
Dying Declaration and its various aspects under Indian Evidence Act: An Overview.

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Abstract:

Dying Declaration is a statement made by a person who is conscious and knows that death is imminent concerning what he or she believes to be the cause or circumstances of death that can be introduced into evidence during a trial in certain cases. A dying declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that they are about to die do not lie. As a result, it is an exception to the Hearsay Rule, which restrict the use of a statement made by someone other than the person who repeats it while testifying during a trial, because of its inherent untrustworthiness. If the person who made the dying declaration had the slightest hope of recovery, no matter how unreasonable, the statement is not admissible into evidence. A person who makes a Dying Declaration must, however, be competent at the time he or she makes a statement, otherwise, it is inadmissible. A dying declaration is usually introduced by the prosecution, but can be used on behalf of

the accused. As a general rule, courts refuse to admit dying declarations in civil cases, even those for Wrongful Death, or in criminal actions for crimes other than the Homicide of the decedent. A dying Declaration is fairly well crystal by judicial decisions. But before it is relied on, it must pass a test of reliability as it is a statement made in the absence of the accused and there is no opportunity to the accused even to put it through the fire of cross-examination to test its genuineness or veracity.

Keywords: Dying Declaration, Reliability, Conviction on its basis, Cross-examination, Death, Admissible.

Introduction:

A Dying Declaration is a statement made by a dying person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. If the person making the dying declaration chances to live, his statement is inadmissible as a Dying Declaration, but it might be relied on under S. 158 to corroborate his testimony when examined. (Emp. v. Rama,

(1902) 4 Bom. L.R. 434). Such a statement can also be used to contradict him under S. 145.

Dying Declaration is based on the maxim "Nemo moriturus praesumitur mentire" which means "a man will not meet his maker with a lie in his mouth". It operates as an exception to the hearsay rule. Hearsay evidence is excluded because it is considered not sufficiently trustworthy. It is rejected because it lacks the sanction of the tests applied to admissible evidence i.e. the oath and cross examination. They are not given any importance in the courts because the person who is giving this evidence is not telling his experiences but that of another person and who cannot be cross examined to verify the facts. It is an exception because if this evidence is not considered the 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.

Distinction between English law and Indian law :

There two important points of distinction between the English law and Indian law on the basis of admissibility of Dying Declaration(DD):

1. In England, a DD is only admissible in criminal cases where the cause of death is in question. In India, DD is relevant both, in civil and criminal cases
2. In English law, DD must have been made in expectation of death and must be made at a time when the maker is hopeless expectation of death, a declaration made without impending death would not be

admissible. Under Indian law, there is no such requirement. If the declarant has died and the statement explains the circumstances surrounding his death, the statement will be relevant.

Essential requirement of a Dying Declaration :

1. A statement of Dying Declaration could be made to any person, like a judicial magistrate, executive magistrate, a doctor, a friend or near relative. Thus, a statement recorded by a doctor or a magistrate should be considered more reliable.

There is no particular form of recording a statement is provided. It could be written, oral or even verbal. In the case of Queen Empress v. Abdullah it was held that the gesture made by the girl to be relevant as a Dying Declaration.

2. It is not necessary that the maker of statement would die immediately after making it. Thus, the death must occur.
3. The statement made must relate to the cause of his death or the circumstances of the transaction which has resulted in his death. The statement would not be relevant if it does not relate to his death, but to the death of another person. In case of Pakala Narayana Swami v. Emperor it was held that the statement made by the deceased (husband) to his wife was admissible as a circumstance of the transaction which has resulted in his death under Section 32(1) of the Evidence Act.
4. The declaration made by the deceased must relate to his death u\s 32(1) in Re

Dannu Singh v. Emperor Case, the statement given by the declarant was not admissible as Evidence, as it does not relate to his death. But, it was related to the participation of his association in the dacoity.

5. The statement made by the deceased must be complete and consistent, if the deceased fails to complete the main sentence then the dying declaration would be unreliable. In *Kamla v. State of Punjab*, for dying declaration were made by deceased. The court found inconsistencies regarding the name of culprit it was held that the conviction cannot be based upon such declaration.
6. It is necessary that the declarant must be competent as a witness. In *R.v. Pike*, the Dying Declaration made was held to be inadmissible as the declarant was the child of age of four years.

Who may record a Dying Declaration:

A Dying Declaration can be made to any person. It is not a fixed rule that it should be only given to or before a authority. It can be made to a magistrate, to a police officer, to a doctor, to a friend or any relative. If it is made to magistrate and is also recorded by him that it will have a more evidentiary value in degree of reliability than given before any other person.

Evidentiary Value of Dying Declaration:

There is no absolute rule which prohibits the courts from taking a Dying Declaration solely into consideration for sustaining any conviction in the absence

of any corroborative evidence. The Apex Court in the case of *Vishnu Dutta Soni v. State of Rajasthan* has given guidelines quoted the principles give in some earlier judgment under:

1. There is neither rule of nor of prudence that Dying Declaration can be acted upon without corroboration.
2. Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.
3. Where the deceased was unconscious and could never make any Dying Declaration the evidence with regard to it is to be rejected.
4. A Dying Declaration, which suffers from infirmity, cannot form the basis of conviction.
5. Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected.
6. Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the evidence itself guarantees the truth.
7. Normally the court in order to satisfy whether deceased was a fit mental condition to make the Dying Declaration look up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make a Dying Declaration, the medical opinion cannot prevail.
8. Where the prosecution version differs from the version as given in Dying Declaration, the said declaration cannot be acted upon.
9. If the court is satisfied that the Dying Declaration is true and voluntary, it can base conviction on it, without corroboration.

Incomplete dying declaration:

Any statement given by the declarant which is incomplete and making no sense, is not admissible. If the statement, though incomplete in the sense but the statement is complete in respect of certain fact, the statement will be admissible and it would not be excluded on the basis of its being incomplete.

In case of Abdul Sattar v. State of Mysore it was held, "under the circumstances though incomplete was complete in so far as the accused Sattar having shot the deceased was concerned and could certainly be relied upon".

FIR as dying declaration:

FIR can be used as essential evidence, in case of death of informant, if it relates to the cause of death or the circumstances of transaction resulting in the informant death as per Section 32(1) of Indian Evidence Act (Damodar Prasad v. State of U.P.

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