

Evidentiary Value of Dying Declarations

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Abstract

“The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.”

James Eyrie CB in` R v. Wookcock, 168 E.R. 352

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Introduction

“*Nemomoriturus prae-sumitur mentire*” is the basis of dying declaration, meaning a man will not meet his maker with a lie in his mouth. Any explanation given or statement made by a person on his death bed as to the events or series of events resulting into the death of that person is referred to as a dying declaration. It is presumed that a person who is about die will not lie. Hence, a dying declaration is considered credible and trustworthy piece of evidence. Resultantly, such a statement which qualifies the requisites of dying declaration is an exception to the rules of Hearsay Evidence.

The evidentiary value of dying declaration cannot be doubted just by the reason of the fact it was the sole testimony of the deceased against the accused. No doubt the courts have used certain precautions while entertaining dying declaration as a piece of evidence for conviction of accused but it is generally made admissible on the principle of necessity. Dying declaration stands on a better footing in comparison to the confession of the accused because the occasion is so very solemn. The courts generally, do not appreciate this piece of evidence in civil cases and in India the dying declaration is most frequently used in criminal domain though there is no bar to entertain it even in civil cases.

Statutory Provision

Section 32 of the Indian Evidence Act, 1872, deals with dying declaration and its extracted below:

“Section 32 : Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. —Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

(1) When it relates to cause of death. —When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question.”

A bare perusal of the Section shows:

- (i) Statement should be of a person who is dead/cannot be found/has become incapable of giving evidence, etc.;
- (ii) It should relate to the relevant facts; and
- (iii) It should relate to cause of “his death” or circumstances of the transaction which resulted in “his death”, in cases in which the cause of that person's death comes into question.¹

A variety of questions have been mooted in the Indian Courts as to the effect of this Section. It has been suggested that the statement must



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be made after the transaction has taken place that the person making it must be at any rate, near death, that the "circumstances" can only include the acts done when and where the death was caused. Their Lordships are of opinion that the natural meaning of the words used does not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae". Circumstances must have some proximate relation to the actual occurrence: though as for instance in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose.²

Objective of The Study

The study aims to discuss the evidentiary value of dying declaration and to emphasise on the point that there is no bar to base the conviction of an accused solely on the base of dying declaration but the judiciary insists as a rule of caution to seek corroboration of the same.

Forms of Dying Declaration

There is no particular form or procedure prescribed for recording a dying declaration nor is it required to be recorded only by a Magistrate. As a general rule, it is advisable to get the evidence of the declarant certified from a doctor. In appropriate cases, the satisfaction of the person recording the statement regarding the state of mind of the deceased would also be sufficient to hold that the deceased was in a position to make a statement. It is settled law that if the prosecution solely depends on the dying declaration, the normal rule is that the courts must exercise due care and caution to ensure genuineness of the dying declaration, keeping in mind that the accused had no opportunity to test the veracity of the statement of the deceased by cross-examination. As rightly observed by the High Court, the law does not insist upon the corroboration of dying declaration before it can be accepted. The insistence of corroboration to a dying declaration is only a rule of prudence. When the court is satisfied that the dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of the imagination of the declarant, in that event, there is no impediment in convicting the accused on the basis of such dying

declaration. When there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated and assessed independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variations in the other.³

Admissibility of Dying Declaration

S.32 carves out certain exceptions to the general rule of hearsay evidence being inadmissible in a court of law. Hearsay evidence was inadmissible in courts as it was preferred that the person makes a statement which is being used as evidence must be examined and subjected to cross-examination to eliminate the possibility of any inaccuracies. Dying declaration is one such exception to this hearsay evidence rule though this piece of evidence is in itself hearsay evidence.

Hence, though in law there is no bar in acting on a part of Dying Declaration, it has to pass the test of reliability. S 32 is an exception to the hearsay rule and unless evidence is tested by cross-examination it is not credit worthy. A Dying Declaration made by a person on the verge of his death has a special sanctity as at that solemn moment by a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding circumstances leading to his death. But at the same time the dying declaration like any other evidence has to be tested on the touchstone of creditability to be acceptable. It is more, so, as the accused does not get an opportunity of questioning veracity of the statement by cross examination. The dying declaration if found reliable can form the base of conviction.⁴

The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and

conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable.

A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.⁵

General Principles

In *Paniben v. State of Gujarat*⁶, summarizing the general principles of a Dying Declaration, it was observed that "This is a case where the basis of conviction of the accused is the three dying declarations. The principle on which dying declarations are admitted in evidence is indicated in legal maxim: 'nemo moriturus proesumitur mentiri — a man will not meet his Maker with a lie in his mouth.' ... The situation in which a man on death bed is so solemn and serene when he is dying — the grave position in which he is placed, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with.

Besides, should the dying declaration be excluded it will result in mis-carriage of justice because the victim being generally the only eye witness in a serious crime, the exclusion of the statement would leave the Court without a scrap of evidence ... Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must

be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under: (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon."

Distinction between English and Indian Law on Dying Declaration

There is a distinction between the evaluation of a dying declaration under the English law and that under the Indian law. Under the English law, credence and the relevancy of a dying declaration is only when a person making such a statement is in a hopeless condition and expecting an imminent death. So, under the English law, for its admissibility, the declarant should have been in actual danger of death at the time when they are made, and that he should have had a full apprehension of this danger and the death should have ensued. Under the Indian law the dying declaration is relevant whether the person who makes it was or was not under expectation of death at the time of declaration. Dying declaration is admissible not only in the case of homicide but also in civil suits. Under the English law, the admissibility rests on the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath. The

general principle on which this species of evidence are admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak only the truth. If evidence in a case reveals that the declarant has reached this state while making a declaration then within the sphere of the Indian law, while testing the credibility of such dying declaration weightage can be given. Of course, depending on other relevant facts and circumstances of the case.⁷

Conclusion

The ghastly and horrifying incident of *Hathras Rape* case where after eight days of her alleged brutal gang-rape, the victim stood strong to give the statement to the Magistrate. This statement no doubt qualifies to be called dying declaration as per Section 32 of the Evidence Act. In her statement, the deceased reportedly named the four men, currently charged with her ghastly gang-rape and who had left her with a broken spine, mutilated tongue and other grievous injuries. The victim ultimately succumbed to her injuries, one week after she is believed to have told the magistrate that "she was afraid to leave the house because she was harassed for six months by these men. No doubt that as a society, we have failed miserably to give to the deceased a dignified life given that she lugged the tag of being an 'out-caste.'

The principles regarding Dying Declaration have evolved overtime through various decisions of the Courts across the country. A dying declaration is valuable piece of evidence but generally viewed with caution. Though it is presumed that a dying man will always speak the truth about the circumstances resulting in his death, the same casts a heavy duty upon the courts to rely to proceed cautiously and admit only such statements as would pass the test of reliability. A Dying Declaration is considered to be on a weaker footing as the accused loses his right of the accused to cross-examine the maker of the statement. Hence, the tests of reliability and admissibility have been laid down through judicial precedents to carefully scrutinize a dying declaration before it can be made a foundation for conviction of an accused.

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