

# EVIDENTIARY VALUE OF DYING DECLARATION: AN ANALYTIC STUDY

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**Abstract** - The dying declaration is a crucial item of evidence in criminal law, especially in cases of homicide, where the last statement of the victim will usually be the main evidence for the crime. Based on the legal principle "Nemo moriturus praesumitur mentiri" (no one who is about to die will be presumed to lie), it is held to be highly trustworthy. This article analyses the legal framework, judicial constructions, conditions of admissibility, and issues related to dying declarations in various jurisdictions. It also discusses the weightage accorded to such statements as evidence and proposes reforms to make them more credible.

**KEYWORDS:** Dying Declaration, Evidence Law, Hearsay Exception, Criminal Jurisprudence, Admissibility.

## I. INTRODUCTION

A dying declaration is a statement made by someone who thinks that their death is impending, regarding the cause or mode of their death. It is an important piece of evidence used in criminal proceedings, particularly when the victim is the only witness. Such declarations are mostly accepted by courts because of the assumption that someone who is about to die is not likely to lie. This article examines the evidentiary significance of dying declarations, their statutory foundation, judicial trends, and the problems involved in their use.

## II. REVIEW OF LITERATURE

The information and literature available has been thoroughly studies and evaluated. The literature resource for analysis is available in the form of a number of books, magazines, journals, internet sites and judgments of Supreme Court of India, High Courts and of foreign courts as well. The literature dying declaration emphasizes gaps between the legal provisions and their operationalization. Academic writings like Ratanlal & Dhirajlal's The Code of Criminal Procedure (2023) and B.B. Pande's Criminal Justice in India (2020) offer the background information regarding statutory provisions of investigations under the CrPC, IPC, and Evidence Act. Judicial interpretations, especially in such cases as K.R. Reddy v. State of A.P. (1976) Laxman v. State of Maharashtra (2002) P.V. Radhakrishna v. State of Karnataka (2003): have been critically examined by legal scholars to highlight the evidentiary value of dying declaration.

## III. RESEARCH METHODOLOGY

Since there are intimate relationships between the research subject and numerous disciplines like religion, psychology, physiology, social science, and law, doctrinal as well as non-doctrinal analysis was used in this study. The doctrinal analysis emphasized the fundamental legal principles and endeavoured to procure requisite information from different sources such as religious scripture, laws, medical jurisprudence, judicial decisions of both India and foreign nations, and academic articles. This method was largely employed to analysis the legal, religious, and psychological aspects and the legal mechanism involved in dying declarations. Nonetheless, because of the social and legal context of the problem, the methodology also included large field surveys, observation, interviews, and case studies. The observation and surveys were focused on encounters with Doctors, Police, Courts, and Lawyers. With case studies and interviews, the viewpoints from other places and communities were elucidated. Further topics like the onus on persons entrusted to capture dying declarations were likewise scrutinized and examined within the framework of such non-empirical studies. The study primarily uses doctrinal legal research methodology to examine statutory provisions under the Code of Criminal Procedure (CrPC), Indian Evidence Act, Indian Penal Code, and special criminal laws as well as judicial precedents from Supreme Court and High Court judgments that have developed investigative procedures. This legal analysis is augmented with qualitative analysis of government reports, Law Commission proposals, and academic literature in order to comprehend dying declaration from theoretical and practical aspects. Wherever possible, the research can draw on some empirical evidence through interviews with legal practitioners and police

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officers to provide ground-level insights into procedural issues, though this part remains dependent on availability and ethicality. The analytical framework involves critical assessment of current procedures, determination of systemic lacunae, and comparative examination with international best practices so as to make meaningful recommendations for reforms.

#### **IV. DYING DECLARATION**

As per section 32 (1) of Indian Evidence Act when the person makes a statement regarding the cause of his death, or one of the conditions of the transaction which led to his death, in cases in which the cause of death of that person raises a question. These statements remain relevant whether this person was anticipating death or not. Under English law he must be in anticipation of death only then this announcement is effective. This announcement is effective in both civil and criminal proceedings whenever cause of death arises.

#### **V. LEGAL FRAMEWORK**

##### **Indian Evidence Act, 1872<sup>2</sup>**

- a) Section 32(1): A statement made by a dead person about the reason of his death is admissible if the death is under investigation.
- b) Clause (1) of section 32 of the Evidence Act, allows for the 'dying declaration' that has been adopted from the principle of English Law, which pertains to what are colloquially referred to as dying declarations but is a significant departure from them because, in English Law, such a statement is admissible only when the accusation is that of murder or manslaughter. Section 32(1) is worded as follows:
- c) 32. Situations where statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-Writings or statements, whether in words or not, making a relevant fact asserted by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be obtained without an amount of delay or expense which, under the situation of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:-
- d) Where it pertains to cause of death.-Where the statement is made by an individual regarding the cause of his death, or regarding any of the conditions of the transaction by which he died, in instances where the cause of that individual's death is in issue.
- e) These statements are true regardless of whether the individual who uttered them was or was not, when they were made, in peril of death, and regardless of the character of the proceeding by which the cause of his/her death is under investigation.
- f) Section 162 CrPC : Excludes police-stated statements from being accepted as evidence, except for dying declarations. On or before the Jurisdictional Magistrate in the court hearings. Section 164 of the CrPC deals with the former situation, i.e., those confessions that are made during the investigation.

#### **VI. Legal provisions under Section 164 CrPC**

Section 164 CrPC deals with the statements taken by the Magistrate: Sub Section (1) makes it obligatory on the part of the Magistrate to reduce into writing the statement of a person or his confession, whether he is so invested with jurisdiction in respect thereof or not. If not so invested Sub Section (6) would be applicable. The word statement does not refer to a statement on oath by a witness but also of the accused and not being a confession. Sub Section (1) states that any Judicial Magistrate or Metropolitan Magistrate may, whether empowered to try the case or not, record any statement or confession made to him during the time of investigation under law in force for the time being, or at some later time before the commencement of inquiry or trial.

Which, according to which, of the above-referred Sub-Section (1) of Section 164 of the CrPC, it will mean that the provision requires the concerned Magistrate to record a confession or statement either during the course of an investigation or subsequently but before an inquiry or trial can be started. In *Re: Yendra Narasimha Murthy v. Unknown* (1965), the High Court of Andhra Pradesh ruled that confession will never be good evidence where it is confessed by the Magistrate

<sup>2</sup> Indian Evidence Act, 1872

## **VII. CONDITIONS OF ADMISIBILITY**

Courts look at the following conditions for a dying declaration to be admissible:

1. **Imminent Death Belief:** The declarant should be aware that he or she is nearing death. The individual making the statement ought to have had a belief when making the statement that death was near. It ought to be made when the individual is aware that his or her death is near or highly likely and will not live beyond the illness or injury.
2. **Voluntariness:** The statement should not be given under duress or tutelage.
3. **Corroboration:** While not always required, corroborating evidence increases credibility.
4. **Recording Procedure:** Preferably by a magistrate, but reports to doctors or police can if credible.

### **Statement Relating to Cause or Circumstances of Death**

- The statement should be closely connected to the cause or situation of the declarant's imminent death. It can state the name of the individual who is accused of inflicting the injury, the conditions under which the attack was made, or other facts closely related to the incident that resulted in their death.

### **Mental Competence**

- The declarant would have been stable at the time of making the declaration. That means that they ought to have known exactly what was going on and what the implications were for them at the time that they were making the declaration.

### **Consciousness of Death**

- The declarant must have had a **consciousness of impending death**, meaning they must believe they were about to die. This awareness is crucial as it indicates the reliability of the statement, given that people are presumed to speak the truth when they are about to die, in fear of facing judgment.

### **No Suggestion of Coercion or Duress**

- The statement must be voluntarily made, without any implication of duress, coercion, or external compulsion. It must express the declarant's own state of mind.

### **Credibility of the Statement**

- The court will be required to work out the reliability of the statement. The circumstances in which the statement was made, the declarant's state, and the environment should demonstrate that the declaration is real. Courts typically consider the belief that the person will die as a clear indication of the reliability of the statement.

## **VIII. JUDICIAL INTERPRETATIONS**

### **Indian Case Laws**

- **P.V. Radhakrishna v. State of Karnataka (2003)<sup>3</sup>:** Small discrepancies do not invalidate the declaration
- **K. Ramchandra Reddy v. Public Prosecutor (1976)<sup>4</sup>**
  - This case explained that a dying declaration is acceptable under Section 32(1) of the Indian Evidence Act, 1872, although it is report. The court held that the statement should be made in the belief of impending death and must be pertaining to the cause or circumstances of death.
  - The court emphasized the credibility of the declaration, considering the situation of the declarant's imminent death.
- **State of Uttar Pradesh v. M.K. Anthony (1985)<sup>5</sup>**
  - This court in this case accepted that a dying declaration can be allowed even though it is not given in the presence of a magistrate. In such a situation, the reliability of the declaration would depend upon the belief that the declarant was conscious of impending death and the statements are made truthfully.

<sup>3</sup> P.V. Radhakrishna v. State of Karnataka (2003)

<sup>4</sup> K. Ramchandra Reddy v. Public Prosecutor (1976)

<sup>5</sup> State of Uttar Pradesh v. M.K. Anthony (1985)

- The case further stated that the statement given in the hospital was admissible, even in the absence of a magistrate, provided the requirements of truthfulness and belief of death on the part of the declarant were satisfied.
- **Laxman v. State of Maharashtra (2002)<sup>6</sup>**
  - The Supreme Court of India made significant observations in this case regarding the admissibility of dying declarations. It stated that a dying declaration is not considered as the best form of evidence, but it holds significant weight if the court finds it to be truthful and credible.
  - The case highlighted the fact that a dying declaration does not always have to be taken before a magistrate. Nevertheless, the court must be satisfied that the declarant was in a sound mental condition to make the declaration.
  - The case also stated that the statement of the deceased should be in harmony with the other evidence on record and should not be self-contradictory.
- **Rattan Singh v. State of Punjab (1997)<sup>7</sup>**
  - The matter involved whether the dying declaration by a police officer is admissible. The court ruled that as long as the dying declaration conforms to the requisites of making it voluntarily and in the state of belief about impending death, it may be admissible regardless of being given in the company of a police officer.
  - The court maintained the doctrine that dying declarations are not required to be made before a magistrate, but the court must confirm the truthfulness and genuineness of the statement.
- **Khusboo v. State (2006)<sup>8</sup>**
  - This case involved a situation where a dying declaration was given by a woman who had been set on fire. The court accepted the dying declaration, noting that it was made in a clear, coherent state and described the events leading to her death.
  - The court also reiterated that a dying declaration could be recorded by anyone, not necessarily a magistrate, as long as it meets the conditions of voluntary and truthful testimony.

## **IX. EVIDENTIARY VALUE OF DYING DECLARATION**

1. **Reliability:** Given the assumption that a person near death would have no motive to make up or misrepresent the cause of their death, courts typically regard dying declarations as being extremely trustworthy.
2. **Persuasiveness in Court:** The dying declaration is generally approached with some scepticism by courts because the person declaring is not present to be cross-examined. They remain nonetheless as powerful evidence, although especially when corroborated by some other supporting facts.
3. **Limited Scope:** The scope of dying declarations is typically limited. They should not be generalizations; rather, they need to be closely connected with the cause or conditions of the declarant's death.

## **X. CHALLENGES AND CRITISMS**

### **Reliability and Truthfulness**

- **Potential for False Statements:** The strongest criticism against dying declarations is the potential to give false statements. Although it is assumed that individuals on the verge of death will tell the truth, no certainty exists that the statement uttered is true. The declarant may be erroneous, confused, or even deceiving, particularly if they are in a perturbed or modified mental state from their condition.
- **Mental and Emotional Condition:** An individual who is dying may be in shock, traumatized, or even delirious, potentially compromising their mental acuity and capacity to make a lucid or honest statement. Pain or fear may also impact the statement's content or validity.

<sup>6</sup> Laxman v. State of Maharashtra (2002)

<sup>7</sup> Rattan Singh v. State of Punjab (1997)

<sup>8</sup> Khusboo v. State (2006)

## Absence of Cross-Examination

- **No Cross-Examination:** One of the core principles of criminal justice is the ability to **cross-examine witnesses**. However, since the declarant is usually deceased or dying, there is no opportunity for the defense or prosecution to cross-examine the person about their statement. This means that the truthfulness or context of the declaration cannot be effectively tested, leaving the defense at a disadvantage.
- **Risk of Misinterpretation:** Since the declarant cannot clarify or explain their statement, the interpretation of the declaration becomes crucial. A dying declaration could be misinterpreted by the person recording it or by the court.

## Lack of Legal Safeguards

- **No Formal Record:** In many jurisdictions, a dying declaration is not recorded under controlled circumstances (e.g., by a magistrate or a legal officer). This creates the risk of the statement being misrepresented or distorted. While some legal systems do allow dying declarations to be recorded by a magistrate or an official, this is not universally required, and informal or less reliable records may be created.
- **Vulnerable to Coercion or Influence:** The dying individual could be under extreme stress or emotional duress, which might influence the content of their statement. In rare cases, a person could be **coerced** or **manipulated** into making a declaration that aligns with someone else's interests, especially if they are being pressured by family members, law enforcement, or other parties.

## Concerns about the Timing of the Declaration

- **Imminence of Death:** The condition that the declarant has to be in a state of imminent death is subject to interpretation. How imminent does one have to be to their death in order for their statement to constitute a dying declaration? In other instances, the statement can be made hours or even days before the actual occurrence of death, and it may not be apparent whether the individual actually believed that they were at the point of imminent death.
- **Uncertainty about the Mental State:** A person may not always be aware that they are about to die, especially in cases of gradual or slow death. There may be uncertainty or inconsistency in whether the declarant truly believed that death was imminent at the time of making the statement.

## Ambiguity and Lack of Context

- **Limited Detail:** Dying declarations tend to be as short as possible or incomplete as far as necessary facts are concerned. In most instances, the declaration can make mention of general or partial facts, i.e., the identity of the attacker or the overall conditions of the crime but fail to provide specifics that may be required to form a complete and credible knowledge of the event.
- **Inconsistent Statements:** Dying declarations may also be inconsistent with other evidence or with statements made by the deceased before their final moments. This inconsistency could raise doubts about the accuracy of the declaration and its trustworthiness.

## XI. SAFEGUARDS AND REFORMS

- **Mandatory Magistrate Recording:** Reduces manipulation risks.
- **Use of a Magistrate or Legal Official:** A major safeguard is to require that the dying declaration be **recorded by a magistrate** or a police officer, preferably in writing and with a full transcript of the statement. This ensures that there is an official record of the declaration, reducing the chances of it being misrepresented or misquoted.

- **Audio/Visual Recording:** In some jurisdictions, it could be beneficial to introduce **audio or video recordings** of dying declarations. This would help preserve the exact words and expressions of the declarant, minimizing the risk of distortion or misinterpretation of the statement. Such recordings can also serve as a safeguard against allegations of manipulation.
- **Sworn Testimony:** Another safeguard is to have the declarant swear an oath or affirmation before making the statement, which would remind them of the legal consequences of giving false information.
- **Medical Certification:** Ensures the declarant was mentally fit
- **Ensure Mental Competence:** Before admitting a dying declaration as evidence, courts should verify that the declarant was in a **mentally competent** state when making the statement. This involves ensuring that the individual was aware of their impending death and was not suffering from confusion, delirium, or mental instability.
- **Medical Verification:** Courts could require a **medical certificate** or testimony from a medical professional to confirm that the declarant was in a conscious, rational state when making the statement. This could help assess the credibility of the declaration, ensuring that the declarant's belief in imminent death was genuine.

### **Recording the Dying**

- **Video Recording:** Modern courts may use technology to enhance authenticity.

## **XII. CONCLUSION**

Dying declarations remain a vital evidentiary tool in criminal justice, particularly in murder trials. While courts generally uphold their sanctity, procedural safeguards are necessary to prevent misuse. Future reforms should focus on technological advancements (like video recordings) and stricter judicial scrutiny to ensure fairness.

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- **Ratanlal & Dhirajlal - The Indian Evidence Act, 1872**
- A detailed commentary on Section 32(1) of the Indian Evidence Act, which deals with dying declarations.
- **Krishnamachari - Law of Evidence**
- Provides an in-depth analysis of the evidentiary value of dying declarations in criminal cases.
- **M. Monir - Principles and Digest of the Law of Evidence**
- Discusses judicial precedents and principles governing dying declarations.

### **Cross & Tapper - Cross on Evidence**

- A comprehensive book on evidence law, including common law perspectives on dying declarations.
- **Wigmore on Evidence (John Henry Wigmore)**
- A classic reference on the principles of evidence, including the admissibility of dying declarations.

**Case Laws (Indian Judiciary):**

- **Pakala Narayana Swami v. Emperor (1939) AIR PC 47**
  - Established the foundational principles of dying declarations.
- **K.R. Reddy v. Public Prosecutor (1976) 3 SCC 618**
  - Discussed the reliability and corroboration of dying declarations.
- **Laxman v. State of Maharashtra (2002) 6 SCC 710**
  - Supreme Court held that a dying declaration can be the sole basis for conviction if found credible.
- **P.V. Radhakrishna v. State of Karnataka (2003) 6 SCC 443**
  - Examined the conditions under which a dying declaration is considered trustworthy.
- **Munnu Raja v. State of Madhya Pradesh (1976) 3 SCC 104**
  - Discussed the necessity of corroboration in certain cases.

**Journal Articles & Research Papers:**

**"Evidentiary Value of Dying Declaration: A Critical Analysis"** – Journal of Indian Law Institute (JILI)

- Discusses judicial trends and reliability factors.

**"Dying Declarations: A Comparative Study in Common Law and Indian Jurisprudence"** – NUJS Law Review

- Compares Indian and English law perspectives.

**"Admissibility and Credibility of Dying Declarations in Criminal Trials"** – Criminal Law Journal (CrLJ)

- Examines procedural safeguards and judicial scrutiny.

**"Psychological and Legal Aspects of Dying Declarations"** – Journal of Forensic Science & Criminal Investigation

- Analyses the mental state of the declarant.

**Online Resources:**

**Indian Kanoon** (<https://indiankanoon.org/>) – For case law references.

**Manupatra** (<https://www.manupatrafast.com/>) – Legal database for judgments and articles.

**SCC Online** (<https://www.sconline.com/>) – For Supreme Court and High Court judgments.

**Google Scholar** <https://scholar.google.com> – For academic papers and legal articles.