

WHEN THERE ARE CONTRADICTORY DYING DECLARATIONS, WHICH ONE TO ACCEPT?

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Abstract

The researcher has researched on the topic of dying declaration mentioned in Indian Evidence Act, 1872 under section 32(1). The word dying declaration means a statement given by a person for the cause of his death before dying. The main purpose of this research is to find what happens if there are two dying declarations given which are contrary in nature and which one is suitable as per the facts of the case and different scenarios mentioned in the running court. The researcher has also given a detailed study on different forms of dying declaration and which one is more evidently admissible in the court of law, and which one is not at all admissible in the court. A dying declaration is most trustworthy and credible source of information in the court as those people who know they are going to die would never lie under those circumstances, for which their reliability increases a lot. If the person who has hope to be saved and does get saved from death, their statement would not be admissible in the court. A person who is admitting in court must be competent at the time they are making the statement, or else it will not be admitted in the court of law. There are different cases which gives different aspect of admission of record before death. The researcher has given its full analytical study on contradiction of the same dying declaration and the criteria which makes which one to admitted in the court of law.

Keywords: Dying Declaration, Indian Evidence Act, admission, reliability, court of law.

Introduction

In layman language dying declaration means when a statement is made by a person stating in his own favour and it is being admitted in the court without putting any doubt in the statement is termed as dying declaration. The dying declaration concept in India was introduced by the English law, and has made it a part of evidence law which is mentioned in section 32(1) of Indian Evidence Act, 1872¹. Dying declaration is the statement made by a person while in the course of death and is stating his reason for his death by whom it is caused so. The reason for dying declaration to be admitted in the court so easily because it is said to be that the person who thinks is gonna die would never lie, it is based on the principle of ‘Nemo moriturns proesumitur mentiri’ (man will not make his maker with a lie in his mouth). There are many types of dying declaration and can be recorded in oral, written and gesture form, mainly it is much easy to prove when it is in written form to prove in front of the court.

Research Objective

- To ascertain when there are contrary dying declaration recorded by same position of magistrate which one to select
- To ascertain how much value is taken for both the dying declaration if made in same physical and psychological fitness being fit

Research Questions

- Whether Dying Declaration be sole basis of conviction?
- Whether more than one dying declaration be recorded?

Hypothesis Of Research

The normality of court in our day to day life accept the dying declaration as a sole basis of conviction and also said by the supreme court, if it is reliable and trustworthy no corroboration is required either². The dying declaration should not be recorded more than once, when recorded one time it should meet the criteria for fitting the dying declaration to be without any sort of malice or being hampered by any other party.

Method Of Research

The research is primarily doctrinal research. Here the data collection is necessarily secondary type which is taken up by law journals, commentaries, e-sources for the purpose of study.

A brief of dying declaration with types admissible in our court system

Dying declaration was brought from a Latin maxim 'Nemo moriturns proesumitur mentiri' (man will not make his maker with a lie in his mouth). It is taken into account that a person before dying won't lie at any cost and would definitely tell the truth in the last moment of their life. There are many forms of dying declaration which is recorded in the courts of law, mainly in India dying declaration can be recognized in six types which are in the form of oral, written, gesture & sign, thumb impression, incomplete dying declaration and last one in the form of question answer. Oral dying declaration which is reliable as well as trust worthy and not controverted by defense is admissible as an evidence as per the Gujarat high court³. Oral dying declaration is also admitted in the court of law and it is suggested mostly that to convert the oral evidence in the written form by magistrate to make it more reliable in the decision making. Written dying declaration is the basic Latin phrase of the dying declaration and nothing new to be framed out of this phrase, it is in written form and it can be recorded by magistrate or police officer or doctor in writing if the person is not in the condition to write anything but can state who did the cause of his death. Gesture and sign dying declaration which made the whole change in the criminal amendment act 2013, in the case of Nirbhaya rape case the evidence were recorded by using the gesture and sign form of dying declaration which was the third dying declaration recorded mostly in gesture form, the first and second dying declaration were recorded in the written form but even after that third one which is in gesture form was also accepted by the court of law. Incomplete dying declaration which is itself stating that it is in incomplete form which is not admissible in the court of law, in certain cases when the victim wants to record his statement and before being recorded goes into the state where it is not at all possible to record his statement in any form of dying declaration is called as incomplete dying declaration. The thumb impression is simply using the thumb expression to record the evidence. The question answer form of dying declaration it is the most generally used by the magistrate to put question in front of the victim and it is being answered by them.

When there are contrary dying declaration which one to accept?

It is the most difficult question which was answered by the Supreme Court in the most atrocious way on 16th August 2022 in the judgement of Makhan Singh vs the State of Haryana. The Supreme Court in this judgement stated, if there are multiple dying declaration and there existed any sort of inconsistency between them, then the dying declaration recorded by a higher officer like judicial magistrate first class would be relied upon. There was still a condition with this situation that there were no circumstances giving rise to the doubt of its truthfulness. Which itself sounds so illogical, whether a dying declaration be admitted in the court of law just because it is recorded by the higher authority than the lower one. There were many other circumstances explained by the court to which dying declaration could be admitted in the court of law, one of them being when a dying declaration is truthful and reliable, when it was recorded of the deceased person was fit physically and mentally and without any distress/prompting /tutoring, which makes the dying declaration to be the sole basis of conviction and if it is found to be reliable and trustworthy no corroboration is required as well. These were the two circumstances which were mainly focused by the court and the recording of statements under these conditions are not suitable in every condition. The reliability of the dying declaration if there are multiple one cannot be decided by the fact that if recorded by the higher authority would guarantee a chance of it being true and correct. It was also in the second circumstances where the sole basis for recording conviction it is not required to be corroborated. The court noted that there were two dying declarations, both completely inconsistent and contradictory to one another which had been recorded by judicial magistrates in the present case. However, it was found that while the first declaration was filed after the deceased was examined by a doctor to ensure that she was in a fit state of mind and conscious to make the statement; and was also endorsed by the doctor examining her, the same was not the case with the second declaration. The court noted that there were two dying

declarations, both completely inconsistent and contradictory to one another which had been recorded by judicial magistrates in the present case. The second declaration, on the other hand, it wasn't submitted after the deceased was evaluated by a doctor to make sure that she was of sound mind and conscious enough to make the statement. The first declaration, on the other hand, was filed after the deceased was examined by a doctor to make sure that she was of sound mind and conscious enough to make the statement.

The second declaration was recorded without a doctor's opinion as to the health status of the deceased. Further, the father and the sister of the deceased were present in the hospital during the recording of the second declaration. Thus, the court stated that the possibility of the second dying declaration being given after tutoring by the deceased's relatives could not be ruled out. In light of these facts and circumstances, the court concluded that the first dying declaration should be regarded as more trustworthy and dependable than the second one. The court added the following: In addition, it should be emphasized that the trial court cleared the appellant's mother and father by granting the benefit of the doubt based on the very same evidence. According to that interpretation, it was wrong, in our opinion, to condemn the appellant using the exact same evidence. Given that the evidence against all three accused was 100% identical, the current appellant should have received the same benefit of the doubt that the other accused received from the trial court. Thus, the appellant was cleared of all allegations.

Dying declaration a broken tool in wrong hands

Dying declaration is considered to be a broken tool which in mere sense means is not just true but is very derogatory for the society. The wife's dying declaration can be used to prove cruelty even if husband is acquitted of charges relating to death as per the supreme court in the matter of *Surendran vs State of Kerala*⁴. In reality it also depends on case to case whether the evidence goes connecting with the fact that it is the husband who committed 498 A of Indian penal code, 1860. This statement by the supreme court in this matter does overrule a lot of previous other judgments which considered the ground of cruelty to be removed if proved that the cause of death was not the husband in any form and acquitted. This condition if used by the family members of the wife who could be killed by any other reason can use this tool as source to make the husband suffer immeasurably without any law and order to stop harassing the husband who have just lost his wife. The tool which has the power to mend the society or if used in ill-manner could harm the lot in a society which would have a long effect with no laws to make the defend available as there is no such laws which would go against the dying declaration for cruelty of woman in the Indian society. The Kerala High Court's decision, which had overturned the concurrent conviction findings of the courts below and cleared the appellant under Section 304B of the Indian Penal Code while upholding his conviction under Section 498A, was upheld by the panel made up of Chief Justice of India NV Ramana, Justice AS Bopanna, and Hima Kohli. The appellant made the following two arguments before the Supreme Court: (1) that Section 32(1) of the Indian Evidence Act, 1872 does not apply to the suicide note and other statements made by the deceased, preventing the Court from using them as evidence to convict him under Section 498A of the IPC (citing *Gananath Pattnaik v. State of Orissa*, (2002) 2 SCC 619) Secondly, the testimony of PW-3 (the deceased's mother) is inconclusive and cannot be used to condemn the appellant. Because of this, it was argued that Section 498A of the IPC could not be used to condemn the appellant. The State argued that there is enough evidence on file to establish a strong case for convicting the appellant under Section 498A of the IPC in opposition to this appeal. The court remarked, referring to the decision cited by the accused's counsel, as well as the judgements in *Inderpal v. State of MP*, (2001) 10 SCC 736, *Bhairon Singh v. State of Madhya Pradesh*, (2009) 13 SCC 80, and *Kantilal Martaji Pandor v. State of Gujarat*, (2013) 8 SCC 781.

What is the evidentiary value of dying declaration in our court of law

As per the Indian court room system there are conditions which satisfies the fact that why it is in our culture to accept the dying declaration and what evidentiary value does it hold to give justice in our

society to the public at large. First factor is that there is no statute or law which states that it cannot be the sole basis of conviction unless it is corroborated. Second factor is that dying declaration is not a weaker sort of evidence it does hold value as per section 32(1) of Indian Evidence Act, 1872. Dying declaration if is in written form holds much more value than the one in the oral form, it is also stated by the scholars and judges that dying declaration is not any sort of weaker evidence just because the person who has given its statement is dead. There is also no question which can be raised in our society in today's time to question the section 32(1) of Indian Evidence act, 1872 validity in our timeline, but yet it has stacked up many drawbacks which even if answered by supreme court does mark a question of reliability to the core of justice. The Latin phrase is the only base which was holding the value which is no man would meet his maker with a lie in his mouth, the evidentiary value is there attached with a string, its not true that the value of it just through a Latin phrase is wrong but if a persons life interest is depended on it then it does hold a lot of value than any other opinion of this world. There are conditions where the evidentiary value of dying declaration is not at all admissible at all, the deceased before being declared dead states everything other than the reason of his death is not admissible in the court of law. There arises a situation where a person is stating the cause of another persons death while himself being in the stage of his last breath would not be admissible in his own case at all.

Exceptions in dying declaration which proofs Indian judiciary to remove dying declaration from our country

There are many cases which makes the part that dying declaration needs to be abstained from the act, as per the research if the victim is stating something which is not at all the cause of the death it will not be admitted either in the court of law and nor under the evidence. There is a case where the declaration by a child is not admissible in the court⁵, it is such conditions which needs to be seen under the adherence of the fact which are different in case to case but such exception if taken under landmark judgments then it is needed to be administered by other courts as well which is not suitable to just a mere reason of the child to be not fit physically and mentally. There are also certain statements made by the victim which under the fear of death sounds inconsistent with the case so they must not be admitted anywhere in the evidence. If the declaration is felt to be made under the pressure by any other person and if it is not spontaneous then it should not be admitted in the court, the pressure of another person while dying is stated in many inferences and is something which is stated to be true in natural circumstances where people under the fear of death made to do obscene acts which they do not do willingly. There are many exceptions stated which are simply going against the process of the 32(1) of evidence act, 1872 which if stated in simpler terms means that the process of recording the statement and conditions of dying declaration must be true and not raising any red flag for which it would not be recognized in the court of law. The state of human being put in fear of any one or more than one family member of his would be killed if he states anything for the cause of his death, before his last breath the person won't state anything other than a lie in his mouth. There is no fun to remove a very important part of our evidence act which do hold a value but to some extent also creates a lot of confusion in the court rooms for their validity which to is changed with more prior conditions which is not suitable in every other case for which over-ruling is the prime option seen by the judges to satisfy the case.

Conclusion

It is stated that dying declaration in certain scenarios must not be accepted at all which in aspect of justice could be true if there is any error or any mistake in the dying declaration or anything which goes in the direction of south for the main purpose of dying declaration. The dying declaration if is harming the basic integrity of justice in every matter of our country, for which the definite solution would be to remove it totally from the base of our statutes which could be done but at the end it doesn't impact like this in every case for which is is necessary to over-rule the older judgments with similar facts with a little twist and turns in between, the court of law made it to the case till it can be proved with the proofs which just either need to be corroborated or just attach to the missing piece of the case. The court marks the dying declaration to be admissible in the court of law and have given conditions

which are not at all admissible in the court of law now it is the duty of judges to see whether they are admissible or not and whether even considered as a dying declaration or not as once again stating “it is one of the most crucial pieces of evidence that may be used in court is a deathbed declaration since it might be the only justification for an accuser's conviction”. Therefore, everything should be meticulously recorded using every step that the court has specified. Nobody should meddle with it in any way. If the deathbed declaration is not full, the court will very certainly reject it. The court has the option to determine whether or not the dying declaration was carefully documented.

References:-

1. <https://blog.ipleaders.in/admissibility-dying-declaration/#:~:text=If%20declarant%20does%20not%20die&text=If%20the%20declarant%20does%20not,t%20lie%20just%20before%20dying>.
2. <https://www.livelaw.in/top-stories/contradictory-dying-declarations-supreme-court-206663#:~:text=In%20a%20case%20of%20conflicting,the%20fitness%20of%20the%20deceased>.
3. <https://indiankanoon.org/docfragment/189013988/?formInput=two%20contradictory%20dying%20declarations>.
<https://www.livelaw.in/top-stories/supreme-court-dying-declaration-cruelty-498a-304b-ipc-surendran-vs-state-of-kerala-2022-livelaw-sc-482-199060>.