

Medico-Legal Aspects of Dying Declaration in India

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Abstract

A dying declaration is a statement made by a dying person as to the cause of his death or as to any circumstances of the transaction that resulted in his death. The dying declaration forms the sole basis of conviction if it is free from any kind of doubt and if it has been recorded in the manner as provided under the law. It should inspire full confidence in its truthfulness and correctness. Not recording of dying declaration will result in miscarriage of justice because the victim being generally the only eye-witness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence. It is for the court to see that dying declaration inspires full confidence as the maker of the dying declaration is not available for cross examination.

This article focus on the medico-legal and ethical aspects encountered while recording dying declaration and its weightage in the court of law.

Key Words: Compos mentis, Courts, Dying declaration, Magistrate, Police officer

Introduction:

A dying declaration is “a statement, written or verbal made by a person as to the cause of his or her death or as to the circumstances of the transaction resulting in his or her death”. [1]

It is based on the principle that dying declarations are made in the extremity when the party is at the point of death, and every hope of this world has gone, when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth. A situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

Thus the oath is not administered when dying declaration is recorded. Its admissibility has been explained in the **section 32 (1) of Indian Evidence Act**. [2]

There is a clear distinction between the evaluation of dying declaration under the Indian law and the English law.

The credence and relevancy of dying declaration under the English law is only when the declarant is in hopeless condition and under the expectation of death.

However in Indian law it is not necessary that the deceased at the time of giving the statement should be under the expectation of death and the dying declaration is admissible not only in the case of homicide but also in civil suits. Under the English law, the admissibility of dying declaration is confined to criminal charges of murder or manslaughter only. [3, 4]

Compos Mentis:

It is essential that the declarant must be in a sound state of mind (**compos mentis**) at the time of making the declaration. The doctor is required to certify that the patient is in a sound mental condition to make a statement before it is recorded. Most suicidal cases will have predisposing medical conditions and psychiatric illness, which may trigger the victim to succumb to death. The doctor who is giving fitness should make a note of his/her predisposing medical illness and state of consciousness during the statement or else its validity remains questionable. [5]

Most important point of consideration is that victim was in a fit condition of mind to give the statement when recording was started and remained in fit condition of mind till the recording of the statement finished. Merely stating that patient was fit will not serve the purpose.

This can be best certified by the doctor who knows best about the condition of the patient. But even in conditions where it was not possible to take fitness from the doctor, dying

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declarations have retained their full sanctity if there are other witnesses to testify that victim was in such a condition of the mind which did not prevent him from making statement.

Medical opinion cannot wipe out the direct testimony of the eyewitness stating that the deceased was in fit and conscious state to make the dying declaration.

Recording of the statement should not be under the influence of anybody or prepared by prompting, tutoring or imagination. Even if any one of these points is proved then dying declaration is not considered valid. If it becomes suspicious then it will need corroboration.

Ideally the treating doctor should give fitness for statement as he knows best about the condition of the patient keeping in mind the pre-existing diseases of the declarant.

He should also record date and time of giving *compos mentis*. Most important point of consideration is that declarant was in a fit state of mind to give the statement when recording was started and remained in fit condition till the recording of the statement finished.

Merely stating that patient was fit will not serve the purpose. But the court has held that even if no certificate was affixed that the declarant was under fit state of mind, the recorded statement still carries validity as the sense of impending death produces in man's mind to make true statement. [5]

Recording of Dying Declaration:

Indian law doesn't provide any prescribed manner, format or procedure for recording dying declaration. But ideally it is recorded in local dialect in narrative form.

It gives less chance of asking leading questions and nothing is being prompted. In question and answer forms, most of the points will be missed and the declarant concentrates only on the questions which he was asked.

Calcutta High Court has ruled that where a dying person is unable to speak and can make only signs to the questions put to him, such questions and signs put together might be regarded as '*verbal statement*' made by a person as to the cause of his death within the meaning of S 32 of Indian Evidence Act, and are therefore admissible in evidence. [1]

The accuracy of such verbal statement and the investigating officer having influence on declarant, recording such verbal statement remains questionable.

Who Can Record Dying Declaration?

The law does not provide direction on who can record a dying declaration. The Supreme Court Bench of justices B S Chauhan and Dipak Misra while reversing an acquittal in a dowry death case ordered by Madhya Pradesh High Court said that any member of the public can record the statement of a dying declaration, but he should make sure that the one making the statement should be conscious and his mental status are normal. [6]

But ideally, magistrate should record the statement in all cases and if not possible at least in allegation cases, so that exact cause of death from the declarant can be elicited on the spot and long waiting trails can be avoided. It cannot be said that a statement recorded by a police officer is always invalid.

The practice of investigating police officer himself recording a dying declaration during the course of investigation is ideally not to be encouraged as he may influence on the declarant statement. Dying declaration should be recorded in the presence of independent witnesses by recording the date and time of starting and ending of statement.

Declarant should not be under the influence of anybody nor prepared by prompting, tutoring or imagination.

Even if any one of these points is proved then dying declaration is not considered valid. Court has held that, if an investigating officer records dying declaration not in local dialect to which the deceased belonged makes the dying declaration suspicious. [5]

But the court did not mention anything on the validity of the recorded declaration where declarant is illiterate and investigating officer not understanding the local language of declarant.

The declaration after being recorded should be read over to the declarant, who should affix his or her signature/ thumb impression to it and if not, then should mention the reason for not taking it in the end of the statement. If the declarant writes his statement himself, the statement should be signed and attested by both the witness and investigating officer. If the declarant becomes unconscious while the statement being recorded, person who is writing it must elicit as much as information and sign it.

When concluded, it should be signed by the person who is recording along with date and time of recording it, and also obtain the signature of the independent witness who can corroborate the content of the document.

Such declaration will be truthful and reliable. If a victim loses consciousness in the middle of recording statement, the evidentiary

value of such incomplete declaration is again questionable. Law does not provide any information on this issue. After recording statement its confidentiality is maintained.

It should be sealed in a proper envelope with a seal and sent to the concerned authorities and a photocopy should be kept in case file, but are usually not followed in routine. If a declarant has made more than one dying declarations and if these are not at variance with each other in essence, they retain their full value. If these declarations are inconsistent, such dying declaration loses their value. [5]

Conclusion:

Great importance is attached to a dying declaration by courts, and if properly recorded keeping in mind all the essential ingredients, can form the basis of conviction.

Verdicts of higher courts on dying declaration shows it is used as corroborative evidence as most of the recorded statements have incomplete details which make it invalid. All the hospitals should have their standard dying

declaration Performa, so that all the statements can be precisely recorded in it.

The purpose behind this is, no single data will be missed and the procedure will be recorded in an ideal way.

Most of the errors in dying declaration are due to lack of knowledge among police officers, which could be minimized by training them. The court has to give proper guidelines for recording dying declaration by clearly defining grey areas. This will improve the validity and reliability of the statement to a far more extent.

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