



DYING DECLARATION AND ITS CREDIBILITY

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ABSTRACT:

The 'Dying Declaration' depends on the maxim 'Nemo moriturus praesumitur mentire', which signifies 'a man won't meet his maker with a lie in his mouth'. A dying declaration is called as 'Leterm Mortem', which signifies 'Words said before death'. Recording of dying declaration is significant errand. Most extreme consideration is to be taken while recording a dying declaration. In the event that a dying declaration is recorded cautiously by the best possible individual, remembering the fundamental elements of the dying declaration, such dying declaration holds its full value.



KEYWORDS: Dying Declaration, Admissibility of D.D., Evidentiary Value, India.

I. INTRODUCTION:

In India, the provisions in regard of recording and worth of dying declaration are given under Section 32 (1) of The Indian Evidence Act. The words 'Dying Declaration' have not been utilized in the Sec. 32 (1) explicitly yet it accommodates the Statement made by the individual before his demise expressing the reason for his passing. Such a statement is known as a 'Dying Declaration'. An examination of Sec. 32 (1) of Indian Evidence Act has demonstrated that when the statement is made by an individual with regards to the

reason for his death or as to any of the circumstance of the transaction which brought about his death, in cases where the reason for that individual's death comes into question. Such statements are important whether the individual who made them was or was not, when they were made, under desire for death, and whatever might be the nature of the proceeding where the reason for his death comes into question.¹ A statement by an individual who is conscious and knows that death is unavoidable concerning what the person in question accepts to be the reason for circumstances of death that can be brought into proof during a trial in specific cases. A dying declaration is

viewed as believable and dependable proof based on the general conviction that the vast majority who realize that they are going to die don't lie. Therefore, it is a special case to the Hearsay rule, which restricts the utilization of an statement made by somebody other than the individual who rehashes it while affirming during a proceeding, in view of its inborn dishonesty. In the event that the individual who made the dying declaration had the smallest any desire for recuperation, regardless of how irrational, the statement isn't allowable into evidence. An individual who makes a dying declaration must be able at the time the person makes a

¹ S. D. Basu, "The Law of Evidence", (2010), pp. 165-166

statement, else, it is unacceptable. A dying declaration is commonly introduced by the prosecution, yet can be utilized in the interest of the accused.

In this way, the dying declaration implies a statement written or verbal of significant realities made by an individual, who is dead. It is the declaration of an individual who had died clarifying the circumstances of his demise. The victim is the only eye-witness to the wrongdoing and in this manner rejection of his declaration would defeat the ends of justice. Sec. 32 of Indian Evidence Act is related with the cases of individual who is dead or who can't be found.

II. PROCEDURE FOR RECORDING OF DYING DECLARATION:

There is no specific form of dying declaration which is recognized or allowable in the eye of law. Yet, that must capacity as a bit of proof with the best possible distinguishing proof. However, the best type of dying declaration is as questions and answers. Be that as it may, at whatever point a dying declaration is being recorded as questions and answers insurance ought to be taken that precisely what questions are posed and what answers are given by the patient those ought to be written. Consequently, a dying declaration might be in the accompanying structures:

1. Written form: It is favored that it ought to be written in the vernacular which the patient comprehends and talks.
2. Verbal form: If the patient can talk then verbal dying declaration can be made by the patient.
3. Gestures and Signs form: In *Queen v. Abdulla*,² it was held that if the harmed individual can't talk, he can make dying declaration by signs and signals in light of the inquiry. On the off chance that an individual isn't able for talking or writing he can make a gesture in the form of yes or no by gesturing and even such sort of dying declaration is legitimate.
4. A dying declaration might be as narrations: If an occurrence arises where dying declaration is recorded as portrayals, nothing is being provoked and everything is coming from the brain of the individual making it.

The dying declaration recorded by Magistrate is considered as the best Dying Declaration. However, on the off chance that there is no opportunity to call the Magistrate, keeping in view the breaking down state of the person in question, it tends to be recorded by anyone for example local official like physician or some other individual. In uncommon cases, the dying declaration can likewise be recorded by a Police Officer. It can't be said that a dying declaration recorded by a police officer is always invalid. It is also expected that the dying declaration is not recorded by the able Magistrate, it is better that signs of the witnesses are taken who are available at the hour of recording it.

There are some significant facts identifying with the chronicle of dying declaration. Those realities must be recollected by the authority before recording dying declaration. The individual making dying declaration must be in a fit state of brain to give the explanation when recording is begun and should stay in fit state of psyche until the chronicle of dying declaration is finished. The fact that the individual making dying declaration is in fit state of psyche ought to be confirmed by the specialist. However, in the event of where it was impractical to take fitness from the specialist, dying declaration has held its full sacredness if there are different witnesses to affirm that victim casualty was in fit state of the mind which didn't keep him from making dying declaration. In any case, it ought not be affected by anyone or arranged by inciting, mentoring or creative mind. On the off chance that any dying declaration gets suspicious, it will require corroboration. In the event that an injured individual has made more than one dying declarations and if these are not at difference with one another then generally they hold their full worth. However, where these statements are irregularity or conflicting, such dying declarations will lose their worth.

III. ADMISSIBILITY OF DYING DECLARATION:

In regard of the admissibility or worthiness of Dying Declaration, some basic conditions must be satisfied. Acceptability of Dying Declaration is clarified in the Section 32 (1) of Indian Evidence Act.

² (1885) ILR 7 ALL 385

After the satisfaction of those conditions it tends to be acknowledged as proof under the Indian Evidence Act. Following are those conditions for admissibility of Dying Declaration:

1. The injured individual who has made Dying Declaration ought to have died.
2. The Dying Declaration must be complete.
3. The reason for death must be clarified by the person in question or possibly the conditions which came about into his demise must be clarified.
4. The individual making Dying Declaration must be conscious and sound.
5. The individual making Dying Declaration must be in sound state of mind.
6. The reason for death of the individual making Dying Declaration must be in question.
7. In regard to the acceptability of Dying Declaration, it isn't vital that the individual making declaration relating to his death ought to be under desire for death. He need not be under shadow of death.
8. The entire Dying Declaration and not a specific part of it ought to be considered by the Court for the purpose of its admissibility. The verbal Dying Declaration is additionally satisfactory.
9. As per the decisions of the Indian Courts, Dying Declaration will be permissible however there is no corroboration of Dying Declaration and no utilization of definite expressions of the died person in Dying Declaration.
10. The Dying Declaration will be acceptable regardless of whether it is signed or thumb by the expired individual, provided that it must be appropriately witnessed.

IV. EVIDENTIARY VALUE OF DYING DECLARATION:

Evidentiary value of dying declaration will change from case to case as indicated by facts and circumstances of each case. In *K. R. Reddy v. Public Prosecutor*,³ evidentiary value of dying declaration was observed as under:

"The dying declaration is without a doubt allowable under Section 32 of Indian Evidence Act and not being statement on oath so its reality could be examined by interrogation, the court needs to apply the examination and the closest care of the statement before following up on it. While incredible gravity and sacredness is appended to the expressions of a dying man in light of the fact that an individual very nearly passing isn't probably going to lie or to interface a case as to involve a blameless individual, yet the court must be alert against the statement of the expired being a consequence of either mentoring, inciting or a result of his creative mind."

In *Kushan Rao v. State of Bombay*,⁴ the Court has held that "there is no total principle of law that a dying declaration can't be the sole basis of conviction except if corroborated. A genuine and willful statement needs no corroboration. A dying declaration, in this way, is not weaker sort of proof than some other bit of proof. Each case must be resolved without anyone else actualities keeping in view the conditions in which the dying declaration was made. A dying declaration which has been recorded by an able Magistrate in the best possible way, in other words, as question and answers, and to the extent practicable in the expressions of the maker of the declaration remains on an a lot higher balance than a dying declaration which relies on oral declaration which may experience the ill effects of the considerable number of sickness of human memory and human character. The dying declarations remain on the same balance as other bit of proof and must be made a decision in the light of encompassing circumstances and with reference to the principle governing the weight of proof. So as to test the credibility of a dying declaration the court needs to keep in view the conditions like the chance of the dying man for perception, for instance, regardless of whether there was adequate light if the wrongdoing was committed in the night; whether the ability of man to recall the facts expressed had not been hindered at the time he was owing the expression by conditions outside his ability to control; that declaration has been reliable all through on the off chance that he had a few chances of making a dying declaration separated from its official record and that the declaration had been made at the soonest opportunity and was not the consequence of coaching by invested individual."

³ 1976 (2) SCC 618

⁴ AIR 22, 1958 SCR 552

In case of more than one Dying Declarations, every single such declaration must be indistinguishable. Now and again, F.I.R. was additionally considered as a dying declaration. Conflicting Dying Declaration is no evidentiary value.

V. EXCEPTIONS TO DYING DECLARATION:

There are a few special cases of Dying Declarations where the statement of dying person would not be admissible in evidence. Following are those situations where the declarations made by the dying person are not allowable:

1. The victim is incompetent witness: The victim who has made Dying Declaration must be able witness. Consequently, passing on revelation made by the kid or unsound individual is prohibited.
2. Cause of death of deceased is not in question: If the deceased own explanation before his demise anything with the exception of the reason for his passing, that statement isn't acceptable as evidence.
3. Doubtful features: Where the harmed individual died after passing of 7-8 hours of the occurrence and more than one declaration are recorded however not got medicinal certificates. In such a condition, there is an uncertainty in regard of the wellness of died individual and hence such declarations are not permissible.
4. Conflicting statements: If there are at least two Dying Declarations however every one of those declarations are conflicting to one another. In such circumstance, each one of those declarations have no evidentiary value and not allowable.
5. Untrue statement: It is consummately reasonable to dismiss a part of statement in the event that it is seen as false and in the event that it tends to be isolated.
6. Impacted statement: It must be noticed that dying declaration ought not to be under impact of anybody.
7. Incomplete statement: Incomplete statements are not permissible as proof.
8. If dying declaration isn't as per prosecution: If Dying Declaration is conflicting with the case of prosecution it isn't allowable.
9. Declaration identifies with death of someone else: If Dying Declaration made by expired doesn't identify with his demise however to the death of someone else, it isn't important.

VI. CONCLUSION AND SUGGESTIONS:

Dying Declaration is a important bit of proof. It might be the last and most relevant available proof concerning the commission of a wrongdoing. Therefore, the law of evidence makes it important and allowable as evidence. It is additionally substantive proof against the accused and a conviction can be founded exclusively on a dying declaration. Given the significance appended to Dying Declaration, the courts have advanced different standards to manage it. It is significant that the dying declaration ought to be free from blunders, controls and alterations. It should strike to be authentic, free from all questions, expressing the genuine story of the maker. In the event that the court engages any uncertainty as to the equivalent, it is basic for the court to investigate authenticating confirmations to test the honesty of the Dying Declaration. In case no such proof is accessible, the court should dismiss the dying declaration. It is the obligation on the court to think about Dying Declaration in right point of view and fulfill itself of its honesty before it can continue to convict an offender.

The researcher needs to give a few suggestions to improve the credibility and veracity of Dying Declaration. The rules ought to be given by the court ordering that to the extent practicable, the Dying Declaration ought to be video recorded by the magistrate so it tends to be inspected and investigated for its veracity. This can be conceivable with the assistance of mobiles (cell phones) which will lessen the debates in regards to Dying Declaration. In some exceptional and urgent situations where it isn't workable for a magistrate or specialist or any approved individual to record a Dying Declaration, anyone should ready to record a video of a dying declaration which ought to be allowable in court. Further, mindfulness ought to be spread among the overall population about recording of Dying Declaration and its significance.

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