

'DYING DECLARATION – ITS APPLICABILITY IN CRIMINAL CASES'

By Justice A.V.Chandrashekhar

Dying declaration is admitted in evidence. The principle on which it is admitted as evidence is indicated in the legal maxim '*nemomoriturus prae-sumitur mentire*' which means a man will not meet his maker with a lie in his mouth. This is exactly the reason as to why courts have held that an accused can be convicted solely on the basis of 'Dying Declaration.' In fact, no corroboration is required since corroboration is only a rule of prudence and not a rule of evidence.

Section 32 of the Indian Evidence Act, 1872, deals with dying declaration and it s extracted below:

"32. Cases in which statement of relevant facts by the 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.'

Dying declaration will be admissible in evidence only when the person making the statement dies and the cause of the person's death comes into question. If the person who has made a dying declaration survives, such a statement will not come within the purview of Section 32(1) of the Evidence Act. Dying declaration is an exception to the general rule of excluding the hearsay evidence. The burden of proving the dying declaration is always on the prosecution. Since an accused can be convicted solely on the basis of dying declaration, the court is expected to carefully scrutinize the same. Three essential ingredients will have to be proved to the satisfaction of the court and they are:- (i) the declarant should have been in actual danger of death at the time when he made the statement; (ii) he should have had full apprehension of his danger and (iii) death should have ensued.

The Dying Declaration should inspire the confidence of the court about the truthfulness of such a declaration. If the court, after careful evaluation of the entire evidence, feels that the same was the result of either tutoring, prompting or product of imagination, the Declaration will

not be accepted. If the contents of the very Dying Declaration contradicts the core of the prosecution case, the declaration will not be the basis for conviction. Normally, a Dying Declaration should be recorded in the words of the declarant, but the same cannot be rejected merely because the exact words used by the declarant are not reproduced.

In the leading case of **PAKALA NARAYANA SWAMI .v. EMPEROR (AIR 1939 PRIVY COUNCIL p.47)**, the expression ‘circumstances of the transaction which resulted in his death’ has been eloquently explained. As per the facts of the said case, the deceased had left his house to go to Behrampur. While leaving his house, he had told his wife that he was going to Pakala Narayana Swamy’s house in Behrampur to demand him to pay back the amount given by him. Later on his dead body was found in a trunk and his body had been cut into pieces. The question before the Privy Council was as to whether such a statement made by the deceased to his wife would really come within the purview of Section 32(1) of the Evidence Act. In fact, it was held by the Privy Council that the statement made by the deceased to his wife just prior to leaving his house to go to Behrampur was a statement and one of the circumstances of the transaction which resulted in the death of the man. Therefore the

expression ‘any of the circumstances of the transaction which resulted in his death’ is necessarily wider in its interpretation than the expression ‘the cause of his death.’

Normally the court looks to the medical opinion about the fit condition of the declarant at the time of making the statement. But this cannot be an inelastic rule. If the person who records the statement or the witness to the declaration tenders satisfactory evidence as to the fit mental condition, the Dying Declaration will be accepted. In the Constitution Bench judgment of the Hon’ble Apex court in the case of **LAXMAN .v. STATE OF MAHARASHTRA** reported in **AIR 2002 SC 2973**, it is succinctly explained that medical certification is not a *sine qua non* for accepting the Dying Declaration. The relevant law enunciated is as follows:

*‘For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this court in **Paparambaka Rosamma and Others .v. State of Andhra Pradesh (MANU/SC/0558/1999)** to the effect that ‘... in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a magistrate who opined that the injured was in a fit state of mind at the time of making a*

*declaration' has been too broadly stated and is not the correct enunciation of law. It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where after he recorded the dying declaration. Therefore, the judgment of this court in **Paparambaka Rosamma and Others .v. State of Andhra Pradesh (MANU/SC/0558/1999)** must be held to be not correctly decided and we affirm the law laid down by this court in **Koli Chunilal Savji and another .v. State of Gujarat (MANU/SC/0624/1999)** case.'*

In case of plural dying declarations, the court is expected to see whether all the plural declarations differ in material particulars. If the declaration materially differs from the other, the same will not be relied upon unless the corroborative evidence is adduced.

If there are two Dying Declarations, one made before the doctor and another made before the witnesses, normally the declaration made before the doctor will be treated as more reliable. Similar is the case in regard to a statement made before a magistrate. If one part of the declaration is found

to be untrue, the same can be rejected by separating the same from the rest of the declaration. If separation is not possible, it is not wise to accept such a declaration.

Dying Declaration should not be discarded merely because it did not give precise description of all the weapons used to commit the offence and about the manner in which injuries were caused. Dying declaration cannot be rejected merely because the declarant did not die instantly or immediately and he lingered on for some days. The declarant need not necessarily be in the imminent danger of death.

Declaration given to a police officer is not hit by Section 162(2) of Cr.P.C. If the statement of a victim is recorded by the police as a first information and if there is a declaration, it is safe to rely on the declaration. In the case of **KHUSHAL RAO .v. STATE OF BOMBAY (AIR 1958 SC p.22)**, Hon'ble apex court has held that uncorroborated dying declaration can be the basis for conviction. Following are the principles laid down in the said judgment:

- (i) that it cannot be laid sown as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated,

- (ii) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made,
- (iii) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence,
- (iv) that a dying declaration stands on the same footing as another piece of evidence has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence,
- (v) that a dying declaration which has been recorded by a competent magistrate in the proper manner that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon the oral testimony which may suffer from all the infirmities of human memory and human character, and
- (vi) that in order to test the reliability of a dying declaration the court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it, and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.'

Though, law as it stood earlier was that the declaration be recorded in the form of question and answer, but in the case of

SATISHCHANDRA .v. STATE OF MADHYA PRADESH ([2014] 6

SCC p.723), it is observed by the apex court that the declaration cannot be rejected on that ground alone if the declaration is otherwise acceptable and meets the requirement of Section 32(1) of the Evidence Act. A magistrate is expected to record the statement in the absence of the police. Steps must be taken to see that no interested persons remain there while recording the declaration.

Insofar as proof of **oral dying declaration** is concerned, the court should, as a matter of prudence, look for corroboration in order to know whether such a declaration was truthful. Following broad principles have been laid down by the Hon'ble Apex Court in the case of **ATBIR .v. GOVT. (NCT OF DELHI)** reported in [2010] 9 SCC 1 in paragraph 22 which are extracted below:

- (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
- (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
- (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

- (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot be the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
- (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
- (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
- (viii) Even if it is a brief statement, it is not to be discarded.
- (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
- (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.'

The magistrate recording the statement should obtain the signature/thumb impression of the declarant on the declaration. If it is not possible, there must be an explanation to that effect in the declaration itself. If all the fingers of the declarant are seriously burnt, it will not be possible to obtain thumb impression/signature. The magistrate should neither cross-examine

the declarant nor put any leading questions to the declarant. As far as possible, the declaration should be in the form of question and answer and preferably the words used by the declarant should be written. The recorded declaration should be sent to the concerned court through a special messenger in a cover and the same should not be handed over to the police. A copy of the declaration may be given to the police for further investigation. As far as possible, the magistrate may obtain a certificate from the doctor about the fitness of the declarant to give a statement.

Though a Dying Declaration is entitled to great weight, one cannot forget that the accused has no power to cross-examine the declarant to elicit the truth. Hence the court should be satisfied about the truthfulness of such a declaration and the same being not tutored in any manner. Section 32(1) of the Evidence Act does not prescribe any statutory guideline in the matter of recording dying declaration, and considering the same while appreciating the evidence. But the Hon'ble apex court, in several leading decisions, while considering the facts of each case, has laid down some broad guidelines and thus they have become binding precedents under Article 141 of the Constitution of India. While evaluating the evidence, especially in criminal cases, the court is expected to keep in mind the novel

observation made by the apex court in the case of **STATE OF U.P. .v. KRISHNAGOPAL (AIR 1988 SC p.2154 – paragraph 13)**. The relevant observation is as follows:

'.....There is an unmistakable subjective element in the evaluation of the degree of probability and quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.'

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