

[1] Section-32(1) of Indian evidence act, 1872.

[2] *P. V. Radhakrishna Vs. State of Karnataka*

- [3] Uka Ram v. State of Rajasthan, A.I.R. 2001 S.C. 1814.
- [4] Rule 33 of the criminal rule of practice
- [5] 2010 AIR SCW 5494
- [6] AIR 2001 SC 2383/ AIR 1983 SC 164
- [7] (1999)3 Mah. L J 581 (DB) Bombay)
- [8] (2000(2) ALT (CrI.) 448)
- [9] Queen-Empress V. Abdullah
- [10] K. Ramchand Reddy V. Public Prosecutor
- [11] Amar Singh v. State of Madhya Pradesh, 1996 Cr L J (MP) 1582
- [12] Paniben v. the State of Gujarat (AIR 2002 SC 2996)
- [13] The State of U.P. v. Madan Mohan
- [14] Barati V. State of U.P.
- [15] K. R. Reddy V. Public prosecutor
- [16] Khushal Rao v. State of Bombay (1958 SCR 552)
- [17] Harbans Singh V. State of Punjab (1962 Workshop Core Paper on Dying Declaration 7 AIR 439)
- [18] In-State of U. P. v. Ram Sagar Yadav (1985 AIR 416)
- [19] Dashrath V. The State of M.P., (2007) 12 SCC 487)
- [20] Munnu Raja & Anr. v. The State of Madhya Pradesh (1976) 2 SCR 764)
- [21] State of Uttar Pradesh v. Ram Sagar Yadav and Ors. (AIR 1985 SC 416)
- [22] Ramavati Devi v. State of Bihar (AIR 1983 SC 164)
- [23] K. Ramachandra Reddy and Anr. v. The Public Prosecutor) (AIR 1976 SC 1994).
- [24] Rasheed Beg v. State of Madhya Pradesh (1974 (4) SCC 264))
- [25] Kaka Singh v State of M.P. (AIR 1982 SC 1021)
- [26] Ram Manorath and Ors. v. State of U.P.) (1981 (2) SCC 654)
- [27] State of Maharashtra v. Krishnamurthi Laxmipati Naidu (AIR 1981 SC 617). [27]
- [28] Surajdeo Oza and Ors. v. State of Bihar (AIR 1979 SC 1505)
- [29] Nanahau Ram and Anr. v. State of Madhya Pradesh (AIR 1988 SC 912).
- [30] State of U.P. v. Madan Mohan and Ors. (AIR 1989 SC 1519)

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