



RECORDING OF DYING DECLARATION

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ABSTRACT A dying declaration is a statement which is made by a dying person due to the cause of his expected death or any other circumstances and its ultimate result in his death. Generally, the dying declaration must be free from any kind of doubt and it has been recorded in the manner which is provided under any law. It should be inspired with full of confidence in its truthfulness and correctness because victim being only the eye witness in the serious crime. Hence in this situation 'a person who is about to die would not be lie'. Here one more thing a person is going to be dying, we cannot call him as a witness before the court as well as court cannot conduct cross examination of dead person. Therefore, the hearsay evidences are an exception to the dying declaration. Through this declaration the investigating authority is trying to reach the original accused or assailant.

KEYWORDS : Dying Declaration, Statement, examination.

INTRODUCTION

Dying Declaration (hereinafter referred as 'DD') is a significant document of administration of justice from an ancient time to till date. In day today life the human beings situation becomes worst because where there is society there are crimes and some time we are observing those are the bystanders they cannot to give testimony as a witness before court or an investigating authority, so how the investigating authority is reaching towards them. If there is no adequate coordination between police authority and the people so definitely that situation becomes worst days by day. Due to this fact adequate authority cannot reach to the original culprit or assailant. But in case of DD dying person is making declaration means at the end of the life whatever he is stating everything is right and whoever is recording all these statements which are made by declarant, all these declarations should be prove before the court. Because the court cannot call dead person as a witness. Actually, this article focuses on Who can record DD? how to record DD? Where to submit report?

What is dying declaration?

The term 'dying declaration' has not been defined anywhere under the Indian Evidence Act but under Sec. 32 (1) defined DD as follows: "A dying declaration is statement made by a person who is dead: as to cause of his death or as to any circumstances of transactions which resulted in his death".¹

For example: if *A* has been assaulted by *B* or has been attacked by *B*, such a person shortly before his death makes a declaration holding *B* responsible for the injuries inflicted on him. This is a dying declaration provable at the trial against *B* under Section 32 (1) of the Evidence Act.

Why dying declaration is admitted?

There are few grounds for acceptance of dying declaration-

- Necessity knows no law - and no better evidence is available.
- Philosophical ground - '*Nemo mortior praesumitur mentiri*'- which means truth sits on the lips of a dying man and no man will go to meet his maker with falsehood in his mouth will into play.² In short, a person who is about to die would not lie.

Who can record the dying declaration?

A dying declaration can be recorded by any person. Where as in some circumstances the judicial magistrate, police officer and doctor is not available, the Court cannot reject the dying declaration made before any ordinary person. But one more thing must be here the person who records the statement must show that the deceased was competent while making the declaration and that statement is admissible in a court of law.

In the *State of U.P. v/s Shishupal Singh*³, the dying declaration was recorded by the Magistrate which was neither signed by the deceased, nor contained date and time of its recording and the prosecution failed to give any explanation that the deceased was not able to sign it. It was held that such dying declaration which was impregnated with so many suspicious circumstances which created doubt about its genuineness and it was not safe to base conviction on it. In *Ram Singh vs. Delhi Administration*⁴, it was held by Delhi High Court that a clear and

corroborated dying declaration cannot be rejected just only because it was recorded by a police officer.

Procedure of recording dying declaration

There is no certain procedure for recording DD has been provided but we can follow the following procedure.

- It must be recorded at the earliest possible opportunity.
- The names and other particulars of the victim must be recorded at top of the sheet.
- The venue, date and time of recording must also be noted down.
- It must be recorded after ascertaining the mental condition of the victim and power of observation of the victim.
- If possible, the opinion of the doctor about the mental condition of the victim has to be obtained prior to recording of dying declaration and after completion of dying declaration.
- The magistrate has to satisfy about the fit state of mind of the victim and coherence in this regard. He has to put some simple questions.
- It must be recorded in the language of the victim and preferably in the form of questions and answers.
- No leading question should be put to the victim.
- The contents of the statement must be read over and explained to the victim, thereafter, signature or thumb impression of the victim should be obtained. If the fingers are totally burnt, toe impression can be obtained on the statement.
- The person recording the statement has to certify about recording the true account of statement and about the manner of ascertaining the mental fitness of the victim.
- If possible signature of victim must be obtained.
- Record the name of assailant.
- It must be dispatched immediately by sealed cover to CJM, JM, SDJM having jurisdiction.

Proofs of dying declaration

DD may be proved by the following procedure;

- Person who recorded the statement.
- If it is oral, who heard it.
- By secondary evidence, if original is not available.

Forms of dying declaration

There is no prescribed form for dying declaration.

It may be recorded- **a)** in letters, **b)** in words spoken, **c)** in gestures and signs which are considered as verbal statements. In *Queen-Empress v. Abdullah*⁵, the court held by full bench through Patheram C.J. that the question and signs taken together might perfectly be regarded as 'verbal statement' made by a person as to cause of the death within the meaning of section 32 of the evidence Act, and therefore, admissible in evidence as DD. Therefore, the DD may be communicated by any adequate method of communication whether by words or by signs or otherwise provided the indication is positive and definite and seems to proceed from the intelligence of its meaning'.⁶

Evidentiary value of dying declaration: case laws

The following considerations would lend assurance and strength to the credibility of the DD. They are-

a) Recorded by a competent magistrate:

If the DD is made to a magistrate and is recorded by him, then it will have greater evidentiary value. In *Ravikumar v. State of Tamil Nadu*,⁷ Where the deceased named two persons as participating in offence but the magistrate recording the declaration committed an apparent mistake in splitting single name into two names by putting comma thereby disclosing three names instead of two, the DD recorded by the Magistrate cannot be rejected.

In *Samadhan Dhudaka v. Maharashtra*,⁸ A dying declaration made before a judicial Magistrate has higher evidentiary value as he is presumed to know how to record a DD and he is a neutral person.

b) Recorded in the exact words:

As far as possible the DD must have been recorded in the exact words in which it was spoken by the declarant.

c) DD must have been made soon after the alleged incident:

If a DD is made by a person soon after the incident of attack on him then it can have greater evidentiary value. If there is an interval or there is a time gap, then there is every possibility of that DD being hardened on account of the impressions gathered from other persons.

d) The incident must have occurred in a lighted place:

It is necessary in order to give sufficient opportunity to the deceased to identify his assailant. The incident must have occurred at a lighted place.

e) Where successive declarations are made, all must be identical:

The declaration must be consistent as to the identity of the circumstances as well as to the identity of the assailant. For example: a person who has been attacked makes a declaration to his relatives and friends. When his relatives ask him he makes a statement, which he repeats when his friends ask him. When the police arrive he makes once again the same statement, and when the magistrate arrives he makes to him the same statement. Such a statement which is identical as to the identity of the assailants is admissible in evidence.

CONCLUSION

DD is a very vital piece of evidence as it may be the last and most relevant piece of evidence about the commission of the offense and it should be recorded very carefully keeping in mind what could possibly go wrong if in case of any error on the part of the court. Conviction can be merely based upon it without any corroboration if it is true and voluntary and has the full confidence of the court. If dying declaration is suspicious or incomplete or differs from prosecution's version then it cannot be acted upon.

REFERENCES

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- 2) Dr. V. Krishnamachari, "Law of Evidence", 7th ed., Narender Gogia & company, Hyderabad (2014)
- 3) Dr. Avtar Singh, "Principles of The Law of Evidence" 16th ed., Central Law Publications, Allahabad (2007)
- 4) Mukund Sarda and D S Chopra, "Cases & Materials on Evidence Law", 1st ed., Thomson Reuters, New Delhi. (2012)

End Notes

- ¹ Ram Bihari Yadav v. State of Bihar, AIR 2007 SC 2709 at p. 2711.
- ² The principle attributed to Mathew Arnold.
- ³ AIR 1994(SC)
- ⁴ 1995 Cr. L.J. (Delhi)
- ⁵ ILR 7 All 385.
- ⁶ Gokul Chandra v. State, AIR 1950 Cal. 306.
- ⁷ 2006 Cr. LJ 1625 (SC).
- ⁸ 2009 SC 1059.