

Dying Declaration under Indian Evidence Act, 1872

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ABSTRACT

The purpose of this study is to identify the principle of 'Dying Declaration' enshrined in the S. 32 of the Indian Evidence Act, 1872. The study will elaborate the different type of statements which can be deemed to be dying declaration and its importance in the context of the various provisions of laws.

1. Introduction

**"Where words are scarce, they are seldom spent in vain;
they breathe truth that breathe their words in pain."**

~Shakespeare (in Richard-II)

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

The principle of is based on **"NEMOMORITURUS PRAESUMITUR MENTIRE"** which means that a man will not meet his maker with a lie in his mouth.

Two statements that are covered under the section are:-

- cause of his death
- any circumstances of transaction which resulted in his death

2. Cause of his death

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

3. Essential requirement for dying declaration

- To whom the statement is made
- The person must have died
- The statement must relate to his cause of death or transaction
- The cause of death must be in question
- Statement must be complete
- The declarant must be competent as a witness

4. Circumstances of transaction which resulted in his death

The statement not relating 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 case of robbery a statement made by a person before death regarding the whole action in robbery is admissible In **Patel Hiralal Jotram versus State of Gujarat AIR 2001 SC 2944**, in this case a woman was burnt alive by the accused. In her dying declaration she stated that the name of the accused as 'Patel Lalchand' which was recorded in her 1st dying declaration by magistrate and in 2nd dying declaration recorded by the investigation officer she rectified it as 'Patel Jotram' in place of earlier 'Patel Lalchand'. So the issue was whether the statement is admissible as a dying declaration. The apex court stated that when the words or circumstances are linked to an event or transaction which actually resulted in the death then this section has a very wide dimension. Anything which has a nexus with his or her death proximate, remote, direct or indirect can also fall within the preview of this section. Circumstances must have some proximate relation to the actual happening of the event and must be and a transaction which resulted in the death. So as far as in instance case of prolonged poisoning they may be resulted two dates or at a considerable distance from the date of actual death.

In **Sudhakar versus State of Maharashtra AIR 2000 SC 2607**, a young school teacher of 20 years of age was being raped by headmaster and Co teachers. She narrated the ordeal after 5-6 days to her parents. FIR was filed after 11th day of the said incident. Being humiliated she commit suicide after 4-5 months. The issue in this case was whether the FIR be dealt as a dying declaration. ? it was held that the cause of death in this case is not humiliation but by poisoning. It does not stand in the place of 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.

In **Kushal Rao versus State of Bombay AIR 1958 SC 22** the deceased made 4 separate and identical dying declaration before a doctor, a Sub Inspector, a magistrate and another person. So in this case the question was whether this kind of

dying declaration can be used as the sole basis of conviction. The apex court laid down following principles :-

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

The person making the statement must be under the expectation of death. It doesn't 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 a possibility of speaking the truth.

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

Problem persist when there are more than one dying declaration. In **Harbans Lal vs State of Haryana AIR 1993 SC 819** there were two separate dying declaration one was taken by the doctor and was attested by two other doctors, who also given the fitness certificate to the deceased that she was in a fit state of mind. 2nd dying declaration was that upon which there

was a thumb impression of the deceased and it was not clear that whether it was taken in a fit state of mind or not .There was not any mention of 2nd dying declaration in FIR. So it was held that in the absence of any evidence or proof the second declaration was not reliable but the declaration which was earlier recorded by the doctors fulfils all the essential conditions of a dying declaration and it was more reliable.

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

5. Some key points which should be taken into consideration while admitting any dying declaration

- The code should satisfy itself that the statement is not the result of coaching torturing or prompting
- Deceased should be in a fit state of mind without enmity
- Medical officer has to certify that disease that he is she is mentally fit to make the statement
- A dying declaration must be complete in order to be admissible under Section 32 for example a person said I was sleeping and Ram came and shout at me I was injured and suddenly he died it is perfect to the fact that Ram shot me as it describes the cause of his death.
- Ordinary and oral dying declaration is by itself in sufficient for sustaining a conviction
- Unlimited cases and FIR can be treated as a dying declaration. (**Mahmood Ilahi versus State of UP 1990 CR LG 885**)
- There is no requirement in law dated dying declaration shell necessary be recorded by a magistrate as held in **State of Karnataka vs Sharif AIR 2003 SC 1074**.

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