

## Dying Declaration Section 32(1) of the Indian Evidence Act, 1872.

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**Abstract:** The dying declaration is called as “**Leterm Mortem**” which means “words said before death” and in a legal term it is called ‘Dying Declaration’. Recording of dying declaration is very important task. Utmost care is to be taken while recording a dying declaration. If a dying declaration is recorded carefully by the competent person, keeping in mind the essentials ingredients of the dying declaration, such declaration retains its full evidentiary value. This project highlights those questions, which have a more value in legal field relating to dying declaration. This research tells about those statements which converted into dying declaration, different forms of dying declaration, which are admissible by law and what are the exceptions of it?

**Keywords:** Dying Declaration, Evidence Act 1872, Admissible Law, Eyewitness.

**Introduction:** Term “Dying declaration” which means a statement is made by a person as to cause of his death, or any of the circumstances of the transaction which resulted in his death and death of such person comes into question in any suit or proceeding. Such statements are relevant irrespective of the person who made them was or was not at the time when they were made under the expectation of death. Thus, it is apt to say that admissibility of dying declaration is explained under section 32 (1) of the Indian Evidence Act, 1872. This is based on the maxim ‘**Nemo mariturus**

**presumuntur mentri**’ i.e. A person, who is about to die, would not lie. “Truth sits on the lips of a person who is about to die.” Our Indian law recognizes this fact that “a dying man seldom lies”. It is an exception to the general principle of excluding hearsay evidence rule. Here victim is the only eyewitness to the crime and exclusion of his statement would tend to defeat the end of justice.

In **Ulka Ram v. State of Rajasthan** Apex Court held that, “When a statement is made by a person as to cause of his death or as to any circumstances of transaction which resulted into his death, in case in

which cause of his death comes in question is admissible in evidence, such statement in law are compendiously called dying declaration.”

**Forms of Dying Declaration:** There is no particular form of dying declaration. It may be either written or verbal or gesture and signs forms. In the case of “**Queen versus Abdulla, ILR 7 ALL 385**”, it was held that if the injured person is unable to speak, he can make dying declaration by signs and gesture in response to the question. In this case deceased whose throat was slit by the accused was unable to speak. When the name of “Abdullah” was taken she moved her hand up and down. This was understood to be sign of affirmation and was admissible as dying declaration.

#### **Who may record a dying declaration?**

A dying declaration may be made to anyone, to a police officer, to a doctor, to any person but if it is made to a Magistrate and is recorded by him, then it will have greater evidentiary value. The declaration is such a case of is regarded of higher credibility.

#### **Evidentiary Value of Dying Declaration:**

There is no absolute rule which prohibits

the courts from taking a dying declaration into consideration for the purpose of sustaining any conviction in the absence of any corroborative evidence. But the following consideration would lend assurance and strength to the credibility of the dying declarations:

They are:

1. The dying declaration must have been recorded by a competent magistrate, then it will have a greater evidentiary value.
2. The dying declaration must have been recorded in the exact words in which it was spoken by the declarant.
3. The dying declaration must have been made soon after the alleged incident of attack on him then it can have greater evidentiary value. If there is an interval or there is time gap then there is every possibility of that dying declaration being tampered on account of the impression gathered from other persons. If there is an interval, it presides opportunity to the person to think over and bring all his enemies to

the scene implicating them to take a sweat revenge.

4. The incident must have occurred in a lighted place. This is necessary in order to give sufficient opportunity to the deceased to identify his assailant. Suppose a person has been attacked in pitched darkness and he has no opportunity of identifying his assailant and he presume that in all probability a certain person who is his enemy must have attacked him and in his declaration he names that person. Here the incident has taken place in darkness when there was no opportunity to identify the person. So in such cases, it cannot be relied upon. The incident must have occurred at a lighted place.

**Incomplete Dying Declaration:** An incomplete dying declaration is inadmissible. But, if the statement, though incomplete in the sense that the declarant could not state all that he wanted to state, yet whatever, he state is complete in respect of a certain fact, the statement would not

be excluded on the ground of its being incomplete.

In the case of **Abdul Sattar Versus State of Mysore, AIR 1956 SC 168**, the deceased stated "I was going home, when I came near the house of Abdul Majid, Sattar shot me from the bush. He ran away I saw". The dying man was in no condition to answer any further. Their Lordship 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:** A report made by the deceased relating as to the caused of death or as to any of circumstances of the transaction which resulted in his death shall be relevant as dying declaration under section 32(1).

**Can dying declaration form the sole basis of conviction:** The Supreme Court observed in **Kaushal Rao versus State of Bombay, AIR 1958 SC 22** that it was not absolute rule of law that other evidence must corroborate a dying declaration. A dying declaration

even if uncorroborated can form the sole side basis of conviction. But each case must be determined on its own facts; keeping in view the circumstances in which the dying declaration was made. It cannot be laid down as a general proposition 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 principles governing the weighing of evidence; a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and as far as practicable in the words of maker of the declaration stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character. In order to test the reliability of a dying declaration, the court has to keep in view the circumstances like the opportunity of dying man for observation, whether the capacity of the man to remember

the facts stated had not been impaired at the time he was making the statement by circumstances beyond his control, that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties. In order to be reliable for conviction a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused, who had no opportunity of testing the veracity of the statement by cross-examination. But once the court determines that the dying declaration is truthful, there is no question of further corroboration and dying declaration can form the sole basis of conviction.

**Relevant Case-Law as to “Dying Declaration”:**

- 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. (**N Ram Vs. State**).
- **Pakala Narayana Swami vs Emperor, AIR 1939 PC 47**, in this case, the statement of Pakala Narayana Swami's wife "he is going to Berhampur to get back his amount" was considered as "Dying declaration".
  - As a measure of safety original dying declaration should be sent to the court like FIR and its photo copy should be kept in the case file (**State of Karnataka v. Shivalingappa, 2001 (4) RCR (Criminal) 237 (Karnataka) (DB)**).
  - It is perfectly permissible to reject a part of dying declaration. If it is found to be untrue and if it can be separated. (**Nand Kumar v. State of Maharastra**).

**Conclusion:** Dying declaration is a legal concept refers to that statement which is

made by a dying person, explaining the circumstances of his death. Lord Lush, L.J., quoted that "A dying declaration is admitted in evidence because it is presumed that no person who is immediately going into the presence of his maker, will do with a lie on his lips. But the person making the declaration must entertain settled hopeless expectation of immediate death. If he thinks he will die tomorrow it will not do".

With propound sense of regret, I crave the indulgence of the officials and others concerned, who record dying declaration, it is suggested that whenever dying declaration is to be recorded, it must be recorded with great care and caution keeping in mind the sanctity which the court of law attaches to the dying declaration.

#### References:

1. **Ulka Ram v. State of Rajasthan.**
1. **Queen versus Abdulla, ILR 7 ALL 385.**
2. **Abdul Sattar Versus State of Mysore, AIR 1956 SC 168.**
3. **Kaushal Rao versus State of Bombay, AIR 1958 SC 22.**



4. **Pakala Narayana Swami vs Emperor, AIR 1939 PC 47.**
5. **(State of Karnataka v. Shivalingappa, 2001 (4) RCR (Criminal) 237 (Karnataka) (DB).**
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