



DYING DECLARATIONS UNDER THE BHARATIYA SAKSHYA ADHINIYAM 2023

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ABSTRACT

The law relating to what a person says when he or she is dying is included in the list of exemptions from the general rule that we do not accept hearsay evidence. The Bharatiya Sakshya Adhiniyam, 2023, has a section, which is Section 26, which is very similar to Section 32 of the Indian Evidence Act, 1872, which states that the courts can take into consideration the statements made by people who are not in a position to come to the courts as witnesses, especially when the death of the person is in dispute. This article looks at what this idea's really about how it is different, from when someone gives a statement as they are dying how useful it is when someone has said something many times, when it is not allowed to be used and how the courts are changing their approach to make sure the person accused is treated fairly while still using these statements to figure out what really happened with the Indian courts and the rules they have made for the doctrine. The rationale behind the law relating to the dying declaration is that it is necessary, and people tell the truth when they are dying, which is a saying that people who are dying do not lie.

INTRODUCTION

The dying declaration law is very important in law. Indian courts have worked on the rules for what can be used as evidence over time. They have made these rules clearer for things like how reliable something is when someone says something more than once, what the police write down, and the limits of a specific idea. The law of evidence does not allow hearsay because the person who made the statement is not there to answer questions. The Bharatiya Sakshya Adhiniyam, 2023, Section 26, says we can use statements made by people who are dead or cannot give evidence for some other reason. Among the categories recognised under this provision, the dying declaration occupies a central place. It becomes relevant when the statement relates to the cause of death or the circumstances of the transaction resulting in death. Indian law is different from common law. Indian

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law does not say that someone has to think they are going to die for their statement to be used in court. Indian law looks at how relevant the statements are to the cause of death, not at whether the person thought they were going to die.

STATEMENTS OF PERSONS WHO CANNOT BE CALLED AS WITNESSES - DYING DECLARATION

Section 26 of the Bharatiya Sakshya Adhiniyam¹, 2023 corresponds to Section 32 of the Indian Evidence Act, 1872. This provision deals with the relevance of statements made by persons who cannot be called as witnesses. It is an exception to the general rule against hearsay evidence. Normally, hearsay evidence is inadmissible because the maker of the statement is not present in court for cross-examination. However, under this provision, such statements become relevant when the person who made the statement:

- Is dead;
- Cannot be found;
- Is incapable of giving evidence due to physical or mental illness; or
- Cannot be produced in court without unreasonable delay or expense.

These statements are considered relevant in certain situations, especially in cases involving dying declarations, where the maker of the statement cannot appear before the court to testify.

Section 26(a): Dying Declaration: Maxim and Legal Principle –

The principle behind a dying declaration is based on the Latin maxim: *Nemo moriturus praesumitur mentiri*, meaning “a person who is about to die is not presumed to lie.”

The law assumes that when a person is facing death, the person will speak the truth, as there is no motive to falsely implicate another person.

The statement must relate to:

- The cause of death,
- or the reason for injury or illness,
- or the circumstances of the transaction which resulted in death.
- This includes the description of the *modus operandi* of the injury or the events leading to death.

Pakala Narayana Swami v Emperor: A letter stated by the deceased to his wife explaining that he was going to meet the accused was considered as forming part of the circumstances which resulted in his death. The Privy Council held that the expression “circumstances of the transaction” includes statements which have a proximate relation to the actual occurrence of death. It is not necessary that the statement must directly state the exact cause of death; it is sufficient if it explains the circumstances that resulted in death.

- The statement can be used only when the cause of death of the declarant is in question.
- A dying declaration is an exception to hearsay evidence and does not require direct oral testimony.
- Importantly, the expectation of death is not necessary. Even statements made without anticipating death can qualify as dying declarations.

NATURE OF PROCEEDINGS WHERE DYING DECLARATION IS RELEVANT

A dying declaration is relevant in:

- Criminal proceedings (murder, suicide, abetment, etc.);
- Civil proceedings (such as disputes relating to wills or succession);
- Any judicial proceeding where the cause of death is in question.
- A dying declaration recorded by a Magistrate has higher evidentiary value. However, a dying declaration recorded by a police officer may also be valid in emergencies.

CONCEPT BEHIND RELEVANCY AND ADMISSIBILITY OF DYING DECLARATION

A dying declaration is substantive evidence and can form the sole basis of conviction if found reliable.

Shakunthala v State of Haryana: The concept behind the relevancy and admissibility of a dying declaration is based on the psychological condition of the person making the statement. The court presumed that the person making the dying declaration would not lie, considering the seriousness of the situation. The dying declaration was treated as substantive evidence and relied upon by the court. Since the declarant is not available for cross-examination, courts must exercise caution while evaluating dying declarations.

State of Gujarat v Jagraj Bhai: The Supreme Court held that judges must be extremely careful while appreciating dying declarations because the maker of the declaration is not

available for cross-examination. The court must examine the declaration carefully and cautiously. Since a dying declaration creates greater difficulty for the accused, it must be scrutinised carefully before relying upon it.

Ugen Sherpa v State of Sikkim: The court held that a dying declaration recorded by the police may be relied upon if it is found truthful. However, if the police officer had sufficient time to produce the declarant before a magistrate and failed to do so, the reliability of the dying declaration may be questioned.

Evidentiary Value of Dying Declaration –

A dying declaration has high evidentiary value if:

- It is properly recorded;
- It is voluntary;
- It is truthful and reliable.
- However, generally, eyewitness testimony has higher evidentiary value because cross-examination is possible.
- A dying declaration can form the sole basis of conviction if found trustworthy.

Strength and Credibility of Dying Declaration –

- Any person can record a dying declaration, but it has higher evidentiary value if recorded by a Magistrate.
- Dying declaration must: Be recorded in exact words; Be recorded as soon as possible after the incident; Preferably be in question-answer format. Failure to videograph a dying declaration is not fatal.
- Videography is only a precautionary measure and not a legal requirement.

Ravi Kumar v State of Tamil Nadu: The Supreme Court held that the essence of a dying declaration lies in its consistency. If the declaration has not changed and remains consistent, it strengthens its validity. The credibility depends on the exact words used by the declarant. The dying declaration must be recorded in the exact words in which it was made.

Mukesh v State (NCT of Delhi): The Supreme Court held that videography of a dying declaration is not mandatory. Failure to record a dying declaration through videography is not fatal to the prosecution's case.

Conditions for Admissibility of Dying Declaration

- The Declarant must be Dead.
- The declarant must be dead for Section 26(a) to apply. If the person survives, the statement cannot be treated as a dying declaration.
- If the declarant survives, the statement may be used only:
 - For contradiction;
 - For corroboration;
 - To impeach credibility.
- The death of the declarant is essential to give the statement evidentiary value.

Statement Must Relate to Cause of Death or Circumstances of Transaction –

The statement must relate to:

- Cause of death, or
- Circumstances of the transaction resulting in death.
- Expectation of death is not required.

In **Pakala Narayana Swami v Emperor**, the Privy Council clarified that circumstances must have a proximate relation to death.

Kans Raj v State of Punjab: The Supreme Court held that a dying declaration applies not only in cases of homicide but also in cases of suicide. Statements made by a person who later commits suicide can also be treated as dying declarations if they relate to the cause or

Injuries Must Have Caused the Death: There must be clear proof that the injuries mentioned in the declaration caused death.

Moti Singh v State of UP: The dying declaration was rejected because the prosecution failed to prove that the injuries mentioned in the declaration actually caused the death. Since the cause of death was not medically established, the declaration lost its evidentiary value.

Sudhakar v State of Maharashtra: The Supreme Court held that where the prosecution fails to establish a clear connection between the incident mentioned in the declaration and the death of the declarant, the statement cannot be treated as a valid dying declaration.

Declaration must relate to the Cause or Circumstances of Death –

A dying declaration must relate directly or indirectly to death. Expectation of death is not necessary.

Pothamsetti Sathyanarayana Reddy Case: The court held that a dying declaration may be in the form of a letter or a written statement. It need not be made to a specific person. Such a statement is admissible if it relates to the circumstances resulting in death.

Ranjit Singh v State: The court accepted a letter written by the deceased stating apprehension of danger to his life. The letter was admissible as a dying declaration even though the incident occurred years later, as it established the circumstances of the transaction.

Pakala Narayana Swami, letters describing surrounding events were admissible.

Cause of Death Must Be in Question –

Ratan Goud v State of Bihar: The statement made by the declarant regarding another person's death was held inadmissible as a dying declaration because it did not relate to the cause of the declarant's own death.

- Declaration Must Be Complete
- Completeness depends on substance, not length.

Abdul Sattar v State of Mysore: The court held that a dying declaration is admissible even if the declarant collapsed before completing the entire statement, provided the essential facts identifying the accused were clearly stated.

Declarant Must Be in a Fit State of Mind: The declarant must be conscious and mentally fit. Medical certification is desirable but not mandatory. Even severely burned victims can give valid dying declarations if conscious and coherent.

Kamalavva v State of Karnataka: The Supreme Court held that medical certification regarding mental fitness is only a rule of prudence and not mandatory. If the court is satisfied that the declarant was mentally fit, the dying declaration remains valid.

Circumstances When a Dying Declaration Becomes Unreliable or Meaningless¹⁸ -

Tutoring or Influence by Relatives: A dying declaration loses its evidentiary value if there is any indication that the maker was coached or influenced. The very basis of admitting such a

statement is that it must be voluntary. If relatives or other interested persons “prepare” the declarant about what to say, the assumption that a dying person would speak only the truth no longer holds good.

In **Varand v Emperor**, the court declined to rely on a dying declaration when the surrounding circumstances suggested that relatives had discussed with the injured person what statement should be made. The case reinforces an important principle: once outside influence is shown, the declaration stops being a spontaneous account and starts looking like a rehearsed version of events.

Unconscious State of Declarant: Mental fitness is essential for credibility. If the declarant was unconscious or only partially conscious at the time of making the statement, the court cannot treat the declaration as reliable evidence.

In **Bhagwan Dass v State**, the Supreme Court refused to accept a dying declaration where evidence indicated that the maker was not in a fit mental condition and passed away soon after making the statement. The Court made it clear that a declaration made without full awareness cannot inspire confidence. Medical evidence regarding the physical and mental condition of the declarant often becomes crucial in determining reliability.

Discrepancy Between Declaration and Other Evidence: Courts also exercise caution when there is a clear inconsistency between the dying declaration and the testimony of prosecution witnesses. Minor inconsistencies may be overlooked, but serious contradictions affecting the core of the prosecution’s case can make reliance unsafe.

In **Bapu Rao v State of Maharashtra**, the Supreme Court observed that when there is a material divergence between the facts stated in the dying declaration and those deposed to by witnesses, the declaration becomes doubtful. A dying declaration cannot be read in isolation; it must broadly fit within the overall chain of evidence.

Internal Contradictions within the Declaration -

A dying declaration that contradicts itself on material points also loses credibility. The presumption of truth attached to such statements weakens when the narrative contains internal inconsistencies.

In **Jaya Ram v State of Tamil Nadu**, the Supreme Court refused to rely on a dying declaration that contained conflicting versions within the same statement. If the declarant presents mutually

destructive accounts, the court cannot simply pick and choose portions without sufficient justification.

Failure to Establish Identity of the Accused: Identification of the accused is often central to securing a conviction. If the dying declaration fails to clearly identify the perpetrator, or if the identity remains doubtful, it cannot safely form the basis of a conviction.

In **Shabir Mohmad Syed v State of Maharashtra**, the Supreme Court held that where the identity of the accused was not satisfactorily established through the dying declaration, it would be unsafe to rely upon it. The Court reiterated that suspicion, no matter how strong, cannot replace proof.

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CONCLUSION

The law relating to dying declarations under the Bharatiya Sakshya Adhiniyam 2023 reflects a balance between necessity and fairness. It recognises that a victim's last words may sometimes be the only direct evidence available; at the same time, courts are careful not to accept such statements unquestioningly. They subject dying declarations to scrutiny to ensure that they are voluntary, consistent, and reliable. Courts also carefully examine cases involving multiple dying declarations and rely on them only when they are consistent and trustworthy. Even declarations recorded by police officers are accepted in certain circumstances, especially emergencies, but only after careful judicial evaluation. Ultimately, the doctrine exists because the justice system cannot ignore the last words of a person who believes death is near. At the same time, courts remain vigilant to ensure that such statements are genuine and dependable before they become the foundation of a conviction.

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