

How to Cite:

Khan, I., & Choudhary, H. (2022). Recording and admissibility of dying declaration. *International Journal of Health Sciences*, 6(S4), 7896–7903. <https://doi.org/10.53730/ijhs.v6nS4.10319>

Recording and admissibility of dying declaration

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Abstract---The declaration given by either a complainant detailing exact cause of its demise or all of the circumstances that led to the death of the declarant. if somehow the confession is corroborated beyond a reasonable doubt and in the way legally , it is the only foundation for prosecution. this should instill complete trust in its veracity and correctness. the failure to include the deathbed declaration could result in an acquittal Because the witness is often the sole person present there at the moment of the major, and removing testimony would leave the court without any proof. the honorable court must guarantee that now the declarants dying testimony this completely valuable, and the Court must rely on it. This is attributed to the fact that the declarant who made the deathbed declarant would be no longer operational to be cross-examined. This article aims to explain the notion of recording of deathbed Declaration, as well as the method, method of recording, admissibility and other aspects related to it. The article also concentrates solely on the recording of a dying statement, as well as the way in it is being recorded.

Keywords---dying declaration, cross-examined, recording, admissibility.

“A man would never meet his creator (i.e. the God) with having a lie in his mouth. Statements made by the deceased in regarding the reason behind the death, or circumstances which resulted in his death is called as Dying Declaration”

Introduction

According to the Indian law, there is no standard for recording a deathbed declaration. It is preferable, though, it is recorded in narrative style with a regional accent. There seems to be no provocation, which decreases the probability of posing questions. The large number of the arguments usually ignored in question-and-answer form., And the declarant Focuses entirely upon that questions asked before him. this same Calcutta High Court ruled that in which a deceased man has been unable to speak but can only address questions with sign like gesture. such questions and Signs taken together may be treated as a verbal declaration made by a person as to the cause of his demise u/s 32 of the Indian Evidence Act, and are therefore, legitimate as evidence. Both the importance from such a verbal statement to the declarant and the recording of such a verbal statement by the investigating officer were suspicious.

Anyone can record the death bed statements. The person who is recording it must have a connectivity with the deceased person. Similarly statements recorded by Doctors and police officers are also reliable in the court. in some cases Court does not appreciate declarations which has been recorded by Doctors and police officers but on the other hand Court sometimes rely upon statements recorded by doctors and police officers. But a statement recorded by the Magistrate will always have greater value than the statements recorded by Doctors and police.

It has not been written anywhere that who can record deathbed Declarations but statement recorded by the magistrate will be considered as admissible and reliable. In dowry death case Justices *B.S. Chauhan* and Justice *Dipak Misra*, elaborated a high Court order. The person who records Deathbed statements must take it into consideration that the mental fitness and physical fitness of the declarant should be fit.

Deathbed declaration can be written or verbal. statement made by the deceased about the reason of his death, or it states all of the facts related to his Demise. It establishes the only presumption. Crime Only exists when it is free from all doubts it has been documented in a legally acceptable Manner. Given that nobody could die lying, It is regarded as trusted and Honest testimony. Deathbed statements are exceptional to the Hearsay evidence. The reason behind the admissibility of deathbed Declarations are as follows;

- (A) It has been regarded as the most trustworthy proof. And,
- (B) It has been assumed that if a person is on the verge of death could never lie. This is because the Latin maxim “*Nemo Mauritus praesumitur mentire*” underpins the notion of deathbed Declaration. That is , “dying man would not meet his maker with a lie in his mouth”.

Sec- 32(1) of IEA

Whenever it comes to the cause of the death it deals with the admissibility of dying declaration, that further reads; “Whenever an individual possesses a declaration about the reason of his demise or any one of the events related to the transactions that leads to the death, in cases where the cause of that person's

death is unknown. Such remarks are significant not if the individual who had been under the expectations of demise at the time it was made, and whatsoever the nature of the procedure in which the cause of death is called upon.[1] The deceased must, according to the English law be presumed to be dead. it is recognized in the both criminal and civil proceedings. anytime the cause of death is called into doubt considering if we study different decisions on the admissibility of dying declarations once in a while, we may see that various judicial officers had adopted opposing viewpoints and supplied various explanations. Nonetheless, their main purpose is to provide justice and equality to all the people.

Who has the authority to record

Any one can record it, but the person who is recording the deathbed declarations has some link to deceased, either by chance or by need. In any occasion, in comparison to the average person, the professional police officer is more valuable. In comparison to articulating noted by the professional police officer but by the average person, the magistrate's interpretation is considered as highly evidential. The magistrate is required by Rule 33 of the CRP(criminal rules of practice) to record the deathbed Statements. The senior judicial magistrate including, the senior metropolis magistrate, according to subrule (d) of rule 2 of the CRP the judicial magistrate is required by rule 33 of the CRP to record the death bed statements nonetheless, the executive magistrate in some parts of the nation record the death Bed statements.

It should always be recorded by the magistrate, but if in case he is not available due to any reason, it must be recorded by anyone present, such as local officials, doctors or others. The recording of deathbed declarations by police officers is not permitted by the courts, but if no one is available to record, it may be by the police officer.

In several case's, the supreme court ruled that this is to be true in law. The court is of the viewpoint that legislation on the particular topic could be completed to the influence that the legislation somehow doesn't offer whatever instructions as to 'who can record a dying statements, but only that the magistrate is allowed to record deathbed Statements, and there is no standard form for doing so[2]. While overturning the high court's order, a bench comprising of both justices BS Chauhan and Justice Deepak Misra said. The person who recorded deathbed Statements must ensure that the deceased is in good mental and physical health while recording the statement. Deathbed Statements, on the other hand, could be recorded by a medical professional, by a magistrate or it can be recorded by any person. But it would have more evidential value if the magistrate records it.

Following its recording, it should be read to the deceased person, who should affix personal mark/thumb imprints to and, if it is not, should refer to the reason for not taking it towards the end of the claim. If the deceased write his own allegations, it should be marked and cross-checked by both the magistrate and the investigating officer. If the witness loses consciousness during the recording of the declaration. The person writing the Statement should elicit as much as information as possible and then attest the statement. After being recorded, the statement should be signed by the individual who were recording it, along with

the date and purpose for recording it. Additionally, obtain the signature of an independent individual present at the time of recording and who can verify the content of the statement. Such a claim will be truthful and reliable. After recording it the Magistrate must send it to the concerned court in a sealed envelope with the Magistrate's stamp on it.

Following persons can record Deathbed Declarations;

- a) By normal individual: when the judicial magistrate as well as police officer are not available due to any reason, then the deathbed declarant can be recorded by a normal person. The court can not record a statement recorded by a normal person unless and until the healthy State of mind of the deceased is shown. When a Statement is not recorded by a police officer or by a magistrate, in this scenario a normal individual can record the statement.
- b) By doctor: when the deceased is in grave danger and there is no time to call upon the Magistrate, in this case the executing doctor can take the dying declaration of the deceased. But one thing should be kept in mind while the statement is being recorded by the doctor that the statement should be recorded in front of one witness so that the court can not doubt on its credibility. If the Statement has not been recorded in front of one witness then the court would find it suspicious. Furthermore, if the doctor does not provide fit mental health of the declarant the declaration would amount as less evidential and if the doctor keeps in mind that the deceased must be in fit State of mind while recording deathbed Declaration, such declaration would be admissible in the court as evidence. It has been held in the case of *N. Ram v. State* [3], *perhaps the fitness certificate of deceased cannot override witnesses testimony indicating that the deceased were sound while making the statement.*
- c) By police Officers: Police Officers are not allowed to record dying declaration. As the statement recorded by police officers are considered as not trustworthy. But declaration recorded by the police is not wholly barred but it is much reliable if it could be recorded by the magistrate. But if the magistrate and judicial magistrate are both not available to record it, then the statements recorded by the doctor and the police officer would be considered as credible.
- d) By Magistrate: Statements recorded by the magistrate are viewed as more reliable and valuable as evidence. Additionally the Magistrate records it u/s 164 of Cr.PC.

When there's no time to call out the magistrate due to the severe condition of the deceased anyone can record the deathbed declaration. Sec, 32 of Evidence Act, nowhere declares that the dying declaration should only be recorded by the concerned Judicial Magistrate. In other sense if a statement has not been recorded by the magistrate it can not be reliable.

Sec- 164 (1) of Code of Criminal Procedure, enables officers to record dying statement of deceased, regardless of whether he has jurisdiction over the case or not and in circumstances where the justice who had no purview of all. In such cases sub-section. (6) would apply. [4]

[-sec, 6: 'the Magistrate who records statement/confessions u/s 264(6) shall forward the statement to the concerned Magistrate to whom the is to be inquired'.]

Manner of recording

As per Rule 33 of the criminal rules of practice (CRP) Describes the methods in which the magistrates are required to record deathbed declaration. It is as follows;

- i. When recording the deathbed statements the judicial magistrate must keep in the mind that the sole objective of recording a statement to get the reason behind the deceased's demise.
- ii. The concerned judicial magistrate should always reveal his identity. When trying to record the deathbed declaration and inquire the declarant if he is physically and mentally fit to give the statement regarding the Reason behind his death. The magistrate should also ask simple questions to the deceased in order to determine his mental state, and all ought record the questions and replies, as well as signs and gestures, in order to reach his own decision in the case. In addition the magistrate Obtain a physical and mental certificate from the executive doctor to determine the deceased's real state of mind when given a declaration.
- iii. The magistrate should take down the dying declaration in the deceased's own language if at all feasible. the magistrate should also strive to learn more about the deceased's history like his name, age, deceased's residential address. The magistrate should record every word of the declarant while recording a deathbed declaration.
- iv. Once the Statement has been recorded, it must be read over to the declarant. If possible the magistrate should also collect the deceased's signature, and after obtaining the signature, the judicial magistrate should attest the statement which has been recorded by him.[5]

As per rule 33 of the CRIMINAL RULES OF PRACTICE, the measures that the judicial magistrate should consider while recording a deathbed declaration. They are as follows;

- Firstly he must reveal his identity to the declarant.
- The deceased should be asked if he is mental able to make a clear statement
- The magistrate should ask simple questions to the deceased in order to determine his mental health.
- The magistrate must bring all of the queries and replies, as well as the signals, to a close under his own.
- The executive magistrate must also obtain the deceased's medical certificate in order to know the exact fitness of the deceased.
- As much as possible, the declaration should be in writing and in words of declarant.
- The magistrate should also attempt to obtain information from the deceased's that will allow the accused to be identified.
- Everything which has been stated by the declarant should be penned down by the magistrate.

Admissibility of dying declaration

Deathbed Declaration would be admissible as evidence just when the deceased dies and the “reason behind his demise” comes into question. In case the declarant died just before completing the deathbed declaration, in that case it would not come u/s 32(1) of IEA. The admissibility of dying statement is conceivable in the event that the explanation of the declarants demise comes into question under the steady gaze of the court.

The admissibility of deathbed Declarations mainly depend on four factors as per Sec-32(1) of IEA. Mainly;

- i. Relevant facts- it would only admissible when the facts are material facts and they are co-related to the death of the deceased.
- ii. Statements (written/ oral)- the facts illustrated by the deceased can be recorded in both written or oral form. But one thing should be kept in mind that the words should be spoken, gestures (like nodding) are also amount to admissible.
- iii. Reason of death (cause of death)- deathbed Declarations will be admissible in court only when the declarant states the reason behind his death in the dying declaration.
- iv. Circumstances of transaction- also known as circumstantial evidence. As per Sec-32(1) of IEA, there should have some connectivity with the death. It must also include those events which resulted in declarants death. Dying declaration is only admissible in the court of law only when the reason of death comes into question.

The rule governing the admissibility of dying declarations should be used and understood with caution, according to the court, because the declarant making such a statement is not subject to cross-examination by the accused. Furthermore, the court stated that the criterion of verification for the acceptance of a dying declaration is a rule of prudence rather than a rule of law. As per the court, since the declarant providing a such confession is just not exposed to merge by the defendant, the rule controlling the admission of dying statements should be utilized and interpreted with caution. The court further, noted that the verification condition for accepting a dying declaration is a rule of perseverance rather than a rule of law..[6]

Conditions for the admissibility

- The deceased's death is mandatory.
- Must be complete.
- Voluntary statement rather influential declaration.
- The declarant must express the reason behind death.
- Mandatory consciousness of mind.
- Soundness of mind of the deceased.
- Cause of death' must be in question.[7]

Inadmissibility of dying declaration

The inadmissibility of dying declaration is as follows;

- i. When the reason for death/demise is not in question.
- ii. If the deceased is minor.
- iii. Inconsistency in dying declaration.
- iv. When there are doubtful facts.
- v. Influential statement.
- vi. Incomplete statement.
- vii. When the statement given by the deceased relates to death of someone else.
- viii. Contradiction between the declaration.
- ix. Statements made by unsound persons are not admissible.
- x. False deathbed Declarations.[8]

Relevant cases

- 1) The deceased should be in a fit perspective and prepared to do saying something at the hour of recording of dying statement.[9]
- 2) This court laid down the principle that for relying upon the dying declaration the court must be conscious that the dying declaration was voluntary and further it was recorded correctly and above all the maker was in a fit condition – mentally and physically – to make such statement.[10]
- 3) Declaration recorded by Taluka Executive Magistrate – Technical objection regarding unavailability of doctor's certification and endorsement as to mental fitness of deceased, is liable to be rejected in as much as same is a mere rule of prudence and not the ultimate test as to whether or not the said dying declaration was truthful or voluntary.[11]
- 4) when a statement is made by a person as to cause of his death or as to any circumstances of transaction which resulted into his death, in case in which cause of his death comes in question is admissible in evidence, such statement in law are compendiously called dying declaration .[12]
- 5) dying declaration is admitted in evidence is based on Latin maxim, nemo moriturus praesumitur mentiri, a man will not meet his maker with a lie in his mouth. Information provided by a person who died subsequently relating to the reason of his death, is acceptable as evidence under this clause. [13]

Conclusion

A death statement is one of the most important yet crucial evidence. That can be used in the court of law. The declarant's death statement may be the sole basis for conviction. It must be meticulous and recorded with cautions. No-one can alter it. If it has been altered the court must reject it as soon as possible. It is courts duty to ensure the correctness of the Dying Declaration and recorded carefully. Dying Declaration as the name itself suggests a statement given just before the death. Dying Declaration has played the significant role in dealing with dowry death cases as the statement of the deceased is trust worthy and reliable by the courts. The court rely on dying declaration only when it is recorded

correctly by the executive Magistrate. And Statements recorded by the Magistrates are considered as more reliable and has more evidential value in comparison with statements recorded by police officers or doctors.

The dying declaration is admissible in Indian courts as it is based upon the *litem mortem* which means words said before death. The words said before death has considered as reliable because it is believed that a dying man would not lie, and he would definitely not meet his creator with having a lie in his mouth. So the words said just before the death becomes more crucial and evidential. Including, India dying declaration is only admissible u/s 32(1) of the IEA. It has been now clear that death bed statements can be in writing or verbal. But it must be cautiously recorded and appropriately demonstrated so that the courts can rely upon it as dying declaration and the justice can be served.

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