

Dying Declaration

Definition of Dying Declaration

According to Section 32 (1) of the Indian Evidence Act, when a person makes a statement regarding the cause of their death or any circumstances related to the incident that led to their death, it is considered relevant in cases where the cause of their death is questioned. These statements remain relevant even if the person who made them is no longer alive at the time of their statement and regardless of the nature of the legal proceeding.

SECTION 32: Cases in which a statement of relevant fact by a person who is dead or cannot be found, etc ., is relevant. — Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

1 when it relates to cause of death. —When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which 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, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

2 or is made in course of business. —When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

3 or against interest of maker. —When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

4 or gives opinion as to public right or custom, or matters of general interest. —When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

5 or relates to existence of relationship. —When the statement relates to the existence of any relationship 25 [by blood, marriage or adoption] between persons as to whose relationship 25 [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

6 or is made in will or deed relating to family affairs. —When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

7 or in document relating to transaction mentioned in section 13, clause (a). —When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

8 or is made by several persons, and expresses feelings relevant to matter in question. —When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

The statements made by the deceased person are treated as evidence and can be presented in a court of law. This is supported by the Latin maxim “Nemo

Mariturus Presumuntur Mentri,” which means that a person who is about to die is presumed to speak the truth. In other words, a dying person is believed to not lie, and truth is expected from them. Therefore, a dying declaration is admissible as evidence in court and can be used to bring the culprit to justice.

Types of Dying Declaration

There is no specific format required for a dying declaration. It can be given orally, in writing, through gestures or signs, by a thumb impression, or even in the form of a question and answer. However, the statement must clearly and assertively convey the person’s intention.

Ideally, a written declaration should be recorded using the exact words stated by the person making the statement. In cases where a magistrate records the dying declaration, it is usually done in a question-and-answer format. This allows the magistrate to gather maximum relevant information accurately. In some instances, the dying declaration becomes crucial evidence to secure the conviction of the accused.

Evidentiary Value of Dying Declaration in India

A dying declaration carries significant weight in legal proceedings and can serve as the sole basis for a conviction without the need for additional corroborating evidence. It is considered a piece of evidence and can be relied upon if found to be genuine and reliable. However, the court must be satisfied that the dying declaration instils complete confidence in its accuracy.

The court must ensure that the statement of the deceased was not influenced, coached, or a result of imagination. It must also ascertain that the deceased was of sound mind and had a clear opportunity to observe and identify the assailants. Once the court is convinced that the statement is truthful and voluntary, it can base a conviction solely on the dying declaration without requiring further corroboration. Hence, this adds up an evidentiary value of a dying declaration.

Cases on Evidentiary Value of a Dying Declaration

The evidentiary value of a dying declaration depends on the nature of the case and its specific facts. In the case of **Sham Shankar Kankaria v. State of Maharashtra**, the Supreme Court recognized a person’s solemn and serene nature on their deathbed, considering it a sufficient reason in the law to accept the truthfulness of their declaration. Therefore, the usual requirements of oath and cross-examination are not necessary. Excluding a dying declaration from

evidence could lead to a miscarriage of justice as the victim is often the only eyewitness in serious crimes, leaving the court without any other evidence.

In the case of **Munnu Raja v. State of MP**, a First Information Report (FIR) recorded by the police was considered a dying declaration. However, in the case of **State of Punjab v. Kikar Singh**, it was held that an FIR could not be treated as a dying declaration when the victim remained in the hospital for a considerable time (8 days). In the case of **State v. Maregowda**, it was established that a suicide note found in the deceased's clothes could be considered a dying declaration and is admissible as evidence.

Can the Identification through Dying Declaration be Considered and Made Relevant?

One of the fundamental principles of the law of evidence is that facts should be proven through direct evidence. According to Section 60 of the Evidence Act, oral evidence must always be direct, and hearsay evidence is considered unreliable and, therefore, inadmissible.

However, an exception is made for a dying declaration, which is a statement made by a person just before their death, explaining the circumstances of their death. This exception is based on the principle of “*nemo mariturus presumuntur mentri*,” which means that a person about to die is presumed to speak the truth. Courts consider identification through a dying declaration as relevant and significant in ensuring justice is served. Hence, the dying declaration holds evidentiary value.

This principle is specifically mentioned in Section 32 of the Indian Evidence Act. According to this section, statements made by a person regarding the cause of their death or any circumstances related to the incident that led to their death are considered relevant and admissible as evidence. In fact, a dying declaration can form the sole basis for conviction in certain cases.

On the other hand, the courts need to ensure that the record of the dying declaration is accurate and faithful. Therefore, it is recommended that the dying declaration be recorded in a specific manner as prescribed. If the person making the declaration passes away, it should be presented during the inquiry or trial.

Evidentiary Value of Dying Declaration with Incomplete Statements

For a dying declaration to be admissible as evidence under Section 32(1) of the Evidence Act, it should be materially and substantially complete. However, the

Supreme Court has clarified through various judgments that even an incomplete declaration can be considered admissible in certain cases.

In the case of **Cyril Waugh v. The King**, the court ruled that a dying declaration was inadmissible because it appeared to be incomplete, and it was unclear what the deceased intended to add to it.

However, in the case of **Abdul Sattar v. State of Mysore**, the court held that despite being incomplete, a dying declaration could be made admissible under Section 32(1) if it clearly indicated the guilt of the accused.

Moreover, it has been established that a dying declaration does not need to be exhaustive and include every detail of the incident. Its admissibility cannot be disregarded solely based on the omission of a particular circumstance related to the transaction.

Evidentiary Value of Dying Declaration If Declarant Survives

There is a question about what happens to the evidentiary value of dying declaration when a statement is recorded as a dying declaration, but the person making the statement does not actually die.

A statement is considered a dying declaration only when the person making the statement passes away. If the person making the statement does not die, then they can be treated as a regular witness in court against the accused. The concept of a dying declaration is based on the assumption that the declarant is near death and will not lie just before dying. However, if the declarant survives, their statement cannot be considered a dying declaration and cannot be admitted as evidence.

In the case of **Ramprasad vs. the State of Maharashtra**, the Supreme Court observed that the declarant should have expected to die for a statement to be considered a dying declaration. If a person making a dying declaration survives, their statement cannot be used under Section 32 of the Indian Evidence Act. Instead, it may be treated as a statement under Section 164 of the Criminal Procedure Code (CrPC).

It is important to note that Section 32 does not specify a specific time frame between the declaration and the death of the declarant.

Evidentiary Value of Dying Declaration Together with Exceptions Thereof

The Supreme Court has established several principles regarding the evidentiary value of a dying declaration, as seen in cases like **Khushal Rao v. State of Bombay**, **Kusa v. State of Orissa**, and **K.R. Reddy v. Public Prosecutor**.

These principles for the evidentiary value of a dying declaration are as follows:

- A dying declaration can serve as the sole basis for conviction. A genuine and voluntary declaration does not require corroboration, as the imminent threat of death provides inherent assurance of its truthfulness.
- A dying declaration is not inherently weaker evidence compared to other types of evidence.
- Each case should be evaluated based on its unique circumstances, taking into account the context in which the dying declaration was made.
- A dying declaration carries the same weight as any other piece of evidence and should be assessed in light of the surrounding circumstances, following the principles governing the evaluation of evidence.
- Ideally, a competent magistrate should record a dying declaration using a question-and-answer format, using the actual words spoken by the declarant whenever possible.
- To assess the reliability of a dying declaration, the court must consider factors such as the declarant's opportunity to observe and perceive events.
- The court must ensure that there was no coaching or manipulation involved, that the deceased was of sound mind, and that the statement was not a product of imagination.

When a Dying Declaration is Not Admissible?

These factors need to be considered when evaluating the evidentiary value of a dying declaration in court.

- If the deceased made a statement before their death about something other than the cause of their death, it may not be considered a dying declaration.
- If there are doubts about the decision, inconsistencies, substantial incompleteness, proof of falsehood, or signs of coercion influencing the statement, its reliability may be questioned.
- The credibility of the declarant as a competent witness is essential. For example, in the case of **Amar Singh v. State of Madhya Pradesh**, it was determined that without evidence of mental or physical fitness, the dying declaration could not be considered reliable.

- If the statement made by the deceased does not pertain to their own death but to the death of another person, it is not relevant as a dying declaration.

Evidentiary Value of Dying Declaration Based on Suspicion

The evidentiary value of a dying declaration can be called into question when suspicious circumstances cast doubt on its genuineness. If the prosecution's case relies solely on a dying declaration that is surrounded by such suspicious circumstances, it may not be sufficient to sustain a conviction.

For example, suppose a dying declaration recorded by a magistrate lacks the deceased's signature and does not mention the date and time of its recording. In that case, it may be deemed inadmissible unless the prosecution provides a valid explanation for these omissions.

In the case of **Natha Shankar Mahajan v. State of Maharashtra** in 2011, the Bombay High Court held that if there are any suspicions surrounding a dying declaration, the benefit of doubt should be given to the accused. Therefore, a dying declaration should not be relied upon if clear suspicious circumstances surround it.