

## A CRITICAL ANALYSIS ON DYING DECLARATION BY RAPE VICTIMS

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### ABSTRACT:

Dying Declarations area unit the statements created by a dying person on injuries that culminated in his death or the circumstances below that the injuries were inflicted. Statements created by a deceased long before the incidence leading to death aren't Dying Declaration and not permissible in Indian proof Act. The overall ground of acceptableness of the proof is that no higher proof is to be had.

Dying declaration relies on the maxim *Nemo moriturus praesumitur mentire* which implies 'a man won't meet his maker with a lie in his mouth'. It operates as an exception to the rule of evidence. Evidence is excluded as a result of it's thought-about not sufficiently trustworthy. It's rejected as a result of it lacks the sanction of the tests applied to permissible proof i.e. the oath and cross examination. They're not given any importance within the courts as a result of the United Nations agency one that one who is giving this proof isn't telling his experiences however that of another person and who can't be cross examined to verify the facts. it's an exception as a result of if this proof isn't thought-about the terribly purpose of the justice are going to be lost in bound things once there might not be the other witness to the crime except the one who has since died.

### KEYWORDS:

Dying declaration, evidence, rape victims, hearsay evidence, corroboration

### OBJECTIVES:

1. To study about dying declaration in detail.
2. To analyse whether it is a sufficient evidence.

**HYPOTHESIS:**

Dying declaration is a weak kind of evidence even though it is based on the principle that a man will not meet his with a lie in his mouth.

**RESEARCH METHODOLOGY:**

This is a doctrinal research and all materials collected are secondary data. Question:

**Research question:** whether dying declaration be made the sole evidence for conviction?

**INTRODUCTION:**

A Dying Declaration as envisaged by S thirty two of the Indian proof Act needn't essentially be from an individual UN agency is dying at the time of constructing the statement. additionally, at the time of constructing such declaration, it's necessary that he or she ought to recognize that there's at hand death. In different words, at the time of constructing such declaration it's a legal mandate that such person should entertain expectation of death.

A rule peculiar to criminal cases is that the exception to the rule respecting evidence that renders dying declarations on the explanation for death permissible in trials for murder and homicide. The earliest emphatic statement of it's to be found in woodcock's case, set in 1789. This case refers to a call in 1720 and to the case of R v. Reason and Tranter, set in 1722. That case, but say nothing on any limitation on the rule. A series of cases from 1678 to 1765 shows that in that amount declarations of deceased persons on the explanation for their death were admitted even if the declarants had hopes of recovery once they were created.

A dying declaration is sometimes introduced by the prosecution, however may be used on behalf of the suspect. As a general rule, courts refuse to admit dying declarations in civil cases, even those for death, or in criminal actions for crimes nevertheless the putting to death of the person. Thus, the aim of the paper is to check whether dying declaration is a conclusive proof or not.

**DYING DECLARATION:**

A dying Declaration is fairly well crystal by

judicial choices. However before it's relied on, it should pass a check of reliableness because it may be a statement created within the absence of the suspect and there's no chance to the suspect even to place it through the hearth of cross- examination to check it genuineness or truthfulness.

Section thirty two of the evidence Act is an exception to the final rule of exclusion of the evidence. Statement of a witness, written or verbal, of relevant facts created by someone United Nations agency is dead or can't be found or United Nations agency has become incapable of giving proof or whose attending cannot procured while not an quantity of delay or expense, square measure deemed relevant facts underneath the circumstances per Sub-sections (1) to (8). Sub-section (1) of Section thirty two provides that once the statement is formed by someone on the reason for his death or on any circumstances of the group action that resulted in his death, being relevant truth is allowable obvious. Such statements square measure unremarkably referred to as dying declarations. Such statements square measure admitted obvious on the principle necessarily. just in case of cutthroat deaths, statements created by the deceased square measure allowable solely to the extent of proving the cause and circumstances of his death. to draw in the provisions of Section thirty two for the needs of acceptableness of the statement of a deceased, it's to be tested that:

(a) The statement sought-after to be admitted was created by someone United Nations agency is dead or United Nations agency can't be found of whose attending can't be procured while not AN quantity of delay and expense or is incapable of giving proof.

(b) Such statement ought to are created underneath any of the circumstances per Sub-sections (1) to (8) of Section thirty two of the evidence Act .<sup>1</sup>

The language of Section 32(1) of the evidence Act depicts the subsequent propositions:

(1) Section thirty two is AN exception of the rule of hearsay and makes admissible the statement of someone UN agency dies, whether or not the death could be a putting to death or a suicide, provided the statement relates to the reason behind death, or exhibits circumstances resulting in the death. During this respect, as Indicated on top of, the Indian proof Act, visible

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<sup>1</sup> <http://www.legalserviceindia.com>

of the peculiar conditions of our society and also the numerous nature and character of our folks, has thought it necessary to widen the sphere of Section thirty two to avoid injustice.

(2) The take a look at of proximity can't be too virtually construed and much reduced to a cut-and-dry formula of universal application therefore on be confined in an exceedingly strait-jacket. Distance of your time would rely or vary with the circumstances of every case. to Illustrate, wherever death could be a logical fruits of a continual drama long in method and is, because it were a finale of the story, the statement relating to every step directly connected with the top of the drama would be admissible as a result of the complete statement would ought to be scan as AN organic whole and not torn from the context. Generally statements relevant to or furnishing a direct motive may be admissible as being a region of the dealings of death. It's manifest that each one these statements come back to lightweight solely when the death of the deceased UN agency speaks from death. to Illustrate, wherever the death takes place among a awfully short time of the wedding or the space of your time isn't touch over 3-4 months the statement is also admissible beneath Section thirty two.

(3) The second a part of Clause (1) of Section thirty two is one more exception to the rule that in legal code the proof of someone UN agency wasn't being subjected to or given a chance of being cross-examined by the suspect, would be worthless as a result of the place of examination is taken by the solemnity and holiness of oath for the straightforward reason that someone on the verge of death isn't probably to create a untruth unless there's sturdy proof to indicate that the statement was secured either by prompting or tutoring.

(4) It should be necessary to notice that Section thirty two doesn't speak of putting to death alone however includes suicide conjointly, thus all the circumstances which can be relevant to prove a case of putting to death would be equally relevant to prove a case of suicide.

(5) wherever the most proof consists of statements and letters written by the deceased that square measure directly connected with or relating to her death and that reveal a telltale story, the same statement would clearly fall among the four corners of Section thirty two and, herefore, admissible. The space of your time alone in such cases wouldn't build the statement digressive.<sup>2</sup>

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<sup>2</sup> Rajendran A (2002). 'Evolution of Dying Declaration or whether Dying Declaration still Sacrosanct?', Criminal Law Journal. Vol-I, Jan –march, PP 49-51

A self-destructive note written found within the garments of the deceased it's within the nature of dying declaration and is admissible obvious beneath section thirty two of Indian Evidence Act . The death said in Section 32(1) of the proof Act includes self-destructive besides murderous death. This was control by Justice Fazal Ali in Sharad Birdhichand fish genus v. State of geographical region when concerning the selections of this Court in Hanumant v. State of Madhya Pradesh, Dharambir Singh v. State of geographic region, rattan Dravidian v. State of province, Pakala Narayana Hindu, knife Kumar v. State of province, Manohar Lal v. State of geographic region.

First info report got recorded by the police has been taken as dying declaration by the Honourable Supreme Court, once the person failed to survive to urge his dying declaration recorded . However once patient remained admit in hospital for adequate days i.e. for eight days FIR can't be treated as dying declaration .

It is not necessary that the circumstances ought to be proximate, for, even distant circumstances may also become admissible beneath the subsection, provided it's nexus with the dealings that resulted within the death. It's enough if the words spoken by the deceased have relation to any circumstance that has reference to any of the transactions that all over up within the death of the deceased. Such statement would conjointly fall among the ambit of Section 32(1) of the proof Act.

The death of declarant long when creating the dying declaration failed to mean that such a press release lost its worth simply as a result of the person creating the statement lived for a extended time than expected. however to create the statement admissible, it's to be shown that the statement created was the reason behind the death or with relevance the circumstances of the dealings that resulted in his death.

The Court in G.S. Walia v. State<sup>3</sup> of geographic region control that the injuries were solely directly chargeable for inflicting death of the deceased and as his death can't be same to possess been caused because of the injuries caused, the statement created by him wouldn't fall among Section thirty two of the Indian proof Act.

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<sup>3</sup> CriLJ (SC) 2524

In *Onkar v. State of Madhya Pradesh*<sup>4</sup> whereas following the choice of the council in *Pakala Narayana Hindu v Emperor*, the Madhya Pradesh tribunal has explained the character of the circumstances contemplated by Section thirty two of the proof Act, "The circumstances should have some proximate reference to the particular incidence and that they will solely embody the acts done once and wherever the death was caused.... therefore a press release, simply suggesting motive for a criminal offense can't be admitted obvious unless it's therefore intimately connected with the dealings itself on be a circumstance of the dealings. within the instant case proof has been junction rectifier regarding statements created by the deceased long before this incident which can recommend motive for the crime". In *Allijan Munshi v. State of geographical region*, the Mumbai tribunal has taken the same read.

#### Distinction between English law & Indian Law

The Indian law on the question of the character and scope of dying declaration has created a definite departure from land Law wherever solely the statements that directly relate to the reason behind death square measure admissible. it's well settled by currently that there's distinction between the Indian Rule and also the English Rule with respect to the requirement of the declaration having been created beneath expectation of death. This distinction between the Indian proof Act and English law depicts the subsequent observations:

1. Clause (1) of Section thirty two of the Indian proof Act provides that statements, written or verbal of relevant facts created by someone UN agency is dead square measure themselves relevant facts once the statement is created by someone on the reason behind his death, or on why of the circumstances of the dealings that resulted in his death. whereas within the English Law the declaration ought to are created beneath the sense of close at hand death whereas beneath the Indian Law it's not necessary for the acceptability of a dying declaration that the deceased at the time of creating it ought to are beneath the expectation of death.

2. The second a part of Clause (1) of Section thirty two of Indian proof Act viz., "the circumstances of the dealings that resulted in his death, in cases during which the reason behind that person's death comes into question" isn't to be found within the English Law

As distinguished from land Law Section thirty two doesn't need that such a press release ought to are created in expectation of death. Statement of the victim UN agency is dead is

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<sup>4</sup> 1974 CriLJ 1200 (MP)

admissible in up to now because it refers to reason behind his death or on any circumstances of the dealings that resulted in his death. The words "as to any of the circumstances of the dealings that resulted in his death" showing in Section thirty two should have some proximate reference to the particular incidence. In different words the statement of the deceased with reference to the reason behind death or the circumstances of the dealings that resulted in his death should be sufficiently or closely connected with the particular dealings.

Due weight is needed to be to a dying declaration keeping visible the legal maxim "Nemo moriturus praesumitur mentire" i.e. 'a man won't meet his Maker with a belong his mouth'. to create such statement as substantive proof, the person or the agency relying upon it's beneath a legal obligation to prove the creation of a press release as a truth. If it's in writing, the scribe should be made within the Court and if it's verbal, it ought to be proved by examining the one that detected the deceased creating the statement. However, in cases wherever the first recorded dying declaration is proved to possess been lost and not offered, the prosecution is entitled to administer secondary proof thence.<sup>5</sup>

#### **Principle and basis of acceptability of Dying Declaration:**

Clause (1) of S thirty two makes relevant what's typically represented as dying declaration, although such associate exception has not been employed in any statute. It means that statements created by someone on reason behind his death on the circumstances of the dealing leading to his death. The grounds of admission are: (1) necessity for the victim being typically the sole principal eye-witness to the crime, the exclusion of the statement would possibly defect the ends of justice (2) the sense of close at hand death that creates a sanction adequate the requirement of associate oath. It's admitted is that they're declarations created in extremity, once the party is at purpose of death and once each hope of his words is gone, once each motive to falsehood is silence, and therefore the mind is iatrogenic by the foremost powerful issues to talk the reality, a state of affairs therefore solemn then lawful is taken into account by the law as making associate obligation adequate that that is obligatory by a positive oath administered within the court of justice.

The principle on that Dying Declaration is admitted obvious is indicated in legal maxim, "Nemo Moriturus Praesumitur Mentire 'a man won't meet his maker with a lie in his mouth.

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<sup>5</sup> Bryan Garner (2004). Black's Law Dictionary, United States of America: Thomson Business

The jural theory concerning satisfactoriness of Dying Declaration is that such declaration is created in extremity once the party's at the purpose of death and once each scope of this world is gone, once each motive to falsehood is silenced and therefore the man is iatrogenic by the foremost powerful thought to talk solely the reality, still identical, nice caution should be exercised in considering the load to run to the present species of proof on account of the existence of the many circumstances which can have an effect on their truth. The case during which a person is on death bed is therefore solemn and serene, is that the reason in law to just accept in law to just accept the truthfulness of his statement.

The Hon'ble Supreme Court in *Lallubhai v. State of Gujarat* command that the law concerning Dying Declaration is extremely clear. A Dying Declaration should be closely scrutinized on its honesty like every alternative necessary piece of proof within the lightweight of the encompassing facts and circumstances of the case bearing in mind on the one hand, that the encompassing is by one that has not been examined in court on oath and on alternative hand the Dying man is generally not going to implicate innocent persons incorrectly.

The acceptability of Dying Declaration relies on the maxim 'Nemo Moriturus Praesumitur Mentire' which suggests 'a one that is on the brink of die wouldn't lie'. It's same that truth sits on the lips of someone World Health Organization is concerning of death. The SC in *Kundabal subramanyam v state of AP*, "A Dying Declaration is created by someone on the verge of its death includes a special quality as at that solemn moment someone is impossible to form associate untrue statement. The shadow of the upcoming death is by itself the guarantee of truth of the statement created by the deceased concerning the cause or circumstances resulting in his death".

Thus declarant's death is pre-condition before the acceptability of statement. In *Maqsudan v state of UP* the court command that once someone World Health Organization has created an announcement, is also in expectation of death, isn't dead, it's not a dying declaration and isn't admissible beneath S thirty two.

The Second condition is that the injuries should have caused the death. If someone dies not on account of injuries that square measure inflicted on him however on account of another reasons or ill, the Dying Declaration wouldn't be admissible. The SC in *Moti*



singh v state of UP command that Dying Declaration isn't admissible because the death of the person wasn't evidenced.<sup>6</sup>

The statement of the declarant ought to limit itself having a right away and proximate reference to the cause of his death or to the dealing that resulted in his death, In knife kumar v state of UP, the SC created observation concerning that the circumstances should have some proximate reference to the particular occurrences which general expressions indicating worry or suspicion whether or not of a selected individual otherwise and in some way to the occasion of death won't be admissible .

#### **RELIABILITY OF DYING DECLARATION:**

A dying declaration, before it might be relied upon, should pass a check of reliableness because it may be a statement created in absence of the defendant and there's no chance to the defendant and there's no chance to the defendant even to place it through the fireplace of cross examination to check its genuine or truthfulness. Therefore, it becomes the duty of the court to subject to that to shut scrutiny.

Though in law there's no bar in performing on the part of Dying Declaration, it's to pass the check of reliableness. S thirty two is associate degree exception to the rule of {evidence} and unless evidence is tested by cross examination it's not credit worthy. A Dying Declaration created by someone on the verge of his death contains a special holiness as at that solemn moment by someone is very unlikely to create any untrue statement. The shadow of imminent death is by itself guarantee of the reality of the statement of the deceased relating to circumstances resulting in his death. However at a similar time the dying declaration like all alternative proof should be tested on the criterion of credibility to be acceptable. It is more, so, because the defendant doesn't get a chance of questioning truthfulness of the statement by cross examination. The dying declaration if found reliable will kind the bottom of conviction.

Conviction will be supported it while not documentation if it's true and voluntary. However it becomes unreliable if it's not as per prosecution version. This has been summed up by the Hon'ble Supreme Court:

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<sup>6</sup> Sen Krishnayan (2004). 'Dying Declaration: An Exception to the rule of Hearsay', Criminal Law Journal. Vol-III, July-September, PP 177-179

1. it's for the court to examine that dying declaration evokes full confidence because the maker of the dying declaration isn't out there for cross examination
2. Court ought to satisfy that there was no risk of tutoring or prompting.
3. Certificate of the doctor ought to mention that victim was during a match state of mind. Functionary recording his own satisfaction concerning the match mental condition of the declarant wasn't acceptable particularly if the doctor was out there.
4. Dying declaration ought to be recorded by the manager functionary and policeman to record the dying declaration on condition that condition of the deceased was therefore precarious that no alternative different was left.
5. Dying declaration is also within the type of queries and answers and answers being written within the words of the person creating the declaration. However court can't be too technical.

Therefore, it will be terminated that after the statement of Dying person and also the proof of the witnesses checks a similar passes the test of careful scrutiny of the courts, it

becomes important and reliable piece of proof and if the court is happy that the dying declaration is true and free from any embellishment such a Dying Declaration by itself will be decent for recording conviction even while not trying to find conviction.

#### **SOLE BASIS OF CONVICTION:**

In order to involve the appellant within the alleged offence, the solitary proof is that the dying declaration created by the deceased. Although the dying declaration was created by her, repeatedly at an interval of 1 hour in between, the essential fact remains that the sole material of prosecution is her Dying Declaration. If the dying Declaration would pass the check of scrutiny it may be relied on because the sole basis of conviction. There's no dispute on the same legal proposition .It's well settled that conviction may be supported the dying declaration itself provided it's satisfactory and reliable.

Conviction may be supported the strength of Dying Declaration while not documentation provided it's found trustworthy. However, before it's acted upon, it's too closely scrutinized since dying declaration given by someone before his death could be a one sided affair and before putting reliance thereon and shutting case for seeking documentation,

it's not solely fascinating however conjointly essential to eliminate the probabilities of suspicion once careful and shut scrutiny.

Though a Dying Declaration is entitled to an excellent weight, it's worthy to notice that the suspect has no power of interrogation. Such an influence is important for eliciting the reality as an obligation of oath may well be. this can be the rationale the court conjointly insists that the Dying Declaration ought to be such a nature on inspire full confidence of the court in its correctness. The court has got to air guard that the statement of the deceased wasn't as a results of tutoring, prompting or a product of imagination. The court should be any happy that the deceased was in a very match state once a transparent chance to watch and establish the assailants. Once the court is happy that the declaration was true and voluntary, without doubt, a conviction may be supported that with none any documentation. It cannot be set down as AN absolute rule of law that Dying Declaration cannot kind a basis of conviction unless it's supported. The rule requiring documentation is just a rule of prudence. The law is settled that there may be conviction on the premise of Dying Declaration and it's not in the least necessary to own documentation provided the court is happy that the Dying declaration is truthful dying declaration and not vitiated in the other kind. The court should be happy that the deceased was in a very match state of mind to create the statement once the deceased had a transparent chance to watch and establish the suspect which he was creating the statement with none influence and enmity. Once the court is happy that the dying declaration is true and voluntary it may be adequate to found the conviction even while not documentation.

#### **CORROBORATION:**

As regards to certification of the Dying Declaration is bothered, the Supreme Court in Harbans singh v state of geographic area , control that “it is neither a rule of law nor of prudence that a dying declaration needs to be substantiated by alternative proof before conviction will be based mostly on it. The proof volumed by the dying declaration should be thought-about even as the proof of any witness, tho' beyond any doubt some special thought arises within the assessment of Dying Declaration that doesn't arise within the case of assessing the worth of an announcement created within the court by someone claiming to be a witness of the occurrence”. In brief, a Dying Declaration should satisfy the court that it had been “true and voluntary” which the declarant was during a work state of mind’.

Once a Dying Declaration withstands the take a look at of scrutiny and seems to be a truthful version of the circumstances of death and assailants of the victim, no any certification is important to base a conviction on its basis. it had been equally control by SC in Munna Raja v state of MP .

In Lallubhai Devchand crowned head v State of Gujarat, in Vithal Somnath a lot of v State of Maharashtra and in Kundabala subramanyam v State of AP it had been control that that after the court is satisfied that the dying declaration is true and voluntary, it will sufficiently become the idea for conviction despite the fact that with none any certification.

#### **RELEVANT CASE LAWS:**

In State of province v Mahim Barkataki, a press release was created by the victim of rape and murder. She died of burns. She created the statement to at least one of the witnesses whereas she was underneath severe pain thanks to grievous burns. It absolutely was alleged that the defendant had committed rape on her and later by gushing kerosene on her, burnt her alive. The court found the Dying declaration to be truthful and reliable and so, admissible. The Hon'ble court control that the conviction might be supported the dying declaration that is found to be truthful and reliable.

In Jagga Singh v. State of geographic area , the defendant tried rape on a woman and therefore the next day by setting the woman to fireplace by gushing kerosene killed the girl. The daddy of the woman was a tenant of the defendant and left the ladies within the house alone. The brother of deceased (Nihalo) United Nations agency has oust regarding seeing her sister in burning condition has not oust regarding the tried rape the previous night. The Statement in Dying declaration contained that when deceased (Nihalo) had been attack fireplace, that was within the court-yard, she hurried to her space that was latched from outside by the appellant.

The Appellant content that if the deceased (Nihalo) would are attack fireplace within the court-yard, she wouldn't have hurried within the area to avoid wasting herself - this might are unnatural conduct; she would have instead gone outside the house to draw in the eye of others United Nations agency could have come out to avoid wasting her. The court thought-about this competition as a robust purpose. The court additionally discovered that none of the witnesses had seen the appellant setting flame. The brother of the deceased (Rampal) did state in his examination-in-chief that deceased (Nihalo) was crying that Jagga (the appellant)

had set her flaming. however he admitted in examination that he had not expressed regarding identical to the police.

The Hon'ble Court control that the same material solely points the needle of suspicion, towards the appellant and zipadditional. Suspicion, however, isn't any substitute for proof; and in legal code the prosecution must prove the guilt on the far side cheap doubt. The offence alleged within the gift case being murder, that visits the offender of the crime with the minimum sentence of imprisonment for all times, a Court of law would be even in exacting full satisfaction before the deadliness of Section 302 will be used against anyone. The materials on record within the gift case don't have most of stylish on penetrate the defence of innocence engineered spherical on defendant in our criminal jurisprudence.

The Hon'ble Supreme Court, therefore, control that the infirmities square measure sufficient to throw doubt on the correctness of the statements that notice place in dying declaration. it's a settled law that for a dying declaration to supply the premise for conviction, identical must be on the far side any reproach. because the gift dying declaration isn't of such a standing in any respect, the court was of the read that the conviction of the appellant cannot be supported what has been recorded within the dying declaration and thus within the absence of the other proof the Hon'ble Court clean-handed the appellant.

As a chunk of proof, Dying declaration is currently fairly crystal clear by judicial selections. The importance of Dying declaration as a chunk of convincing proof is increasing with the increase of cases, whereby the Dying declaration set the foundations for prosecution. Nevertheless that there is also no direct and ocular proof to prove against the law, a dying declaration is also self -speaking and prove way more than eye witnesses might depose. Truly said, men would lie however not the circumstances. it's pretty much as good as the other piece of proof and it's inviolable.<sup>7</sup>

#### **SUGGESTION AND CONCLUSION:**

A dying declaration is that the morality or non secular condition of the dying man, Truth sits on the lips of a dying man World Health Organization incorporates a sense of at hand death. however if the dying man was underneath no expectation of death, might it's plausible that even then his non secular or ethical fiber would get strong efficacious him to talk the reality.

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<sup>7</sup> Jagga Singh v. State of Punjab, AIR1995 SC 135

it's powerfully felt that it's not invariably the case. Truth would sit on the lips of a dying man provided that he's underneath expectation of death.

A Dying Declaration created by an individual on the verge of his death incorporates a special holiness, as at that solemn moment, an individual is impossible to create any untrue statement. The holiness connected to Dying Declaration is that an individual on the verge of death wouldn't commit sin in implementing someone incorrectly. The shadow of at hand death is by itself guarantee of the reality of the statement of the deceased relating to circumstances resulting in his death. the overall principle on that this species proof is admitted is that they're declarations created in extremity, once the person is at purpose of death and once each hope of this world is gone. At that time of your time each motive to falsehood is suppressed and therefore the mind is elicited by the foremost powerful thought to talk the reality. Such a Solemn scenario is taken into account by the law as making associate obligation capable that is obligatory by a positive oath administered in an exceedingly court of justice.

A Dying Declaration may be a weak reasonably proof as a result of the suspect don't get any chance to cross-examine the declarant. Uncrossed version of the declarant is thrust upon the suspect and that they may well be control guilty of the crime alleged within the declaration. underneath these circumstances, the courts square measure expected to be terribly cautious and discreet in acceptive the dying declaration. Therefore, the hypothesis advance by the investigator is found to be true. The dying declarations square measure weak reasonably proof even supposing they're supported the principle that an individual wouldn't die with a dwell his mouth.

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