

‘NEMOMORITURUS PRAESUMITUR MENTIRE’- Dying Declaration

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Abstract

The purpose of this report help the budding lawyers as well as law students to know the principle of ‘Dying Declaration’ provided under S. 32 of the Indian Evidence Act, 1872. The report will explain the different types of statements which can be admitted as dying declaration and its importance in the context of the various provisions of laws present in India.

Key Words:- Relevant fact, Supreme Court, Dying Declaration, Statements, cause of death, Transaction of Death.

Introduction

Section 32 (1) Evidence Act,1872 provides the principle to what we know as dying declaration. It means the statement of a person who had died explaining the cause or the circumstance or transaction resulting in his death.

The principle of is based on “NEMOMORITURUS PRAESUMITUR MENTIRE” that means a man will not meet his maker with lie on his lips.

There are two statements covered under the section:-

- Any cause of his death
- Any circumstances or transaction which resulted in his death

Any cause of his death:-

This clause lays down that statement of a person will be relevant u/s 32 (1) as to the cause of his death. The fact that the deceased lingered for some days after receiving fatal injuries does not negate the statement as dying declaration. But where P was raped and made a statement that A raped her and three days later she committed suicide, her statement will not be admissible and can’t be considered as dying declaration u/s 32(1). It must be proved that his death was caused by any harm or injury he received in the incidence for which the accused is prosecuted.

ESSENTIAL REQUIREMENTS FOR DYING DECLARATION:-

- To which person the statement is made.
- The person ultimately died.
- The statement must only relate to his cause of death or transaction.
- The cause of death must be in issue.
- Statement must be complete and clear.
- The person died must be competent as a witness.

Circumstances or transaction which resulted in his death

The statement not in relation to the cause of death of its maker may be admissible if it relates to the circumstances of transaction which resulted in his death. In a given case of robbery a statement made by a person before death regarding the whole action in robbery held to be admissible. In **Patel Hiralal Jotram versus State of Gujarat AIR 2001 SC 2944**, in this case a woman was burnt alive by the accused neighbor. In her dying declaration she stated the name of the accused as 'Patel Lalchand' which was recorded in her earlier dying declaration by magistrate and in another dying declaration recorded by the investigation officer she corrected it as 'Patel Jotram' instead of 'Patel Lalchand'. So the issue in this case was that whether the statement is admissible as a dying declaration. The Supreme Court pointed that when the words or circumstances are linked to an event or even transaction which actually resulted in the death then this section has a very wide dimensions. Anything which has a nexus or connection with his/ her death proximate, remote, direct or indirect can also fall within the preview of this section. The circumstances must have some proximate connection to the actual happening of the incident and must be and a transaction which ultimately resulted in his/her death. So in case of prolonged poisoning that may be resulted in two dates or at a considerable distance from the date of actual death.

In another case **Sudhakar versus State of Maharashtra AIR 2000 SC 2607**, a 20 years old school teacher was raped by headmaster and other teachers. She narrated the whole incident after 4-5 days to her parents. FIR was registered after 10th day of the alleged rape. Feeling humiliated she committed suicide after 5 months. The issue in this case was that whether the FIR can be dealt as a dying declaration? It was held that in this case the cause of death is not humiliation but by poisoning itself. It does not speak about the cause of death so it will not be covered under Section 32 (1). It will only be considered as a series of circumstances of transaction i.e. res-gestae u/s 6 of the Act.

In another case **Kushal Rao versus State of Bombay AIR 1958 SC 22** the person before dying made 4 separate and almost identical dying declaration before a Sub Inspector, a doctor, a Magistrate and an another person. So in this case the issue was whether this kind of dying declaration can be used as the sole basis of conviction. The apex court laid down following principles in this regard:-

- Each case must be determined on its own facts and circumstances.
- No absolute rule that a dying declaration cannot be a sole basis of conviction.
- Dying declaration is just like any other evidence and not of a weaker form of evidence.
- Corroboration is needed where there is any doubt.
- Deceased person's qualities must be tested as to date, time etc.
- Oral testimony suffer from all the information of human memory and character.
- If the court is absolutely convinced that the statement is true and it is not the result of coaching, torturing then conviction can be made on sole basis of a single dying declaration.

The person by whom statement is made must be under the expectation of death. It doesn't in any way affect the relevance of the dying declaration but it certainly affects the weight attached to the declaration if a person is conscious that he is dying very soon then there is always a possibility of telling the truth.

It applies to both criminal as well as civil cases. It should be remembered that statements are not admissible as to previous or subsequent transaction and also at the same time the statement of that person is only admissible whose death is subject to a trial.

Doubt occurs when there is more than one dying declaration. In **Harbans Lal vs. State of Haryana AIR 1993 SC 819** there were two separate dying declaration. 1st one was taken by a doctor and was also attested by two other doctors, who also certified that she was in a fit state of mind. The other dying declaration was that upon which there was only a thumb impression of the deceased and it was not much clear that whether it was taken in a fit state of mind. There was not any mention of the 2nd dying declaration in the FIR. So in this case it was held that in the absence of any evidence or proof the second declaration is not reliable but the declaration which was earlier recorded by the doctors fulfils all the essential conditions of a dying declaration.

Statements of a person using sign can also be admitted under Section 32 (1) in **Queen Empress versus Abdullah ILR 7 AII 385** the apex court said that the questions and Signs can be taken together and also can be regarded as verbal statement made by a person hence admissible under Section 32(1).

Some important points while admitting any dying declaration:-

- The court should satisfy itself that the statement is not the result of coaching torturing or prompting, coercion etc.
- Deceased person must be in a fit state of mind without any enmity.
- Medical officer or doctor has to certify that he or she is mentally fit to make the statement.
- A dying declaration must be complete in order to be admissible under Section 32. For eg. a person said “I was sleeping and Ram came and yelled at me. I was injured”- and suddenly he died. It is admissible as it describes the cause of his death.
- Ordinary a dying declaration is by itself insufficient for sustaining a conviction.
- FIR can be treated as a dying declaration as held in **Mahmood Ilahi versus State of UP 1990 CR LG 885.**
- There is no requirement in law that dying declaration should necessary be recorded by a Magistrate as held by SC in **State of Karnataka vs Sharif AIR 2003 SC 1074.**

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