

OVERVIEW OF THE DYING DECLARATION

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INTRODUCTION

A statement, oral or written, made by a person explaining the circumstances of his death is called the dying declaration. This is based on a legal maxim 'nemo mariturus presumuntur mentri' which means that a man will not meet his maker with a lie on his mouth. There arise several questions as to the admissibility of such a hearsay evidence. It is because of the fact that the person making such statement would not be present to explain the circumstances nor the person can be cross-examined by the alleged accused. Section 32 (1) of the Indian Evidence Act makes an exception to the general rule which requires oral evidence to be direct.

The person making such evidence must be conscious and voluntary make all the statement which must be recorded in the presence of the magistrate (presence of the magistrate depends upon the facts and circumstances of each case). Importantly, dying declaration is to be treated as a substantive piece of evidence and must be corroborated with all the other evidences present. However, depending upon the facts and circumstances of the case, a sole conviction can also be based upon the dying declaration. The value that is to be accorded to the dying declaration depends upon the courts, who after considering all the facts and circumstances would come to a conclusion about the truth and genuineness of the dying

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declaration. Dying Declaration is important only in cases, where the person who makes such declaration had died and that the cause of death of that person is in question and not otherwise. It is important that a statement so recorded, whether oral or written, to be treated as dying declaration, the person should have no faith of recovery.

MEANING OF DYING DECLARATION

A Dying Declaration is a statement made by a declarant as to the cause of his death or explaining the circumstances which caused his/her death. If the person making the dying statement is likely to live, his statement is inadmissible as a dying statement, but if examined, it could be relied on under section 158 of the Indian Evidence Act, 1872 to corroborate his testimony. The Hon'ble Apex Court in **Ulka Ram v. State of Rajasthan**¹ had held that when a declaration is made by way of a man or woman as to purpose of his demise or as to any situations of transaction which resulted into his death, in case in which purpose of his dying comes in question is admissible in evidence, such statement in law are compendiously known as dying declaration.

FORM OF RECORDING A DYING DECLARATION

There is no prescribed format or procedure of recording the dying declaration. The dying declaration need not be only recorded by the Magistrate. But as a general rule, the statement must be certified from a doctor. In the absence of such a certificate, the statement in the form of the declaration may be rendered heavily suspect.² The dying declaration can be either in the form of the question-and-answer form or can also be in a narrative form. Merely because the dying declaration is not in a question-and-answer form, the sanctity attached to it cannot be brushed aside. The only requirement as per law is that the same must be made by a person who apprehends that his death is imminent, the person must be conscious while giving the statement and that the statement must relate to his/her death or the circumstances leading to his/her death. In **State of Kerala v. Shariff**³ it was held that merely because a statement is not recorded in a Q & A form, the same cannot be discarded. Moreover, the recording of the statement in a narrative form is more natural and gives a true version of the incident as perceived by the injured person. Moreover, there is no particular language in which the dying declaration is to be recorded. Merely because the statement made by the deceased is recorded in his own language would not vitiate the dying declaration.⁴

¹ Ulka Ram v. State of Rajasthan AIR 2001

² Jai Karan v. State (NCT) Delhi, AIR 1999 SC 3512

³ State of Kerala v. Shariff, 2003 CrLJ (SC); Ram Bihari Yadav v. State of Bihar, AIR 1998 SC 1850

⁴ Biju @ Joseph v. State of Kerala AIR 2012

PRE-REQUISITES OF A DYING DECLARATION

A statement made by a person before his death is relevant when the following ingredients are satisfied:

- The person making the statement must be conscious i.e., in a fit state of mind.
- The statement must be made by a person when he apprehends that his/her death is imminent.
- The statement so made by a person while on the death bed must be pertaining to the cause of his/her death or the circumstances of his/her death.
- What is recorded must be a statement of that person concerned.
- The statement so made must be reliable, truthful and credible.
- The statement should not be the result of any tutoring or prompting.
- The statement made by the person can also be scanned by the court to see whether the same is prompted by any motive of vengeance or not.

The last two pre-requisites were added by the Hon'ble Supreme Court in **Mallella Shyamsunder v. State of A. P**⁵.

FITNESS OF THE DECLARANT MAKING THE STATEMENT

It is important that the person making the statement must be in a fit state of mind. Therefore, it is necessary to obtain a certificate from the doctor about the mental fitness of the declarant. It may, in certain circumstances, not be possible to obtain the fitness certificate of the declarant from the doctor. However, in such circumstances, it does not render the dying declaration as unacceptable. The certificate of fitness is just a rule of caution. A statement which is trustworthy and truthful but without any medical certificate can still be assured even otherwise.⁶

In **Panna v. State of Rajasthan**⁷ the deceased had suffered a head injury and the doctor observed that generally in such cases, the victim should have died or rendered unconscious from which he would not recover. The doctor however, did not rule out the possibility of the victim being able to speak. Therefore, his dying declaration was held to be relevant. In **Jai Karan v. State (NCT) Delhi**⁸ the doctor had recorded the statement in the hospital but did not read the same over to the deceased nor take her signature or thumb impression, and neither the statement was attested by any person. The medical in charge of the ward stated that the injured woman was not fit enough to make any statement and therefore, the declaration was not relied upon.

⁵ Mallella Shyamsunder v. State of A.P (2015) 2 SCC 486

⁶ Laxman v. State of Maharashtra, 2002 CrLJ 4095 (SC)

⁷ Panna v. State of Rajasthan 1994 SCC Cri 1140

⁸ Id Note 1.

SIGNS & GESTURES AS DYING DECLARATION

Sometimes when a victim is able to speak, gestures and signs can also form dying declaration. The evidentiary value of gestures and signs depend on certain factors like what were the questions asked, whether the question asked are simple or complex, what are the gestures, who recorded the statement etc. It is true that the signs and gestures expressed by the victim can be difficult to interpret but it does not mean that it will not constitute dying declaration.

A three-judge bench of the Hon'ble Supreme Court comprising of Justice Deepak Mishra, R Banumathi and Ashok Bhushan in Nirbhaya case, in 2013, had held that a dying declaration should not necessarily be made by words or in writing and it could be through gestures. Not just words but even gestures can be made admissible in court now. A full bench of the Allahabad High Court in **Queen Empress v. Abdullah**⁹ had held that if the injured is unable to speak he can make dying declaration by signs and gestures in response to a question.

MORE THAN ONE DYING DECLARATION

There can be situations wherein there are more than one dying declaration. In such cases, both the statements must be read as one for proper appreciation of its value. If both statements i.e., one made prior and one made subsequent, by the deceased are different than efforts must be made to reconcile them. If it cannot be explained that why the statements differ than the statements become unworthy of credit but when there is an explanation for such a difference, the position is different. The Hon'ble Supreme Court has suggested that the statement made prior to the subsequent statement must be preferred.¹⁰ The courts have also opined that when there are more than one dying declaration and both are consistent with each other, the same should not in itself is sufficient to persuade the court to act on it.¹¹ Consistency is a very relevant factor. In cases where the statements so made are inconsistent, it is necessary to corroborate the statements with other material evidences on record.

The Hon'ble Supreme Court in **State of Punjab v. Praveen Kumar**¹² had observed that when there is more than one dying declaration, the courts while appreciating the credibility of the evidence, must view the entire evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that there are two different versions of dying declaration, but one name is common in both of them cannot be a ground for convicting the named person. In cases where there are different versions of the dying

⁹ Queen Empress v. Abdullah (1885) ILR 7 All 385

¹⁰ Gangaram Gehani v. State of Maharashtra (1982) 1 SCC 700

¹¹ Laxmi v. Om Prakash 2001 CrLJ 3302

¹² State of Punjab v. Praveen Kumar

declaration, a serious doubt is created regarding the truthfulness of the dying declaration and therefore in such cases it becomes necessary to corroborate the dying declaration to bring out its genuineness.

CAN A CONVICTION BE BASED ON THE SOLE BASIS OF DYING DECLARATION?

The law on this point is that when the court comes to the conclusion that the statements so made by the deceased are true and reliable, and have been recorded when the deceased was in a fit state of mind to make the statement and the statement is not made under any tutoring/duress/prompting, the dying declaration can be the sole basis for recording the conviction and in such cases no corroboration is required. The Hon'ble Bombay High Court in **Ashwini Rammehar Sharma v. State of Maharashtra**¹³ had held that a dying declaration can be the sole basis of conviction, if the courts come to the conclusion that it represents the truthful version. To pass a test of reliability a close scrutiny is necessary as the accused does not have the opportunity to cross examine the maker of the dying declaration. It must inspire full confidence of the court regarding its correctness and voluntariness and the court must ensure that the statement was the result of tutoring/prompting/ product of imagination.

LEGAL PRINCIPLES GOVERNING DYING DECLARATION¹⁴

- Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- The courts must satisfy themselves that the person making such declaration was in a fit state of mind at the time of making such declaration and it was not the result of any tutoring or prompting.
- If the court is satisfied that the declaration is true and voluntary, conviction can be based on it without any further corroboration.
- Conviction can be on the basis of the dying declaration. Corroboration is merely a rule of prudence.
- If the dying declaration is suspicious, it cannot be acted upon without corroboration.
- If the dying declaration suffers from infirmity, it cannot form the basis of conviction.
- Merely if the dying declaration does not contain all the details, it cannot be rejected.
- Even if the statement is brief, it cannot be discarded.¹⁵
- When the eye witness confirms that the person making the statement was not in a fit state of mind, medical opinion cannot prevail.

¹³ Rammehar Sharma v. State of Maharashtra 2019 SCC OnLine Bom 803

¹⁴ Atbir v. Govt. (NCT of Delhi) (2010) 9 SCC 1

¹⁵ Surajdeo Ojha & Ors. v. State of Bihar, AIR 1979 SC 1505

CAN A F.I.R BE TREATED AS A DYING DECLARATION?

It may be possible that a person after lodging the F.I.R dies immediately after it. In such cases, it becomes very important to dwell into the legal character of the said F.I.R. The Hon'ble Supreme Court in **Dharma Pal v. State of U.P.**¹⁶ had held that *the legal position is therefore well settled that the F.I.R. lodged by the deceased would attain the character and legal status of dying declaration if the victim dies before his/her examination in the court.* The Hon'ble Supreme Court in **Munnu Raja & Anr. v. State of M.P.**¹⁷ had held that statements by the injured individual recorded as F.I.R can be considered as dying declaration and such statement is admissible under section 32 of the Indian Evidence Act.

CAN A DYING DECLARATION BE ONLY RECORDED BY A MAGISTRATE?

Any individual can record the death statement made by the deceased, but either circumstantially or by some evidence, the person who records the dying statement must have some association with the deceased. As far as the dying declaration is concerned, the magistrate who charged with recording the dying declaration is considered more evidential than the statement reported by the doctor, police officer and the normal individual as the statement recorded by him. As in such cases in which the judicial magistrate, the police officer and the physician are not present, the Court cannot deny the declaration of death rendered solely before the common citizen.

In addition, a dying statement can be reported by an individual or even by a police officer, but if it is recorded by a judicial magistrate, it will be of greater credential importance and reliability. The magistrate was empowered to record the dying statement under section 164 Cr.P.C.

DISTINCTION BETWEEN DYING DECLARATION IN INDIAN AND ENGLISH LAW

The basics of a dying declaration are as follows, under English law:

- At the moment the declarant made the dying statement, he should have been in real danger of death.
- He ought to have had complete apprehension of the nearness of his passing.
- Death was expected to follow.

Before treating it as a dying statement, these certain requirements must be demonstrated to the satisfaction of the judge than can be obtained.

¹⁶ Dharma Pal v. State of U.P (2008) 17 SCC 337; see also Ram Kumar v. State of Chhattisgarh 2019 SCC OnLine Chh 83 (decided on 22-07-2019)

¹⁷ Munnu Raja & Anr. v. State of M.P. 1976 AIR 2199, 1976 SCR (2) 764

No such limits are levied by Indian law. Under Indian law, the producer is not allowed to be prepared to die imminently, nor is it confined only to the case of homicide. It must be proven that its creator is dead before a dying statement can be admitted. If the creator survives, it can be used to corroborate or refute his argument in the case.

WHAT IF A PERSON SURVIVES AFTER MAKING A STATEMENT?

A statement made is only transformed when the victim/declarant dies into a dying declaration. If the plaintiff may not die, then the plaintiff will be used as a witness against the defendant in court. The Bench of Justices Mukundakam Sharma and C K Prasad claimed that if he or she subsequently survived, no reliance can be put on the dying declaration made by an individual.

The Hon'ble Supreme Court of India in **Ramprasad vs the State of Maharashtra**¹⁸ noted that the declarant should have been under the expectation of death when making the statement, and if a person who makes a dying declaration survives, his statement cannot be used under section 32 of the Indian Evidence Act, but it is a declaration in terms of section 164 of CrPC.

A statement becomes a dying declaration ONLY if the person dies.

¹⁸ Ramprasad vs the State of Maharashtra 1999 SCC(Cr) 651