

RELEVANCY OF DYING DECLARATION IN INDIAN JUDICIARY

Navdeep Kadian

ABSTRACT

There are several steps involved in the administration of justice from the filing of the FIR, the investigation, and the arrest of the accused, to the trial or hearing itself, with arguments from both parties. The process also involves the evidence's submission and admissibility. Any record, object, or assertion that attests to and supports a fact is considered evidence. The main goal of the study of evidence law is to convince a court of justice of the critical elements of a legal case in order for the court to render a judgment. "Dying declaration" has been referred to as a very significant and essential means of achieving justice. In addition to the statutory format (question-answer), the court has provided a broader interpretation, taking into account the declarant's physical and mental competency. The most crucial factor, which has been emphasized in numerous judgements, is that the dying announcement shouldn't be preplanned or have retaliation as its motivation. Recording a person's declaration of death is crucial. It retains all of its importance if it is properly recorded by the proper person while retaining the key statement of the dying. When a dying declaration is missing even one component, it is suspicious, and perpetrators are more likely to reap the rewards. Since the prosecution bases its case only on the dying declaration to condemn the defendant, it is urged that the rule of corroboration be followed by law.

Keywords: Dying declaration, FIR, competency, admissibility, corroboration.

INTRODUCTION

It is a general notion that a person on deathbed is very unlikely to tell a lie and the truth sits on his/her lips, as no one want to falsely blame anyone before leaving the world. Hence, "dying declaration" is based on the maxim-Nemomorituruspraesumiturmentire, which usually means that no one will tell a falsehood when he stands before God. In contrast to dying declaration, Because the individual providing the evidence is not speaking from his own recollections, rather from the experiences of another person, and as the witness cannot be cross-examined to verify the facts, hearsay testimony is not given any weight in courts. In litigation concerning deathbed declarations, it is believed to be the ideal evidence in some contexts, and the Act of 1872 explains its acceptance which states that whenever cause of death or any circumstances with relation to death of a person is in question, any statement made by him/her become relevant irrespective of whether his/her death really occurred afterwards or not. This declaration is valid whenever the death reason is in dispute, whether in civil or criminal prosecutions. While going through various judicial decisions, we come to know that Although everyone's goal is to provide the people justice, there have been moments when different judges have adopted diametrically opposed positions and offered dissimilar justifications. Most pressing topic is that these declarations retain their true implications if courts find them to be reliable. most crucial factor to take into account is that victim was in a fit mind-frame when statement was recorded

and remained in that state during entire process. Just mentioning that a patient was healthy won't do. Medical professional with knowledge of patient's condition is most suited to certify this. Nonetheless, even in situations where it was impossible determining patient's fitness from a doctor, dying declarations preserved their full sanctity provided there are more witnesses who can attest that patient was in a mental state that didn't preclude him from speaking. Direct testimony of an eyewitness that deceased was in fit and cognizant state to make dying proclamation cannot be disproved by medical judgment. Second most crucial factor to take into account is that it shouldn't be influenced by anyone or prepared using suggestions, instruction, or imagination. Even if merely one of these claims is validated, a deathbed proclamation is still not regarded as legal. It will require confirmation if it starts to look suspicious. If person has made many dying pronouncements, as long as they are not contradictory, they maintain their full meaning and lose their meaning if in conflict.

DYING DECLARATION: MEANING AND ITS RELEVANCY IN THE ACT OF 1872

Dying declaration is a statement by a person who passed away outlining circumstances leading up to their death. It may be written, spoken, or expressed via gesture. The term is recognized under relevant section of the Act of 1872 through "Leterm Mortem", or "words preceding death," principle by anyone with regard to source or circumstances forming transaction resulting to death, wherein the question of his/her death arises, it becomes relevant no matter if there was/not, expectation of death.

With regard to the procedure, ideal way to declare one's intention to die, nevertheless, is via series of interrogations and replies. However, care need be taken while documenting declarations ensuring patient's questions and responses being accurately written. In relevant case, a person can give his/her dying declaration in the form of signs or gestures in case he/she is not able to speak or write and it shall be regarded as valid. It is preferable it be written in language spoken and understood by patient. Although, magistrate should record it, if that's not possible or it takes too long for magistrate to get to victim, it can still be recorded by doctor or close friend. Courts often forbid recording of deathbed declarations by police officers, but in anyone else's absence, courts will take such declarations into consideration but in such case, it is preferable to get witnesses' signatures present at time of recording.

EVIDENTIARY VALUE OF FIR IN CASE OF DYING DECLARATION

First version of occurrence that police have is in the form of FIR. There are three categories of statements which are made to the police. First, a statement recorded as report (First Information Report). Second, any statement noted during period of investigation by police. Third, statement recorded by police, not falling under any of these two given categories. Naturally, the claims made in the FIR must be given appropriate weight-age. An FIR is not considered to be significant evidence. While assessing whether a case should be upheld or rejected, the Court must take into account further evidence. Because a FIR is not substantial evidence, it can be used as a previous statement to support or refute the claims of the complainants. Hence, FIR, as per the relevant section of the Act of 1872, can be used for the purpose of corroboration. In the case of dying declaration, it is crucial to record a circumstantial

dying declaration when a person passes away after F.I.R. was filed declaring threat to his life was present. It was observed by Apex Court in one of its significant decisions that in case a person did not survive to get his dying declaration recorded, FIR which was recorded by police was regarded as dying declaration and became acceptable under the Indian Evidence Act of 1872. But in case patient stayed in hospital for ample days, around 8 days, then it can't be treated as dying statement. FIR need not contain the details of the entire case or in an elaborated form, or any supporting evidence. Rather, a dying declaration itself may be deemed the only piece of evidence to support a conviction in case the person dies soon after giving the statement. In relevant judgment, trial Court erred in rejecting death declaration to police (F.I.R.) on basis that deceased claimed to doctor that he had fallen asleep after incident, it was ruled. There was no reason invalidating appellant's dying declaration made to police sub-inspector. Nothing in doctor's statement suggested dead was rendered unconscious for extended period of time and was therefore unable to file an F.I.R.

ESSENTIALS OF DYING DECLARATION

There is widespread belief, someone about to pass away wouldn't lie. As victim is just eyewitness, such evidence shouldn't be disregarded. Following are few criteria to be met for a dying declaration to be valid-

- It's ideal for magistrate to record it, but if there isn't enough time to do so given the declarant's worsening health, it can be still recorded by doctor or other public servant.
- It's not always true that police officer's recording of dying pronouncement is invalid. If competent Magistrate doesn't record it, it's preferable to have witnesses' signatures present when the declaration was recorded.
- When recording deathbed declaration, declarant must be in sound mental condition. Doctor is best qualified to certify fit state of mind.
- It shouldn't be influenced by anyone or prepared via tutor, prompt, or someone's imagination. Any dying declaration that raises suspicion requires confirmation.
- If declarant made more than one non-conflicting dying declaration, each retains its full validity. Such deathbed utterances lose their value if inconsistent or contradictory.
- Declaration isn't relevant and won't be accepted if someone claims, which isn't vaguely connected to or related to death's cause.
- Dying statement should be delivered in speaker's exact words, using question-and-answer format.
- The statement's promptness determines higher chances of admissibility and authenticity.

RELEVANT CASE-LAWS WITH RESPECT TO DYING DECLARATION

Various judgments depict the relevancy of dying statements in the Act of 1872.

- In a famous judgment, it was held by Lord Atkin that if the transaction had some proximate effect on the declarant's death, the circumstances surrounding that transaction would be admissible.
- In another judgment, it held, rejecting a dying statement solely on the basis of fitness certificate was produced by the doctor without independent inspection by the magistrate of the deceased with regard to its fitness, was improper.
- In another case, it held, a dying pronouncement recorded into two different languages and deceased understood both languages, then it could befall mere root of conviction.
- In another judgment, necessary rules were provided with regard to correct process for recording the dying statement such as, recorded in interrogatory format, must be supported by proof of mental fitness, can be recorded by a legally entitled person and so on.
- Apex Court in its decision held, statement made by injured person as well as documented as FIR may be considered a deathbed declaration.
- In another case, there were essentials of dying declaration were given such as, there must be authentic risk of death of declarant when he/she gave statement, there must be real apprehension of death and death must have ensued.
- In another judgment it held, that true and voluntary dying statement made without compulsion, can form sole basis of conviction without substantiation.
- Few measures were set forth by Apex Court in presence of more than one dying statement, to test veracity. Truth needs examination via number of lenses. The court must employ additional evidence to clarify issues, so that, truth be deduced if statements present conflicting versions of facts.
- In another decision, it was stated that, deathbed declaration must be evaluated in context of all other factors, in accordance with rule controlling weight of evidence.
- In another case, maker of deathbed declaration isn't available for cross-examination, so court determines whether declaration inspires full trust and be convinced there was no chance of tutoring or prodding.

DYING DECLARATION: A NEED FOR CHANGE

Evidence law deals with evidence that, can be practically characterized showing crucial specifics pertaining to right asserted or charge obligatory to court's satisfaction through appropriate legal means. The supporting evidence for a fact is that which would persuade a doubter of the truth of the claim. Judicial evidence is information that court may accept as proof of specifics in question in specific case. In India, the Act of 1872 primarily governs the law of evidence as it is used in court proceedings. Best evidence must be provided in order to prove a fact, and the best proof is direct evidence. Hearsay evidence is therefore typically not admissible, though there are some exceptions to this rule. There are many "undefined origins of distortion and instability which may be below plain unverified

allegation of witness and best be brought to light and exposed, if exist, by cross-examination test," according to defence of not utilizing hearsay proof. Dying declaration is one of the exceptions to the previously described direct evidence and is subject to an admission condition. Excluding the victim's dying declaration could result in the accused being exonerated, which would be a miscarriage of justice given that the victim was a key witness to the incident and is now deceased in the absence of any other witnesses. A witness's testimony in court is subject to scrutiny and vetting through cross-examination, while a dying declaration is not covered by any of the aforementioned precautions to ensure its veracity. Extraordinary circumstances frame foundation for their acceptance, when witness is under oath and all hope for world is lost and motive for lying has been silenced with mind moved to speak truth by the most compelling consideration. In this light, no one would want to die telling falsehood. Sheer fact that deathbed declarations were made during crisis make them admissible as well. The Act of 1872 specifies criteria wherein deathbed declaration may be used as evidence in India. It's written or verbal statement about a deceased individual, including information about the reason for their passing or the events leading up to it. Court stresses importance of verifying the dying declaration before it is implemented, as precaution. Nevertheless, this finding was later deemed to be obiter dictum by the same court in another case, which observed that "it can't be stated down as complete law-rule that a deathbed declaration can't form mere root of conviction unless substantiated." "It's neither law rule nor prudence that deathbed declaration requires being verified via additional proof preceding conviction, be made thereon," stated the Apex Court in another decision. Thus, to determine whether the deathbed declaration is accurate must be the court's main focus. If so, there is no need to consider corroboration. The court may seek confirmation of the dying declaration for its assurance only if the circumstances surrounding it are not obvious or convincing. As a result, corroboration of dying statement isn't needed before implementation as rule of law or good judgement. The court's conviction that it is true serves as the foundation for its admissibility. Unclear situations wherein dying statements is made, requires evidence in support. The element of ambiguity may appear for a number of reasons, including the dying person's impaired ability to perceive reality as a result of pain or injury, as well as the dying person's declining vision. Truth is spoken by a dying man who is aware of his impending demise, and this is another crucial factor that establishes the basis for an admissibility of a dying declaration. But even then, if dying man didn't anticipate dying, would his religious/ moral character strengthen, pushing him to blurt truth? This isn't always a case. Only dying guy expecting to die would speak truth. Indian law does not demand expectancy of death element, but "expectation of death" should be added the Act of 1872, to better align admissibility.

CONCLUSION AND SUGGESTION

According to relevant section of the Act, dying statement isn't specifically mentioned. It is declaration made by the person who will pass away, which, be used as evidence showing how passing caused and who assailant is. Several requirements must be met for the dying declaration to be used as a weapon that successfully convicts the accused and serves as compelling evidence. The legal presumption in our Indian courts is that a person will never lie in *Leterm Mortem*, or in his final words, because no one will go to their grave telling a lie. As a result, dying declarations are admissible. This is due to the fact that a man who is about to pass away usually doesn't lie because he has fulfilled all of his needs and wants and no longer has a strong desire to harm others. However, if court determines, that such declaration, was made with malice, it may reject it. Or there are other instances and circumstances that work with the above-discussed admissibility of the dying statement.

It's proposed via aforementioned opinions, whenever dying remark is recorded, it should be done carefully with concern for sanctity attached by courts for evidence. It retains value if shown that victim got abled to identify assailant, as well as victim's narrative of what happened is intrinsically reliable consistent with probabilities, and any significant evidence isn't contradicted with reliable evidence. It's quite appropriate to reject deathbed declaration if false and able to separate. Conviction may be based on it, solely, if it's sincere as well as voluntarily but loses credibility if differs from prosecution's account. Following laws got established by courts:

1. Whether the deathbed declaration inspires complete confidence because its author cannot be cross-examined.
2. There should be no chance of tutoring or prodding.
3. The victim must have been in a sound mental state, according to the doctor's certificate.
4. Only in extreme cases, with no choice left, should executive magistrate and police officer, record dying statement.
5. Dying statements maybe expressed as questions with written responses, by declarant's own words for answers. Court, however, mustn't be unduly technical.