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With this thought, we hereby present to you

LEX BONA FIDE: LAW JOURNAL

DYING DECLARATION UNDER EVIDENCE LAW

* (1) Jitendra Kumar (2) Jutirani Talukdar
(4th Year, B.A. LL.B., Symbiosis Law School, Pune)

ABSTRACT

This study presents a quantitative assessment of the “Dying Declaration” which is very important documentary evidence. It is hearsay evidence but even then it is given a lot of weightage in the court proceedings. Recording of dying declaration is very important. If it is recorded properly by the proper person keeping in mind the essential ingredients of the dying declaration it retains its full value. Missing any single ingredients of dying declaration makes it suspicious and offenders are likely to get the benefits of its shortcomings.

KEYWORDS: *Dying Declaration, Compos Mentis.*

CAN THE IDENTIFICATION THROUGH DYING DECLARATION BE CONSIDERED AND MADE RELEVANT?

There is no particular form of dying declaration which is identified or admissible in the eye of law. But that must be functioning as a piece of evidence with the proper identification. In *Sant Gopal vs. the State of U.P.*^[1] Evidence of dying declaration is admissible not only against the person causing the/death but also against other persons participating in causing death.

In a case, Apex court has also held that the crux of the whole matter was as to who had stabbed the deceased & why. These crucial facts are to be found in the dying declaration. In the case of *Queen-Empress v. Abdullah*^[2] Accused had cut the throat of the deceased girl & because of that, she was not able to speak so, she indicated the name of the accused by the signs of her hand, it was held by the full bench of the Allahabad High Court If the injured person is unable to speak, he can make a dying declaration by signs & gestures in response to the question. In another case The Apex Court observed that the value of the sign language would depend upon 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.

IMPACT OF INCOMPLETE STATEMENTS

If the deceased fails to complete the main sentence (for instance, the genesis or the motive for the crime), a dying declaration would be unreliable. However, if the deceased has narrated the full story, but fails to answer the last question as to what more he wanted to say, the declaration can be relied upon^[3].

A dying declaration ought not to be rejected because it does not contain details or suffers from minor inconsistencies. Merely because it is a brief statement, it is not to be discharged. Shortness guaranteed truth^[4].

However, where the condition of the deceased had become grave and a statement made by him in the presence of the doctor was taken down by the police but it could not be completed as he fell into a coma from he did not recover and died subsequently, the dying declaration was held^[5] to be inadmissible because upon the face of it was incomplete and no one can tell what the deceased was about to add.

EVIDENTIARY VALUE OF A STATEMENT IF DECLARANT SURVIVES

There is a different concept between Indian and English law is concerning evidentiary value to be attached to a dying declaration. This difference was pointed out in the case of *Jasunga S/o Akumu v. R.*^[6] where the Court emphasized that the weight to be attached to a dying declaration recorded under Section 32(1) of Evidence Act would be less than the weight to be attached to a dying declaration under common law rules.

The reasoning behind such observation was that the dying declaration under Section 32(1) would lack that special quality that is thought to surround a declaration made by a dying man who was conscious of his condition and who had given up all hopes of survival.

Where the declarant survives, his statement cannot be used as a dying declaration. As long as the maker of the statement is alive. It was held in *Tahsildar Singh v. State*^[7] that the Court will be prevented from taking notice of a dying declaration of a person who has survived and has not been examined in the case.

BRIEFLY DISCUSS A RECENT CASE LAW OF DOWRY DEATH BY BURNING THE WIFE.

In the case of *Bhatti Devi & others V. State of Delhi*^[8], 2013 the wife Kiran was harassed on account of dowry, and eventually, she was burnt. The wife gave a dying declaration, on that dying declaration she held her husband Rajesh and Mother-in-law Bhateridevi responsible. The wife was demanded a dowry of 50,000 burned her. The court held that, the fact that the patient was brought to the hospital by her mother in law after making her for three burnings. Therefore, there is a possibility of tutoring her. However, on the next day, when recorded by an independent witness there is no possibility of tutoring.

In this case, dying declaration, her husband and mother-in-law were responsible for burning it was her mother in law, who had set her on fire and there was no reason to disbelieve this dying declaration. Therefore, if the court is satisfied that the dying declaration is true and voluntary it can base a conviction on it the deceased had an opportunity to observe and identify the guilty and was a fit state to make the declarations.

EVIDENTIARY VALUE OF DYING DECLARATION TOGETHER WITH EXCEPTIONS THEREOF.

In *K.R. Reddy v. Public Prosecutor*^[9], the evidentiary value of dying declaration was observed as "The dying declaration is undoubting admissible under section 32 & not being a statement on oath so that its truth could be tested by cross-examination, the court has to apply the scrutiny & the closest circumspection of the statement before acting upon it. The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe & identify his assailants & that he was making the statement without any

influence or rancour. Once the court is satisfied that the dying declaration is true & voluntary, it can be sufficient to found the conviction even without further corroboration.”

The **exceptions** of ‘Dying declaration’ stipulate that where the statements made by dying persons are not admissible:

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

* **If the declarer is not a competent witness:** declarer must be a competent witness. A dying declaration of a child is inadmissible. In Amar Singh v. State of Madhya Pradesh[10], it was held by M.P. High Court that without proof of mental or physical fitness, the dying declaration was not reliable.

* **Inconsistent declaration:** Inconsistent dying declaration is no evidentiary value.

* **Doubtful features:** In Ramilaben v. State of Gujarat[11] it was held by the court that burn injuries caused 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.

* **Uninfluenced declaration:** it must be noted that dying declaration should not be under influence of anyone.

* **Incomplete declaration:** dying declaration must be complete.

* **Unsound person:** where the married dying of burns was a person of unsound burn mind & the medical certificate vouchsafed her physical fitness for a statement & not the state of mind at the crucial moment, the court said that the statement could not be relied upon.

EVIDENTIARY VALUE OF DYING DECLARATION BASED ON SUSPICION.

When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. 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 must be in a fit state of mind to make the declaration and must identify the assailants.

The Privy Council in the case of Pakala Narayan Swami V. Emperor[12] explained the term “circumstances of the transaction”. The Court held that the circumstances must have some proximate relation to the actual occurrence. General expressions 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.

Natha Shankar Mahajan v. State of Maharashtra[13] has held if there is any suspicion about this dying declaration, the benefit must go to the accused. That is a correct proposition of law. However, it is also the settled position that where the dying declaration is believable, creditworthy, and appeals to the court, the same can be made the sole basis of the conviction. Thus, a dying declaration is not to be believed only if suspicious circumstances are surrounding the same.

EVIDENTIARY VALUE OF A MEDICAL OFFICER’S OPINION & ABOUT THE FIT AND CONSCIOUS STATE OF THE DECEASED, EFFECTS OF BEING MEDICATED, DELUSIONAL, ETC

Medical evidence is a specialized form of knowledge not known to the layman. Expert evidence is given by a medical person especially when a person dies, for a court proceeding. Supreme

Court has held that medical evidence is admissible^[14] and that there is no hard and fast rule against it.

Where the medical officer who led the post-mortem examination isn't analyzed in court nor the post-mortem report is offered in evidence, the same can't be utilized as substantive evidence. It is laid down on the case of *Gofer Sheik V. State.*^[15]

The court must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable^[16].

The challenge to an otherwise proper dying declaration was made based on the statement of the Medical Officer that the patient had told him that some unknown person had told him. Since the Court found that an Executive Magistrate recorded the dying declaration and there was no evidence of tutoring the same could not be rejected only because of the aforesaid, statement of Medical Officer^[17].

CONCLUSION AND SUGGESTIONS TO IMPROVE THE PREVAILING LAW OF THE LAND

It can be concluded that the dying declaration should be recorded scrupulously owing to the sanctity that the courts attach to it. It will retain its full value only if it has been made voluntarily and is true. Convictions can be made on this basis, without the need for any corroboration, if the court is satisfied that the declaration made is true. Moreover, the certificate of the doctor should reflect that the declarant was in a fit state of mind at the time of making the declaration. All these conditions have to be considered while relying on a dying declaration as a piece of evidence. The dying declarations are a weak kind of evidence even though they are based on the principle that a person would not die with a lie in his mouth. The law related to the dying declaration needs certain changes to be incorporated into it, to make it more relevant in today's context.

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- ^[3] *Kusa v. State of Orissa*, (1980) 2 SCC 207: AIR 1980 SC 559
- ^[4] *Surajdeo Oza v. State of Bihar*, AIR 1979 SC 1505: 1979 SCC (Cri) 519
- ^[5] *Cyril Waugh v. The King*, 1950 ALJ 412 (P.C.)
- ^[6] (1954) 21 EACA 331.
- ^[7] AIR 1958 All 255
- ^[8] CrI. A. 223/2003
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