



**TRUTH SITS UPON THE LIPS OF
DYING MEN: AN OVERVIEW &
EFFICACY OF THE DYING
DECLARATION UNDER THE INDIAN
EVIDENCE ACT, 1872**

By Vaidehi Gupta
From Tamil Nadu National Law
University

ABSTRACT

The judge is bestowed with the duty to establish the veracity & accuracy with regard to the specific disposition procedure which is the chunk of the justice delivery machinery. Accordingly, the concerned facts have to be analyzed & the relevant evidence has to be evinced for the purpose of validating the described statement. Dying Declaration under Section 32(1) of the Indian Evidence Act, 1872 being the declaration of the deceased person aids the court to determine the facts of the event which either collectively or in segregation established the offence he has been subjected to. The evidentiary value of such a statement is imperative to ascertain the finality of the incident thus determining the liability of the assailant. Moreover, it also entails the contradiction regarding the implementation of the judicial mind as on one side, the same declaration of the declarant can be invoked for charging the accused without any additional proof while on the flip side, it being dubious & inaccurate cannot become the basis of conviction. Court's scrutinization & interpretation of the written law highlights the divisive subject that necessitated to be disparagingly analyzed. The current project examines the position of law relating to Dying Declaration in India, the judicial position & logical construal by the courts for determining the defendant's culpability.

KEYWORDS

Dying Declaration, Evidence, Language, Hearsay Rule, Recording, Statement

The article will fundamentally address the following *questions*

- ∞ Whether Dying Declaration be made the only evidence for conviction?
- ∞ What is the legitimacy or cogency of Dying Declaration as a piece of evidence for condemning an individual?
- ∞ Whether a dying declaration is of impeccable character depends on which all factors & which amid them is considered to be of paramount in nature?
The *objective* of this article is to,
- ∞ To establish if the Dying Declaration can be made the sole evidence for conviction by analyzing multiple principles advocated by the Judiciary over the past years to administer the admissibility of Dying Declaration involving appellant in the alleged offence taking in account several cases.
- ∞ To determine the legitimacy or cogency of Dying Declaration as a piece of evidence for convicting an individual by breaking down catena of cases.
- ∞ To determine whether a dying declaration is of impeccable character depends on which all factors & which amid them is considered to be of paramount in nature by looking into gamut of distinct factors like *physical & mental well-being of the departed person, sign on the recoded dying declaration, evidentiary value of the dying declaration* etc. in light of several case laws.

INTRODUCTION

The Evidence Law accentuates on the significance & acceptability of evidence before the court of law. The law governing principle is based on the ideology that non-testable evidence is inadmissible in the Court.



To put it simply, the administration of oath & cross examination of the statement maker creates the truthfulness of the same. Therefore, the hearsay evidence is considered to be no evidence. However, in circumstances where the law makes an exemption in case of exigency where a man is on his death bed & makes a statement pertinent to the reason of his death. The law ascribes prodigious somberness & inviolability of the words uttered by the dying man on the basis that at the edge of his possible parting from the world, it is very unlikely that he will conjure the false statement. Also, the barring of such an evidence may bring about the injustice insofar the sufferer might be the only primary witness of the heinous offence. Therefore, Dying Declarations occupies the special & significant stature in the orb of Law of Evidence. It purely depends on the purposes of beliefs. Nevertheless, throughout the years, the Indian Judicial System have advances numerous ideologies to administer the admissibility of dying declarations.

SECTION 32 (1) OF INDIAN EVIDENCE ACT

Section 32 (1) Evidence Act, 1872 include the belief of English law regarding dying declaration. It denotes the declaration of a deceased person elucidating the reason or the condition resulting in his death. The principle of is based on "*Nemomoriturus Praesumitur Mentire*" which signifies that a *man will not meet his maker with a lie in his mouth*. It doesn't necessitate any sought of other evidence to the extent the court is assured & contented that such a statement is veracious & accurate.

¹ The Indian Evidence Act, 1872, § 5, No. 1 Acts of Parliament, 1872 (India).

TWO STATEMENTS THAT ARE ROOFED UNDER THIS SECTION ARE: -

- (i) *reason of his death;*
- (ii) *circumstances of transaction which resulted in his death.*

ORGANIZATIONAL FRAMEWORK OF DYING DECLARATION (SECTION 32)

According to Evidence Act states that the evidence should be given only of the pertinent facts & of none others.¹ Consequently, this pertinency shows the affinity of the facts in issue in a way which rationally proposes the occurring of a specific event. The Indian Evidence Act, 1872 to a great extent concurs with the English Evidence Act which bifurcates the fact in two namely *legal & logical*. So, it is quite noteworthy to note that *a fact to be labelled as relevant under the Evidence Act should be legally relevant albeit it is logically associated with the other facts or not* since all legally relevant facts are logically pertinent whilst vice-versa doesn't holds true.² Therefore, the Act encompasses actions, statements, entries, Judge's verdict, expert's standpoints & the demeanor vis-à-vis body language of the party to the dispute & the evidence adduced in relation thereto as of relevant nature & admissible in the court. However, in the concerned matter the scholars have perceived that whatever have proclaimed to be legally relevant also turns to be logically relevant & the relevancy clause in general depends on & is the consequence of intense prudence & creation. Under the arrangement of the Evidence Act all sought of evidences whether oral or documentary have to be relevant under several sections envisaged in the Act just in different way.³ The contemporary research is concerned with

² *Id.* § 6-55.

³ *Id.* § 17-33.



the relevant statement made under Section 32(1) of the Evidence Act. The written or oral statement regarding the relevant facts made by (i) *deceased person* (ii) *who couldn't be found* (iii) *unable to adduce evidence* (iv) *attendance can't be obtained without an quantity of deferment or outlay which under the conditions of the case seems irrational to the court* are considered to be relevant in the trailing cases like *when a statement is made by the person which is relating to the reason of death or any other situation of the dealing which lead to the person's death in the cases where the cause of the deceased is disputed.*

It has been sufficiently proposed by the simple reading of Section 32 of the Evidence Act that any person who comes under the ambit of the aforementioned *four tests*⁴, the distinct evidence adduced would be accounted relevant if it associates to the eight subjects mentioned under the concerned provision of the Act, that when such facts are; (i) *related to the reason of the death* (ii) *made in the ordinary course of business* (iii) *in contradiction to the interests of the declarant* (iv) *provides opinion regarding the rights of general public, customs or matters* (v) *associates to the presence of relationship* (vi) *made in regard to family's will or deed* (vii) *encompassed in a document relating to the dealing envisaged under Section 13(a) of the concerned Act* (viii) *made by multiple persons & conveys the feelings pertinent to the subject at issue.*

As per Section 32(1), the statements made are accounted to be pertinent regardless of the person making it was under the anticipation of death or not & also the nature of the

proceeding on which the reason of the death comes in question are labelled as *Dying Declaration* denoting the statement made by the deceased when he or she was on the death bed regarding the harm suffered by them resulting in their severe condition or death or the conditions or person which have inflicted the injuries to the deceased person.⁵ However, it is very important to note that if it is proved that the person didn't died due to the harm suffered by him or her resulting in their severe condition or death or the conditions or person which have inflicted the injuries to the person didn't result in his death, such statement made wouldn't be called to be the reason for his death or any other circumstance of the dealing consequential of death.⁶ Another classification in the statement envisaged under the concerned provision is to any of the conditions or circumstances of the dealing that led to the person's death which per se is capable of escalating the girth & outline of admissibility & also this classification of the section has the broader magnitude as the word *circumstances* when associated with *transaction* or *dealing* which resulted in the death of the person, the subsection pursues relatively broader connotation.⁷ Anything which had a link with the person's death whether immediate or distant, direct or indirect also have the potential to be swept under the purview of the sub section of Section 32(1). As there is extreme plausibility of the person making such a statement might not be alive anymore, the effort should be made in the regard as how to include the statement of a deceased within the arch of the sub section of Section 32(1) & not

⁴ *Id.* § 32(1).

⁵ 1 M.C SARKAR AND P.C. SARKAR, LAW OF EVIDENCE 724 (Wadhwa, Nagpur 2008).

⁶ Moti Singh v. State of U.P., AIR 1964 SC 900 & Tahal Singh v. State of Punjab, AIR 1979 SC 1347.

⁷ 1 M. MONIR, LAW OF EVIDENCE 765 (Universal, Delhi, 15th ed.).



how to eliminate it there from.⁸ In *Rattan Singh v. State of Himachal Pradesh*⁹, it has been appropriately stated by the court that array of words encompassed under Section 32(1), *circumstances* when associated with *transaction* or *dealing* as in *circumstances of the transaction which caused the death* of the person seemingly have the broader connotation than *circumstances that caused the death*. There needn't be any link with the *person's death* whether immediate or distant, direct or indirect with that of the *circumstances* & the words of the deceased at the time of dying is sufficiently enough if they are referring to any of the circumstances which have any nexus with the transaction that caused the death to become admissible as the relevant evidence in the court. To put it simply, the words of the deceased regarding the reason of the death or the circumstances of the dealing that caused the death should be adequately or proximately associated with the actual dealing or transaction.¹⁰

Lord Atkin also stated in the momentous case of *Pakala Narain Swamy v. Emperor*¹¹ that “the phrase *Circumstances of the transaction* undoubtedly carries certain restrictions. This phrase couldn't be considered as wide as the parallelly used in *circumstantial evidence* which comprehends the evidence of all the relevant facts. On the flip side, this phrase is even narrower than the principle of *res gestae*. Here, the *circumstances of the dealing* should have certain close relation to the actual event & must be of the transaction which caused the death of the person making

the statement while dying. It is inessential that such transaction should be identified apart from that the death of the deponent has eventually been resulted for the condition of the evidence's admissibility is that the reason of death of the declarant call into question. Common expressions signifying anxiety or doubt is a specific person or otherwise & indirectly associated with the event of the death will not be admissible as the relevant evidence in the court. But the statement produced by the deceased that he was going to the place where in actuality he was killed or the reasons for so going, or that he or she was proceeding to meet a specific individual or that he or she has been called by such an individual to meet him or her, whether the person was known & not the accused etc., all of these would be the *circumstances of the dealing which caused the death*”. Thus, Indian Evidence Act has trailed readily on what has been put forth by Lord Atkin, such declarations have been affirmed to be pertinent as the Dying Declaration on the paradigm of English Jurisprudence. Nevertheless, Indian Jurisprudence is positioned on different footing in approving the admissibility of such an evidence as the dying declaration.¹²

DIFFERENCE BETWEEN THE INDIAN LAW & ENGLISH LAW REGARDING THE DYING DECLARATION

Under English Jurisprudence,

- *The declarant should be expected to die or at least anticipation of the approaching death.*¹³

⁸ *Id.* at 765.

⁹ (1997) 4 SCC 161,166.

¹⁰ M. MONIR, *supra* note 7, at 766.

¹¹ AIR 1939 PC 47.

¹² *Kishan Lal v. State of Rajasthan*, AIR 1999 SC 3062; SYED AMIR ALI & JOHN WOODROFFE, *LAW OF EVIDENCE* 1760 (Butterworth, Delhi, 17th ed.).

¹³ *Supra* note 6; *Inayat Khan v. Emperor*, 158 IC 336; *Sharad B. Sharda v. State of Maharashtra*, AIR 1984 SC 1622.



- *Dying Declaration is only acceptable in the criminal cases of killing.*
- *Such a declaration is acceptable only when the death has followed.*
- *Such declarations are also acceptable in the cases of suicide.*

Under Indian Jurisprudence,

- *It is not necessary that declarant should be expected to die or at least anticipation of the approaching death.*
- *Dying Declaration is only admissible in both the criminal & civil cases.*
- *Such a statement can be employed even if the declarant doesn't die; in cases like these the statement is relevant under section 157 of the Evidence Act which states about the previous statements of the witness may be proved to support the later evidence & not under section 32 as dying declaration.*
- *Such declarations are not acceptable in the cases of suicide.*

ESSENTIAL NECESSITIES OF DYING DECLARATION

1. The person to whom the declaration is addressed or made or the capacity & competency of the person recording such a statement.
2. The declaration made would only be accounted as an admissible evidence u/s 32(1) of the concerned Act only if the declarant subsequent to making the declaration dies.
3. The declaration made ought to associate to the reason of the declarant's death or the circumstance of the transaction that led to the death of the declarant.
4. The reason of the death of the declarant must be disputed.

¹⁴ State of Maharashtra v. H.K. Chanriwal, AIR 2016 SC 287.

5. The declaration should be complete & conclusive. half-baked words wouldn't be entertained or admissible as a valid dying declaration.
6. The declarant must be capable & competent as a testament i.e. to say he or she should have the fit mental state during the time of making the statement.

ESSENTIAL RULES TO THE CONCEPT OF DYING DECLARATION

I. THE RULE OF FIRST OPPORTUNITY

the most conceivable & eligible standard for the admissibility of the dying declaration is it must be recorded as soon as possible in the first opportunity available to shirk off the possibility of any tutoring or impairment with the declarant's mind by any other event or human involvement. To put it simply, the declaration should be recorded without any adjournment to dodge off the manipulation & coercion by any human involvement. The delay period is admissible on case to case basis, on the conditions in which such a statement is approved ¹⁴. In cases, where the declarant was not in the immediate position & fit mental condition to make the statement, the delay of two days was also taken in consideration when the declarant was mentally fit & conscious to make declaration. ¹⁵However, in the cases where the declarant was mentally fit & stable from the very beginning to make the declaration there the delay of even two hours is not justified. Therefore, the *first opportunity rule* appears to be rational & obligatory to make the statement as virtuous as it must be.

II. THE RULE OF ACCURACY & LUCIDITY

¹⁵ G.S. Walia v. State of Punjab, AIR 1998 SC 2857; Kishanlal v. State of Rajasthan, AIR 1999 SC 3062.



Regardless of the statement recorded is short or detailed, the expected standard is that such a declaration must be *precise & clear* together with being complete. A dying declaration shouldn't be disallowed only on the absenteeism of the particulars about the happening of the event. It is considered to be a fleeting statement & shouldn't be cast-off.¹⁶ On the flip side, the shortness of such declaration per se manifests the veracity of the statement.¹⁷ It shouldn't be exhaustive in nature revealing all the circumlocution events.¹⁸

III. THE RULE OF CONSISTENCY APROPOS OF THE RULE OF INCONSISTENCY

This standard is of utmost application in the cases of several dying declarations for the purpose of credibility & integrity of the statement recorded. In case, having several declarations the first in time should be favored over others.¹⁹ If the multiplicity of the declaration could be relied upon, it can be accounted in as an admissible evidence.²⁰ In the presence of certain inconsistencies. The court should analyse the nature & relevancy of the discrepancies. The court has to ensure its consideration in its most efficacious & accurate manner & should be contented as to

which amid those statements imitates the most accurate & precise circumstances.²¹ It is to be taken note of that a complete consistency shouldn't be expected because the declarant under the severe anguish & grievous injuries in all possible circumstances might make inconsequential errors & omissions while making the statement.²²

IV. THE RULE OF MENTAL & PHYSICAL FITNESS CONDITION

this is one of the primary essentialities for the declaration reliability & admissibility. The mental well-being of the declarant while making the statement at the time of passing away ought to be prudently inspected to get away with all the qualms & concoction.²³ To assure the same, such a declaration must be corroborated with medical certificate or the statement of the doctor, in its absenteeism the admissibility of such a statement would be under distrust.²⁴ However, in certain cases where the person recording the statement per se is contented with the mental well-being of the declarant there the absence of the issuance of the medical certificate by the doctors doesn't impact the evidentiary value of the dying declaration.²⁵ The admissibility & immaculateness of the dying declaration

¹⁶ State of Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617.

¹⁷ Surajdeo Ojha v. State of Bihar, (1979) CriLJ 1122.

¹⁸ State v. Govinda Pillai, AIR 1952 Trav.

¹⁹ M. MONIR, *supra* note 7.

²⁰ Paneershelvan v. State of Tamil Nadu, (2008) Cr. LJ 3531.

²¹ R.V. Satyanandam v. State of Andhra Pradesh., AIR 2001 SC 1708.

²² State of Maharastra v. Gopichand, (1985) Cr. LJ 784.

²³ State v. Laxman, AIR 1986 SC 250; Darshan v. State, AIR 1983 SC 554; Jagga Singh v. State of Punjab, AIR 1995 SC 135; P. Rosamma v. State of AP, AIR 1999 SC 3455; Panniben v. State of Gujarat

(1992) 2 SCC 477; Mafabhai Nagarbhai v. State of Gujarat (1992) 4 SCC 69; Bitthal v. State of Maharashtra (2006) 13 SCC 54; Amar Singh v. State of Maharashtra (2007) 15 SCC 455; Sher Singh v. State of Punjab (2008) 4 SCC 265; D.S. Koli v. State of Maharashtra (2008) 16 SCC 705; Surinder Kumar v. State of Punjab (2012) 12 SCC 120.

²⁴ V.S. Gaikwad v. State of Maharashtra, (1994) Cr. LJ. 2035.

²⁵ Laxman v. State of Maharashtra, (2002) Cr. LJ 4095; State of M.P. v. Dal Singh, AIR 2013 SC 2059; Nathu Ram v. State of Rajasthan, (2016) Cr. L.J 2098; Atbir v. Govt. of NCT Delhi (2010) 9 SCC 1; Ratanlal & Dhirlal, Law of Evidence at 235 (Wadhwa, Nagpur 2005).



relies on multiple factors but the condition of fit mental state of the declarant is of the supreme factor.²⁶ Regardless of the declaration being signed or thumb impressed by the declarant, if the court have the minor doubt regarding the mental state of the declarant, such a declaration wouldn't be the basis for the conviction of the defendant.²⁷

DYING DECLARATION VIS-À-VIS HEARSAY PRINCIPLE

We know that one of the chief principles on which the Evidence Act functions is that *direct evidence* must always be adduced to prove a particular fact & only such an evidence is admissible in the court. Regardless of how powerful a particular evidence is, it has to mandatorily come within the class of admissibility otherwise will get omitted.²⁸ In the present context of dying declaration the direct oral evidence of the fact & the occasion of analyzing the veracity of such evidence adduced by cross examination is disposed of because either the declarant is dead or couldn't be found or is unable to adduce evidence or attendance can't be obtained without an quantity of deferment or outlay which under the conditions of the case seems irrational to the court. No better evidence could be evinced than the statement of the declarant himself & perceptibly is made before the investigation i.e. at the time of death or inability to present evidence. Nonetheless, the nature of the statement & the matter to which it relates signifies the maximum degree of veracity. In order to establish the stated fact when the

declarant is not alive anymore appears to be apt even the statement aches from main debarment. For this reason, the declaration has been declared to be relevant & establishes an exclusion to the principle of hearsay. Unequivocally, it has been mentioned as to why the exceptions to the hearsay rule is acceptable.²⁹ Consequently, the requirement for the evidence & the incidental possibility of reliability with adjoined value has been accountable for exemptions to the hearsay principle. Quit a few other explanations have also been developed to this end like;³⁰

- *The conditions where the genuine & precise statements would certainly be expressed without any strategy of fabrication of the same.*
- *The risk of easy finding of the falsification of the statement or the distress of penalization that will subsequently follow will dodge off the possibility of fabrication or thwart the force of happening so.*
- *The condition where the statement is produced under the circumstance of publicity that due to any fault, such a fabricated statement will possibly get spotted.*

Dying declaration being the exemption to the hearsay principle depends on the reason of deific penalty. It is therefore sufficiently evident that dying declaration envisaged u/s 32(1) of the Evidence is conceivable to be proved as an admissible evidence.³¹ Another exception which has been encompassed in the same clause is with respect to the criminal

²⁶ Gulzarilal v. State of Haryana, AIR 2016 SC 795; W. Y. Singh v. State of Manipur, AIR 2011 SC 783.

²⁷ Dandu Laxmy Reddy v. State of A.P., AIR 1999 SC 3255.

²⁸ Myers v. DDP, (1965) AC 1001; 15 HALSBURY LAWS OF INDIA 216-219 (Butterworth, Delhi 2000); R. CROSS, EVIDENCE 38 (Butterworth, London 6th ed.).

²⁹ M.C Sarkar, *supra* note 5; M. MONIR, *Supra* note 7, at 709.

³⁰ M. MONIR, *supra* note 7, at 709

³¹ *Supra* note 13; Tapinder Singh v. State of Punjab, (1970) 2 SCC 113.



law wherein the evidence evinced by the person who is neither subjugated to not provided any occasion of being interrogated by the defendant would be of no value because the place of interrogation is taken by the sobriety & inviolability of oath for the mere reason that it is very unlikely to make a forged statement by the person who is on the deathbed unless such a statement is coupled with robust evidence to adduce that the statement was obtained either by inducement or any instruction.³²

Unequivocally, several types of admissible facts under the law to prove a particular fact exists & all of these forms the part of *res gestae viz. words spoken in eagerness, mental & physical state of the declarant, statement concerning to the deceased carrying out any specific event etc*, statements made by deceased declarant (8 classes as stated under the Act), declarations made by parties to a joint venture, declarations in official records, works of reference, evidence of repute & the view of third parties.³³ Therefore, due to the importance that the character of evidence holds such statements are being accounted to prove some facts. In the words of Wigmore, the intention & the cause of the hearsay principle is the crucial factor to the exceptions to the rule which imitates the significance of the hearsay principle & the exemptions in the Evidence law.³⁴ it is also important to give certain lines regarding the validation & lucidity of hearsay principle to evince a specific fact in court of law.

Commonly, since hearsay evidence is no evidence & has no evidentiary value, it needs an authorization to validate its admissibility

within the ambit of founded & prevailing exemptions to this rule.³⁵ Hearsay evidence merely being the statement other than the statement made by the person during the time of adducing the oral evidence in the court. The principle of hearsay steps in when the concluding statement of the person is prejudiced due to the human intervention to be attested before the court of law. However, researchers staunchly are in opposition to the admissibility of this sought of evidence.³⁶ It is essential to have the rule contrary to the admissibility of hearsay principle. It is not the sacred evidence & is also not carried under an oath. The veracity & the precision of the person whose words are spoken by the other testament cannot be verified via interrogation & behaviour with regard to the witness is also vanished.³⁷ The reason behind the exclusion of admissibility of such kind of evidence is³⁸; (i) it is not the superlative evidence (ii) it is not evinced under an oath (iii) it might led to the conceivable imprecision because of recurrence (iv) the behaviour of the person adducing such an evidence cannot be seen or determined (v) truthfulness & correctness of the subject cannot be verified via cross-examination.

CAPABILITY & COMPETENCY OF RECORDING DYING DECLARATION

It hasn't been mentioned in the Act as to whom specifically the dying declaration should be directed. The declarant can make the statement literally to anyone at the time of dying, it could be *Magistrate, Public Servant, Police Officer, Doctor, Police Constable, relatives & family members, friends* or any other person. The only essentiality is that

³² *Supra* note 13.

³³ RAYMOND EMSON, EVIDENCE 154-169 (Macmillan, London 1999).

³⁴ M. MONIR, *supra* note 7, at 708.

³⁵ *Supra* note 28.

³⁶ R. v. Sharp, (1988) IWL 7 HL.

³⁷ Jepper v. R, (1952) AC 480.

³⁸ *Id*; M. MONIR, *supra* note 7.



whomsoever is recording such statement should be assured of the fit mental state of the declarant in the conditions he or she is making such a statement.³⁹ Nonetheless, the evidentiary value of such a statement will differ on the according to the statement made to the aforementioned persons. Reasonably, the dying declaration made to the Magistrate stands on the higher rung among the abovementioned lot.⁴⁰

❖ RECORDING BY THE JUDICIAL MAGISTRATE

Undisputedly, the dying declaration recorded by the Judicial Magistrate holds the utmost evidentiary value as he is the one who is well-versed with the process & technique of recording such a statement. The Magistrate is expected to be independent & impartial person who doesn't have anything to defend but just render justice.⁴¹ Not only the Judicial Magistrate but also the Executive Magistrate has the capability & competency to record the statement & the courts have to give equal weightage & trust to such a statement as it gives to the declaration recorded by the Judicial Magistrate.⁴² Because, there might be circumstances where there is an immediate necessity of recording as the declarant under the severe anguish can anytime shut his lips permanently, divesting others to listen.

❖ RECORDING BY THE POLICE OFFICER

Police being one of the strongest pillars of the Indian Justice System & the pivotal role it plays in prosecuting the offenders & taking

the necessary steps to defend the citizens of the country is considered to be the one of the most sacred & inviolable acts by them. But inopportunately, in India the police wing is not bestowed with the complete trust & is timely agonizes with the disbelief of the folks. To believe on him, he is instead expected to be present at the crime spot. Obviously, a person under the severe anguish has to be attended at the earliest by the police & they are expected to reach at the crime scene for the further investigation. The declaration recorded by the police officer is thereby taken in consideration. In one of the cases where the police head constable on getting the info about the wounded person from the hospital hurried to the spot post, he entered in the register of police, the dying statement recorded by him on obtaining the mental fitness certificate by the doctors was accounted as an admissible evidence.⁴³ Not only, the police officer or head constable but such a declaration if recorded by the sub-inspector, it will still be accounted as the admissible evidence.⁴⁴ But the same cannot be regarded as the admissible evidence if recorded without the help or in due cognizance of the Magistrate (provided there were possible chances to ensure the presence of the Magistrate, however, this shouldn't be treated as a general rule.⁴⁵ The necessary thoughtfulness & valid mental fitness certification issued by the doctor is the primary vitality to keep the high evidentiary value of the declaration intact. The statements recorded by the investigating officers can also be considered as an

³⁹ Laxman v. State of Maharashtra, AIR 2002 SC 733.

⁴⁰ Kushal Rao v. State of Bombay, AIR 1958 SC 22.

⁴¹ S.D. Koli v. State of Maharashtra, AIR 2009 SC 1059.

⁴² Ravichander v. State of Punjab, (1998) 9 SCC 338; Harijit Kumar v. State of Punjab, (1999) 6 SCC 545; K.C. Sauji v. State of Gujarat, (1999) SCC 562.

⁴³ Munna Raja v. State of MP, (1976) 2 SCR 764; Bhagirathi v. State of Haryana, AIR 1997 SC 234; State of Karnataka v. Shariff, AIR 2003 SC 1074.

⁴⁴ Gullam Husain v. State of Delhi, (2007) 7 SCC 254.

⁴⁵ Dayal Singh v. State of Maharashtra, 2000 Cr. L.J. 3265; Saheb v. State of A.P, AIR 2003 SC 1014.



admissible evidence ⁴⁶, nevertheless there exists no absolute rule. ⁴⁷

❖ RECORDING BY THE DOCTOR

Doctors recording the declaration who is completely an independent & neutral person on no occasion can be distrusted. ⁴⁸ Doctor is not only proficient to issue the mental fitness certificate but even capable of identifying the wound, curing it, following consequences & everything associated therein. In the circumstances, where the doctor realizes that the person is at the brink of failing & there is no way to cure him or her & there is no more time even to call the magistrate or the police, the doctor has all the capability & competency, in fact is responsible to record the words or statement of the declarant while dying. He is not just the reputable testament but also a fair & neutral professional in his department therefore his declaration recording is having no less evidentiary value than the declaration recorded by the Magistrate or the Police Officer & thereby should be considered as an admissible evidence. ⁴⁹

❖ RECORDING BY THE FAMILY MEMBERS

Above & beyond police, the close relatives are the ones who are in proximate relation to the declarant & encounters the dying man who is in pursuance of some consolation at this severe time. In the situation like this, any statement made by the person in close kinship with the declarant should be given a noticeable evidentiary value. But one of the

significant risks to the admissibility of this sought of evidence is the concept of prejudice to the person who has recorded the declarant's statement. There is extremely high possibility of malafying, fabricating & meddling with the statement can barely be ruled out. For this reason, the court hesitates to endorse the recording of the declaration by private person especially who is in close relationship with the deceased. In many instances, the court didn't even take into the consideration the statement made to the mother ⁵⁰ & brothers ⁵¹, considering it barely as an admissible evidence.

IDENTIFICATION VIA DYING DECLARATION (TYPES)

There is no specific type of dying declaration which is recognised or admitted by the court of law. But the declaration should be operative as an evidential piece with the appropriate credentials. The gist of the entire subject is to identify what has actually occurred, the series of events etc. ⁵² *For Instance*, is someone wounded the deceased, the gist of the incident is just *who killed that person & why*, the remaining surrounding events are the add-ons to the main event.

➤ Gestures & Signs

In one of the momentous cases, the defendant had slit the gullet of the deceased declarant & as a consequence she was incapable to utter anything, while the recording of the statement she signposted to the name of the defendant by signs & gestures of her hand.

⁴⁶ Dilip Singh v. State of Punjab, AIR 1979 SC 1173.

⁴⁷ State of Punjab v. Amarjeet Singh, AIR 1988 SC 2013.

⁴⁸ Sripatrao v. State of Maharashtra, (2000) 10 SCC 320; State of TN v. Karuppasamy, AIR 2009 SC 948.

⁴⁹ AMA Rehman v. State of Gujarat, AIR 1976 SC 1782; Suresh v. State of M.P., AIR 1987 SC 860; Gulzarilal v. State of Haryana, AIR 2016 SC 795.

⁵⁰ Baldeo Raj v. State of H.P., AIR 1980 SC 436; Arvind Singh v. State of Bihar, AIR 2001 SC 2124; State of Orissa v. Parasuram Naik, AIR 1997 SC 3569; Danddu Laxmi Reddy v. State of AP, AIR 1999 SC 3255;

⁵¹ Ramakant Mishra v. State of U.P., AIR 1982 SC 1552.

⁵² Pritam Singh v. State of U.P., 1950 AIR 169.



The court ruled that, in the circumstances like this where there is no possibility of recording the words of the declarant due to the inevitable condition of person incapable to speak, the person can very well produce the statement by employing signs & gestures in reply to the questions put forth.⁵³ The value of the signs & gestures made by the declarant would depend on who actually recorded the declaration, what sought of signs & gestures were made, what types of questionnaire was tabled (*simple or complex*) & how efficacious the understandability of the signs & gestures were.⁵⁴ In infamous, *Nirbhaya's Rape Case* as well, the dying declaration made by her was in the form of sign & gestures in response to the questions asked.

➤ **Question- Answer**

The recording of the statement should proceed in the form of *questions & answers*. In certain cases, the declarant just responded to the questions asked to her & didn't narrated the entire plot of the event or the role of the accused in the happening of the event. It was noted by the court that when the questions are asked differently, the expected answers would also differ. Prima facie, the declaration might look lacking lots of essential stuff but the statement of the declarant needs to be interpreted judiciously to cull out the admissible statement. The Question-answer form is favored when the magistrate is recording the declaration. If there is no uncertainty with the recoded statement by the person recording it *ipsissimis verbis* then such a declaration cannot be repudiated just because it is not recorded in the Questionnaire format.

➤ **Language of the Declaration**

Concerning the language of the declaration recorded, such a statement should be recorded in the native language of the declarant in which he is fluent & comfortable in speaking or in the court lingo. Such a statement cannot be declined by the court on the basis of language in which the statement is recorded & it can be recorded in any official, unofficial, vernacular or regional language. Albeit, the declaration made by the declarant is in Hindi, Urdu, English, etc. the declaration cannot be repudiated on the contention that it is not recorded in the specific language. When the declarant gives the statement in one specific language in which he or she is confident & the magistrate records it in English, in such a situation all the necessary protections should be espoused to while elucidating each & every statement to the deceased by another person. However, it would be considered as the legitimate dying declaration. In case of multiple dying declaration, recorded in two distinct lingos where the declarant is fluent in both the languages, the declaration could form the basis for the conviction of the defendant as an admissible evidence.⁵⁵

➤ **Oral & Written Declaration**

Undisputedly, the written dying declaration is considered as an admissible evidence. Along with that, an exception to general rule, the oral declaration is also counted as the admissible evidence like the verbal statement made to the close family relatives in the fit & mindful mental state.⁵⁶

⁵³ Queen-Empress v. Abdullah, (1885) ILR 7 All 385.

⁵⁴ Ulka Ram v. State of Rajasthan, Appeal (Crl.) 870 of 2000.

⁵⁵ Amar Singh Munna Singh Suryavanshi v. State of Maharashtra, Appeal (Cr.) 97 of 2006.

⁵⁶ Amar Singh v. State of Rajasthan, Appeal (Crl.) 854 of 2004.



➤ **Incomplete Declaration**

In the case where the statement recorded by the capable & competent authority is incomplete & inconclusive, it cannot be vested with any evidentiary value & therefore will be an inadmissible evidence in the court. When the declarant is in the severe condition & still desires to give the statement, which was recorded by the police & later collected by the police but couldn't be completed as prior to the completion only the declarant either slips into coma or dies, the declaration wasn't considered admissible. But if the statement being incomplete still establishes all the fundamental & essential particulars of the event & is complete in some sense then the declaration couldn't be rejected on the basis of it being incomplete & inconclusive.⁵⁷

➤ **Thumb Impression**

In cases where the declarant has sustained significant amount of burn, a dying declaration validated by the thumb impression was measured to be uncertain.

➤ **Where the Declarer Survives post making the Statement**

In the case where the declarant is on the brink of dying because of the sustenance of the grievous injury but fortunately was in a complete mental well-being while making the declaration & fortunately survives, it was ruled by the court that the deceased will now become the alive testament against the defendant to describe the actual events happened on the commission of the offence. As the primary criteria for a statement to be dying declaration is the expectation of death & consequently death ensues, if that doesn't

happen such a statement wouldn't be accounted as the dying declaration.

➤ **Absence of Medical Fitness Declaration**

This is one of the primary essentialities for the declaration reliability & admissibility. The mental fitness of the declarant while making the statement at the time of passing away ought to be prudently inspected to get away with all the qualms & concoction.⁵⁸ To assure the same, such a declaration must be corroborated with medical certificate or the statement of the doctor, in its absenteeism the admissibility of such a statement would be under dispute.⁵⁹ However, in certain cases where the person recording the statement per se is contented with the mental well-being of the declarant there the absence of the issuance of the medical certificate by the doctors doesn't impact the evidentiary value of the dying declaration.⁶⁰ The admissibility & immaculateness of the dying declaration relies on multiple factors but the condition of fit mental state of the declarant is of the supreme factor.⁶¹ Regardless of the declaration being signed or thumb impressed by the declarant, if the court have the minor doubt regarding the mental state of the declarant, such a declaration wouldn't be the basis for the conviction of the accused.⁶²

➤ **Where interested Witnesses were present with the Deceased & Declarations made to or associating Relatives**

The close relatives are the ones who are in proximate relation to the declarant & encounters the dying man who is in pursuance of some consolation at this severe

⁵⁷ Muniappan v. State of Madras, AIR 1962 SC 1252.

⁵⁸ *Supra* note 23.

⁵⁹ *Supra* note 24.

⁶⁰ *Supra* note 25.

⁶¹ *Supra* note 26.

⁶² *Supra* note 27.



time. In the situation like this, any statement made by the person in close kinship with the declarant should be given a noticeable evidentiary value. But one of the significant risks to the admissibility of this sought of evidence is the concept of bias to the person who has recorded the declarant's declaration. There is extremely high possibility of malafying, fabricating & meddling with the statement can barely be ruled out. For this reason, the court hesitates to endorse the recording of the declaration by private person especially who is in close relationship with the deceased. In many instances, the court didn't even take into the consideration the statement made to the mother⁶³ & brothers⁶⁴, considering it barely as an admissible evidence.

➤ **Where Declaration is not pertinent to the Reason of Death**

When the declarant during the declaration is not evidenced to have deceased as a consequence of the wounds received in the event, his declaration cannot be considered as an admissible statement to the reason of his death or as to any of the circumstances of dealing which consequence to his death.

➤ **Medical Report**

It has been evidently recorded by the doctor in the hospital in the maintained accident register that the patient while making the declaration was in the fit mental condition, mindful with good orientation & also responded nicely to the questions asked. The declaration cannot be repudiated on the basis of the harm inflicted to the deceased or the autopsy report stating that the deceased

couldn't be in the position to respond well or make a declaration due to the injuries sustained. Where the *medical fitness report* was made accessible to the magistrate who was responsible to record the declaration, it was stated that it was not essential for the magistrate to make an autonomous investigation as to mental fitness of the late declarant.

➤ **Doctor's Declaration**

To have more evidentiary value, it is essential that the dying statement recorded by the judicial magistrate should be authorized by the doctor as well. But there are various cases where due to the immediate non-presence of the magistrate & paucity of the time to wait for the declaration recorded by the magistrate because of the severe condition of the declarant, the doctor has all the capability & competency, in fact is responsible to record the words or statement of the declarant while dying. Doctors recording the declaration who is completely an independent & neutral person on no occasion can be distrusted.⁶⁵ He is not just the reputable testament but also a fair & neutral professional in his department therefore his declaration recording is having no less evidentiary value than the declaration recorded by the Magistrate or the Police Officer & thereby should be considered as an admissible evidence.⁶⁶

➤ **FIR as Dying Declaration**

If the injured individual filed FIR & then consequently died, the filed FIR was considered as a valid declaration & was an admissible evidence.⁶⁷

⁶³ Supra note 50.

⁶⁴ Supra note 51.

⁶⁵ Supra note 48.

⁶⁶ Supra note 49.

⁶⁷ K.R. Reddy v. Public Prosecutor, (1976) AIR 1994.



➤ **Dowry Death**

In the case where couple of months post marriage, the wife is set ablaze by her husband or in-laws for the demand of dowry or any other pecuniary demand. Regarding this, if the wife is exhibiting the risk or apprehension of threat to her life expressing the conditions which resulted in her death. But when there exists the dichotomy in the declaration made by the declarant, it would give birth to the assumption of distrust & diminishes its evidentiary value like the wife in order to accuse the husband & her in-laws set ablaze on her own & gave the statement accusing her husband but later found by the police that it is the woman herself who is the real culprit. Such a declaration would be discarded on the basis of it being fib & concocted & cannot be established as the basis for the conviction of the accused.

RECENT JUDICIAL OUTLOOK

✦ **MULTIPLE DYING DECLARATIONS**

When there exists are more than one declaration of the same person, all such declarations have to be read in consortium as one for the apt evidentiary value of the statement, if such statements rendered by the same person differs from each-other on the material facets, an attempt must be made for the possibility of reconciliation the court has to ensure its consideration in its most efficacious & accurate manner & should be contented as to which amid those statements imitates the most accurate & precise circumstances. In case, where such statement seems to be unreliable, the court has to resort to other evidences if available as it is unreasonable to consider such a statement & convict the guilty on the basis of it. ⁶⁸

In *Sayarabano Sultana Begum v. State of Maharashtra* ⁶⁹, the two declarations have been recorded according to the first dying declaration recorded, the deceased was hit by the hurricane lamp which fell on the deceased's body & she was set ablaze as a consequence of this accident she died. But according to the second dying declaration which was recorded by the Magistrate, she changed her statement stating that her mother-in-law had asked her to not speak anything against her family members. In actuality, it was deceased's mom-in-law only who threw the hurricane lamp on the deceased leading to the death as the effect of this accident. Further, in the second statement she also explicitly stated that she was being distraught by her mother-in-law. In this case, the court ruled that the second dying declaration would stand as it is voluntary, veracious & without any falsification. The maltreatment with the deceased could be evidently determined & totally proved on the testament of the other witnesses. ⁷⁰

In another case where there were three dying declarations were recorded, the third declaration was considered to be conclusive & as an admissible evidence as it was true & accurate along with being consistent with the second declaration & not the first declaration which was recorded impromptu subsequent to the admission of the deceased in the hospital as it was involuntary & tutored & was recorded under the threat & coercion. ⁷¹ Nevertheless, the court could cast-off even if the multiple declarations if it is not satisfied with the veracity of any of it & there is no other evidence available to sustain the same

⁶⁸ Lella Srinivasa Rao v. State of A.P., (2004) 9 SCC 713.

⁶⁹ (2007) 12 SCC 562.

⁷⁰ Lakhan v. State of MP, (2010) 8 SCC 514.

⁷¹ Sher Singh v. State of Punjab, AIR 2008 SC 1426.



as the accused cannot be held guilty on the basis of frail & unreasonable evidence.⁷²

✧ SEVERABILITY OF DYING DECLARATIONS

Where the part of the dying declaration which the court believes is not accurate & is doubtful & cannot be cut off from the whole of the declaration because of its inextricable association, the court very well can repudiate the admissibility of whole declaration. Nonetheless, there are certain cases, where the portions of the dying declaration are severable & the accuracy & veracity of one of the portions is not interdependent on the other imprecise portion. Such a declaration having a part of which is, such a declaration wouldn't be taken in account until & unless it is backed by an additional evidence which is true & holding high evidentiary value. If the supplementary evidences establish that such part of the dying statement is correct & reliable, the court can take that portion of the declaration as well as an admissible evidence. However, the court can very well act on another accurate portion regardless of existence of the unreliable part in the same declaration.⁷³ In the aforementioned case, where the deceased declarant recorded her statement of her being maltreated & set ablaze by her in-laws, the SC ruled that severability of the dying declarations is quite not possible since there is no clear cut demarcation made in the character of any of the defendants & they all have been assorted together concerning the abuse & burning of the deceased declarant & therefore the declaration was repudiated in toto.⁷⁴

DIFFERENTIATING DYING DECLARATION FROM DYING DEPOSITION DYING DECLARATION

- ✧ *There is no administration of oath.*
- ✧ *The cross-questioning is not permitted.*
- ✧ *Any person who is capable & competent can record the dying statement viz. Magistrate, Police Officer, Doctor Family Members etc.*
- ✧ *It is applicable to whole of India.*
- ✧ *The evidentiary value is quite less.*
- ✧ *For Instance: A (deceased) had made the declaration to his father that he consumed the poison due to the heartbreak & this was communicated by the father to the police. It was claimed by the father & further established by the post-mortem report that the A was mentally fit & mindful at the time of making this statement. On the police investigation, that it is true & accurate that he suffered the heartbreak & therefore as a consequence he committed suicide. Thusly, the statement here recorded by the family member was considered complete & conclusive admissible evidence in the court.*

DYING DEPOSITION

- ✧ *There is administration of oath & it is a significant factor.*
- ✧ *The cross-questioning of the testament by the attorney is permitted.*
- ✧ *Any person who is capable & competent can record the dying declaration viz. Magistrate, Police Officer, Doctor Family Members etc. but it should be in the presence of the defendant or the defense lawyer.*
- ✧ *There is no such provision exists in India.*
- ✧ *The evidentiary value is comparatively greater than that of the dying declaration.*
- ✧ *For Instance: X, a woman was burnt alive by her father-in-law & was subsequently rushed to the hospital by the neighbour. The police*

⁷² State of A.P. v. P. Khaja Hussain, (2009) 15 SCC 120.

⁷³ Godhu v. State of Rajasthan, (1975) 3 SCC 241.

⁷⁴ Jumni v. State of Haryana, Appeal (Cr.) 1159 of 2005.



on recording of the statement was informed about the incapacity of the declarant to answer the questions. After couple of days, on improved state of X to record the statement, the statement was *recorded by the magistrate in the presence of the defence lawyer*. It was considered complete & conclusive admissible evidence in the court.

EVIDENTIARY VALUE OF DYING DECLARATION

Dying Declaration is to be vested with great evidentiary value. It may form the only basis for the conviction of a person without the essentiality of any independent substantiation. It is a relevant part of evidence if found to be veracious & precise. Nevertheless, the court have to satisfy the character of the dying declaration of nature as to stimulate complete assurance in the court of law regarding its accuracy. The courts need to be assured that such a statement is not obtained either by inducement or any instruction. In addition, the court also needs to ensure that the declarant whole making such statement was in a fit mental state & had the clear & unobstructed chance of observing & identifying the assailants. Once the court is fully contented that the declaration made by the declarant is completely accurate & made wholly voluntarily & impromptu without under the influence of any coercion or tutoring, it can base its conviction solely on this without the need of any additional proof. The evidentiary value of the dying declaration is opined by the court in *K.R. Reddy v. Public Prosecutor*⁷⁵, undoubtedly dying declaration is admissible under Section

32(1) of the Evidence Act & the declarant isn't obligated to administer the oath while delivering the statement however, the veracity in question in absence of oath could be settled by cross examination. The court has to necessarily espouse every possible step to validate the accuracy of the statement made by the declarant. We know that, under the Indian Jurisprudence it is believed that the person at his or her deathbed is unlikely to lie when he or she is about to meet his or her maker i.e. God because at the time of approaching death, the wants & gluttony of the dying man comes to an end & therefore possibly there is no reason or purpose to fib.⁷⁶ Subsequently, the court obviously mustn't rely blindly on this aspect & should be contented with the circumstance that the declarant while making such a statement was mentally fit. Post all the necessary steps are employed & ensured by the court that the statement completely accurate & made it wholly voluntarily & impromptu without under the influence of any coercion or tutoring, the statement should be free & spontaneous⁷⁷, as this statement would be adequately enough to approve the admissibility of the relevant evidence without any sought of supplementary evidence.

Certain principles with regard to the dying declaration has been set out in *Kushal Rao v. State of Bombay*⁷⁸

✎ *There exists no unqualified rule of law that the dying declaration under Section 32(1) couldn't be considered as the only basis of conviction without the aid of any further*

⁷⁵ *Supra* note 67.

⁷⁶ *Supra* note 54.

⁷⁷ *Krishna Lal v. Jagun Nath*, AIR 1958 SC 22.

⁷⁸ *Supra* note 40; *U.P. v. R.S. Yadav*, AIR 1985 SC 416; *Padmaben Shamalbai Patel v. State of Gujarat*,

(1991) 1 SCC 744; *State of Orissa v. B. Singh*, (1996) 2 SCC 194; *Jaikaran v. State of Delhi*, AIR 1999 SC 3512; *L.N. Yadav v. Shivjee Yadav*, (1999) 6 SCC 63; *Atbir v. Govt. of NCT Delhi*, (2010) 9 SCC 1.



evidence. A veracious & intended declaration made by the declarant needn't be backed by any other proof.

- ☞ *The Dying Statement is vested with great evidentiary value & is not placed on any lower rung amid the other types of evidence.*
- ☞ *Every case must be decided based on the facts, it should work on case to case basis taking in account the conditions in which the dying declaration was made by the declarant.*
- ☞ *Dying Statement & other all kinds of evidences are on the same plane & had to be determined considering the encompassing situations with due regard to the principles governing the evidentiary value of the dying declaration.*
- ☞ *Dying Statement adduced by the deceased ought to be recorded by the capable & competent authority viz. Magistrate in the appropriate way. To put it simply, it can be done in the manner of questions & answers & to the extent it is possible in the words spoken by the declarant on the death bed as it is considered on the higher stature than the dying declaration which relies on the oral evidence which might endure the frailness of human retention & nature.*

CRITICISM TO DYING DECLARATION

The reliability of dying declaration have always remain disputed since the beginning of the 19th century. The Wisconsin SC taken in account the principle of dying declaration in one of the cases where the defense accentuated on the fact that this sought of evidence could be easily manipulated & isn't regarded with favor. It was contended by the defense that there exist multiple factors which could possibly weaken the credibility & integrity of dying declaration.

Any physical or mental infirmity resulting in the death, a want of self-exoneration to ascribe the accountability for an offence on another along with the fact that statements are produced in the absence of the defendant & frequently in retaliation to the moot questions & direct proposals & with no occasion for interrogation, taking cognizance of all these factors such declaration could be proved to be risky & might be violable to justice.

EXCEPTIONS TO DYING DECLARATION

- ☞ There are various conditions under which the dying declaration is not considered as an admissible evidence in the court like,
 - ☞ If the reason for the death of the deceased declarant is undisputed. If any statement is made by the declarant prior to his death except the statement concerning the cause of his death such a declaration wouldn't be an admissible evidence.
 - ☞ If the declarant is the incapable & incompetent viz. child, then such a declaration wouldn't be an admissible evidence. Without ensuring the mental & physical well-being, the dying declaration couldn't be relied upon.⁷⁹
 - ☞ The varying dying declaration lacks evidentiary value & such a declaration wouldn't be an admissible evidence.
 - ☞ The declaration rendered by the declarant should be voluntary & impromptu, free from any kind of coercion, if not so such a declaration wouldn't be an admissible evidence.
 - ☞ Such a declaration should be made freely & spontaneously, if not so such a declaration wouldn't be an admissible evidence.
 - ☞ The court is enabling to repudiate any statement which is felt to be fallacious &

⁷⁹ Amar Singh v. State of M.P., (1996) Cr LJ (MP) 158.



incorrect, as such a declaration wouldn't be an admissible evidence.

- ⊗ The declaration should be complete & conclusive. the incomplete or half-baked statement not answering the pertinent disputed questions like as to the reason of the death, essential to determine guiltiness, etc., such a declaration wouldn't be an admissible evidence.
- ⊗ Doctor's view & the medical certificate issue by them should clearly establish that the deceased declarant was mentally fit & competent to give such a statement, otherwise such a declaration wouldn't be an admissible evidence.
- ⊗ If the declaration is not in line with the prosecution & the two differs, certain points should be taken in account like, (i) *the mental fitness of the deceased declarant at the time of making such a statement;* (ii) *the declaration should be recorded by the capable & competent authority like Magistrate or a Police Officer etc.;* (iii) *the declaration should be recorded in the form of Question-answer & should be jotted down in words exactly spoken by the deceased declarant.*

PRINCIPLES GOVERNING DYING DECLARATION

- The court has established certain governing principles of dying declaration, summarized⁸⁰
- There is no established rule of law nor any providence that dying declaration can't be taken in as an admissible evidence without any additional proof.⁸¹

⁸⁰ Atbir v. Government of NCT of Delhi, Appeal (Crl.) 870 of 2006.

⁸¹ Mannu Raja v. State of M.P., (1976) 2 SCR 764.

⁸² State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416.

⁸³ Ram Chandra Reddy v. Public Prosecutor, AIR 1976 SC 1994.

→ Once the court is fully contented that the declaration made by the declarant is completely accurate & made solely voluntarily & impromptu without under the influence of any coercion or tutoring, it can base its conviction solely on this without the need of any supplementary evidence.⁸²

→ The courts need to be assured that such a statement is not obtained either by inducement or any instruction. In addition, the court also needs to ensure that the declarant whole making such statement was in a fit mental state & had the clear & unobstructed chance of observing & identifying the assailants.⁸³

→ Where the dying declaration is quite dubious, it shouldn't be counted in as the admissible evidence without taking in any additional proof.⁸⁴

→ Where the deceased declarant was insentient & wasn't in the state of making any sought of statement, the admissibility concerning such statement is repudiated.⁸⁵

→ An infirm dying declaration cannot form the foundation for conviction.⁸⁶

→ A dying declaration shouldn't be disallowed only on the absenteeism of the particulars about the happening of the event. It is considered to be a fleeting statement & shouldn't be cast-off.⁸⁷ On the flip side, the shortness of such declaration per se manifests the veracity of the statement made.⁸⁸

→ Usually, to determine the fit mental state of the declarant the takes recourse to the medical opinion. But in the cases wherein the witness has avowed for the well mental state of the deceased declarant to make such a

⁸⁴ Rasheed Beg v. State of M.P., (1974) 4 SCC 264.

⁸⁵ Kake Singh v. State of Madhya Pradesh, AIR 1982 SC 1021.

⁸⁶ Ram Manorath v. State of U.P., 1981 SCC (Crl.) 531.

⁸⁷ *Supra* note 16.

⁸⁸ *Supra* note 17.



declaration, the medical stand will not exist.
89

- If the declarant posts the happening of the event remains alive for a reasonable period of time & died subsequently to the recording of the declaration, it may be established that the declarant's condition wasn't clearly serious or perilous when such statement was logged.
90
- Where the form of the prosecution & that present in the dying declaration differs, such a declaration cannot be accounted as an admissible evidence.⁹¹
- When there exists are more than one declaration of the same person, all such declarations have to be read in consortium as one for the apt evidentiary value of the statement, if such statements rendered by the same person differs from each-other on the material facets, an attempt must be made for the possibility of reconciliation the court has to ensure its consideration in its most efficacious & accurate manner & should be contented as to which amid those statements imitates the most accurate & precise circumstances. In case, where such statement seems to be unreliable, the court has to resort to other evidences if available as it is unreasonable to consider such a statement & convict the guilty on the basis of it.⁹²

evidence piece. It is completely alright to cast-off a portion of dying declaration if it is found to be fallacious & if it can be parted. All the hospitals should have their normal dying declaration perfunctory, for the purpose of recording the statements precisely therein. The objective behind this is, not a single information will be lost & the process will be logged in an idyllic manner. Utmost faults in dying declaration are due to dearth of knowledge amid police officers, which could be diminished by providing them apt training. The court has to enumerate suitable guiding principle for recording dying declaration by clearly defining ambiguous areas. This will advance the cogency & consistency of the declaration to a much greater extent".

CONCLUDING THE PERSPECTIVE WITH SUGGESTIONS

Dying Declaration is a vital & significant declaration logged as it is the last statement noted of the departed person. It plays a vital role while the delivery of justice. Whenever dying declaration is to be recorded it should be done very prudently borne in mind the sanctity which the courts attribute to this

⁸⁹ Nanhau Ram and another v. State of M.P., AIR 1988 SC 912.

⁹⁰ Munnawar v. State of U.P., (2010) 5 SCC 451.

⁹¹ State U.P. vs. Madan Mohan, AIR 1989 SC 1519.

⁹² Lella Srinivasa Rao v. State of A.P., (2004) 9 SCC 713.