

DYING DECLARATION- MORAL ASPECT OF LAW

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ABSTRACT

This paper deals with the principle of Dying Declaration which is an English principle. It is not defined in The Indian Evidence Act, 1872. But Section 32(1) of The Indian Evidence Act talks about this English principle. Section 32(1) of The Indian Evidence Act, 1872 deals with or talks about the principle of the English Law commonly termed as “Dying Declaration”. It is derived from the word ‘letern motem’ means words spoken before death. It is not defined in the Indian Evidence Act but we can understand it in ordinary sense as “ A statement is given by a person who is dead, or in the course of death, or any outcome of a series of acts which leads to his death, in the matter where his death comes in issue, such statement is relevant under Section 32 and considered as dying declaration.” This paper also deals with the concept of grounds of the dying declaration, what are differences in English law and Indian law in relation to this principle, why we consider it as weak evidence. Also we will discuss about the exceptions of dying declaration and What are the moral grounds which we see in the context of dying declaration. How this principle of dying declaration shows the relation between law and morality. We will discuss all these concepts on some philosophical basis, logical basis, and with the help of relevant case laws and illustrations. In conclusion we will sum up this concept in a positive sense with relation to the public interest and focus on the points that in this digital era also why we need morality in law.

KEY WORDS- Dying Declaration, evidence, evidencary value, declarant, consistent sanction, morality.

INTRODUCTION

Section 32(1) of The Indian Evidence Act, 1872 deals with or talks about the principle of the English Law commonly termed as “Dying Declaration”. It is derived from the word ‘letern motem’ means words spoken before death.¹ It is not defined in the Indian Evidence Act but we can understand it in ordinary sense as “ A statement is given by a person who is dead, or in the course of death, or any outcome of a series of acts which leads to his death, in the matter where his death comes in issue, such statement is relevant under Section 32 and considered as dying declaration.” Let’s take an illustration for crystal clear understanding of the concept. Suppose while going to market, a person tells his wife that his friend is coming to meet him on ABC sweets corner for some discussion about business profits. But when after few hours he does not come back to home then his wife goes to the sweet corner and finds her husband laying on the table in very serious condition, and when she asks about who has done this evil, then he only says the name of his friend and died. In his hand, the wife got a locket of his friend. And along with the proofs like meeting with friend, locket in the hand, the statement made by that person to his wife is considered as dying declaration and relevant.

It is not the direct evidence being a type of hearsay evidence, and at same time it is an exception to the rule against the concept of admissibility of hearsay evidence.² The grounds on which the dying declarations are the part of the hearsay evidence but still admitted-

- (i) Death of the person who has given the statement, (declarant).
- (ii) The victim of that very crime is only the eye- witness of that crime. Suppose on highway, in night there happens a crime against a person who is at the time is alone on the highway so, he is only the person except criminal who know the truth.
- (iii) The third ground is sort of moral ground. It is based on the principle “ Truth stands upon the lips of dying person’. It simply says that a person at the time of returning to the house of creator can never tell lie at the very moment.³

¹ www.primelegal.com

² P. no. 291, The Law of Evidence, Batuk Lal, 23rd edition, 2020

³ P. no. 131, Law of Evidence, Dr. Ashok Kr. Jain, 6th edition, 2014

ESSENTIALS OF DYING DECLARATION-**i. The person giving the statement must have died.**

The name given to this principle itself suggests that declaration of something before die or in course of death. So after making that statement, if the declarant die then only in that circumstance, we consider the statement as dying declaration.

ii. The cause of death must be in question.

The cause of the death of declarant comes in question then only it is dying declaration. If there is another cause of death of that person which is not in the question then that statement is of no use in the eyes of law.

iii. Consistent statement

The statement must be consonant. If the statement in relation to it is illogical and not reasonable then we cannot considered it as consistent statement and the court cannot rely on it.

iv. Competent declarant.

The person who is giving that statement must be a competent person. There is no issue of incompetency related to age, health and may be problems related to communication.

*Kake Singh Alias Surendra Singh vs State of Madhya Pradesh*⁴, the Court held that in case where the injured person is unconscious, then the dying declaration should be rejected.

DIFFERENCE BETWEEN ENGLISH LAW AND INDIAN LAW

(i) In England, in only criminal cases the dying declaration is relevant but in Indian law it is admissible in both civil and criminal cases. Even in the situation if the trial is not for a death of person, it is admissible in context of the Indian law.

(ii) Under English Law, in the only instance of homicide that is murder or manslaughter the dying declaration is admissible but in context of the Indian law case of suicide is also included.

⁴ AIR 1982 SC 1021

(iii) Under English Law, in the case of relevancy, it must be given at the time when the maker is under settled and dejected assumption of death. It is not required in the Indian law.

(iv) In England, the deceased should have concluded his statement before dying. But in India there is no such requirement.

WHO CAN RECORD THE DYING DECLARATION?

A dying declaration can be recorded by a person, by a police officer, by magistrate, by doctor. Anyone can record it but the statement which is recorded Judicial Magistrate have more strength and reliable value.

Recorded by an ordinary person:- A dying declaration can be recorded by an ordinary person. As in some situations where the judicial magistrate, police officer and doctor is not available, and the condition is quite critical then the Court can not discard the dying statement made in front of the normal person.⁵ But the person who records the statement must display that the declarant was in a good state of mind and not be unconscious while making the statement no matter if the statement is not recorded by Judicial Magistrate, doctor and police officer. It is valid in a court of law.

Recorded by any doctor or by a police officer:- If there is very critical situation and it is impossible to call the magistrate keeping in the mind the bad condition of the deceased, the statement can be recorded by the doctor or by a police officer. But one ingredient must be coupled with it that while recording the statement there shall apart from them, one or two-person present there as a witness or else the Court may find the statement to be dubious. It was held in the case of N. Ram v. State⁶ that the medical opinion can not swab out the direct testimony of an eye witness which states that the declarant was in a good mental condition and capable to give a dying declaration.

⁵ <https://blog.iplayers.in/dying-declaration-2/>

⁶ <https://indiankanoon.org/doc/1918323/>

Recorded by the magistrate:- When the statement is recorded by the competent magistrate has considered to be considered as relevant and attracts the evidentiary value as he supposed to know how the dying declaration should be recorded.

In the State of U.P. v/s Shishupal Singh,⁷ the dying declaration was recorded by the Magistrate which was neither signed by the deceased, nor included date and time of its recording and the prosecution failed to explain that the deceased was not able to sign it. It was observed that such dying declaration which was impregnated with so many doubtful circumstances which created doubt about its consistency and it was not safe to base conviction on it. In Ram Singh vs. Delhi Administration,⁸ it was held by Delhi High Court that a clear and corroborated dying declaration can not be rejected on the only ground that it was recorded by a police officer.

FORMS OF DYING DECLARATIONS

Dying declaration may be oral, in writing or by some conduct also.

Oral declaration

The oral dying declaration is basically made in “words” and can be drawn into consideration as a valid evidence and is a deviation to the hearsay rule under the IEA. The only fulfillment here is that the oral dying declaration must be reliable and should be checked in its strict manner in order to form the root of conviction.

Written declaration

A written declaration is when a statement is given by the deceased in a document form. Written dying declarations are seen very exceptional because the declarant is in such a critical condition is not able to write something properly

⁷ AIR 1994(SC)

⁸ 1995 Cr.L.J. (Delhi)

Sign and Gesture

In the cases where the deceased is not able to speak and write something because of his critical condition then in those circumstances the court can also considered the declaration in form of any sign or gesture as a dying declaration. .

FIR AS DYING DECLARATION

In a situation where a person dies just after, logging of F.I.R and in FIR he was stating that his life was in danger, it is pertinent to be recorded as circumstantial dying declaration.⁹

After lodging of the FIR by injured person he died. It was held in K.Ramchanda Reddy vs. Public Prosecution¹⁰ to be relevant as dying declaration.

In the case of Munnu Raja and another v. State of M.P¹¹ the Supreme Court Of India held that statement giving by injured person recorded as FIR can be considered as dying declaration and such declaration is admissible under Section 32 of Indian Evidence Act. It was also observed by the court that dying declaration must not displays the full incident or tell the case history. Corroboration is not necessary in this circumstance, Dying declaration can be declared as the exclusive evidence for the determination of conviction.

DYING DECLARATION- A WEAK EVIDENCE

It seems to a weak evidence on these grounds-

- (i) It is one of the species of hearsay evidence.
- (ii) The declarant might be in mental and physical confusion or in some imagination at the time of making it.
- (iii) The declarant may take it as last opportunity to take revenge from his enemies.

⁹ <https://blog.ipleaders.in/dying-declaration-2/amp/>

¹⁰ AIR 1994 SCR 542

¹¹ (1939) 41 BOMLR 428

EVIDENTIARY VALUE OF DYING DECLARATION

There is no confusion that the dying declaration is admissible under section 32(1) of the Indian Evidence Act, 1872. and there is no strict obligation while making of dying declaration to take an oath, but the truth of the statement can be determined by the cross-examination. The court has to ensure essentials measures to check the sanctity of the statement given by the deceased as held in *K.R Reddy vs Public Prosecutor*.¹² There is no absolute rule of law that a dying declaration cannot be the sole base of conviction unless corroborated. A pure & voluntary declaration needs no corroboration as observed in *Khushal Rao vs State of Bombay*¹³

CASE LAWS RELATED TO THE DYING DECLARATION

*Lakhan v. State of M.P.*¹⁴ in this case supreme court provides that, when the condition is satisfied that the dying declaration made by the deceased is true and can be relied upon, as the declarant is found to be conscious and mentally fit while making the statement, and the statement made by him proven to be voluntarily and no compulsion was there while making the statement and can be put for the sole basis of conviction. In that situation there is no need for corroboration is necessary.

In the case of *State of Punjab v. Parveen Kumar*,¹⁵ the Supreme Court set forth some measure to test the veracity in the case when there is more than one dying statement. The court provides that there must be a series of examinations in order to determine the truth. If the statements provide different versions and do not couple with given facts, then the court must opt for other evidence in their record to clarify the things so that truth can be inferred.

In the case of *Sudhakar v. State of Madhya Pradesh*,¹⁶ the Supreme Court while deciding the issue of multiple dying declarations, which varying from other statements and have no series related to each other, this will raise a doubt in the eyes of court to whether the statement should

¹² 1976 AIR 1994, 1976 SCR 542

¹³ 1958 AIR 22, 1958 SCR 552

¹⁴ <https://indiankanoon.org/doc/98853/>

¹⁵ <https://indiankanoon.org/doc/1713421/>

¹⁶ <https://indiankanoon.org/doc/115725916/>

be believed or not, in order to clear the issue the Court has given some directions which help to guide while exercise the judgment by court in such matters, examined.

*Natha Shankar Mahajan v. State of Maharashtra*¹⁷ in this case the supreme court ruled that if there is a doubt about the statement made by the deceased, in that case, the gain will transfer to the accused. As this is the correct Law preposition.

In the leading case of *Pakala Narayana Swami vs Emperor*,¹⁸ the expression 'circumstances of the transaction which derived in his death' has been ardently explained.

Fact of the case:- The deceased had left his home to go to Behrampur. While leaving his house, he had said his wife that he was going to Pakala Narayana Swamy's home to ask and request him to pay back the amount given by him. Later his dead body was found in a trunk and his body had been chopped into 7 pieces. And the trunk was brought on the behalf of the Pakala Narayana Swami.

Issue before the Court- Whether such a statement given by the deceased to his wife would truly fall under the area of Section 32(1) of the Evidence Act.

Observation- It was observed by the Privy Council that the statement made by the deceased to his wife before going to the house of Pakala Narayana Swami was a statement and one of the conditions of the transaction and the death of the man was result of it. Therefore, the expression 'any of the circumstances of the transaction which resulted in his death' is definitely wider in its scope of interpretation than the expression 'the cause of his death'. And the statement is considered to be relevant. The statement made by the deceased that he was moving to the place where the accused lived, and to demand for the money back, the wife of the: accused, who lived in the appears logically to be a statement as to some of the situation of the arrangement which resulted in his death."

¹⁷ <https://indiankanoon.org/doc/13911806/>

¹⁸ AIR 1939 Privy Council P.47

CRITICISM OF DYING DECLARATION

From the nineteenth century, critics used to question the veracity of dying declarations. Physical or mental weakness resultant upon the approach of death, a desire of self-vindication, or a disfiguration to chalk up the responsibility for a wrong to another, as well as the fact that the declarations are given in the non-appearance of the accused, and often in answer to leading questions and direct suggestions, and with no chance for cross-examination: all these considerations conspire to render such declarations a dangerous and harmful kind of evidence.

MORAL ASPECTS OF DYING DECLARATION

As Mathew Arnold clearly stated that Truth sits on the lips man who is going to die. The principle of dying declaration is also based on the principle that it is made in the ferocity when the deceased is at point of death, and every hope of this world has gone, when every motive to falsehood is muzzled and the mind is induced by the most superior considerations to speak the truth; a situation so solemn and so dreadful is considered by the law as creating a duty equal to that which is imposed by a affirmative moral oath administered in a court of justice.¹⁹

When we talk about the role of the Dying Declaration in rape cases, they play a very important role. The statement can be made orally, written or even in gestures by the victim of rape and if this statement passes the test of inspection and investigation, this dying declaration given by her can be the base of conviction of the accused. This statement was given by the rape victim, usually is required to be made in the appearance of a Magistrate, but if a victim is admitted in the medical institutions and is in an emergency situation, the Doctor can also record the victim's dying declaration and cannot wait for the Magistrate.

The very recent example related to this moral aspect is Unnao rape case,²⁰ in which a minor in Unnao district of UP was raped brutally by a person Kuldeep Sengar who is a leader of BJP, along with his brother and accomplices. The police didn't even let the relatives of the victim file an F.I.R. Then, a day after the incident, the victim before the Chief Minister of UP Yogi

¹⁹ <https://blog.ipleaders.in/dying-declaration-2/amp/>

²⁰ www.thehindu.com

Adityanath, tried to immolate herself. Then, the case came into light and the inspection began. In 2019, the victim's relatives were hit by a truck and resulted in the death of her two aunts and the victim and her lawyer were in a censorious situation. Then, the case came to light and the investigation began. The accused was sentenced to imprisonment till the last breath.

The dying declaration was made by the victim and was recorded by a sub-divisional magistrate in the hospital. This was deemed to be powerful evidence against the five accused who had done this evil act and then burnt her alive. So, the importance of dying declaration can be easily realized in these cases and how these statements can play a critical role in the path of justice. This makes the victim morally strong to fight against any crime in the society.

CONCLUSION

The dying declaration is not defined in our penal law under Section 32(1) of IPC. It is the statement given by the human who is going to die, and that statement will be recognized as evidence in court, if the cause of death is in question. There are many situations that relied upon it that it should be in a proper manner as dying declaration is the weapon and as powerful evidence. The admissibility of dying declaration is reliable in our Indian court because the law supposes that in *Leterm Mortem* i.e. in his last parting words the person will never back as anyone will meet his creator with a lie on his tongue. This is because a person who is going to die, is no more ardent for self deeds so he rarely lies.

The recent trend is that courts are taking into consideration a dying declaration without any further verification and making it the true basis of conviction. The authors are of the opinion that the court should take into account affirmation also in order to look that no preconception would be caused to the accused. So, it is good time that courts erect specific and strict parameters so that the declarations cannot be misused. The very necessary thing is that needs to be determined while admitting or refusing a dying declaration, is to make definitely that there's a balance maintained between the rights of the accused and the fairness of the deceased. Although it plays quite a crucial role in cases of rape, dowry death cases, hence make contribution to prevent the social evils in society.

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