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DYING DECLARATION RELEVANCY OF DYING DECLARATION

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ABSTRACT

A person who is about to die would not lie, as truth sits on the lips of a person who is about to die....!

*This research paper endeavours to identify the principle of “**Leterm Mortem**” which means “words said before death”, or Dying Declaration. The word dying declaration means declaration or statement made by any person whose death is imminent. Dying Declaration is based on maxim “**Nemo moriturus praesumitur mentire**” which means a man will not meet his maker with a lie in his mouth. A statement made by a person regarding cause of his death or circumstances of the transactions resulting in his death is a Dying Declaration. As per Section 32(1) of Indian Evidence Act The only statement given just before death is dying declaration. It is strongly believed that a person who know that he is about to die will not lie. Dying Declaration is an exception to Hearsay Rule. Admissibility of a dying declaration as a relevant piece of evidence is guided by the principle of necessity and religious belief of the olden days. The necessity being, that in cases, where victim is the only eyewitness to crime, the exclusion of his statement might defeat the ends of justice. Recording of dying declaration is very important task. Utmost care is required to take while recording a dying declaration. If a dying declaration is recorded carefully by the proper person, keeping in mind its essential ingredients, such declaration retains its full value. In this research paper different forms of Dying Declaration, admissibility and its importance are studied.*

KEYWORDS: *religious belief, Dying Declaration, admissibility, Hearsay Rule,*

INTRODUCTION

The paper unfolds a picture of the the Principle behind Dying Declaration Which is provided under the Section – 32(1) of the Indian Evidence Act 1872. It explains specific reference to the English rule against hearsay under the Indian Evidence Act, 1872.

AIMS AND OBJECTIVES

The purposes of this study are as follows:

The aim of this paper is Draw the importance of Dying Declaration and also the Relevancy of Dying Declaration under Different circumstances .

RESEARCH HYPOTHESES

- Defining Dying Declaration as an Exception to the Hearsay Rule.
- The research project is entitled “Relevancy of Dying Declaration. It shows the provisions that are relevant according to the Indian Evidence Act 1872.

RESEARCH METHODOLOGY

It is a doctoral research and its content search of secondary available data.

RESEARCH QUESTIONS.

What is the concept of Dying Declaration ?

What is the evidentiary value of Dying Declaration , when it is recorded by different person ?

What are the different forms of Dying Declaration and its Relevancy in administration of Justice?

MODE OF CITATION

BLUE BOOK 19TH EDITION, LEGAL CITATION has been followed throughout the project.

RESEARCH SCHEME

The present Research characterized into 5 Chapters.

SOURCES of DATA

There have been used both primary and secondary sources as the foundation for the analysis presented in this paper. Primary sources include statutory and case law, while secondary sources include books and scholarly articles available online.

Section 32 of Indian Evidence Act ,1872

Cases in which statements of relevant fact by person who is dead or cannot be found.—statement, written or verbal, or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expanse which, under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

1. When it relates to cause of death.
2. Or is made in course of business.
3. Or against interest of maker .
4. Or gives opinion as to public right or customs or matters.
5. Or relates to existence of relationship.
6. Or is made in will or deed relating to family.

7. Or in document relating to transactions mentioned in section 13 clause (a).

8. Or is made by several persons and expresses feelings relevant to matters in question.

Section 32(1) 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 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. 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.¹

In Ulka Ram vs State of Rajasthan it was held by the apex court that “When a statement is made by a person as to cause of his death or as to any circumstances of transaction which resulted into his death, in case in which cause of his death comes into question is admissible in evidence, such statement in law are compendiously called dying declaration.”

SCOPE OF DYING DECLARATION

The statement of Dying Declaration holds relevancy in any judicial proceedings where the cause of death of that person is in issue. The Statement relates to the cause of death of the person making the statement. Section 32(1) makes it clear that it is not necessary that there is an apprehension of the person making such statement. Dying Declaration is admissible in both civil and criminal cases.

In India Oath and ensuring the truthfulness of the statement has not been made a condition of it's admissibility.

In Ram Nath v. State of Madhya Pradesh (AIR 1953 SC 420),

Supreme Court held that , just on the basis of evidence of Dying Declaration accused person cannot be convicted, because Dying Declaration are not made on oath and is not subject to cross examination and because the maker of it might be mentally or physically in a state of compassion and might be drawing upon his imagination while he was making the declaration.

People v. Falletto, 202 N.Y. 494, 499-500, 96 N.E. 355, 357-58 (1911),

Judge Vann said "experience shows that dying declarations are not always true , Men sometimes lie even when facing death, as has frequently been known of convicts about to be executed, and the motive of self exoneration which induced them to lay the crime on someone else might move a declarant to say that the accused was the aggressor by committing the first assault. Experience shows that dying persons have made self-serving declarations, such as false

¹ Indian Evidence Act , 1872 , Act no. 1 Of 1872

accusations, in order to destroy their enemies, and false excuses in order to save their friends."

Thus, the Supreme Court of India has laid a stress, as a safeguard, on corroboration of the dying declaration before it is acted upon.

DYING DECLARATION: AN EXCEPTION TO RULE AGAINST HEARSAY

• **Black's Law Dictionary** defines hearsay as, "A statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

It is prevalent that in order to prove fact best evidence must be furnished and the direct evidence is considered as best evidence, whereas, hearsay is where information you have heard might or might not be true. Thus the admissibility of hearsay rule is excluded.

FORM OF DYING DECLARATION

Though there is no particular form of Dying Declaration, it may be written, oral or in form of gestures.

Gestures and Signs form

If the victim is unable to speak than his/her statement can be recorded in the form of gestures. As per the Supreme Court the Evidentiary value of gestures and signs will depend on factors like who recorded the statement, what are the gestures, what were the questions asked.

In "**Queen versus Abdulla**,"² it was held that if the injured person is unable to speak, he can make dying declaration by signs and gesture in response to the question. In this case deceased whose throat was slit by the accused was unable to speak. When the name of "Abdullah" was taken she moved her hand up and down.³ This was understood to be sign of affirmation and was admissible as dying declaration.

In Nirbhaya case 2013, a bench of Justices Dipak Misra, R Banumathi and Ashok Bhushan said a dying declaration not necessarily be made by words or in writing but it could be through gestures also. Not just words but even gestures can be made admissible in the court now.

Question Answer form

The best form of recording Dying Declaration is question and answers. While asking question and recording Dying Declaration precaution should be taken that exactly what question are to be asked and what are the answers given by the patient, everything should be noted. The Dying Declaration can also be recorded in Narrative form.

Who may record a Dying Declaration

A dying declaration may be made to anyone, to a police officer, to a doctor, to any person but if it is made to a Magistrate and is recorded by him, then it will have greater evidentiary value. The declaration is such a case of is regarded of higher credibility. Some times even if the Dying Declaration is recorded by Magistrate it does not hold any evidentiary value as after the statement is recorded Doctors does not approve the patient mentally fit. In such situation evidentiary value of Dying Declaration is questioned.

In 2013, in Nirbhaya case three Dying Declaration were recorded, First was recorded by Doctor while she was admitted in Hospital, The second was recorded by Sub Divisional Magistrate where she gave exact details of the crime and the third one was recorded by a metropolitan magistrate and was mostly by gestures. In this case, all three dying declarations were recorded. But the one recorded by the magistrate was important. And the court did accept the dying declaration recorded by magistrate even when it was in gestures and nods.⁴

FIR as Dying Declaration

In *K. Ramachand Reddy v. Public Prosecutor*, it was held that where an injured person lodged an FIR & then died, it was held to be relevant as a dying declaration.

A report made by the deceased relating as to the caused of death or as to any of circumstances of the transaction which resulted in his death shall be relevant as dying declaration under section 32(1).

Dowry Death, wife burning etc

The death of a married woman in the matrimonial home three or four months after her statements expressing the danger to her life has been held by the Apex Court to be a statement explaining the circumstances of her death. In a case of wife-burning, after recording her statement that her husband had set afire, she mercifully pleaded that her husband should not be beaten. It was argued on this basis that she wanted to exonerate her husband. The court replied: This is a sentiment too touching for tears & stems from the values of the culture of the Indian womanhood; a wife when she has been set afire by her husband, true to her tradition, does not want her husband should to be assaulted brutally. It is this sentiment which promoted this dying tragic woman to say that even if she was dying, her husband should not be beaten. We are unable to appreciate how this statement can be converted into one exculpatory of the accused. In a further application of this principle to a case arising out of "that atrocious species of murder", called wife burning, the Apex Court said: "The three dying declarations corroborated by other circumstances are sufficient in our view to bring home the offence. The counsel has sought to discredit these declarations

² ILR 7 ALL 385

³ <https://www.pen2print.org/2017/06/dying-declaration-section-321-of-indian.html>

⁴ https://blog.ipleaders.in/admissibility-dying-declaration/#_ftn2

forgetting that they are groaning utterances of a dying woman in the grip of dreadful agony which cannot be judged by the standard of fullness of particulars which witnesses may give in other situations. To discredit such dying declarations for short- falls here or there or even in many places is unrealistic, unnatural & unconscionable, if basically there is credibility. The terrible in this case has taken place in the house & in the presence of the husband who has been convicted. We hardly see any reason for interfering in this conviction. In a case a bride was 80% burnt when she had given statement to the doctors. But according to doctors she was in a fit condition to give statement. The court said that from the fact of 80% burns no inference was to be drawn that she could not have been capable of making the statement. Where the declaration of the deceased wife was deposed only by her mother, the Court held this to be not sufficient to convict.

DOCTOR'S STATEMENT

In the case of a bride burning, the doctor to whom the deceased was taken for treatment deposed that soon after her admission, she said that her husband had poured kerosene on her clothes and set her ablaze. The doctor made a note of it in the case papers. The testimony of the doctor became supported by the contemporaneous record. The Court said that the doctor had no reason to falsely depose against the accused or prepare false case papers.

EVIDENTIARY VALUE OF DYING DECLARATION

Dying declaration can only be taken into consideration when it is a) Recorded by a competent magistrate (with certain exception), b) the said statement must be recorded in the exact words, c) there must not be any scope of influence from the third party, and hence the declaration must be made soon after the incident that is the reason of the death, d) there must not be any ambiguity regarding the identity of the offender or cause of death. It is very important to note that such a statement must not be made under the influence of anybody or it must not be given by promoting or tutoring. In case there is such a suspicion, then such dying declaration needs evidence to corroborate.⁵

Condition For Admissibility Of Dying Declaration

1. The declarant who gave dying declaration should die.
2. The dying declaration must be complete.
3. It must be voluntary and uninfluenced.
4. The cause of death must be explained by the declarant or at least the circumstances which resulted in his death must be explained.

5. The declarant who makes dying declaration, must be conscious and coherent.
6. The declarant must be of sound state in mind.
7. The cause of death of declarant must be in question.

IMPORTANT CASE LAW

Pakala Narayan Swami vs Emperor AIR 1939 PC 47

It is one of the Leading cases related to Dying Declaration . In this case Privy Council observed that :-
“The circumstances must have some proximate relation to the actual circumstances to prove a dying declaration.”

It was noted by the Lord Atkin that “the circumstances must be the circumstances of the transaction in general indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible.

But statements made by the deceased that he was proceeding to the spot where he was in fact killed or as to the reasons for so proceeding or that he was going to meet a particular person or that he had been invited by such person to meet him, would each of them, be the circumstances of the transaction. The statement under this clause may be made before the cause of death has arisen or before the deceased has reason to anticipate being killed.”

EXCEPTION OF DYING DECLARATION

The exception , where the statement of the person dying are not admissible.

1. If the deceased makes statement of anything other than his death the statement would not be considered as Dying Declaration.
2. If a Declarer is incompetent witness the statement would not be reliable . In Amar singh v. State of Madhya Pradesh,1996 Cr LJ (MP) 1582, it was held by M.P. High Court that without proof of mental or physical fitness, the dying declaration was not reliable.
3. Inconsistent dying declaration is no evidentiary value.
4. The statement of deceased must not be doubtful. In **Ramilaben v. State of Gujarat** it was held by the court that second degree burn injuries, the injured dying 7-8 hours after the incident, four dying declarations recorded but none carried medical certificate. There were other doubtful features, evidence not taken into account.
5. The Dying Declaration must not be made under influence of some other person it must be made with free will.
6. If multiple Declaration are made and all of them contradict each other than all of them loses credibility.

⁵ https://www.legistify.com/blogs/view_detail/711-dying-declaration-evidentiary-value

CONCLUSION

Dying Declaration is a crucial and important statement recorded as it is the last statement recorded of the Deceased . It plays a vital role while the delivery of justice. It must be recorded with due care and proper care must be taken while recording Dying Declaration as it may be in form of question and answer and may be oral or in the form of gestures. The person making Dying Declaration must be mentally fit as it is subject to the life of accused also, which might be ruined if such Dying Declaration made by a person who is mentally unfit. It is a accepted fact in India that a dying person never lies but the person who is injured and and is in agony and is suffering such that he is in such mental condition where he might give false statement due to anger as against the accused . As has been held in **People v. Falletto**, a English case where Judge Vann said "experience shows that dying declarations are not always true ," Thus Due care must be taken while recording Dying Declaration and the mental condition of the person making it must be examined and then only Justice should be administered .

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