

Dying Declaration under Indian Evidence Act, 1872



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Abstract

"Leterm Mortem" the Latine term which means "words said or statement made or said before death" by the person who is about to die. The Indian Evidence Act laid down the principle of "Dying Declaration" in section 32(1). The dying Declaration is the statement given by the person who is about to die relating to the circumstance of his death in form of the statement or in verbal form. According to the Indian Evidence Act such statement made by dying person is relevant.

Dying declaration is based on the Latine Maxime *"nemo moriurus presumuntur menti"* which means "a man will not meet his maker with lie on his mouth." The same was also set up in Indian Law also as- "a dying man seldom lies" or "truth sits upon the lips of a dying man." According to this dying man is always true i.e. the statement given by him when he is about to die. Through this paper we will understand the evidentiary value, admissibility meaning and ways of recording the dying declaration.

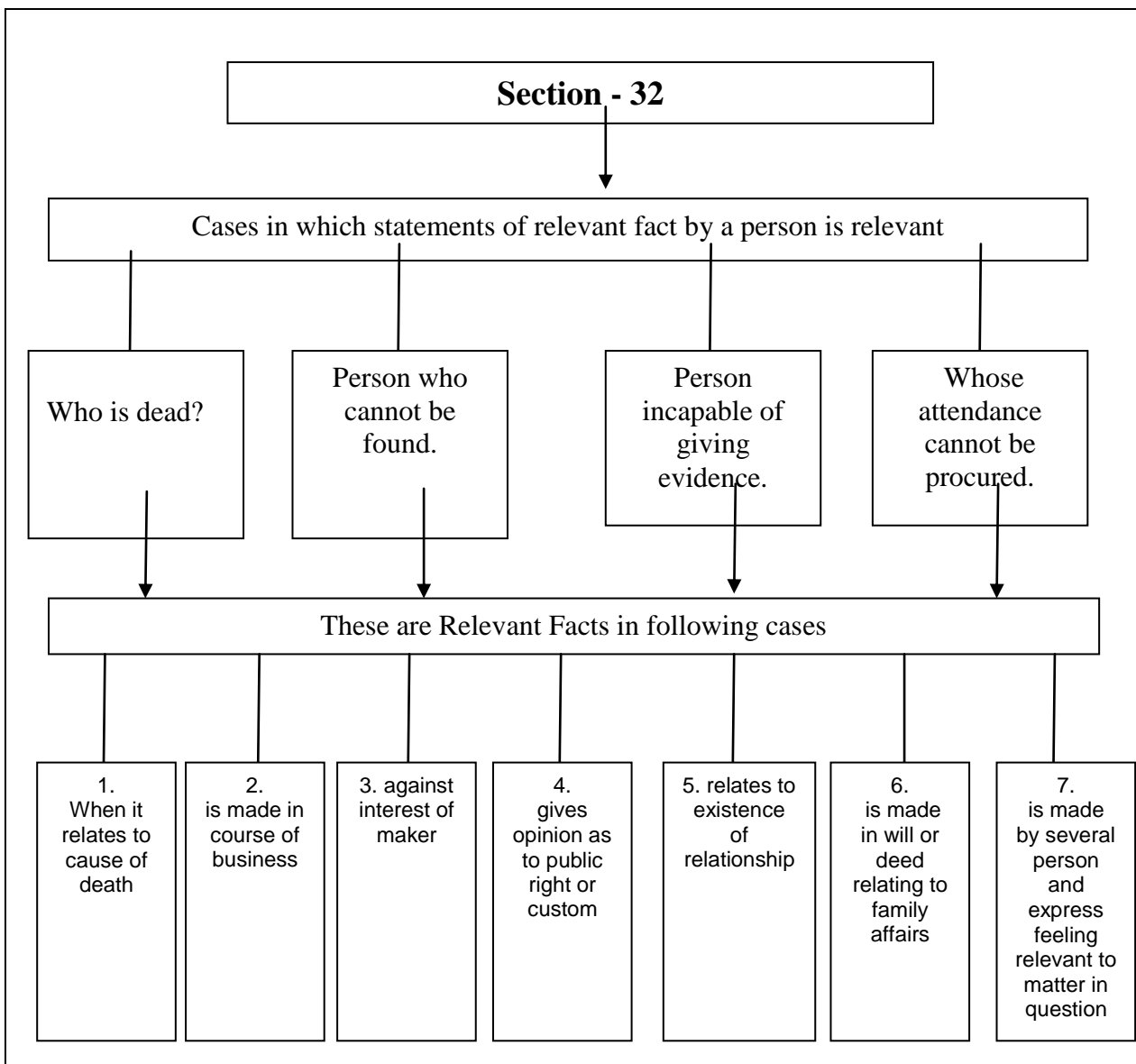
Keywords: Dying declaration, Evidence, Relevancy Of fact, Oral Evidence, Admissibility, Evidentiary Value.

Introduction

Dying declaration under Indian Evidence Act has been laid down in chapter II, section 32(1). Chapter II of the Act deals with "Relevancy of Fact" and section 32 with cases in which statements of relevant fact by person who is dead or cannot be found etc is relevant. According to which when a person who makes any statements in verbal or in writing form –

1. Who is dead,
2. Person who cannot be found,
3. Person incapable of giving evidence, and
4. Whose attendance cannot be procured without an amount of delay or exprense whin under the circumstance of the case?

The court considers the following statements given by such types of person to be relevant facts under the Indian Evidence Act. In evidence it is always important to give evidence of relevant facts and fact in issue. The dying declaration also the evidence is given of this two things. In all circumstance the oral evidence must be direct set the principle in section 60 and section 32(1) is the exception of this section



Objective of the Study

The objective of the study is to understand the meaning and definition of dying declaration the word dying declaration has not defined in The Indian Evidence Act, 1872. But section 32 (1) explain what is dying declaration. Further the study is on the admissibility of dying declaration and the evidentiary value of dying declaration. The study is focused on the mode of recording the dying declaration and the exceptions of dying declaration.

Review of Literature

Dying declaration section 32 (1) of Indian Evidence Act Written by Shipra Arora¹-In this article the writer has given a complete article about the dying declaration.

Evidentiary Value of Dying declaration under Indian Evidence Act by Asamaya Roy²-In this article the writer has written about the evidentiary value of the dying declaration its admissibility under the Indian Evidence Act.

Dying Declaration: A Critical Study by Toshali Pattnaik³- This article was based on the

critical study of the dying declaration the complete meaning and definition of dying declaration have explained along with different case studies.

Dying Declaration: A Comparative Study by Irfan Nadi⁴- This article Irfan Nadi has written about the recording of dying declaration explained the mode of recording. Made distinction between Indian and English Law regarding dying declaration. Relevance of dying declaration is also explained.

Hypothesis

The scope of dying declaration under section 32 (1) is very wide and unambiguous. Through his research it is focused to find out the ways of recording the dying declaration and the value of dying declaration along with the admissibility of dying declaration under the Indian Evidence Act, 1872.

Research Methodology

Secondary data for this research paper have been taken.

Admissibility of Dying Declaration

Section 32 (1) according to this section under Indian Evidence Act 1872 speaks about cause

of death of a person. When any statements is given by any person who is about to die or cause of death or any conditions which leads to death. All this statements of this nature by a dying person are relevant. And according to Indian Evidence Act evidence can be given of relevant facts and fact in issue and dying declaration are relevant and admissible in the eyes of Indian Evidence Act.

*Ulka Ram Vs. State of Rajasthan*⁵ the supreme court held that “if any person states any statement of his death the question is admissible in evidence and such statement by him is called dying declaration.” *P.V. Radhakrishna Vs. State of Karnataka* the supreme court held that the principle

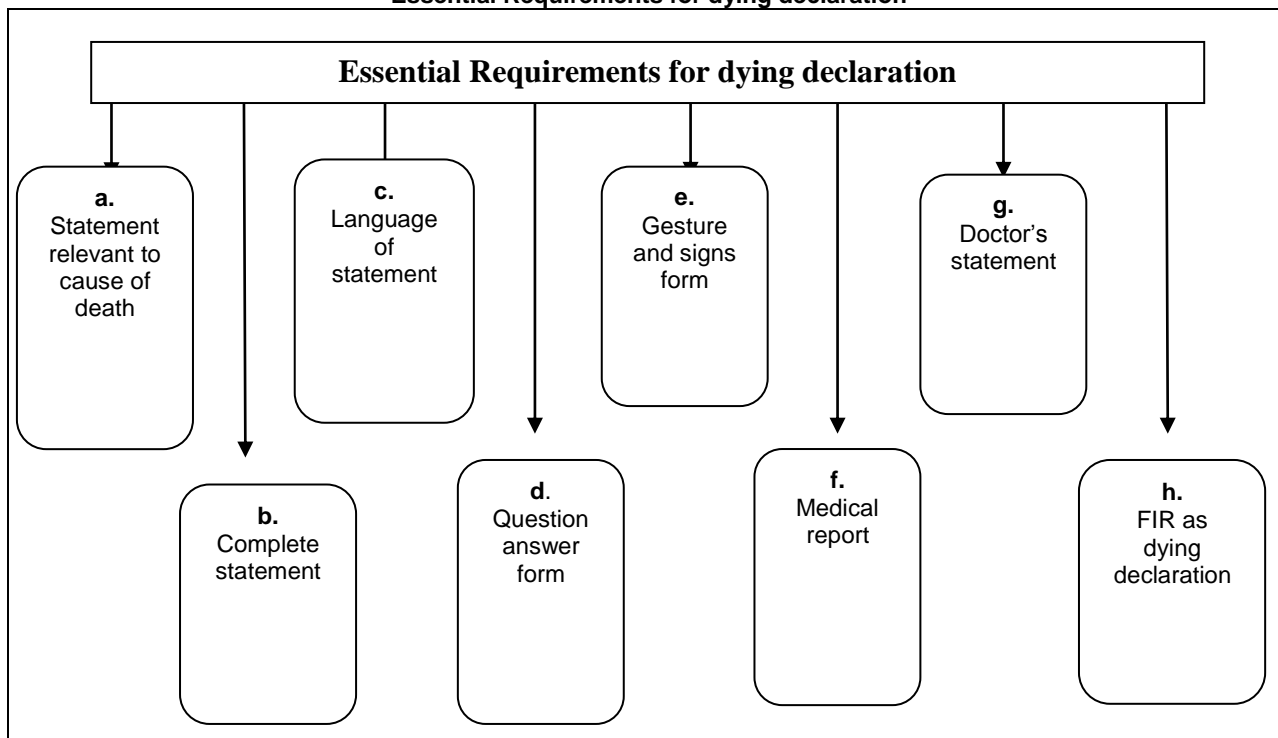
on which dying declaration is based in evidence act is the Latine term “*nemo moriurus presumuntur menti*” i.e a man will not meet his maker with a lie in his mouth. The statement said by the person who died relating to the cause of his death is admissible under the Indian Evidence Act Section 32 (1).

Reasons for Admissibility of Dying Declaration

These are two main reasons for the admissibility of dying declaration under Indian Evidence Act:-

1. The dead person is the only eye witness.
2. Under the evidence act declaration by a dying person is presumed to be true.

Essential Requirements for dying declaration



1. Statement relevant to cause of death- in dying declaration the statements should be related to the death of that person. Any other statements should not be considered as dying declaration which is not related to the circumstance of causing death of person. In the case of *Pakala Narayana Swami Vs. The Emperor the Privy Council*⁶ held that to be admissible because the circumstances where resulted his death and so, it was admitted under section 32 (1)
2. Complete statement- to rely upon the dying declaration it is important that the statement making by the person who is about to die should be complete. Incomplete statements would be unreliable. The apex court held that if a dying person fails to complete the sentence about the cause of death it would be unreliable and not admissible as evidence. In the case of *Cyrial Waugh Vs. The King*⁷ in this case the condition of the deceased was become very serious and the statement made by him was taken down by the police officer which the deceased was not able to complete as he felt into coma and died

3. Language of the statement- the language used in the dying declaration can be in any language. It is very important that the language used in the dying declaration must be clear and unambiguous. The court shall accept the dying declaration in any language but it must be about the circumstance of death of that person.
4. Question and answer form- under the dying declaration it is necessary that the statement of the death person must in the form of question answer form. But if the dying declaration can't be recorded in the form of question answer it was held that on that ground it can't be discarded for that reason. Dying declaration is the most important evidence of the death of that person so it can be recorded in a narrative form also. In dying declaration it is not mandatory to record the statement in question answer form. But under dying declaration recording of statement in question answer form in considered as the best

form which will make the evidentiary value of the dying declaration more effective under the evidence.

5. Gesture & signs form- after question answer form dying declaration can be in the form of gesture and signs form. If a person who is about to die and when the victim does not able to speak the person can admit the statement in the form of gesture and signs form.

In gesture and signs form the Apex Court held that about the evidentiary value of the gesture and signs forms depends upon the following things:-

- Who recorded the statement?
- What are the gestures?
- Question asked?
- Fitness of the victim.

Taking all the above things into consideration the evidence should be followed, if the victim is not able to speak. In this conditions gesture and signs can be taken as evidence.

About the gesture and signs form as evidence the court in the case of *Nirbhya case 2013*, the bench of Justice Mishra, Rf Banumathi and Ashok Bhushan stated about the dying declaration and layed down that "it is necessary to make the dying declaration in word and or in writing. But it can be in the form of gesture and signs also, if the victim is unable to speak or write the statement. So it well established that even gesture can be made admissible in the court now."

6. Medical Report- medical report or fitness of the victim is very necessary part of the dying declaration. While recording the dying declaration of the victim the health should be examine. Judicial Magistrate plays and important role in the recording of dying declaration. Before the recording the statements it necessary to satisfy the Judicial Magistrate that the victim was in the fit condition to state the statements. Obtaining of medical certificate by the Judicial Magistrate for the doctor examining the victim is necessary.
7. Doctor statement- in dying declaration the doctor statement plays an important role because it gives the evidence regarding the fitness of the victim. The health of victim and the mental state of mind is very necessary in giving the statement. A healthy and fit state of mind and understand the circumstance of cases and give the statement in this regard. So the statement given by the doctor regarding the fitness of the victim is very important in the dying declaration.
8. FIR as dying declaration- under dying declaration if a person lodges a FIR and then dies the lodge FIR by the dead person can be considered as dying declaration for him. And such dying declaration is relevant under Indian Evidence Act. The Supreme Court in the case of *Munna Raja & Others V. State of M.P.*⁸ held that "if a person injured and lodged FIR and then dies, which can be considered as dying declaration and admissible under Section 32 (1) of the Indian Evidence Act."

Evidentiary Value of Dying Declaration

In evidence act for every set of evidence it is necessary that it should have some evidentiary of it, if it has no evidentiary value then it is not admissible as evidence so it is important to understand the evidentiary value of the dying declaration. Dying declaration under evidence act it is necessary that death of the person must occur and the statement pronounced by him must related to his death only. But if the person making dying declaration has a chance to live then his statement is inadmissible as a dying declaration under Indian Evidence Act. Where the person making dying declaration not dies the statement recorded ne relied on under Section 158 to corroborate his testimony when examined and such recorded statement can also be used to contradict him under Section 145 of Indian Evidence Act.

Under Section 60 of Indian Evidence Act it has been stated that oral evidence must be direct. But Section 32 (1) is an exception of his section the dying declaration statement is given by the dead person before his death about the cause of his death which comes to the court in the form of statement by other person who has either recorded or heard. Which is no direct but which is admissible in law of evidence. Following points are taken into consideration under dying declaration-

- There must not be any ambiguity regarding the identity of the offenders or cause of death.
- Recording o dying declaration.
- Statement must be recorded in exact words.
- No scope of influence from the third person.

In the case of *Kaushal Rao vs. State of Bombay*⁹ the Supreme Court held following conditions which should b fulfilled while taking the statement for admissible as dying declaration having evidentiary value-

- Cause of death must be in question.
- The person must about to die.
- Injury caused.
- Declaration related to his death.

Conclusion

Dying declaration is very important piece of evidence and the Indian Evidence Act 1872 lays down the provision of dying declaration in section 32 (1). As seen earlier that how much importance have been given to the dying declaration under the Indian Evidence Act. So, all the guidelines must be followed in the recording of dying declaration, because it will increase the evidentiary value of the dying declaration. The dying declaration only stands sole for the conviction of on accused. And now it is become very important that it must be recorded very carefully following the guidelines established by the Apex Court in various cases. While recording the dying declaration it must be taken care that it should be free from tampering by anyone. Incomplete declaration be rejected by court all the dying declaration must be taken in the light of the fact and circumstances of the cases.

Refereces

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