

Relevancy of dying declaration in India

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Abstract

Dying declaration is the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. Dying declaration is one of the most important evidence that is admissible in court as dying declaration can be a sole purpose for conviction of accuse. Hence, it should be recorded carefully with all the procedure that the court has mentioned. It should not be tampered at all by anyone. If the dying declaration is incomplete, then it is very much to be rejected by the court. It is on the court discretion to check if the dying declaration is recorded carefully or not.

Keywords: conviction, declaration, statement, tampered, evidence, relevancy

Introduction

Gestures & signs form

Gestures and signs can form dying declaration even when the victim does not speak a word. The Apex court stated that the evidentiary value of the gestures and signs will depend on certain factors like who recorded the statement, what are the gestures, what were the questions asked, were the questions asked were simple or not etc. Gestures can be difficult to interpret but this does not mean that the accuse can roam freely after hurting someone. If the victim is not able to speak, gestures or signs can be taken as evidence.

In Nirbhaya case 2013, a bench of Justices Dipak Misra, R Banumathi and Ashok Bhushan said a dying declaration should not necessarily be made by words or in writing and it could be through gestures. Not just words but even gestures can be made admissible in the court now.

Question answer form

Dying declaration should be in question and answer form. If the dying declaration is not in question answer form it was held that it cannot be discarded for this reason alone. The Statement can be recorded in a narrative way also. It is not mandatory to record it in question answer form. But it is always best to record it in question answer form as that will make the evidentiary value of the dying declaration more.

Fitness of the victim should be examined

While recording the statement of the victim, it is very important to examine the health of the victim. It can be possible that he is making stories in the presence of drugs given. Judicial Magistrate should satisfy himself that the victim is in a fit condition to give a statement. A certificate should be obtained by the judicial magistrate from the doctors examining the victim.

This certificate can prove in court that the statement given was in fit condition and it is true. If the circumstances do not permit attendance of the medical officer, then judicial magistrate can record statement without the medical certificate but judicial magistrate should provide the reason why he considered it indivisible for a doctor's attendance.

Who should record the dying declaration

If the dying declaration is recorded by the magistrate, then it will hold more evidentiary value than any other dying declaration. Doctors and police officer are also authorized to record the dying declaration if the magistrate is not present. But sometimes the situation arises where dying declaration recorded by the magistrate can be questioned. For example, If the magistrate records it even when the doctor does not approve the victim medically fit. In this situation, the evidentiary value of the dying declaration can be questioned. The court always looks into the certain things to decide the value of the statements. The court always seeks if the victim was mentally fit while giving the statement. If the victim is not fit at the time of giving a statement then that statement won't hold any value.

Confusion can occur while recording dying declaration as anything can effect its evidentiary value. It should be taken with precaution and keeping in minds the following points:

1. The victim should be mentally fit to given statement. A medical certificate should be given by the doctor about her health.
2. Doctors and the Police officer can record the statement but it is best if a magistrate records it.

In 2013, Delhi gang rape three dying declarations of Nirbhaya were recorded ^[2]. The first was recorded by the doctor when she was admitted to the hospital, the second was by SDM during which she gave exact details of the crime and the third one was recorded by a metropolitan magistrate and was mostly by gestures.

In this case, all three dying declarations were recorded. But the one recorded by the magistrate was important. And the court did accept the dying declaration recorded by magistrate even when it was in gestures and nods.

In Kushal Rao v State of Bombay ^[3], The Supreme Court of India accordingly states that the court must be satisfied that the deceased was mentally fit to make the statement. And victim had the opportunity to observe and identify the accused. The victim should not be making the statement under any influence. Also, Supreme Court of India held that

once the court is satisfied that the dying declaration is true, the conviction can be upheld and there is no need for further corroboration.

If the dying declaration is recorded by the medical officer or police officer, it should be attested by one or more person that is present there.

Language of statement

As far as possible the statement should be recorded in the language of the declarant or the court language. The court cannot discard the dying declaration on the basis of the language. It can be recorded in any language. Even if the deceased made the statement in Urdu, Hindi, Punjabi languages, it was held that statement could not be discarded on the ground of language alone or on the ground that it was recorded in Urdu. Where the statement was in Urdu and the magistrate recorded it in English but the precaution was taken in explaining every statement to the deceased by another person, it was held that the statement was the valid dying declaration.

Points to remember

1. Dying declaration can be recorded in any language.
2. If the statement was in another language than the one which magistrate recorded, then precaution should be taken.
3. The court cannot reject or discard the dying declaration on the sole ground of language.

In *Biju @ Joseph Vs State of Kerala* [4] it was held by the court that merely on the ground that the statement of the deceased was in her own language cannot vitiate the dying declaration. It was stated by the High Court of Kerala:

“Assuming that the deceased gave her statement in her own language, the dying declaration would not vitiate merely because it was recorded in a different language. We bear in mind that it is not unusual that courts record evidence in the language of the court even when witnesses depose in their own language. Judicial officers are used to the practice of translating the statements from the language of the parties to the language of the court. Such translation process would not upset either the admissibility of the statement or its reliability”

Multiple dying declarations

Supreme Court of India held that multiple dying declarations can be relied upon without corroboration if there is consistency in all the dying declaration. If all the dying declarations are similar to each other than it can be admissible [5].

But if the dying declaration is different from each other than the court will examine the facts of the case or can examine the statement of other witnesses to ascertain the truth of the case.

The statement of the deceased should match the facts of the case. It is very important to understand the nature of dying declaration. Points to remember in multiple dying declarations:

1. Consistency in all the dying declaration should be there.

2. If all the dying declaration does not match, then the court will examine the facts of the case with the dying declaration or examine the witnesses.

In *Kushal Rao v state of Bombay* [6], this case set the importance of dying declaration and what is the right process to record it. In this case, if the dying declaration is recorded in question-answer form, if the medical certificate is given by the doctor, if it is recorded by the authorized person, then it is admissible and reliable. If there are multiple dying declarations, then court looks into all these points to see which dying declaration holds more evidentiary value.

The Supreme Court has held that multiple dying declarations can be relied upon without corroboration if consistency is maintained throughout. Otherwise, the courts would have to examine the statement of other witnesses to ascertain the truth in a criminal trial.

An expectation of death not necessary

Under English Law, the victim should not be under any expectation of death. Evidence Act has taken this law from English law. If the statement has been made even when no cause of death had arisen then also the statement will be relevant. It is not important at all that the statement recorded should be just before the death of the victim.

In *Pakala Narayan Swami v Emperor* [7], it was held that the letter given by the deceased to his wife before going to the place where he was killed was relevant. The court said that the statement made must be at any rate near death or the circumstances of the transaction explaining his death is relevant under section 32 of Evidence Act. In this case, the court stated that dying declaration can be any statement that explains the cause of death or the circumstances of the transaction explaining his death. Hence, statements as to any of the circumstances of the transaction which resulted in the death would be included.

F.I.R as dying declaration

When an injured person lodges a FIR and then dies, it was held that the FIR will be relevant as a dying declaration.

In *Munnu Raja and another v. State of M.P.* [8], the Supreme Court Of India held that statement by injured person recorded as FIR can be treated as dying declaration and such statement is admissible under Section 32 of Indian Evidence Act. It was also held that dying declaration must not cover the whole incident or narrate the case history. Corroboration is not necessary for this situation, Dying declaration can be the sole purpose for conviction.

If declarant does not die

The question arises when the dying declaration is recorded and the declarant does not die. The statement is only converted in dying declaration when the victim/ declarant dies. If the declarant does not die, then the declarant can be used as a witness in the court against the accused. It is said that the dying declaration is only recorded on the presumption that the declarant is about to die. And the declarant won't lie just before dying. But if the declarant does not die then the statement can't be admissible as dying declaration.

Conclusion

Dying declaration is one of the most important evidence that is admissible in court as dying declaration can be a sole purpose for conviction of accuse. Hence, it should be recorded carefully with all the procedure that the court has mentioned. It should not be tampered at all by anyone. If the dying declaration is incomplete, then it is very much to be rejected by the court. It is on the court discretion to check if the dying declaration is recorded carefully or not.

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