A CRITICAL APPRAISAL ON 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. 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 resulting 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.

KEYWORDS:

Dying Declaration, Evidence, Admissibility of Dying Declaration, Evidentiary Value of Dying Declaration.

INTRODUCTION:

Dying declaration is bases on the maxim “ Nemo moriturus praesumitur mentire” i.e. 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. Section 32(1) of the Indian Evidence Act talks about dying declaration. A dying declaration is admissible in evidence even though it has not been given on oath and the person making it can-not be cross-examined. It is an
exception to the rule against hearsay. This exception, as such dates back as far as the first half of the 1700s, the period when the hearsay rule was coming to be systematically and strictly enforced. The custom of using dying declaration probably comes down as a tradition long before the evidence system arises in the 1500s. Admissibility of a dying declaration as a relevant piece of evidence is guided by the principle of necessity and religious belief of the olden days. The necessity being, that in cases, where victim is the only eye-witness to the crime, the exclusion of his/her statement might defeat the ends of justice. The religious sanction behind their admissibility comes from the belief in the fact, that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath-nemo moriturus praesumuntur mentiri.

This research aims to To know about Dying Declaration, To know whether Dying Declaration is admissible and To know the legal status of Dying Declaration.

**HYPOTHESIS:**

Dying Declaration may be admissible as it would be an exception to the principle that excludes the hearsay rule

**RESEARCH QUESTION:**

Whether Dying Declaration is admissible?

**RESEARCH METHODOLOGY:**

The researcher has followed secondary data collection. This is a doctrinal study. The researcher has also utilized commentaries, books, treaties, articles, notes comments and other writings to incorporate the various views of multitude of jurists, with the intention of presenting a holistic view. The researcher has made extensive use of Case Laws in this paper, so as to discern a trend in the judicial pronouncements.

**ADMISSIBILITY AND RECORDS OF DYING DECLARATION:**

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 fit condition of mind to give statement. Merely stating that patient was fit will not serve the purpose. This can be best certified by doctor who knows condition of patient. In N Ram v State it is stated dying declaration have 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. If a person has made more than one dying declaration and if these are not at variance with each other in essence they retain their full value. It is best that it is recorded by magistrate but if there is no time it can be recorded by anybody like doctor or other. Courts discourage the recording of dying declaration by the police.
officers but if there is nobody else to record it considered by the courts. As a measure of safety original dying declaration should be sent to the magistrate like FIR.

In State of Punjab v Kikarsingh First information report got recorded by the police has been taken as dying declaration by the court, when the person did not survive to get his dying declaration recorded. But when the patient remained admitted in hospital for sufficient days FIR cannot be treated as dying declaration. It is perfectly permissible to reject a part of declaration if it is found to be untrue and if it can be separated.

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.

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.

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. 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.

Evidentiary Value to be Attached to A Dying Declaration
There doesn't seem to be much controversy as far as the question of a dying declaration being a significant piece of evidence is concerned. The divergent and conflicting Judicial opinion has been with respect to value and importance to be attached to dying declaration in basing the conviction of an accused: The Courts in India have held time and again, that a dying declaration before it could be relied upon must pass a test of reliability, as it is a statement made in the absence of the accused and there is no cross-examination of the declarant to test its genuineness or veracity. Thus, a dying declaration must be subject to close scrutiny.

A dying declaration in India stands on a different footing than in England. Under the English law, credence and the relevancy of a dying declaration is important only when person making such statement is in hopeless condition and expecting an imminent death. In India, the weight to be attached to a dying declaration depends not upon the expectation of death that is presumed to guarantee the truth of the statement, but upon the circumstances and surrounding under which it was made, and very much also upon the nature of record that has been made of it. It is almost a question of fact whether a dying declaration should be relied upon or not. In one of its earliest judgments on dying declaration the Supreme Court had held that, it was not safe to convict an accused on an uncorroborated dying declaration. Since then, the Supreme Court in a catena of cases has held that conviction can be based on an uncorroborated dying declaration provided that the Court has come to the conclusion that it is true and voluntary. The most significant being the case of Khushal Rao v. State of Bombay where, the Supreme Court laid down several propositions with respect to dying declarations and these propositions till date continue to govern the law relating to dying declarations. The Court held, that there is no absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated, nor can it be said that a dying declaration is a weak piece of evidence. The Court further held that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principle governing the weighing of evidence. Speaking on the same line the Supreme Court held in the case of Padmaben Shamalbhai Patel v. State of Gujarat that, "a dying declaration is an independent piece of evidence—neither extra strong nor weak and can be acted upon without corroboration if it is found to be otherwise true and reliable."

Procedures and Precautions:

Section 32(1) of the Act is silent about the person to whom a dying declaration can be made and the mode of making such a dying declaration. The same has rightly not been provided since, for someone who is breathing his last, it would be ridiculous to make him/her undergo several procedures before
he/she could get his/her dying declaration recorded. But, the absence of sued provisions gives rise to several questions. For example, can a dying declaration made to the only family member present at the time of killing be believed? Can an investigation officer record a dying declaration? Will the statement made to a magistrate under Section 164 of the Code of Criminal Procedure cover a dying declaration as well? What happens in cases where there is no certification by the doctor to the effect that the declarant was in a fit state of mind while making the declaration? There cannot be straight answers to such questions since, the admissibility of a dying declaration is very fact specific and to a great extent is determined by the circumstances under which it was made.

Section 162 (1) of the Code of Criminal Procedure provides that any statement made to a police officer during the course of investigation is inadmissible. But Clause of the same section makes an exception in favour of dying declaration by providing that, the provisions of this section shall not apply to statement falling within the provisions of S. 32(1) of the Act. The Courts have been hesitant to admit dying declarations made to an investigation officer, for the obvious reason that investigating officers being interested in the success of investigation might tamper with the dying declaration to tilt the balance in their favour. The Supreme Court in the case of Dalip Singh v. State of Punjab has held that it is better to leave dying declarations made to police officers- during in-stigation out of consideration until and unless prosecution satisfies the Court as to why it was not recorded by a magistrate or doctor. It further held that such declarations might be relied upon if there was no time or facility for adopting the better method. Several High Courts have also held that it is not prudent to base conviction on a dying declaration made to an investigating officer and the practice of the investigating officer recording dying declaration should not be encouraged.

It all depends on the facts and circumstances of the case. Thus, where the dying declaration recorded by the police officer was natural, coherent, truthful, narrating incident without embellishment and explicitly identifying accused, such dying declaration was held to be valid. But, where the investigating officer had recorded the dying declaration even before the victim was certified by the doctor to be fit for making a statement and though the victim survived for two weeks thereafter, the investigating officer made no efforts to get this statements recorded by a magistrate, it was held, that no reliance could be placed on such dying declaration.

In Rambai v. State of Chhattisgarh, It was held that if the person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make a dying declaration then such dying declaration will not be invalid solely on the ground that the doctor has not certified as to the condition of the declarant to make the dying declaration.
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. it is perfectly permissible to reject a part of dying declaration if it is found to be untrue and if it can be separated. 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. 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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