



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 4 AND ISSUE 2 OF 2024

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 2 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-2-of-2024/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



ILE Publication House is the
**India's Largest
Scholarly Publisher**

© Institute of Legal Education

Copyright Disclaimer: All rights are reserved with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

THE ADMISSIBILITY OF DYING DECLARATION IN THE EVIDENCE ACT

AUTHOR – DR. NAVIN KUMAR, ASSISTANT PROFESSOR AT BHARAT COLLEGE OF LAW, KURUKSHETRA, INDIA

BEST CITATION – DR. NAVIN KUMAR, THE ADMISSIBILITY OF DYING DECLARATION IN THE EVIDENCE ACT, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (2) OF 2024, PG. 1247-1252, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract:

The Indian Evidence Act is based on three principles: direct evidence must be given, evidence must be confined to the facts in issue, and hearsay evidence must not be admitted in a suit or proceeding before the court. Under ordinary circumstances, hearsay is generally inadmissible in accordance with a fundamental tenet of evidence law due to its lack of reliability and directness. The evidence provided is subpar and lacks the formality of being offered under oath. Moreover, the delicate nature of hearsay evidence often leads to prolonged trial durations as its validity and reliability require thorough examination and validation. Therefore, it is a general principle that oral testimony must always be direct, and hearsay information is not considered evidence. However, exceptions to this rule, such as Res Gestae and Dying Declaration, exist to accommodate specific circumstances where the standard principles may not apply. When a statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction that resulted in death, 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. The underlying principle for admitting this type of evidence is that it consists of declarations made in a state of extreme urgency where the individual is expecting death and has lost all hope in this world. At such a moment, every reason to lie ceases to exist, and the mind is compelled by the greatest justifications to speak the truth. There is no legal principle stating that a dying statement should not be acted upon unless it is supported by additional evidence. However, it is often deemed unsafe to convict an accused solely based on it. In this paper the researcher will discuss the relevancy of dying declaration and the evidentiary value of it in court proceeding.

Keywords: Res Gestae, Judgements, Evidence, Declaration, Homicide, Falsehood, Self-Inflicting.

Introduction:

A dying declaration refers to any statement made by a deceased individual that reveals the explanation of their death or the circumstances that led to the death of the victim. The dying declaration is accepted as evidence in accordance with Section 32(1) of the Evidence Act, 1872.¹³⁰³ This section outlines the criteria for proving assertions of relevant facts made by individuals who cannot be considered witnesses. The admission of dying declarations is based on the legal maxim "*Nemo moritururus praesumitur mentiri*," which means that a

person is presumed to speak the truth when facing imminent death. The law is very clear that if the dying declaration has been recorded in accordance with law, is reliable and gives a cogent and possible explanation of the occurrence of the events, then the dying declaration can certainly be relied upon by the Court and could form the sole piece of evidence resulting in the conviction of the accused. This Court has clearly stated the principle section 32 of the Indian Evidence Act, 1872 (for short 'the Act') is an exception to the general rule against the admissibility of hearsay evidence. Clause (1) of Section 32 makes the

¹³⁰³ The Indian Evidence Act, 1872

statement of the deceased admissible, which is generally described as a 'dying declaration'.

The 'dying declaration' essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that the conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth. Once the Court is satisfied that the declaration was true and voluntary, it undoubtedly can base its conviction on the dying declaration, without requiring 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 by other evidence.

This idea is founded on the premise that a terminally ill individual would not provide a false accusation against an innocent individual. However, it is important to note that in such cases, taking an oath and conducting cross-examination is not feasible. Therefore, before considering a dying declaration or accepting such a statement as legal evidence, the court must have complete confidence in its authenticity, as established in the case of *K. Ramachandra Reddy v. Public Prosecutor*.¹³⁰⁴ The court should ensure that the statement is not influenced by prompting, tutoring, or a figment of imagination. In the case of *Kans Raj v. State of Punjab*.¹³⁰⁵ the Supreme Court noted that the phrase "as to any circumstances of the transaction which resulted in his death" in

Section 32 indicates that the circumstances leading to death must have a direct connection to the actual event. Put simply, the statement made by the deceased on the cause of death or the circumstances of the transaction that resulted in their death must be directly and obviously connected to the actual transaction. In the case of *Patel Hiralal Joitaram v. State of Gujarat*¹³⁰⁶, the Supreme Court noted that the phrase "statement as to any circumstances" had the potential to broaden the scope of admissible evidence. When the terms circumstances are associated with a transaction that led to his demise, the sub-section encompasses a broad scope. Any factor that is connected to his death, whether it is close or distant, direct or indirect, can also be considered under this sub-section. Section 32 does not specify the timing or manner in which statements should be made, nor does it address the evidentiary value of a dying declaration in the absence of other evidence.

Similarly, it does not clarify the evidentiary value of an exculpatory dying declaration when there is other evidence or the mental and physical fitness of the person making the statement. However, it is the duty of the court to check the fit state of mind of the deceased. As a result, the judiciary has issued a series of judgments that have both expanded and restricted the scope of dying declarations. There is no specific format required for making a death declaration. Communication can take the form of spoken or written expression, or a combination of both. Alternatively, it could be nonverbal and non-written, indicating it may involve just signs or gestures given by the victims. A dying declaration encompasses various forms of communication, including verbal statements, written expressions, and even gestures made by the victim to convey crucial information. In *J. Ramulu v. State of Andhra Pradesh*¹³⁰⁷, the court also mentioned that a dying declaration was recorded by the investigating officer with the help of the gestures of the deceased because

¹³⁰⁴ 1976 (3) SCC 618.

¹³⁰⁵ AIR 2004 SCC 2324.

¹³⁰⁶ AIR 2001 SC 2944.

¹³⁰⁷ AIR 2008 SC 1505: 2008 Cr LJ 1918: 2008 AIR SCW 1602.

acid was thrown on the face, neck, and chest, due to which he was unable to see and speak. Besides, he had to make some statements on the chits and by signs and gestures, though the same was not relied upon not because of its being with the help of signs and gestures but because of other infirmities in it.

Evidentiary value of the Dying Declaration:

The term "dying declaration" encompasses any type of communication made by signs and gestures by a person who has lost hope of further life. The court has consistently emphasized that the probative significance of signs and gestures in a dying declaration is contingent upon factors such as the clarity of the communication, the credibility of the interpreter, and the context in which the gestures were made. For example, the significance of the answers given by the victim, regardless of their complexity, the nature of the signs made, the identity of the person who recorded the statement, and other related details. Signs can occasionally be challenging to read, but their difficulty does not render them unacceptable. This approach is implemented under the assumption that if a statement is treated as a dying declaration, the accused will be allowed to move about without restriction, regardless of the apparent circumstances. By enacting Section 32, the legislature, in its wisdom, has placed a dying declaration or par with evidence on the oath for the reason that, at the time when a man is in danger of losing himself, it is not likely that he would speak lies and involve an innocent person. There is neither an absolute rule of law nor a rule of prudence that has ripened into a rule of law that a dying declaration cannot form the sole basis of a conviction unless it is corroborated by independent evidence. But the court has to be watchful in the dying declaration case.

1. The testimony is hearsay, indicating that it was not provided under oath and is not subject to verification through cross-examination in court, raising questions about its reliability and admissibility.

2. The maker of such a statement might be mentally and physically in a state of confusion.
3. It is common for a dying man to desire to exploit the opportunity to seek retribution against his adversaries.

To make a dying declaration admissible without corroboration, the Supreme Court in *Surinder Kumar v. State of Haryana*¹³⁰⁸, observed that though there is no legal or practical need that a dying declaration must be corroborated, the court still needs to be convinced that the dying declaration is both truthful and voluntary. If these conditions are met, there is no obstacle to using the dying declaration as the basis for a conviction, even without additional corroboration. The court has the obligation to thoroughly examine the dying declaration and must ensure that it is not influenced or manipulated by coaching or prodding. If a dying declaration is deemed questionable, it should not be acted upon without more corroborating evidence. The first dying declaration was made by the deceased, who reported that her *saree* caught fire when the stove suddenly exploded while she was pumping it. Her husband came rushing over to put out a blaze when she yelled out. In it, the appellant was not implicated in any way. Instead, it proved that the appellant made an effort to revive deceased. The decedent went on to say in her subsequent declaration that she was so angry with her spouse that she poured kerosene over herself and then set herself on fire. Given the conflicting accounts of the appellant's last words, the court decided to grant him the benefit of the doubt.¹³⁰⁹ In *Vallabhaneni Venkateshwara Rao v. State of Andhra Pradesh*,¹³¹⁰ it has been held that the second dying declaration is not a mere improvement of first dying declaration. The story projected in the first dying declaration is entirely different from that of the second dying

¹³⁰⁸ 2012 AIR SCW 494; 2012 Cr LJ 1043.

¹³⁰⁹ AIR 2007 SC 1368.

¹³¹⁰ (2009) 6 SCC 484.

declaration. The story of the first dying declaration has been given up and a new case has been projected in the second dying declaration by introducing new set of eye-witness and new set of accused.

Important facts to be remembered before recording the Dying Declaration:

The legislation does not specify the individuals authorized to document a dying declaration, nor does it establish any designated format, structure, or protocol for its execution. The one responsible for documenting a dying declaration must ensure that the individual is mentally competent and capable of providing such a statement. Furthermore, it is not always necessary to obtain a certificate from a medical professional regarding the condition of the deceased. It is imperative to exercise caution when considering the evidential value and validity of a dying declaration, as the individual who made such a statement cannot be subjected to cross-examination. Nevertheless, the court is not obligated to seek validation for a dying declaration, unless the declaration is flawed.¹³¹¹ In the cases of *Smt. Paniben v. State of Gujarat*¹³¹² and *Kushal Rao v. State of Bombay*¹³¹³, certain important factors were established about dying declarations. When considering such declarations as evidence, the court should take into account the following crucial points in a particular proceeding:

1. The statements of victims or deceased given to doctors and magistrates are more reliable than those given to friends or relatives¹³¹⁴. The medical officer should certify that the declarant was in a fit state of mind to narrate the facts. Such a certificate may be on the dying declaration itself or it may be on a separate form, but this essential requirement must be satisfied in letter and spirit.

2. It is important to record the precise words used, regardless of whether they are spoken or written.
3. The deceased had ample opportunity for observation.
4. The incident happened in a sufficiently lit place.
5. The deceased had made more than one statement, and all of them were consistent as to the circumstances of the occurrence and the identity of the attackers.
6. It was made shortly after the assault. A dying declaration made soon after the alleged incident has a greater probative value. If there is an interval between the alleged incident and the recording of the dying declaration, it raises the possibility of that dying declaration being tampered with and tutored on account of impressions gathered from other persons.
7. If a person who is making a statement before their death makes multiple statements, and if these statements do not contradict each other in their essence, then all of these statements maintain their complete value. If these declarations are found to be inconsistent or contradictory, the value of such dying declarations weakens.

In *Atbir v. Govt. (NCT of Delhi)*¹³¹⁵ the Apex Court observed that the dying declaration can be the sole basis of conviction if it inspires the full confidence of the court. If the court is satisfied that the dying declaration is true and voluntary, it can form the basis of a conviction without any corroboration. Corroboration is only a rule of prudence. However, if the dying declaration suffers from any infirmity or if it is suspicious, then it should not be acted upon without corroborative evidence. Although there is no rule of law or prudence that states a dying

¹³¹¹ *State of Madhya Pradesh v. Dal Singh*, AIR 2013 SC 2059.

¹³¹² AIR 1992 SC 1817.

¹³¹³ AIR 1992 SC 1817.

¹³¹⁴ *K. Ramachandra Reddy and Anr. v. The Public Prosecutor*, AIR 1976 SC 1994.

¹³¹⁵ *S.P. Devaraji v. State of Karnataka*, AIR 2009 SC 1725 at p. 1062.

declaration cannot be relied upon without corroboration, the Supreme Court noted in *Surinder Kumar v. State of Haryana* that in order for a dying declaration to be admissible without corroboration, the court must be satisfied that the declaration is true and voluntary. If that is the case, then there is no obstacle to basing a conviction on it without corroboration. The court has an obligation to thoroughly examine the deathbed declaration and rule out the possibility that it is the product of counselling. While in England the dying declaration must be finalized before to the victim's death, in India it is permissible to leave certain details out. The story's narration, however, must be included.

Where the version contained in the dying declaration is found to be inconsistent with the actual facts collected in the course of the investigation, the dying declaration should not be given importance. To admissible dying declaration as evidence, the omission in the medical certificate is not relevant, but if there is an omission in the procedure, then it can be doubtful. There is a big difference between consciousness and a fit state of mind, so the doctor must ensure that the victim is in a fit state of mind to give a dying declaration. In that case, it would not be irrelevant if the certificate of the doctor was not appended relating to the fit state of mind.

Dying declaration in English law and Indian law;

There is big difference between Indian and English law on the admissibility of dying declaration. However, the intention of the legislature could be the same as to English because India was the colony of England at that time. But due to advancement the Indian judiciary has changed the definition of the concerned rule.

1. In English law a dying declaration is admissible only on a criminal charge of homicide or manslaughter, whereas in India it is admissible in all the proceeding before the court.

2. In English law the dying declaration statement must be completed before the death of the victim, but in India the narration of the facts should be completed.
3. When the persons making the statement are in a hopeless condition and expecting to die soon, the English law gives credence and relevance to the dying declaration. Accordingly, in order for the declaration to be admissible under English law, the declarant must have been in real danger of death and must have had a full knowledge that his death was imminent. However, under the Indian law, the dying declaration is relevant, when the person makes it was or was not under the expectation of death at the time of such declaration.

Conclusion:

Dying declarations are an exception to the hearsay rule because they are made by a person who believes they are nearing death. This belief is thought to reduce the likelihood of false statements, as the declarant has no personal stake in misleading others. Despite their potential value, courts treat dying declarations with caution. The lack of cross-examination means the statement must be carefully evaluated for reliability. Key considerations include the declarant's mental state, their understanding of the situation, and the conditions under which the statement was made. Proper recording of a dying declaration is crucial. It must be documented accurately, ensuring the declarant was in a clear and coherent state of mind. Any indication of confusion, external influence, or coercion must be scrutinized. While the law does not always require corroboration of dying declarations, those that are dubious or questionable should be supported by additional evidence if possible. The court must assess the declaration's authenticity and reliability before accepting it. There is a concern that a dying declaration could be influenced by revenge or other



motives. The court must consider these factors to ensure that the declaration is genuine and not a result of external pressure. In summary, while dying declarations can be compelling evidence, their admissibility and weight depend on their accuracy, the declarant's state of mind, and careful judicial scrutiny. The judiciary ensures these statements meet high standards of reliability before being used in legal proceedings.

