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DYING DECLARATION

1. Abstract

Dying declaration is a crucial aspect of Indian Evidentiary system. India still faces many challenges in proving the guilt of a person under the umbrella of law. This article is written in order to examine the important aspect of dying declaration by keeping in mind the cases of domestic violence and cruel dowry murder cases. This article will analyze following areas of dying declaration; meaning of the term, impact of incomplete statements, evidentiary value of a statement if declarant survives, dowry death by burning the wife, exception to the rule and evidentiary value of a Medical officers opinion with the help of statute and case laws.

2. Introduction

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According to *Section 32(1)* of Indian Evidence Act (IEA), 1872, Dying Declaration means ‘a statement given by a person about his cause of death or circumstances related to his death subject to the futility whether he was under expectation or fear of impending death’. A statement of a dying person is only admissible when it is under the purview of the aforementioned section and not otherwise¹.

A statement is said to be within the purview of Section 32(1) and undoubtedly admissible if, ‘such statement has a connection with the death or circumstances leading to the death of that

¹ *Inderpal v Madhya Pradesh*, (2001) 10 SCC 736; see also, *Kantilal Martaji Pandor v. Gujrat and anr.*, AIR 2013 SC 3055.

person’, but ‘other statements which do not bear any proximity with death or if at all very remotely and indirectly connected with his death are not admissible’².

In the case of ‘*Chandrasekhara @ Alisandiri v. King*’³, Privy council accepted the gesture nod of accent of the victim admissible, when she was asked “was it Alisandiri”, who committed the crime, before she died.

Therefore if the identification through Dying Declaration is related to the cause of death or circumstances resulted into death of the declarant can be considered and made relevant based on the rationale of ‘*Nemo moriturus praesumuntur mentiri*’⁴, meaning ‘truth sits on the lips of dying men’ or ‘dying men never speaks lie as he has no motive left’⁵.

3. Impact of incomplete statements

Incomplete statement under dying declaration is not admissible⁶. The purpose of dying declaration is only to ascertain the cause of death or circumstances resulted to his death. If the statement is incomplete in itself to the extent of ascertaining the above purpose then admission of it will be unjustifiable.

In *Cyril Waugh v. King*⁷, Privy Council held that the statement of dying declaration is inadmissible if ‘the deceased could not convey the whole what he wanted to say’. But Supreme Court in ‘*Abdul Sattar v. Mysore*’⁸ held that statement can be admitted, even though the declarant has not been able to say completely what he wanted to say, if the statement clearly states the cause of death or circumstances resulted to death.

In *Abdul Sattar* case, victim made the following statement, “I was going home. When I came near the house of Abdul Majid, Sattar shot me from the bush. He ran away, I saw”, and died.

² *Sharad Bidhrichand Sarda v. Maharashtra*, AIR 1984 SC 1622; see also, *Ulka Ram v. State of Rajasthan*, Appeal (crl.) 749 of 2000 (SC).

³ *Chandrasekhara @ Alisandiri v. King*, LR (1937) AC 220.

⁴ *R. V. Woodcock*, 1 Leach 500

⁵ *Laxman v. Maharashtra*, 2002 SCC (Cri) 1491; see also, *P.V. Radhakrishna v. State of Karnataka*, Appeal (crl.) 1018 of 2002 (SC)

⁶ *Munlappan v. State Of Madras*, 1962 AIR 1252

⁷ *Cyril Waugh v. King*, 1950 AC 203.

⁸ *Abdul Sattar v. Mysore*, AIR 1956 SC 168.

Court admitted the statement even it was incomplete in its entirety, but court said “it was complete in so far as the accused having shot the deceased was concerned”. Therefore, incomplete statement can be admitted if it shows the cause of death or circumstances resulted in death even though it is not complete in its totality.

4. Evidentiary value of a statement if declarant survives

A statement is not admissible under Section 32(1) if the declarant survives⁹. The mere purpose of the section is to consider the situation where person cannot come to court and depose himself and if person survives then he can come to court and depose under *section 21(1)*¹⁰. If the statement is made as dying declaration and person survives then it can be used under *Section 157* for the corroboration and under *Section 155* for the purpose of contradiction¹¹.

5. Dowry Death by burning the wife

In ‘Ramesh and others v. State of Haryana (2017) 1 SCC 529’, deceased wife gave the narration in the hospital that her in – laws beat her and set her on fire. She also said her in- laws frequently beat her and demanded things like buffalo, money, scooter etc, even after the 20 years of marriage.

Issue before the court was ‘whether the dying declaration made by the deceased can be relied for the conviction of accused’.

Court held that the declaration is reliable as declarant was in a fit state of mind and voluntarily made the statement. Medical certificate was also taken for the same. Court said it is well settle law that conviction can be relied upon the sole dying declaration irrespective of the fact to whom it was made¹².

⁹ *Maqsoodhan v. State of UP*, AIR 1983 SC 126.

¹⁰ *Ram Prasad v. State of Maharastra*, AIR 1999 SC 1969.

¹¹ *State of UP V. Veer Singh*, (2004) 10 SCC 117.

¹² *Jai Kiran v. State of Delhi*, (1999) 8 SCC 161

Therefore, accused was convicted by relying on the dying declaration of the victim.

6. Evidentiary value of dying declaration together with exceptions

Dying declaration is a valid piece of evidence and conviction can be relied upon such statement¹³. It is substantive evidence and like other substantive evidence requires no corroboration for forming the basis of conviction of the accused¹⁴. Supreme Court in its landmark judgment of ‘Ksuhal Rao v. Bombay’¹⁵ has laid down following guidelines related to dying declaration:

- i) Dying declaration is a valid piece of evidence;
- ii) It doesn’t require any corroboration as per rule of law but as a rule of prudence it should be followed for conviction;
- iii) Reliability or weightage of such statement is dependent on the facts of each case;
- iv) If time and opportunity permits statement can be given to magistrate in question and answer format. It provides more weightage to the statement.

But above conditions are subject to some following exceptions, presence of which can lead to inadmissibility of dying declaration:

- i) If the cause of death of the deceased is not in question.
- ii) If the declarer is not a competent witness¹⁶ (either mentally or physically).
- iii) Incomplete declaration¹⁷.
- iv) If the statement relates to the death of another person¹⁸.
- v) If dying declaration is not according to prosecution or contradicts prosecution story¹⁹, etc.

¹³ Id.

¹⁴ *Ram Bihari Yadav v. Bihar*, AIR 1998 SC 1850.

¹⁵ *Kushal Rao v. Bombay*, AIR 1958 SC 22.

¹⁶ *Amar Singh v. State of MP*; 1996 Cr Lj (MP) 1582.

¹⁷ *Supra* at 8.

¹⁸ *Ratan Gond v. Bihar*, AIR 1959 SC 18.

¹⁹ *U.P. v. Madan Mohan*, AIR 1989 SC 1519.

Therefore, dying declaration is valid evidence under IEA but subject to above mentioned exceptions.

7. Evidentiary value of Dying Declaration based on suspicion

When there is suspicion as to the authenticity of the dying declaration, the court before convicting an accused have to connect it with other corroborative evidence to ensure that the accused can be proven guilty beyond reasonable doubt²⁰. If there is doubt as to prompting or tutoring of dying declaration then it can be treated only as a piece of evidence and not the sole basis for conviction²¹.

However, charges can be framed on the basis of strong suspicions, if the court deems it necessary²². Moreover, even if the validity of the declaration itself is under suspicion because of the antecedents of the declarant, the same cannot be tarnished with the same brush as the maker of a confession²³. Only the declaration that allures the confidence of the court would be sustainable as evidence²⁴. It must be noted that declaration expressing suspicion may indicate inconsistencies in its evidentiary value²⁵.

Hence, a dying declaration which is mired with a suspicious character has its evidentiary value reduced and needs to be corroborated with other evidences for conclusive determination.

8. Evidentiary value of a Medical officers opinion

It should be borne in mind that the dying declaration is made by a person who is seriously injured and died eventually on account of those injuries. He might be under stress and agony at the time of making such statement and it should be ensured by the court that the person is in fit

²⁰ *P. Mani v State of T.N.*, (2006) 3 SCC 161.

²¹ *J. Ramalu v State of Andhra Pradesh*, (2009) 16 SCC 432

²² *Palwinder Singh v Balwinder Singh*, (2008) 14 SCC 504.

²³ *Supra* at 15.

²⁴ *Panchdeo Sing v State of Bihar*, (2002) 1 SCC 577.

²⁵ *Kamla v State of Punjab*, (1993) 1 SCC 1.

physical and mental condition²⁶. One of the ways to determine such state of mind is to take medical assistance.

In ‘Tamilnadu v. Karupppaswamy’²⁷, accused murdered his wife by pouring kerosene on her and setting her on fire. Magistrate recorded the statement after doctor certified her to be “conscious and oriented”. High Court reversed the conviction given by trial court stating that “magistrate got carried away”. But apex court held that “doctor is the appropriate person to certify” and the High court’s opinion “is, to say the least, an absurd conclusion” and restored the conviction.

However, Apex court in ‘Laxman v. Maharashtra’²⁸ held that the statement given to magistrate who found the state of mind of declarer normal is accepted even though it was not certified by the doctor. Therefore, Medical certificate or opinion can be taken as evidence for the conviction, but the presence of the same is not prerequisite for the admissibility of dying declaration.

9. Conclusion and suggestions to improve the prevailing Law of the Land

The rationale behind the dying declaration is to take into considerations of those situations where person under the fear or expectation of death makes statement regarding his cause or circumstances resulted in his death. But under section 32(1) statement is accepted even if it is not made under expectation of death or where person died one month after making such statement but the cause was not the crime²⁹.

Courts have accepted F.I.R or Suicide notes for convictions³⁰. There might be a possibility of misuse if such wide interpretation is allowed. Therefore, it is humbly suggested that the scope of dying declaration should be limited to the statements made under expectation or fear of death to make it prudentially more reliable.

²⁶ *Kasu v. Orissa*, AIR 1980 SC 559.

²⁷ *Tamilnadu v. Karupppaswamy*, AIR 2009 SC 948.

²⁸ *Laxman v. Maharashtra*, 2002 SCC (Cri) 1491.

²⁹ *Joginder v. State*, 2012 (1) JCC 578; *see also, Santosh Kumar v. state of UP*, 2002 Cri LJ 301.

³⁰ *State v. Anthony Nicholas*, 2006 Cr.LJ 1582 (Kant.)