

## CRITICAL APPRAISAL OF DYING DECLARATION

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### ABSTRACT

Dying declaration 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

### INTRODUCTION

Dying declaration is based on the maxim "*Nemo moriturus praesumitur mentire*" i.e. a man will not meet his maker with a lie in his mouth. Hearsay evidences are not given any weightage in the courts because the person who is giving this evidence is not telling his experiences but that of another person and who cannot be cross examined to verify the facts. Dying declaration is an exception to this rule because if this evidence is not considered very purpose of the justice will be forfeited in certain situations when there may not be any other witness to the crime except the person who has since died. Sometimes it the best evidence in such situations. Its admissibility is explained in the section 32 (1) of Indian Evidence Act. According to this section when the statement is made by a person as to the cause of his death, or 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 this was expecting death or not [1]. In English law he must be under expectation of death only then this declaration is valid. This declaration is valid both in civil and criminal cases whenever the cause of death comes into question.

If we read the various judgments on the admissibility of dying declaration at times various judges have taken diagonally opposite views and different explanations have been offered though the motive in all have been to provide justice to the people. Main thing is that if these declarations seem trustworthy to courts these retain their full values.

Most important point of consideration is that victim was in a fit condition of mind to give the

statement when recording was started and remained in fit condition of mind till the recording of the statement finished. Merely stating that patient was fit will not serve the purpose. This can be best certified by the doctor who knows best about the condition of the patient. But even in conditions where it was not possible to take fitness from the doctor, dying declarations have retained their full sanctity if there are other witnesses to testify that victim was in such a condition of the mind which did not prevent him from making statement. Medical opinion cannot wipe out the direct testimony of the eyewitness stating that the deceased was in fit and conscious state to make the dying declaration. [2]

Second most important point to be considered is that it should not be under the influence of any body or prepared by prompting, tutoring or imagination. Even if any one of these points is proved then dying declaration is not considered valid. If it becomes suspicious then it will need corroboration.

If a person has made more than one dying declarations and if these are not at variance with each other in essence they retain their full value. If these declarations are contradictory than these lose value.

Best form of dying declaration is in the form of questions and answers. If it is in the form of narrations it is still good because nothing is being prompted and every thing is coming as such from the mind of the person making it. If 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 declaration is valid. Whenever this is being recorded in the form of questions and answers precaution should be taken that exactly

what questions are asked and what answers are given by the patient those should be written. It is preferred that it should be written in the vernacular which the patient understands and speaks.

It is best that it is recorded by the magistrate but if there is no time to call the magistrate due to the deteriorating condition of the victim it can be recorded by anybody e.g. public servant like doctor or any other person. Courts discourage the recording of dying declaration by the police officers but if there is no body else to record it dying declarations written by the police officers are also considered by the courts. If these are not recorded by the magistrate it is better that signatures of the witnesses are taken who are present at the time of recording it.

In burn cases usually it is debated the person is not capable of making dying declaration due to the effect of burns or due to the narcotic sedation given to treat burns. But Gupta and Jani have opined that neither effect due to burns nor the drugs used to treat burns victims conventionally affects the higher functions. Therefore they safely concluded that *compos mentis* is not affected either by burns or by its treatment [3].

If the person making it is imbecile or is of tender age and was incompetent to testify due to this reason, that dying declaration would not be valid [4]

As a measure of safety original dying declaration should be sent to the court like FIR and its Photostat should be kept in the case file [5].

It does not matter that the person has put a thumb impression or signed it if this is duly witnessed. But in the court question does arise if a person who can sign puts a thumb impression. If a literate person putting the thumb impression is in such a condition that he cannot sign e.g. he was lying in the bed and could not get up to sign it or it was inconvenient for him to put thumb impression due to his condition (intravenous drip on the back of hand) or injury e.g. injury on the right hand in a right handed person. In the absence of such conditions if there is thumb impression and this is not witnessed by disinterested persons a doubt may be created whether this was done after the person died to take revenge by some interested person.

There is usually no time limit that dying declaration becomes invalid if the person died after many months after making the declaration. Cases

are on record when it was considered valid after 4 months.

Even the HISTORY given by the injured recorded by the doctor in the case file has been considered as dying declaration by the honorable Court if it is mentioned that the patient told in the history that incident occurred in such and such manner which was responsible for the death of the victim [6]. Hence it is important that if such history is written as narrated by the victim it should be recorded carefully, keeping in mind the mentioned finding of the court.

First information report got recorded by the police has been taken as dying declaration by the honorable Supreme Court, when the person did not survive to get his dying declaration recorded [7]. But when patient remained admitted in hospital for sufficient days i.e. for 8 days FIR cannot be treated as dying declaration [8].

A suicidal note written found in the clothes of the deceased it is in the nature of dying declaration and is admissible in evidence under section 32 of Indian Evidence Act [9].

## CONCLUSIONS

Keeping in view the above mentioned opinions of various courts it is suggested that whenever dying declaration is to be recorded it should be recorded very carefully keeping in mind the sanctity which the courts attach to this piece of evidence. It retains its full value if it can justify that victim could identify the assailant, version narrated by victim is intrinsically sound and accords with probabilities and any material evidence is not proved wrong by any other reliable evidence. [10]. it is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated [11]. Conviction can be based on it without corroboration if it is true and voluntary. Dying declaration becomes unreliable if it is not as per prosecution version [12]. This has been summed up the Supreme Court:

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
2. Court should satisfy that there was no possibility of tutoring or prompting.
3. Certificate of the doctor should mention that victim was in a fit state of mind. Magistrate recording his own satisfaction about the fit

mental condition of the declarant was not acceptable especially if the doctor was available.

4. Dying declaration should be recorded by the executive magistrate and police officer to record the dying declaration only if condition of the deceased was so precarious that no other alternative was left.
5. Dying declaration may be in the form of questions and answers and answers being written in the words of the person making the declaration. But court cannot be too technical.

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