

ROLE OF DOCTORS IN DYING DECLARATION

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ABSTRACT:

“Nemo moriturus pro sumitermentri”

A man will not meet his maker with a lie in his mouth. Also known as the dying declaration to hearsay evidence. It stands for the premise that one who is about to die has no reason to lie. Thus a dying person’s utterances will be assumed very likely to be truthful. It is an evidence under Section 32 of Indian Evidence Act. Dying declaration can be recorded by a magistrate, a doctor, a police officer or even a village head. It should be recorded in presence of at least two witnesses. Dying declaration is a vital piece of medico legal evidence which if, found truthful and voluntary by the court, it could be a sole piece of evidence for conviction it is important for a doctor to understand its value also the role of medical fraternity in recording dying declaration. This paper is purely based on research methodology. Hope the research paper will give an advanced knowledge in the matter regarding role of doctors in dying declaration.

KEY WORDS:

Evidence, medico legal, court, dying declaration

OBJECTIVES:

- To make a study on role of doctors in dying declaration
- A brief outlook about the concept of dying declaration

HYPOTHESIS:

A dying declaration cannot be more evidential value for the end of justice

The dying declaration are more evidential value for the end of justice

RESEARCH METHODOLOGY:

In this paper the research has opted for doctoral research methodology and the sources act collected mainly through secondary data.

LIMITATION:

The research is unable to trace the primary sources needed to write about the topic as the topic demands research in the archives which is not available to the research as admission to the government archives is not allowed to undergraduate students.

REVIEW OF LITERATURE:**Book:****The indian evidence act, 1872, bare act with short notes edition 2018**

This bare act is very useful for me to do my research work it contains with all the provision and amendments which relevant case law for the sections. With comments and illustration.

The indian evidence act 1872, Avtar Singh central law publication 22nd edition 2016

This book is very useful for me to do my my research work it contain some case law in this book they explain in a detail way with explanation and

INTRODUCTION:

The dying declaration is define as a written or verbal statement made by a person likely to die because of some unnatural act done on his body narrating the circumstance responsible for his present state of health or cause and the manner of unlikely death. It is a evidence under the section 32 of Indian evidence act 1872. A dying declaration is considered a vital piece of evidence to nail a murdered accused It is based on the principle that dying declarations are made in the extremity when the party is at the point of death, and every hope

of this world has gone, when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth. A situation so solemnly and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice. Thus the oath is not administered when dying declaration is recorded.

AN OVERVIEW ON ROLE OF DOCTOR IN DYING DECLARATION:

DYING DECLARATION:

In the law of evidence, an exception to the hearsay rule in England whereby the oral or written statement of a dying person may be used in evidence at the trial of a person for his murder if he would have been a competent witness himself. To be effective, the maker must have been in hopeless expectation of his death. Its basis is that the person being so near death is unlikely to lie when he is so soon to come before a higher authority.¹([How, when he had besieged Chambly, an...](#))

The principle of “*leterm mortem*” which means “words said before death” & in a legal term it is called dying declaration²

“*Nemo moriturus praesumitur mentire*” It means 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 a dying declaration. Indian law recognizes the fact that ‘a dying man seldom lies.’ Or ‘truth sits upon the lips of a dying man.’ Section 32(1) of the Indian Evidence Act, 1872 explore the concept of dying³ declaration. Section 32 deals with the cases related to that person who is dead or who cannot be found.

DYING DECLARATION IN ENGLISH AND INDIAN LAWS:

Although the dying declaration under Indian law is founded on English law there are differences between the two legal systems:

¹<https://legal-dictionary.thefreedictionary.com>

²<http://www.legalservicesindia.com/>

³<http://mja.gov.in> SUMMARY OF WORKSHOP PAPER ON DYING DECLARATION

1. Under English law the dying declaration in civil cases is not admissible. It is admissible in civil cases in India.

2. In English law the dying declaration is admission in homicide case “where the death of the deceased is the subject of the charge and circumstances of the death, the subject of the dying declaration.” Under Indian Law if the cause of death of the deponent comes in question his dying declaration is relevant irrespective of the nature of proceeding. There should be nexus between the circumstances stated by the victim and his/her death.⁴

3. In English law it is necessary that the declarant had been in actual danger of death after receiving injuries and he should have abandoned all hopes of recovery. But, “if the declarant failed to complete his statement and died, the dying declaration is inadmissible.” In India the declarant’s death must have been ensured. It is immaterial whether the declarant was in actual danger and he had abandoned all hopes of life. If the declarant had been alive, he would have been a competent witness.

If the maker of a dying declaration was present in the court, making a statement stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof be subjected to cross-examination([Ionel and Ionel 2016](#))⁵

SECTION 32 OF INDIAN EVIDENCE ACT 1872:

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, of 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 expense 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

⁴<http://www.shareyouressays.com>

⁵<http://www.shareyouressays.com> Section 32 of the Indian Evidence Act, 1872 shantanuchakrat

3. Or against interest of maker
4. Or gives opinion as to public right or custom, or matters of general interest.
5. Or relates to existence of relationship
6. Or is made in will or deed relating to family affairs.
7. Or in documents relating to transaction mention in section 13, clause (a)
8. Or is made by several persons, and expresses feelings relevant to matter in question.[\(India 1928\)](#)⁶

PRINCIPLE:

Under section 32 evidence given by a person in a judicial proceeding or before a person authorized by law to take evidence is relevant for the purpose of proving in a subsequent judicial proceeding the truth of the facts stated therein. It imposes restrictions upon the admissibility of statements made by persons who cannot be brought before the court to give evidence. As there is no better evidence available the statements made under this section are admitted as principle of necessity.” In other words written or verbal statements of relevant facts made by a person:—

- (i) Who is dead;
- (ii) Who cannot be found;
- (iii) Who has become impossible of giving evidence; or
- (iv) Whose attendance cannot be procured without unreasonable delay or expense, are relevant under the following circumstances of the case[\(J. and C. 1913\)](#)⁷

⁶Universal's law publishing new delhi- india the Indian evidence act, 1872 bare act 2018

⁷<http://www.shareyouessays.com>

FIR IN CASE AND DYING DECLARATION:

In case of death of the informant, FIR can be used as substantive evidence if it relates to the cause of death of the informant or the circumstance of the transaction resulting in the informant's death within the meaning of sec. 32 (1) of I.E. Act.

Damodar Prasad v. State of U.P. AIR 1975 SC 757

When the statement is made by a person as to the cause of his death., or as to any of the circumstance 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 the death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

In no other case FIR can be used as a substantive evidence. FIR lodged by the deceased is admissible U/S – 323(1) as the statement of a person since deceased relating to the circumstances of the transaction which resulted in his death. Kapoor Singh v. Emperor (AIR 1930 Lahore 450)⁸

WHO CAN RECORD DYING DECLARATIONS:

- ❖ Rule 33 of Criminal Rules of Practice casts duty on Magistrate to record the Dying Declarations. Sub Rule (d) of Rule 2 of Criminal Rules of Practice says “Chief Judicial Magistrate” includes the Chief Metropolitan Magistrate, “Magistrate” includes the Metropolitan Magistrate, and “Special Magistrate” includes Special Metropolitan Magistrate. So, under Rule 33 of Criminal Rules of Practice, Judicial Magistrate is empowered to record the Dying Declarations. However, in some parts of the Country, Executive Magistrates are recording the Dying Declarations.
- ❖ In case of non-availability of the Magistrate and in view of the urgency, sometimes the Dying Declarations recorded by the Police Officers and the Medical Officers working there, the Courts are accepting the Dying Declarations recorded by the Police Officers and the Medical Officers.

⁸www.legalservicesindia.com

- ❖ The proper method for recording dying declaration by a Magistrate or a doctor or a police official is that they should see that the declarant is in a fit state of mind to give declaration. If the declarant is not in a fit condition to give statement, the Magistrate should not proceed further beyond making a note that the declarant was not in a fit condition to give statement. The endorsement of the duty doctor is also equally important⁹

FORM OF DYING DECLARATION:

- ❖ There is no format as such of dying declaration neither the declaration need to be of any longish nature or neatly structured. As a matter of fact, perfect wording and neatly structured dying declaration bring about an adverse impression and create a suspicion in the mind of the Court since dying declarations need not be drawn with mathematical precision. The declarant should be able to recollect the situation resulting in the available state of affairs.¹⁰[\(Wellman 1983\)](#)

A dying declaration may be in the following forms:

- ❖ Written form;
- ❖ Verbal form;
- ❖ Gestures and Signs form. In the case "Queen vs Abdulla", it was held that if the injured person is unable to speak, he can make dying declaration by signs and gestures in response to the question.
- ❖ 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 dying declaration is valid.
- ❖ It is preferred that it should be written in the vernacular which the patient understands and speaks.
- ❖ A dying declaration may be in the form of narrations. In case of a dying declaration is recorded in the form of narrations, nothing is being prompted and everything is coming as such from the mind of the person making it.[\(Singh 2009\)](#)¹¹

IMPORTANCE OF DYING DECLARATION:

Dying Declaration is a legal concept refers to the effect that the statement which is made by dying person explaining the circumstances of his death. The word Dying

⁹<http://www.authorstream.com> PPT author: by Dr. Robert keisham

¹⁰ The indian evidence act 1872, Avatar Singh ccentral law publication 22nd edition 2016

¹¹<https://blog.iplayers.in/>

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. A dying declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that their about to die “do not lie”. As a result, it is an exception to the general rule “hear say”, which prohibits the use of a statement made by someone other than the person who repeated it while testifying during trial. Section 157 of the **Indian Evidence Act**, in order to contradict, corroborate, impeach or confirm the credit of the person by whom it was made.¹²

In **Uka Ram v. State of Rajasthan Apex Court** held that, “when a statement is made by a person as to cause of his death or as to any circumstances of transaction which resulted in his death, in case in which cause of his death comes in question is admissible in evidence, such statement in law are compendiously called dying declaration”.¹³

Case law:

Pakala narayana swami v. Emperor¹⁴

It is held in this case if the person who records the statements but this cannot be an inelastic rule. The witness to be proved on basis of mental fit will be accepted.

Diwan singh vs. State([Roberts and Zuckerman 2010](#))¹⁵

The court said that the patient is in a condition to give her dying declaration thus , before recording statement, no written endorsement was taken from the doctor.

EXCEPTIONS TO DYING DECLARATION

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

¹²<https://chambersofnitinchopra.wordpress.com>

¹³<https://www.legistify.com>

¹⁴ Kjablr.kar.nic.in by justice a.v. Chandra sekhar AIR 1939 PV council p.47

¹⁵ [https:// Indian kanoon .org](https://Indiankanoon.org) 14 th sep 2010

- ❖ **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 competent witness. A dying declaration of a child is inadmissible. In **Amar singh v. State of Madhya Pradesh, 1996 Cr LJ (MP) 1582**, it is held that without proof of mental or physical fitness, the dying declaration is not reliable.
- ❖ **Inconsistent declaration:** Inconsistent dying declaration has no evidential value.
- ❖ **Doubtful features: In Ramilaben v. State of Gujarat (AIR 2002 SC 2996):**¹⁶ Injured died 7-8 hours after incident, four dying declarations recorded but none carried medical Workshop Core Paper On Dying Declaration 28 certificate. There were other doubtful features too, so it is not acted upon.¹⁷
- ❖ **Influenced declaration:** It must be noted that dying declaration should not be under influence of anyone.
- ❖ **Untrue declaration:** It is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated.
- ❖ **Incomplete declaration:** Incomplete declarations are not admissible.
- ❖ **If statement relates to death of another person:** If statement made by deceased does not relate to his death, but to the death of another person, it is not relevant.
- ❖ **Contradictory statements:** If a declarant made more than one dying declarations and all are contradictory, then those all declarations lose their value.
- ❖ **Unsound person:** The statement of unsound mind can not be relied upon.
- ❖ **If dying declaration is not according to prosecution:** If dying declaration is inconsistent with the case of prosecution it is not admissible. ([Raistrick 1994](#))¹⁸

CONCLUSION:

Hence I concluded that by stating quotes of LORD LUSH, L.J., Quoted that, “A dying declaration is admitted in evidence because it is presumed that no person who is immediately going into the presence of his Maker, will do so with a lie on his lips. But the person making the declaration must entertain settled hopeless expectation of immediate death. If he thinks he will die tomorrow it will not do.” the dying declaration should be recorded in clear way it

¹⁶ AIR 2002 SC 2996

¹⁷ summary of workshop paper on dying declaration

¹⁸ <http://mja.gov.in/Site/Upload/GR/Summary%20paper%20Criminal.pdf> by Members of criminal core group.

should be a full value. only if it has been made voluntarily and is true the evidence as been enlighten before the court of law.

FINDINGS AND SUGGESTION:

- The dying declaration should be in a proper way of statement
- It is better to be in electronic form like CD, Voice Record, video clip rather than in a written
- The written statement can have the chances to fabricating it.
- It should be considered a full value of the statement without any witness

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