

## A GENERAL STUDY ON RECORDING OF DYING DECLARATION

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### ABSTRACT:

A dying declaration is a statement made by a dying person as to the cause of his death or as to any circumstances of the transaction that resulted in his death. The dying declaration forms the sole basis of conviction if it is free from any kind of doubt and if it has been recorded in the manner as provided under the law. It should inspire full confidence in its truthfulness and correctness. Not recording of dying declaration 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 scrap of evidence. 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.

**KEYWORDS:** Declaration, confidence, exclusion. Statement, examination

### INTRODUCTION:

A dying declaration is “a statement, written or verbal made by a person as to the cause of his or her death or as to the circumstances of the transaction resulting in his or her death”. 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 solemn and so awful 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. ([Petersdorff 1831](#))

### AIM OF THE STUDY

- Ø To study the concept of dying declaration
- Ø To analyze section 32 of the Indian Evidence act
- Ø To look into flexibility of the process of recording dying declaration
- Ø To study the disadvantages of the recording of dying delaration.

### RESEARCH METHODOLOGY

The researcher has adopted *doctrinal* method of research and the entire paper is in the form of analysis of the established procedures, thereby following *analytical* mode of research. The primary sources for this research paper are the Indian Evidence Act and relevant judicial decisions. Secondary sources include books, articles and web sources.

### BACKGROUND AND SCOPE

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 is the best evidence in such situations.

Its admissibility is explained in 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. 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 has 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.[\(Petersdorff 1831\)](#)

Second most important point to be considered is that it should not be under the influence of anybody 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.[\(Petersdorff 1831; Chaumont \)](#)

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 everything 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.[\(Petersdorff 1831; Chaumont ; Book Review and Note: When Life Meets...\)](#)

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 nobody 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.

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. 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.

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.

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. But when patient remained admitted in hospital for sufficient days i.e. for 8 days FIR cannot be treated as dying declaration [8]. A suicide 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

## **RECORDING OF DYING DECLARATION**

Recording of Dying Declaration: Indian law doesn't provide any prescribed manner, format or procedure for recording dying declaration. But ideally it is recorded in local dialect in narrative form. It gives less chance of asking leading questions and nothing is being prompted. In question and answer forms, most of the points will be missed and the declarant concentrates only on the questions which he was asked. Calcutta High Court has ruled that where a dying person is unable to speak and can make only signs to the questions put to him, such questions and signs put together might be regarded as 'verbal statement' made by a person as to the cause of his death within the meaning of S 32 of Indian Evidence Act, and are therefore admissible in evidence.

The accuracy of such verbal statement and the investigating officer having influence on declarant, recording such verbal statement remains questionable. [\(McClain 1983\)](#)

### **Who Can Record Dying Declaration?**

The law does not provide direction on who can record a dying declaration. The Supreme Court Bench of justices B S Chauhan and Dipak Misra while reversing an acquittal in a dowry death case ordered by Madhya Pradesh High Court said that any member of the public can record the statement of a dying declaration, but he should make sure that the one making the statement should be conscious and his mental status are normal.

But ideally, magistrate should record the statement in all cases and if not possible at least in allegation cases, so that exact cause of death from the declarant can be elicited on the spot and long waiting trails can be avoided. It cannot be said that a statement recorded by a police officer is always invalid.

The practice of investigating police officer himself recording a dying declaration during the course of investigation is ideally not to be encouraged as he may influence on the declarant statement. Dying declaration should be recorded in the presence of independent witnesses by recording the date and time of starting and ending of statement. Declarant should not be under the influence of anybody nor prepared by prompting, tutoring or imagination. Even if any one of these points is proved then dying declaration is not considered valid. Court has held that, if an investigating officer records dying declaration not in local dialect to which the deceased belonged makes the dying declaration suspicious.

But the court did not mention anything on the validity of the recorded declaration where declarant is illiterate and investigating officer not understanding the local language of declarant. The declaration

after being recorded should be read over to the declarant, who should affix his or her signature/thumb impression to it and if not, then should mention the reason for not taking it in the end of the statement. If the declarant writes his statement himself, the statement should be signed and attested by both the witness and investigating officer. If the declarant becomes unconscious while the statement being recorded, person who is writing it must elicit as much as information and sign it.

When concluded, it should be signed by the person who is recording along with date and time of recording it, and also obtain the signature of the independent witness who can corroborate the content of the document. Such declaration will be truthful and reliable. If a victim loses consciousness in the middle of recording statement, the evidentiary value of such incomplete declaration is again questionable. Law does not provide any information on this issue. After recording statement its confidentiality is maintained. [\(McClain 1983; Bhatt 2013\)](#)

It should be sealed in a proper envelope with a seal and sent to the concerned authorities and a photocopy should be kept in case file, but are usually not followed in routine. If a declarant 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 inconsistent, such dying declaration loses their value.

#### **Some relevant case laws:**

1. The deceased must be in a fit state of mind and capable of making a statement at the time of recording of dying declaration **AIR 2001 SC2383**.
2. Prior to recording of statement of deceased, the doctor shall do a thorough and professional assessment of physical and mental condition of the patient. **1998 CrLJ585**.
3. Dying declaration is not mandatorily required to be recorded by any Magistrate or particular person. However, it is normally accepted that such declarations would be recorded by Magistrate or by doctor to eliminate chances of any doubt of false implication. **2010 AIR SCW 5494**.
4. More sanctity is attached to a dying declaration recorded by Magistrate since the recording of dying declaration by a Magistrate assures the Court that the statement has been

correctly understood and truthfully recorded by an impartial person. **2010(3) SCC (Cr.) = 2010 AIR SCW5993.**

5. At the time of recording of dying declaration as far as possible the language used by maker of declaration should be used. **(1999)3 Mah. LJ 581 (DB)Bombay.**

6. Dying declaration cannot be rejected merely because it was recorded in other language than that deposed by deceased 2001 CrL.LJ3780.

7. The prosecution should specifically bring on record that deceased had heard the statement recorded by Executive Magistrate and she admitted it to be true and correct. This is not mere formality but an essential part while recording the dying declaration. **2000 (2) Mah. LJ 3 (DB)Bombay.**

#### **CONCLUSION:**

Great importance is attached to a dying declaration by courts, and if properly recorded keeping in mind all the essential ingredients, can form the basis of conviction. Verdicts of higher courts on dying declaration shows it is used as corroborative evidence as most of the recorded statements have incomplete details which make it invalid.

All the hospitals should have their standard dying declaration Performa, so that all the statements can be precisely recorded in it. The purpose behind this is, no single data will be missed and the procedure will be recorded in an ideal way. Most of the errors in dying declaration are due to lack of knowledge among police officers, which could be minimized by training them. The court has to give proper guidelines for recording dying declaration by clearly defining grey areas. This will improve the validity and reliability of the statement to a far more extent.

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