

Divisional Judicial Seminar

Raipur Division

{Distt. Raipur/Dhamtari/Baloda Bazar and Mahasamund}

Paper Presentation

On

“Evidentiary Value of Dying Declaration”



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DISTRICT & SESSION'S COURT,

BALODABAZAR (C.G.)

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1. INTRODUCTION

“A man will not meet his maker with a lie in his mouth. The Statements made by a person as to the cause of his death or as to circumstances of the transaction resulting in his death is called dying declaration.”

In simple words, a dying declaration is a statement made by a person while he is dying and explaining the reason for his death. His statement can be either indirect or direct revealing the cause of his death. Therefore, the only statement given shortly before persons death is called dying declaration.

2. MEANING

Dying Declaration itself tells the meaning. A statement by a person who is conscious and knows that death is imminent concerning what he believes to be the cause or circumstances of his death. In the case of **Bhajju alias Karan Singh v. State of Madhya Pradesh**¹ the Hon'ble Supreme Court has observed that

“The dying declaration essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death”.

¹ (2012) 4 SCC 327

3. JUSTIFICATION FOR THE SANCTITY/ PRESUMPTION ATTACHED TO A DYING DECLARATION

It is twofold -

- i. Ethically and religiously it is presumed that a person while at the brink of death will not lie,
- ii. From a public policy perspective it is to tackle a situation where the only witness to the crime is not available.

4. PLACE AT LAW AND RELEVANCY

According to Section 32 Clause (1) of the Indian Evidence Act, when a person makes a statement regarding the cause of death or any circumstances related to the incident that laid to his death, it is considered relevant in cases where the cause of his death is questioned. These statements remain relevant even if the person should made them is no longer alive at the time of his statement and regardless of their nature of the legal proceedings.

5. DYING DECLARATION IS AN EXCEPTION TO THE GENERAL RULE

The general rule is that in order to prove fact best evidence must be furnished and direct evidence is the best evidence. Hence, as a general rule the admissibility of hearsay evidence is excluded though there are exceptions to it. Dying declaration is one of the exceptions to the direct evidence. The victim, a prominent witness to the occurrence, being dead in the absence of any other witness, exclusion of the dying declaration may lead to the acquittal of the accused resulting in miscarriage of justice. Hence, there is need for this exception.

6. FORM OR FORMAT OF DYING DECLARATION

There is no specific form or format required for a dying declaration it can be given orally, in writing, through gesture or signs by a thumb impression or even in the form of a question and answer. However, the statement must clearly and sustainably convey the person's intention. A dying declaration may be in the following forms:

- Written form;
- Verbal form
- Gestures and Signs form²

In *Queen-Empress v. Abdullah*³ : Accused had cut the throat of the deceased girl and 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 Hon'ble Allahabad High Court that, "If the injured person is unable to speak, he can make dying declaration by signs and gestures in response to the question."

- A dying declaration may be in the form of narrations.
- Question Answer Form.

² Where a person is not capable of speaking or writing he can make a gesture in the form of yes or no, by nodding and even such type of dying declaration is valid. The value of the sign language would depend upon as to who recorded the signs, what gestures and nods were made, what were the questions asked, whether simple or complicated and how effective and understandable the nods and gestures were.

³ (1885 ILR 7 ALL 385)

7. CONDITION PRECEDENTS FOR ADMISSIBILITY OF DYING DECLARATION

- The declarant who gave dying declaration should die.
- The dying declaration must be complete in that matter.
- It must be voluntary and uninfluenced.
- The cause of death must be explained by the declarant or at least the circumstances which resulted in his death must be explained.
- The declarant who makes dying declaration must be conscious and coherent.
- The declarant must be of sound state.
- The cause of death of declarant must be in question.
- The court must ensure that the statement of the deceased was not influenced, couched or a result of imagination.

8. RECORDING OF THE DYING DECLARATION

The following persons can record dying declarations:

A) **Judicial Magistrate** – The dying declarations recorded by Judicial Magistrates have greater evidentiary value because they are supposed to be familiar with the procedure to record the dying declarations. Moreover, they are neutral persons.⁴

B) **Doctors**- The doctor can record dying declarations. A Division Bench of the Hon'ble Supreme Court in *Surendra Bangali @ Surendra Singh Routele v. the State of Jharkhand*⁵ has observed that the dying declaration is not disregarded merely because the doctor does not have a certificate of fitness of the declarer. Herein, the evidentiary value of that declaration relies on the facts and surrounding circumstances of the case.

C) **Police Officers**-A police officers can also record the dying declarations. Such declarations cannot be rejected when they are clear and corroborated. But the condition is that if the doctors or the police officers record the dying declarations, then the appearance of one or two persons as a witness is mandatory at the place of recording the statement.

⁴ *Samadhan Dhudaka v. State of Maharashtra*, (2008) 16 SCC 705: AIR 2009 SC 1059 at 1062

⁵ *Surendra Bangali @ Surendra Singh Routele v. the State of Jharkhand* Criminal App No. 1078 of 2010

D) **A normal person**-When there is not sufficient time to call any of the aforesaid persons, then a normal person can also record the dying declarations. The court can not reject such declarations if the person clearly shows that the declarer was mentally fit and aware in the course of making the statement.

9. EVIDENTIARY VALUE OF DYING DECLARATION

A dying declaration carries significant weight in legal proceedings and can serve as a sole basis for a conviction. It is considered a piece of evidence and can be relied upon if found to be genuine and reliable.

The situation in which a person is on death bed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. Besides, the dying declaration should be excluded it will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the court without a scope of evidence.⁶

The philosophy of law which signifies the importance of a dying declaration is based on the maxim '*nemo moriturus praesumitire mentire*', which means, 'no one at the time of death is presumed to lie and he will not meet his Maker with a lie in this

⁶ *P.V. Radhakrishna v. State of Karnataka*, AIR 2003 SC 2899

mouth". Though a dying declaration is not recorded in the court in the presence of the accused nor is it put to strict proof of cross-examination by the accused, still it is admitted in evidence against the general rule that hearsay evidence is not admissible in evidence.

There is a question about what happens to the evidentiary value of dying declaration; when a statement is recorded as a dying declaration but the person making the statement does not actually die then his statement will not come under section 32(1) of Indian Evidence Act but his statement can be used as corroborative evidence under Section 157 of Indian Evidence Act.

10. LANDMARK JUDGMENTS

Some landmark judgments of the Hon'ble High Court of Chhattisgarh, Bilaspur are here as guiding principles while considering the dying declaration:-

- **Sumitra Bandhe and others v. State of Chhattisgarh⁷**

In this case, the Executive Magistrate records the dying declaration of the declarant, it would not be appropriate for the police officer to re-record the dying declaration of the declarant at any subsequent point of time.

- **Tejram Yadu and others v. State of Chhattisgarh⁸**

In this case of serious doubt as to whether victim/ deceased was in fit state of mind to make dying declaration and in absence of certificate of doctor, it would be unsafe to convict an accused on the basis of dying declaration for offence under Section 302 of IPC.

- **Ram Kumar v. State of Chhattisgarh⁹**

Victim dying after lodging of FIR, the same would be admissible as dying declaration under Section 32 of Evidence Act.

⁷ The Hon'ble High Court of Chhattisgarh , Criminal Appeal no 292 of 2014 , Judgment dated 05.02.2023

⁸ The Hon'ble High Court of Chhattisgarh , Criminal Appeal no 976 of 2013 , Judgment dated 02.02.2023

⁹ The Hon'ble High Court of Chhattisgarh , CRA no 1372 of 2016 , Judgment dated 22.07.2019

- **Rajendra @ Matauva & others v. State of Chhattisgarh¹⁰**

“Dying declaration is also a kind of evidence. Courts are required to scrutinize the dying declaration on the basis of other surrounding and attending circumstances minutely.”

11. SOME GUIDING PRINCIPLES FOR VALUING THE DYING DECLARATION ARE HEREBY MENTIONED IN PARTICULAR CASES

- **Umakant and another v. State of Chhattisgarh¹¹**

The dying declaration does not even require any corroboration as long as it inspires confidence in the mind of the court and that it is free from any form of tutoring. At the same time, dying declaration has to be judged and appreciated in the light of surrounding circumstances.

- **G.S. Walia v. State of Punjab¹²**

“If there is delay for taking dying declaration it will not effect if all facts and circumstances are explaining its delay.”

¹⁰ The Hon'ble High Court of Chhattisgarh , CRA no 557 of 2009 and *Rakesh & others v. State of Chhattisgarh* CRA no 984/2011 , Judgment dated 06.03.2014

¹¹ (2014) 7 SCC 405

¹² (1998) 5 SCC 150

- **Ram Bihari Yadav v. State of Bihar**¹³

“No absolute need of the doctor’s certificate is required for believing in dying declaration if it is believable in all other circumstances.”

- **Kushal Rao v. State of Bombay**¹⁴

“No need to take the dying declaration before the magistrate it can take either before the police authority or any relative of the deceased or any other person and it includes doctors or even nurses too.

- **Ravichandran v. State of Punjab**¹⁵ (Multiple dying declaration)

In this case, there was more than one dying declaration. One was before the Assistant Sub-Inspector, second was before the Executive Magistrate and third was before the deceased brother. The Hon’ble Supreme Court says in that case if there is different dying declaration and the court have facts to corroborate each other than if there is a number of dying declaration it will not destroy the whole case it is the duty of the court to consider which one dying declaration is more

¹³ (1998) 4 SCC 517

¹⁴ AIR (1958) SCC 22

¹⁵ (1998) 9 SCC 303

reliable.

- **Lala Bhai v. State of Gujarat**¹⁶

“The deceased mental status must be sound.”

- **Rasheed Beg v. State of Himachal Pradesh**¹⁷ & **Munna Raja v. State of M.P**¹⁸

“If in any case sole evidence is dying declaration then it will be sufficient for conviction of the accused.”

- **Maqsoodan & Others v. State of UP**¹⁹

“If maker of dying declaration, he may be in expectation of death, is not dead, then his statement will be used as a corroborative evidence.”

- **Nanhau Ram v. State**²⁰

“The eye witness of the dying declaration says the deceased was mentally fit but doctors who was examining him was saying that deceased was not medically fit in this situation the statement of eye witness will be prevail if eye witnesses

¹⁶ (AIR 1972 SC 1776)

¹⁷ (AIR 1974 SC 332)

¹⁸ (AIR 1976 SC 2199)

¹⁹ (AIR 1983 SC 126)

²⁰ (AIR 1988 SC 912)

statement looks reliable to the court.”

So, we can see aforesaid citations are what are the facts and circumstances which can provide the admissibility and reliability of dying declaration and on what basis court can reach out a definite point with the help of dying declaration.

- **Smt. Paniben v. State of Gujarat**²¹-

In this case, there were lots of case laws in which guidelines are given related to dying declaration where dying declaration was playing a vital role to achieve justice:-

1. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.²²
2. If the court is satisfied that the dying declaration is true and voluntary, it can base a conviction on it without corroboration.²³
3. The court has to scrutinize the dying declaration and must ensure that the declaration is not the result of torturing, taunting or imagination. The deceased had an opportunity to observe and identify the assailants and in a fit state to make the declaration.²⁴

²¹ (AIR 1992 SC 1817)

²² *Mannu Raja v. State of M.P.*, [1976] 2 SCR 764

²³ *State of M. P. v. Ram Sagar Yadav*, AIR 1985 Sc 416; *Ramavati Devi v. State of Bihar*, AIR 1983 SC 164.

²⁴ *Ram Chandra Reddy v. Public Prosecutor*, AIR 1976 S.C. 1994.

4. Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.²⁵
5. Where the deceased was unsuspecting and could never make any dying declaration, the evidence with regard to it is to be rejected.²⁶
6. A dying declaration that suffers from infirmity cannot form the basis of conviction.²⁷
7. Merely, because a dying declaration does not contain the details as to the occurrence it is not to be rejected.²⁸
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.²⁹
9. Normally, the court to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration looks the medical opinion. But, where the eye witness has said that the deceased was in a fit and conscious state to make a dying declaration, the medical opinion cannot prevail.³⁰

²⁵ *Rasheed Beg v. State of Madhya Pradesh*, [1974] 4 S.C.C. 264.

²⁶ (*Kake Singh v. State of M. P.*, AIR 1982 S.C. 1021)

²⁷ (*Ram Manorath v. State of U.P.* 1981 SCC (CrI.) 531).

²⁸ (*State of Maharashtra v. Krishnamurthi Laxmipati Naidu*, AIR 1981 SC 617).

²⁹ (*Surajdeo Oza v. State of Bihar*, AIR 1979 SC 1505)

³⁰ (*Nanahau Ram and another v. State*, AIR SC912)

10. Where the prosecution version differs from the version as given in the dying declaration the said declaration cannot be acted upon.³¹
11. Where there is more than one statement in the nature of dying declaration, the first one at a point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable have to be accepted.³²
- In **K. R. Reddy v. Public Prosecutor**³³ evidentiary value of dying declaration was observed as under:-
 1. The dying declaration is undoubtedly admissible under section 32 and not being statement on oath so that its truth could be tested by cross-examination.
 2. The court has to apply the scrutiny and the closest circumspection of the statement before acting upon it.
 3. Great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lies or to connect a case as to implicate innocent person, yet the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination.

³¹ (State U.P. v. Madan Mohan, AIR 1989 S.C. 1519)

³² Mohan Lal v. State of Maharashtra, AIR 1982, S.C. 839

³³ (1976 (3) SCC 618)

4. 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 and identify his assailants and that he was making the statement without any influence or rancor.
 5. Once the court is satisfied that the dying declaration is true and voluntary, it can be sufficient to record the conviction even without further corroboration.
- In **Khushal Rao v. State of Bombay**,³⁴ the Hon'ble Apex Court laid down following principles:
 1. There is no absolute rule of law that a dying declaration cannot be the sole basis of conviction unless corroborated. A true and voluntary declaration needs no corroboration.
 2. A dying declaration is not a weaker kind of evidence than any other piece of evidence.
 3. Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made.
 4. A dying declaration stands on the same footing as other piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principle governing the weight of evidence.
 5. A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of

³⁴(See also *Panneerselvam v. State of Tamil Nadu* - [2008] 17 SCC 190)

questions and answers and as far as practicable in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character.

6. In order to test the reliability of a dying declaration the court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed in the night; whether the capacity of man to remember the facts stated had not been impaired at the time he was making the statement by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested party.

- In **State of UP v. Madan Mohan**³⁵ , the Hon'ble Apex Court Held that:

1. It is for the court to see that dying declaration inspires full confidence as the maker of the dying declaration is not available for cross-examination

³⁵ (AIR 1989 SC 1519)

2. The Court should satisfy that there was no possibility of tutoring or prompting.
 3. Dying declaration may be in the form of questions and answers and answers being written in the words of the person making the dying declaration. But court cannot be too technical.
- **Irfan @ Naka v. State of Uttar Pradesh³⁶ (Factors to determine on weightage of dying declaration)**

“Where there is any suspicion over the genuineness of a dying declaration and veracity of the same or the evidence on record shows that the dying declaration is not true It will only be considered as a piece of evidence but cannot be the basis for conviction alone,”

³⁶ The Hon'ble Supreme Court of India, Criminal Appellate Jurisdiction-Criminal Appeal Nos. 825-826 of 2022

12. CONCLUSION

The dying declaration is an important piece of evidence that can be relied on if it is true and wither from every motive of the falsehood. As the uttering word of dying person is the last word at the time of saying goodbye to this mortal world as the last truth of life. Of course at this juncture, the deceased mind is influenced by the most powerful consideration to speak the truth. The reasoning behind the acceptance of dying declaration comes with the requirement, experience, and practice of the social life for several decades. But the court has tried- to balance the two conflicting interests that is justice to the departed soul and justice to the innocent cuffed culprit the ultimately trapped creature of prosecution. If the dying declaration is clear, clean and unambiguous, pointed and match or support the prosecution story beyond all ambiguity, the court heavily relied on it. But, the inference as drawn must be pinpointed about the assailant.



बलौदा बाज़ार

— छत्तीसगढ़ —

DISTRICT:- BALODABAZAR (C.G.)

Outstations of Judicial District Balodabazar:-

1. Civil Court Bhatapara
2. Civil Court Simga
3. Civil Court Kasdol