

# A BRIEF OVERVIEW REGARDING DYING DECLARATION IN INDIA

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## ABSTRACT

The context upon dying declarations are considered in evidence is mentioned in the legal maxim- Nemo martiurus proeremitue- a man will not meet his maker with a lie in his mouth. These are the declarations made in pinhead when the person is at last of his journey and everything in this world seem like hopeless and all the path carrying a false statement remain silenced and the control over the person mind is only to express truth; a grave and severe situation law treats it on important prospect to accept the reality of the statement. Dying declaration became very necessary concept in the region of law of evidence. It only promotes the path of conviction. However the judiciary comes to conclude various principles to administer the admissibility of dying declaration. This article gives light on the position of dying declaration in the eyes of law in India.

**KEYWORDS:** - Dying Declaration, Truthfulness, Evidence, Mental fitness.

## INTRODUCTION

The law of evidence gives focus on the relevancy and admissibility of evidence in the courts. The points which is to be kept in mind while considering evidence is their admissibility if they are not be tested admissible cannot be taken as evidence before court.

Whenever any act related to crime is committed, there is always presence of two party, who literary knows about everything that actually happened i.e. accused and the victim. So they both made statement according to their position but whole story is treated as true evidence in spite of fact that statement result in their favor and no doubt is created behind the reason for that statement. So this process are to be judged only if the statement made by party at the last stage of their life as to Dying declaration which is provided in Evidence in sec 32(1).

So for the above situation, the law makes an exception as the matter of requirement that when a man is in position of his death and makes statement regarding his death law attaches this process as last words of man on his dying situation which clearly gives intention towards his truthfulness and also result in providing justice as victim is the only eyewitness of a serious crime.

## DYING DECLARATION & INDIAN EVIDENCE ACT

The provision of section 32 of Indian evidence act 1872 give reflection to this statement which came in action in a specific situation when the person is dead, or not found, incapable of giving evidence before court. So, as a proof on his behalf, his statement is transmitted in the court through the channel of some other person. Section 32(1) specifies that statement made by a person as to cause and fact tending to his death becomes relevant and admissible in the eyes of law as a concept of dying declaration provided in the provision of evidence act.

## GLOBAL SCENARIO/ SCENARIO IN UK

Under English law there is provision regarding admissibility of dying declaration. These points are to be considered that the person must have been in the actual danger of his time when he made statement regarding his death as dying declaration; secondly should feel full apprehension of his death and lastly death should have ensued.

## INDIAN SCENARIO

In Indian law context in regards to dying declaration under section 32(1). It is not compulsory that the death of a person should result with the fixed time with the statement neither the statement made by victim gives reflection regarding the circumstances which ultimately led to death. The admissibility of dying declaration made by deceased are not required to have been result in imminent expectation of death.

Before a statement may be admitted as dying declaration death of the deceased must be proved by the person who want to prove dying declaration before court burden of proving death of deceased is upon him. If due to any circumstances person is able to live then the statement given by him is not treated as dying declaration but may be considered in section 157 of evidence act for the corroboration and contradiction of statement before the court.

## PROCEDURE FOR RECORDING DYING DECLARATION

There are two prospects in which Dying Declaration may be specified i.e. orally or in writing. There are several other methods also which can be used by deceased person such as signs, gestures, question answer form etc. it must be recorded by the person in the deceased comfort language which gives more support and strength to the statement.

This is not necessary and only method that it must be in question and answer form as it can be one of the way for expressing their views at the last stage of life. Even if the declaration may result in the few clues or in the actual words of deceased then also it is sufficient. The important prospect regarding the person who is recording the statement must be in fit state of mind and capable enough to record the statement which lead to dying declaration.

But there is no specified rules prescribed in the law for recording statement nor is it mandatory that it must be recorded in the presence of magistrate. It can be recorded by doctor, police officer or any other person as per the demand or convenience of the circumstance but if it is before the physical presence of magistrate its admissibility weight is at higher pin point.

## EVIDENTIARY VALUE OF DYING DECLARATION

Dying declaration reflects heavy impact in the eyes of law by this statement only person can be convicted in the crime. This is treated as sole basis for punishing the culprit for his criminal act as this process required no corroboration, If, it is found true and reliable. It is important to prove before the court that statement made by deceased is not the result of torturing, tempering or product of imagination. The person who presenting dying declaration before court on behalf of deceased person must be in fit state of mind while recording and person giving statement also have clear intention to state the actual fact related to crime and if the court is satisfied that the declaration is true and voluntary then it result in sole basis for conviction.

## MULTIPLE DYING DECLARATIONS

Sometimes there is chances deceased states many statement regarding the incident related to his death due to several reasons. In that case all the statement is to be considered but court has to decide which is more reliable and upon which statement conviction is going to be held for the act of the culprit.

In Sayarabano @ Sultana Begum vs. State of Maharashtra. In this case two dying declaration has been recorded. In the first deceased mentioned that the deceased met with an accident in which she was hit by a kerosene lamp which fell on her body and incident happen. While other declaration was in front of magistrate that when he asked about two dying statement then deceased replied that her mother-in-law warns hereto not to give statement against of any of family member but in actual the culprit was her mother-in-law who threw kerosene lamp on her and due to this her body burnt. She also told that she was also harassed by her mother-in-law. So, at last second declaration reflects more credibility and inspired confidence. Hence second Dying declaration was considered by magistrate.

## CONCLUSIONS

Dying Declaration treated as one of the valued piece of evidence. Its prominent plays very important role in the proceeding of case while conviction and also considered as sole piece of evidence on the behalf of deceased person.

So in the eyes of law it's relevant and also admissible before so far its admissibility it is more important that dying declaration should be free from and must not result in falsehood or any kind of tempering by any person. It does not involve any kind of manipulation or hidden fact out of it. Hence, mentioned and true and clear fact.

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