

Dying Declaration

Introduction

Whenever any offence has been committed, there is always the two persons, who voraciously knew what actually happened i.e. the Accused, who commit the offence and the other one is Victim, with whom offence had been committed.

In order to prove their positions, and make one's story to be true, they give Statements to judge but their story one can not rely on the veracity of statements which they made to support their stories, as it may be prejudiced or untrue so generally, the role of Witness becomes crucial to determine the truth.

But there is a condition when the statement made by the person to be treated as true evidence in spite of the fact that he made the statement in his own favour and hardly any doubt behind the reason for that statement. That condition is Dying Declaration.

Dying Declaration is a statement made by the person while he was dying and states the reason for his death. The statement given by the dying person can be circumstantial or tells the cause for his death. Hence, the only statement given just before the death of a person is **called** Dying Declaration. The person who is conscious of *Compos Mentis* and knows that death is about to happen can make a declaration and state the cause of his death and that statement will be Admissible and treated as Evidence in the Court. Declaration made by the deceased person can be in oral, written and by conduct. The word Dying Declaration explain the word itself.

Definition

In [Section 32 \(1\) of Indian Evidence Act](#) defines when the statement is made by the person as the cause of his death, or as any of the circumstances of the transaction which resulted in his loss of life, in cases in which the cause of that person's death comes into question. Such statements made by the person are relevant whether the person who made them was alive or was not, at the time when they were made, under the expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

The statement made by the deceased person will be treated as Evidence and Admissible in a Court of law. The reason behind this can be followed by *Latin maxim Nemo Mariturus Presumuntur Menti* which means that "Man Will Not Meet

His Maker With Lying On His Mouth. More precisely in our Indian law, it is the fact that the dying man can never lie or Truth sits on the lips of dying man. Hence, the Dying Declaration is Admissible and considered as Evidence in Court, and can be used as a weapon to punish the culprit.

Types of Dying Declaration

There is no particular form to be employed in making the Dying Declaration. it can be Oral, Written, Gestures & Signs, Thumb impression, Incomplete and can also be in the form of Question Answer. However, there must be a distinct and definite assertion on the part of the person who produces the statement. Possibly the declaration should be in written form in the exact words stated by the person who made the statement. When a magistrate records the dying declaration, then it should be in Question-Answer form as the magistrate will opt the maximum information rightly, as in some cases dying declaration becomes the sole way to help in the conviction of the accused.

Let us discuss some of the types in the elaborative form:

Gesture and Signs

In the case of [Queen-Empress v. Abdullah\[1\]](#) the appellant was charged with the offence of murder before the court of session. That he had murdered one DULARI, a prostitute by cutting her throat through RAZOR. It seems that one-morning dulari with her throat cut was taken to the police station and from there to the dispensary. She was alive till the morning. The post-mortem report shows that the windpipe and the anterior wall of the gullet had been cut through. When Dulari was taken to the police station, she was questioned by her mother in the presence of a sub-inspector. She was again questioned by the sub-inspector, deputy magistrate and subsequently by the assistant surgeon.

She was unable to speak but conscious and able to make gestures and signs. Magistrate asked dulari, as who had wounded her, but due to the injured condition dulari was unable to speak. After that, The magistrate mentioned several names one by one and asked if they had wounded her. Dulari moves her hand forward and backwards and made negative and affirmative signs. Subsequently, the magistrate asked whether Abdullah had wounded her, for that dulari waved her hand made the sign in the affirmative, the magistrate recorded the statement. After that question was put to her that if she been wounded with a knife or sword. In this regard, dulari makes a negative sign, again magistrate asked her if she had been wounded with the RAZOR. She in answer to this made an affirmative sign.

In this way, the magistrate records the dying declaration of Dulari and the same was accepted as evidence to prosecute Abdullah.

Similarly, in the recent "Nirbhaya's Rape Case," Dying Declaration was made by her in the form of sign and gesture.

The dying declarations made by Nirbhaya were recorded.

The first declaration was recorded by the doctor when she was admitted in the hospital on the night of December 16, 2012 and the second on December 21 by the sub-divisional magistrate during which she gave exact details of the mishappening.

The third declaration was recorded by the metropolitan magistrate on December 25 and was mostly by **gestures**. The bench said that as far as the third dying declaration is concerned, this court has already held that the **dying declaration made through signs, gestures or by nods are admissible as evidence**.

Oral and written

When the person gives the name of the murderer to a person present and written by any of them then it is a relevant dying declaration. However, people may dispose of the name of the mugger orally.

An oral dying declaration is admissible in evidence as an exception to the general rule of evidence that hereby evidence is no evidence in the eyes of law. The oral dying declaration made before his wife, father-in-law and other near relatives were made in the conscious state.

In the case of [Amar Singh v. State Of Rajasthan\[2\]](#). The deceased's mother and brother gave the evidence, that the deceased made the statement month prior to the incident of suicide by her that the appellant, her husband used to taunt the deceased saying that she had come from a hunger house and the appellant himself go to the house of deceased and asked for 10.000/-. It was held that the dying declaration and appellant were convicted under section 304B and 498A of IPC. The Court referred to [Pakala Narain Swamy v. Emperor\[3\]](#). in which Lord Atkin: **held that the circumstances of the transaction which resulted in the death of the declarant will be admissible if such transaction has some proximate effect.**

Incomplete Dying Declaration

Dying declaration made by the person, which is found to be incomplete can not be admissible as evidence. When the condition of the deceased is grave and at his own request a statement made by him in the presence of the doctor was later taken by the police but could not be completed as the deceased fell into a coma from which he could not recover. It was held that the dying declaration was not admissible in court as the declaration appears to be incomplete on the face of it. But the statement, though it is incomplete in the sense but conveys the declarant all necessary information or what he wanted to state, yet stated as complete in respect of certain fact then the statement would not be excluded on the ground of its being incomplete.

The deceased stated, *"I was going home when I came near the house of Abdul Majid, Sohail shot me from the bush. He ran away. I saw."* this was the dying declaration made by the deceased and further was unable to answer the questions. It was held that there is no question of incompleteness so far as the context of the case is concerned. In the case of [Muniappan v. State of Madras\[4\]](#). The deceased made the dying declaration as follows :

"Sir,

This day 24th January 1960 in the afternoon at 12:30 Muniappan son kola goundan of kamnav-kurechi stabbed me in my body with a knife."

Soon the deceased died after the statement. His thumb impression was taken after he was dead. This declaration against Muniappan was complete and admissible.

Question- Answer form

Dying Declaration can be made in the form of Question-answer. the deceased, in some of her statement, did not state the actual part played by the appellant. She merely answered the questions put to her. The court held that when questions are put differently then the answer will also appear to be different. At first glance, the detailed description of the offence may appear to be missing but the statement of the deceased construed reasonably. However, when the magistrate records the dying declaration, it must be preferred to be recorded in the form of a question-answer must be preferred. If there is nothing to doubt that the person who records the statement made by the deceased exact word to word, would not

make any difference merely because the same was not recorded in the form of question and answer.

Reason for admitting dying declarations in evidence

A dying declaration is admitted in evidence that is truly based on the principle of "Nemo moriturns proesumitur mentiri (man will not meet his maker with a lie in his mouth). Dying declaration does not require any corroboration as long as it creates confidence in the mind of the Court and free from any form of tutoring. In case [Uka Ram v. State of Rajasthan](#)[5]. Court held that dying declaration is admitted upon consideration is made in extremity; when the maker of the statement is at his bed end, every hope of this world is gone; and every motive of falsehood is silenced and mind induced to speak only truth. Indian law recognises this fact that "a dying man seldom lies".

Fitness of the declarant should be examined

At the time of giving a declaration, the person who's making the statement must be in a fit state of mind. If the court has the slightest doubt about the mental soundness of the maker of dying declaration, it is unsafe and unfair for the base on such a statement.

The mere fact that the victim in his dying declaration did not make any reference to injuries received by the accused is not a genuine ground that decides the merit of dying declaration. Where the dying declaration was recorded by the doctor who himself certified that the patient was in a fit condition for giving the statement, his non-mentioning that the patient was in a fit mental condition and throughout remained conscious would be of no consequence. In case [State of M.P. v. Dhirendra kumar](#)[6]. The mother-in-law of the deceased was in the position to reach the upstairs within 5 to 6 minutes after hearing the cry of the deceased. According to the opinion of the autopsy surgeon, the deceased was able to speak about 10-15 minutes. The Supreme Court did not agree with the view of the High Court that the deceased is not in a position to make the dying declaration, as it was reaffirmed by the autopsy report and circumstances of the case that the deceased was in a fit state of mind to talk when her mother-in-law reached the place where the deceased was dying.

Whereas in the case [State of Orissa v. Parasuram Naik](#)[7]. The accused, the husband was alleged that he poured petrol on the body of his wife and lit a fire. Whereof extensive burn injuries were sustained by the deceased wife. It was held that the oral dying declaration to her mother can not be accepted because there

was no certificate by medical officer certifying that the deceased was medically fit to make a statement.

It is improper to reject the dying declaration on the ground that the fitness of the maker depends solely on the certificate of the doctor and the magistrate himself did not require independently as to whether the deceased was in a fit state to make a dying declaration.

As in the case of [Arvind Kumar v. State of Rajasthan](#)[8]. The accused is charged with an offence under Sections 304B and 498A of IPC. The dying declaration was recorded by Naib-Tahsildar but did not take any certificate from the doctor regarding the fit state of mind of the deceased nor there was any endorsement by the doctor. The doctor testified that the dying declaration was recorded by the reader of Naib-Tahsildar. No preliminary questions were asked from the deceased before recording his statement. The naib-Tahsildar also stated that he did not seal the recorded statement of the deceased and carbon copies provide instead of the original copy of dying declaration of the deceased during cross-examination. The mother of deceased categorically refused to put a signature or thumb impression on dying declaration which showed that the dying declaration made in the hospital room was a lie. All these facts created doubt and truthfulness of dying declaration and held that the alleged dying declaration could not be admissible and reliable document as it suffered from a number of infirmities. However, the accused were convicted on the basis of entire evidence.

In case [Dhanraj and other v. State of Maharashtra](#)[9]. The dying declaration was challenged on the ground that no medical certificate was attached to the condition of the deceased. However, the deceased went to the hospital all alone by changing different vehicle in the way. The statement of doctor and magistrate was on record to indicate that the deceased was in a fit state of mind to give a statement. Such circumstances can be used as supporting evidence about the mental condition of the deceased.

When the deceased made a dying declaration and while stating that fell into a coma before completing the statement, it would have a serious effect on his capacity to make such a statement. Certificate of fitness given by the doctor with regard to this condition of the deceased. Such an opinion should be accepted by the court. If the circumstances so demand, such opinion must be carefully balanced with all other surrounding facts and circumstances.

In a case [Rajeev Kumar v. State of Haryana](#)[10] medical opinion shows that the deceased larynx and trachea were charred by heat. It was clarified that when larynx and trachea are charred, the person can not speak but when they are in the process of being charred, he can speak. The second medical opinion was if the vocal cords or larynx is charred of a person, he may be able to speak but not

clearly and it will be difficult to understand. The medical report of two is not in variance with the ocular evidence that the deceased was in a position to speak when dying declaration was recorded and the court can rely on such dying declaration.

Who should record the dying declaration?

Any person can record the dying declaration made by the deceased, but the person who is recording the dying declaration must have some nexus with the deceased either circumstantially or by some fact. However, the doctor or police officer hold more value as compared to the normal person. As far as the dying declaration is concerned the magistrate entrusted to record the dying declaration, as the statement recorded by him is considered more evidential rather than statement recorded by the doctor, police officer and by the normal person.

The Supreme Court has found this to be true in law, at least in cases where the person dies of burn injuries. Court hold the opinion that "The law on the issue can be summarized to the effect that law does not give any direction that who can record a dying declaration but just provided that magistrate is above all the person in subject for recording the statement, nor is there any definite form, format or procedure for the same," said a bench of Justices B S Chauhan and Dipak Misra while quashing the high court order in the case of dowry death acquittal case.

The person who records the dying declaration must be satisfied that the maker is in a fit state of mind and conscious while making the statement.

Moreover, a dying declaration can be recorded by a person, or even by the police officer, but if it is recorded by the judicial magistrate that it will have more credential value and reliability.

Recorded by a normal person

A dying declaration can be recorded by a normal person. As in some circumstances where the judicial magistrate, police officer and doctor is not available, the Court can not reject the dying solely statement made before the normal person. But the person who records the statement must show that the deceased was in a fit state of mind and conscious while making the statement no matter if the statement is not recorded by Judicial Magistrate, doctor and police officer. The statement is admissible in a court of law.

Recorded by the doctor or a police officer

If there is no time to call the magistrate keeping in the mind the deteriorated condition of the declarant, the statement can be recorded by the doctor or by a police officer. But one condition must be coupled with it that while recording the statement there shall one or two-person present there as a witness otherwise the Court may find the statement to be suspicious. Moreover, the statement recorded by the doctor, later endorses that the declarant was not in a stable condition and his statement would not be considered as evidence, rectify by the witness that the deceased was in a fit state of mind and conscious to make the declaration. It was held in the case of [N. Ram v. State](#)[11] that the medical opinion can not wipe out the direct testimony of an eye witness which states that the deceased was in a fit mental condition and able to make a dying declaration.

Recorded by the magistrate

When the deceased statement recorded by the competent magistrate has deemed to be considered as reliable and attracts the evidentiary value as he presumed to know how the dying declaration should be recorded and he is a neutral person. Moreover, the magistrate has empowered to record the dying declaration under [164 of Cr.P.C.](#)

Section 164 Cr. P.C states that SubSection (1) gives power to the magistrate to record the statement of the dying person, no matter whether he has jurisdiction over that case or not, and in case where the statement recorded by the magistrate who has no jurisdiction in that case subsection (6) will apply. Here the word "statement" does not confine to only the statement by the deceased and witness but also include a statement of the accused, in order to satisfy himself, but the accused statement will not amount to a confession.

Subsection (1) states that: any judicial magistrate and metropolitan magistrate shall have the power to record the dying statement made by the dying person, whether the magistrate has jurisdiction in that particular case or not, he will be able to record the state provided under this chapter or by any other law for the time being enforced, or at the time before the commencement of trial and investigation.

Section 164 provides a warning. Under this provision the magistrate who record the statement should tell the accused that he has to made only statement which shall not be amount to confession, but if he did so, then the confession can be used against him for the purpose of conviction. This is the *sine qua non* for recording confession. The other important requirement is that the Magistrate

must raised questions from the wrongdoer to satisfy himself that the confession made by the accused was voluntary so as to enable him to give the requisite certificate under subsection(4) of this chapter. The judicial magistrate here tell the accused that he is not bound to make a confession, but he did not ask the question from the accused in order to satisfy in question, whether the statement made by the accused is voluntary or not.

In [Mahabir Singh v. State of Haryana](#)[12] the Court held that, Where the Magistrate did not clear the rule that the statement made by the accused should not be amount to confession, if he does so then it will be used as evidence against him, can not be considered. The Magistrate must satisfy himself that the statement made by the accused voluntary, no pressure or force was used on the accused while making the confession. Any mark of the person of the accused to vitiate the voluntary character of the confession. When was held not only inadmissible under the section but it could not be used under the other provision of Indian Evidence Act such as sections 21 & 29.

Language of the statements

As far as the language of the statement is concerned, it should be recorded in the language of the deceased in which he is fluent or may possible than in Court language. The court cannot reject the dying statement on the basis of the language in which it was made. It can be recorded in any language. Even if the dying declaration is made by the deceased in Urdu, Hindi, Punjabi languages, it was considered that statement could not be denied on the ground of language in which it was made solely or on the ground that it was recorded in Urdu. When the statement was given by the deceased in Urdu and the magistrate recorded it in English than in that case precaution should be taken while in explaining every statement to the deceased by another person, it was declared that the statement was the valid dying declaration.

Statements made in different languages

When two dying declaration was recorded in two different languages on is in Marathi and the other is in Hindi and the deceased were proficient in both the language the statement could be the basis of conviction as it was held in the case of [Amar Singh Munna Singh Suryavanshi v. State of Maharashtra](#)[13].

Points to remember

1. Dying declaration made by the deceased can be recorded in any language.
2. If the statement was recorded in another language than the one which magistrate recorded, then precautions should be taken to explain each and every aspect and phrase.
3. The court cannot deny or discard the dying declaration only on the ground of language.

In [Biju Joseph v. State Of Kerala](#)[14] it was observed by the court that only ground that the statement of the deceased made was in her own language can not reduce it value of the dying declaration. It was given by the High Court Of Kerala:

“Presumed that the statement made by the deceased when he was dying recorded in his language in which he has command or fluent, does not vitiate it value and court can not denied or rejected on that basis. Judicial magistrate entrusted with the duty to convert the statement in court language. And such translation process would not affect the credibility that dying declaration”.

Multiple dying declarations

Supreme Court Of India in concern to multiple dying declarations, it can be considered upon without corroboration if there is no breakdown of fact in all the dying declaration. If all the dying declarations are similar to each other and state correctly the cause of death, and there is no contradiction between the statement it can be admissible But if the dying declaration is different from each other and there is a contradiction between them, then court will cross-examine the facts of the case or can examine the statements of other witnesses to determine the truth and sanctity of statement regarding the case.

The statement of the deceased should match the facts and circumstances of the case. It is very important to understand the character of multiple dying declarations. Points to be considered in multiple dying declarations:

1. There should be regularity in all the dying declaration.
2. If all the dying declaration does not match or say overlap, then the court will examine the facts of the case with the dying declaration Or examine the witnesses.

In [Kushal Rao v state of Bombay](#)[15] that case Court set the importance rules for dying declaration and what is the right process or manner to record it. In this case, if the dying statement made by the deceased. That it should be recorded in the form of question answer form, shall be endorsed/supported by the doctor that the deceased was in good mental state, can be recorded by the person who is legally entitled to record, if there are multiple dying declarations than it should be consistent, so that the court can rely on it.

The Supreme Court has held that multiple dying declarations can be reliable when it made without corroboration if consistency is maintained throughout the statement. Otherwise, the courts would have to cross-examine the statements of other witnesses to determine the truth in a criminal trial.

Expectations of death is not necessary

Under English Law, the victim should not be under any expectation of death. Evidence Act has taken this law from English law. If the statement has been made even when no cause of death had arisen then also the statement will be relevant. It is not important at all that the statement recorded should be just before the death of the victim.

In [Pakala Narayan Swami v Emperor](#)[16], it was held that the letter given by the deceased to his wife before going to the place where he was killed was relevant. The court said that the statement made must be at any rate near death or the circumstances of the transaction explaining his death is relevant under section 32 of Evidence Act. In this case, the court stated that dying declaration can be any statement that explains the cause of death or the circumstances of the transaction explaining his death. Hence, statements as to any of the circumstances of the transaction which resulted in the death would be included.

F.I.R as a dying declaration

In a situation where a person dies after, when a F.I.R was lodged and stating that his life was in danger, it is relevant to be recorded as circumstantial dying declaration.

In the case of [Munnu Raja and another v. State of M.P](#)[16] the Supreme Court Of India observed that statement made by injured person recorded as FIR can be deemed as dying declaration and such declaration is admissible under Section 32 of Indian Evidence Act. It was also observed by the court that dying declaration must not shows the whole incident or narrate the case history. Corroboration is

not necessary in this situation, Dying declaration can be declared as the exclusive evidence for the purpose of conviction.

If the declarant does not die

When the dying declaration given by the deceased is recorded. But the question arises that after the dying declaration was recorded and the deceased is still alive, was the statement holds the same effect. In that situation, the deceased now turned to be a witness against the accused to narrate what the actual story was. As the dying declaration itself mentioned the word dying, so it is necessary that there must be an expectation of death on the part of the declarant.

Criticism of dying declaration doctrine

Since the nineteenth century, critics have questioned the credibility of dying declarations. In a state court case, the Wisconsin Supreme Court considered the issue of a dying declaration. The defense pointed out that "this kind of evidence is not regarded with favor." The defense argued that several factors could undermine the reliability of dying declarations.

Physical or mental weakness consequent upon the approach of death, a desire of self-vindication, or a disposition to impute the responsibility for a wrong to another, as well as the fact that the declarations are made in the absence of the accused, and often in response to leading questions and direct suggestions, and with no opportunity for cross-examination: all these considerations conspire to render such declarations a dangerous kind of evidence.

Dying Declaration in India

Dying declarations are admissible as evidence in Indian courts if the dying person is conscious of his or her danger, he or she has given up some hope of recovery, the death of the dying person is the subject for the changing nature of the dying declaration, and if the dying person was capable of to justify a sense of accountability to his or her Maker.

Distinction between Indian and English law

The distinction between English law and Indian law on the subject of dying declaration has been elaborately dealt in the case of [Rajindra Kumara v. State](#)^[17] Under English law, the essentials of a dying declaration are as follows:

1. The declarant should have been in actual danger of death at the time when they were made the dying declaration.
2. He should have had a full apprehension of his death is near.
3. Death should have ensued.

These conditions must be proved for the satisfaction of the judge before considered it as a dying declaration than it can be received. Both in England and America, dying declaration is not admissible as evidence whether any civil cases or in criminal cases; it is not admissible upon charges other than homicide, or as to homicides other than that of the declarant.

However, these conditions are not provided in Section-32 Of the Indian Evidence Act. It is not required for a declarant to be in expectation of actual death while making such a declaration nor is it restricted in the cases of homicide. Because of this structure, it becomes increasingly necessary to know that the dying person speaks the truth because if he does not die than still declaration can be used as evidence against the accused. Moreover, dying declaration can be considered as relevant evidence in both criminal and civil proceedings, whenever the cause of his or her death comes into question.

Requirements of dying declaration

According to section 32 clause (1) of Indian Evidence Act, the requirement of dying declaration is as follows:

1. The statement made by the deceased may be oral or written. But in some cases it can be made with sign and gesture depends on the condition of the deceased
2. The statement must be as:
 - Cause of death- when the statement is made by the person as to the cause of his death or as to any of the circumstances of the transaction which was the reason for his death not cover all the incident which are not relevant in order to determine the cause
 - Circumstances of the transaction- the statement made by the deceased is only related to the circumstances of the transaction will result in the death of the deceased, remoteness or having no nexus which can not be connected with the transaction have no value.
 - Resulted in the death- the deceased statement should have the cause and circumstances that will clearly reason for his death or ultimately result in his death.

Pakala Narain Swami v. Emperor Case

The deceased was a man of about 40. He had been a peon in the dewan of Pithapur. Pakala Narain Swami, the accused, was married to one of the daughters of dewan of pithapur. After marriage pakalana narain swami and his wife went to live at Berhampur about 250miles away from pithapur. In the year of 1933, they came back to pithapur and where they stayed with the dewan. They seemed at that time to have been in need of money, and during 1936 the wife of the accused borrowed money from the deceased at various times an amount of Rs. 3,000. On Saturday 18th March 1937, the deceased received a letter from the accused inviting him to come that day or the next day to Berhampur. The deceased left his house in order to go there and catch the train of Berhampur. He did not come back. On 23rd March 1937, the body of the deceased was found in steel trunk in the third class compartment at puri. The body has been cut into seven portions. The body of the deceased was identified by his widow. The accused was tried and convicted for murder and was sentenced to death.

During the trial, the widow of the deceased stated before the court that on the day her husband showed her a letter and said that he was going to Berhampur as the appellant's wife had written to him to come and receive payment of his dues.

The lordship of the privy council held that the statement related to the circumstances of the transaction which resulted in the death of the deceased so it was relevant. They also held that the statement made by the deceased that he was proceeding to the spot where he was killed or as to his reason for proceeding or that he was going to meet him would each of them be circumstances of the transaction. However, circumstances must have some proximate relation to the actual cause and must be related to the transaction which resulted in death. For instance, in case of prolonged poisoning, they may be related to date at the considerable distance from the date of the actual fatal date. It is not necessary that there should be a known transaction other than the death of the declarant has ultimately been caused comes into question. In the present case the cause of death comes into question, the transaction is one in which the deceased was murdered on 21th march or 22nd march, the statement that he was setting out the place where the accused lived and to meet a person, the wife of the accused, who lived together with the accused's appears to be clear statement as of some transaction which resulted in his death.

Note: This case is important to be discussed here, as earlier in the article it was stated that the deceased can make a statement by sign and gesture or there are some circumstances that reflect the cause of the death and transaction of the situation collateral to it. In that case, the statement made by the deceased hold strong basis for conviction.

Dying declaration Case laws and landmark Judgments

1. **Lakhan v. State of M.P.[18]** in this case supreme court provides that, when the condition is satisfied that the dying declaration made by the deceased is true and can be relied upon, as the declarant is found to be conscious and mentally fit while making the statement, and the statement made by him proven to be voluntarily and no compulsion was there while making the statement and can be put for the sole basis of conviction. In that situation there is no need for corroboration is necessary.

In case of multiple dying declarations consists which consist in the form of irregular interval and contradict each other, dying declaration recorded by the person who is entitled to record like magistrate then there is no doubt and can be found to be reliable. But in circumstances where it was observed that the statement made by the deceased is not voluntarily but due to some force or compulsion, then the court raised suspicion on that dying declaration and Court should re-examine the statement of witness and other facts in order to determine the truth.

2. In the case of **State of Punjab v. Parveen Kumar[19]**, the Supreme Court set forth some measure to test the veracity in the case when there is more than one dying statement. The court provides that there must be a series of examinations in order to determine the truth. If the statements provide different versions and do not couple with given facts, then the court must opt for other evidence in their record to clarify the things so that truth can be inferred.
3. In the case of **Sudhakar v. State of Madhya Pradesh[20]**, the Supreme Court while deciding the issue of multiple dying declarations, which varying from other statements and have no series related to each other, this will raise a doubt in the eyes of court to whether the statement should be believed or not, in order to clear the issue the Court has given some directions which help to guide while exercise the judgment by court in such matters, examined.

The Court put forward the point that when multiple dying declarations made by the declarant, if found either contradictory or are at variance and having no nexus to each other to a large extent and narrate another version of the story, then the test of common reasonableness would be applied while examining which dying declaration is corroborated by circumstantial evidence. Further, when the dying declaration was made the condition of the deceased at the time of making of each declaration concerned, medical report of the deceased, truthfulness of statements made by deceased, possibility of deceased being tutored, are some of the points which would guide while exercise of judicial function by court in such matters.

The Supreme Court also observed that the **dying declaration is the statement made when a person is at there bed end, as the word dying declaration itself signifies its meaning. A person having a serious apprehension of death and there shall be no chances for his survival. At this point, the court assumed that whatever the statement made by the declarant is purely true as the man will never meet his maker with a lie on his lips and person will speak only truth.**

4. **Natha Shankar Mahajan v. State of Maharashtra**[21] in this case the supreme court ruled that if there is a doubt about the statement made by the deceased, in that case, the gain will transfer to the accused. As this is the correct Law preposition. Moreover on the other was round if the statement found to be true and reliable ten it can be used solely as the purpose of the convection.
5. The Supreme Court in the case of **Surajdeo Oza v. State of Bihar**[22] does not give an affirmative answer to the question and held that merely because the dying declaration is a brief statement it is not to be discarded. On the contrary, the length of the statement itself guarantees the truth.

The Court has to scrutinize the dying declaration carefully and examine each and every sort of situation and must ensure that the declaration is not the result of tottering prompting of imagination and the deceased had the opportunity to observe and identify the accused and was in a fit state while making the dying declaration.

Dying deposition

Dying deposition is almost a dying declaration. The main difference between both is that the dying deposition is always recorded in the presence of a magistrate. Whereas dying declaration can be recorded even by a normal person, doctor and by a police officer.

A deposition is recorded when the lawyer of the accused is present and magistrate record the dying declaration. But dying declaration has no such conditions, but the evidentiary value will be more if the statement is recorded by the magistrate. However, it can be recorded by the doctor or police officer also.

Illustrations

1. A case where the deceased was given the statement to his father that I inhale the poison because of my heartbreak and the same was conveyed to the police and father of the deceased also said that the deceased was

conscious and in a fit state of mind and the same was endorsed by the autopsy report. After that when the police investigate the matter it was found to be true that the cause of his suicide is the girl who used to aid and abet him to commit the suicide. Hence the statement recorded by the normal person(father) has admissible in a court of law. This is the example of **dying declaration**.

2. In a case where a woman is burnt by his father-in-law. And the woman was admitted to the hospital by the neighbour and when the police were informed about the matter they came to rely on the statement of the deceased but the doctor tells them that the deceased is not in a position to answer the question. After 2nd and 3rd day when the woman is in better condition and subsequently magistrate was available to record the dying statement and the accused lawyer was also there. The statement is recorded and this is called **dying deposition**.

Comparison Between Dyeing & deposition declaration

Basis	Dying declaration	Dying deposition
Oath	Here, the oath is not administered.	While here, administering oath is important.
Cross-examination	Here, cross-examination is not allowed.	But here, the witness can be cross-examined by the lawyer.
Recorded by whom	The dying declaration can be recorded by a normal person, doctor, police officer and by the magistrate.	Whereas, it can be recorded by the magistrate in the presence of accused or by his lawyer.
Applicability	It is applicable in India.	There is no such provision of dying deposition.
Value	It has less value.	It superior and has more value than the dying declaration.

Identification through dying declaration

The conviction can be based on the statement made by the deceased, and the identity of the accused must be established by it. It should contain the same parentage and address of the accused. But if there is no corroborative evidence to prove identity, the conviction is possible and this was established by the Court in the case of [Pritam Singh v. State of U.P](#)[23]. However, there is no particular form which is dying declaration identified and admissible as evidence in a court of law in a case the Supreme Court held that only the Crux is important or relevant to determine what actually happened. For instance, if someone stabbed a deceased then the crux of this is, who stabbed him and why, and the rest are the complementary things.

Absence of medical statement of fitness

It is only a rule of caution. Normally, the Court places reliance on the medical evidence for reaching the conclusion whether the person making the dying declaration was in a fit state of mind but where the person recording the statement of the deceased stated that the deceased was in a fit state of mind and conscious, the medical opinion will not prevail nor can it be said that there being no certificate of the doctor as to the fitness of the mind of the declarant, the dying declaration is not **acceptable**. A certificate from the doctor is essentially the rule of caution. Where the testimony of the magistrate is to the effect that the declarant was fit to make the statement, it can be acted upon without there being a certificate of the doctor provided that the court ultimately held the same to be voluntary and truthful.

When there was no certificate of doctor about the fitness of the deceased making dying declaration before the investigating officer but the doctor was present at the time of making dying declaration and thumb-impression of the deceased was attested by him, holding that there could not have been any attestation of such document was technically held to be too wrong.

Where the eye-witnesses stated that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the mind of the declarant, the dying declaration is not acceptable. **A dying declaration may be reliable without obtaining a certificate of endorsement by the doctor.**

Statement is not relevant to the cause of the death

The dying declaration is a statement made by a person to the cause of his death or as to any of the circumstances of the transaction which resulted in his death

and such details which fall outside the ambit of this are not strictly within the permissible limits laid down by section 32(1) of the evidence act and unless absolutely necessary to make the statement coherent or complete should not be included in the statement. Where the dying declaration is set to be a long written document and tell about the number of incidents in a narrative form and talk about what happened before the actual resort, such long statement being more in the nature of first information reports than recitals of the cause of death or circumstances resulting in it, are likely to give the impression of their being not genuine or not having made unaided without prompting.

When the dying declaration made by the deceased is not coupled with the transaction of consequences which results in the death of the deceased or the statement made regarding the fact which has no nexus or connection with it or in other words having no remote reference to the death of the deceased, it would not be admissible under Indian evidence act.

In the case of [Bhairon Singh v. State of M.P.](#)[24] the body of the deceased lady was found in a well of the village. The cause of the death asphyxia due to drowning. She was married to accused about 10 years before the death of the incident take place. The trial court held that the incident took place accidentally. And the presumption of her dying declaration does not attract section 113-A and 113-B of Indian evidence act and the accused set free under section 304-B and 306 of the IPC.

But later on, the trial court held the accused guilty under section 498-A of IPC and section 3 of the dowry prohibition act, 1961 and gives the punishment to accused of rigorous imprisonment for three years along with the fine of Rs. 15000.

Again high court made changes in the judgment and accused convicted under section 498-A of IPC, the changes were the cause of the statement given by her brother that his sister(deceased) told him that the accused used him to force her as he wanted that her brother arranged a job for him and also demanded for dowry for her of Rs 1lakh. On the deposition brother of the deceased stated that the accused by putting a cloth in her mouth(deceased) beating him for dowry.

Medical report

Medical reports are those reports which are provided by the doctor usually in criminal cases, they are admitted as evidence in a court of law when a doctor provides oral evidence while taking the oath. The report includes the mental condition, fitness of the disease whether he is able to give the statement or not. And sometimes forensic and autopsy reports also clarify that the deceased was

saying right in his dying declaration. For example, there was a case in which the mother of the deceased, when hearing the cry of her son immediately reached to their room, where the deceased made the dying declaration in front of his mother that he was in love with some girl and she left her and due to this he commits the suicide. The time to reach in his room was estimated by the police in their investigation was about 2 minutes.

Here the question comes that if the mother was really saying the truth about the declaration as there was no one when the deceased was making the statement, the absence of medical fitness will remain in the dark. But the autopsy report conferred that decrease is the condition to survive for 6-8 minutes. So that the mother statement can be admissible in a court of law. In that perspective the role of medical report become crucial and if sometimes, if there is a plotting in dying declaration (which rarely happens as the law presumed that no one meet his maker with a lie on his lips) the report may contract the statement which creates the sense of suspicion and the statement made by the deceased can not be regarded as the sole base for the conviction. But the medical report did not discard the statement on the basis of the report in which it was stated that the nature of injuries sustained by the deceased. Moreover, if the medical report states the fitness of the deceased while taking the statement of the deceased by magistrate then there is no need for a separate test of fitness by the magistrate.

Doctor statement

It is necessary that the dying declaration recorded by a magistrate should be endorsed by the doctor, as it gains more evidentiary value. But there are many situations when the statement is recorded by the doctor as due to circumstantial reasons and unavailability of magistrate. So the statement of doctor is regarded to be true and being a doctor, he understands about the condition of the deceased whether the deceased is able to make dying declaration or not. In the case where a burnt wife had been admitted in the hospital and the doctor who operates her, disclose the fact that the husband of her pour kerosene oil and set ablaze to her. At this point, the doctor records the statement point by point. Later on, it was found that records are also in favour and did not contradict the statement made by the deceased. The court held that the doctor has no other motive to make a false statement and the value of statement recorded by the doctor is admissible. But the statement made by the doctor is proven more relevant when there is an eye witness in order to endorse that particular dying declaration.

Dowry death, wife burning

When there is a situation after the three or four months of the marriage, where the wife is burnt by her husband or husband relatives for dowry purposes or for

monetary gain. And in relation to this, she expressing the danger and threat to her life is somehow the expression which depicts the circumstance which leads to the death of the deceased. But when there is a contradiction found in the statement by the deceased, it would raise the presumption of suspicion and decrease its value as evidence. In case where wife by way of plotting set ablaze to her and when she was admitted to hospital, where she made the statement that her husband set on fire to her after some point of time it was discovered in the police investigation that the children of the deceased state that their father will never do this kind of act, moreover they also said that the deceased was tried for committing suicide earlier. And police also found that the relation between the husband and wife is not good. And deceased also think that her husband had some extramarital affair. All the facts show that there was a motive to lie. So the court held the dying declaration to be falsehood and set aside the conviction. And the court has reason to believe, as the person who took the deceased to the hospital was none other than her husband.

Evidentiary value of dying declaration

In the case of [K.R Reddy v. Public Prosecutor](#)[25], it was observed by the court that the evidentiary value of dying declaration made by the deceased:

There is no doubt that the dying declaration is admissible in court under section 32(1) of the Indian Evidence Act. and there is no compulsion while making of dying declaration to take an oath, but the truth of the statement can be determined by the cross-examination. The court has to ascertain necessary measures to check the sanctity of the statement made by the deceased. As in India law, it was presumed that the man who is going to die, not meet his maker with a lie on his lips this is because, when the person is at his bed end all the desire and greed of person come to an end so probably there is no motive to lie. After that, the court must be satisfied with the condition that the deceased must be in a fit state of mind while making the statement. After all the measures assured by the court and satisfied that the statement is made voluntarily and true then it will be sufficient to accept the statement to finding conviction even without the corroboration.

In [Khushal Rao v. State of Bombay](#)[26] Apex Court laid down the following principles related to dying declaration :

(i) There is no absolute rule of law that a dying declaration cannot be the sole basis of conviction unless corroborated. A true & voluntary declaration needs no corroboration.

(ii) A dying declaration is not a weaker kind of evidence than any other piece of evidence;

(iii) Each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made.

(iv) A dying declaration stands on the same footing as other pieces of evidence & has to be judged in the light of surrounding circumstances & with reference to the principle governing the weight of evidence.

(v) A dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, &, as far as practicable in the words of the maker of the declaration stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory & human character.

Exception of dying declaration

There are many circumstances in which the statement made by the dying person is not admissible in a court of law. These conditions are as follows:

1. If there is no question for consideration about the cause of death of the deceased. For example, if a person in his declaration state anything which is not remote or having a connection with the cause of death than the statement is not relevant and hence not be admissible.
2. The declarant must be competent to give a dying declaration, if the declaration is made by the child then the statement will not be admissible in court as it was observed in case of [Amar Singh v. State of M.P](#)[27] that without the proof of mental fitness and physical fitness the statement would not be considered reliable.
3. The statement which is inconsistent has no value and can not be considered as evidentiary in nature.
4. The statement made by the deceased should be free from any influential pressure and should be made spontaneous.
5. It is perfectly allowed to the court if they reject any untrue statement which contradicting in nature.
6. If the statement is incomplete in the sense which means it can not answer the relevant questions which are necessary to found guilty, and on the counterpart, statement deliver nothing so it will not be deemed to consider.

7. Doctor's opinion and the medical certificate should with the statement and support that the deceased is capable of understanding what statement he makes.
8. If the statement is not according to the prosecution. In this regard, the following points should be taken into consideration by the apex court.
 - While making the statement deceased must be in fit mind of the state.
 - Should be recorded by the magistrate or by a police officer and person in a case when deceased was so precarious
 - A dying declaration should be recorded in question-answer form and written in words of the persons exactly who gives the statement.

Dying Declaration should be free and spontaneous

Dying declaration due to compulsion or pressure not be relied upon whereas dying declaration free from any biased relied upon. As it was held in the case of **Krishna Lal v. Jagun Nath** that the wife was burnt by the husbands-in-law and in her dying declaration she held that she was not burnt by her husbands-in-law and she was believed.

Conclusion

The dying declaration is not specifically mentioned in our penal law under Section 32(1) of IPC. it is the statement made by the person who is going to die, and that statement will be considered as evidence in court, how his death caused and who is the mugger. There are many conditions that relied upon the dying declaration that it should be in an adequate manner as dying declaration is the weapon who convicted the accused and stood as strong evidence. The admissibility of dying declaration accepted in our Indian court because the law presumes that in Leterm Mortem i.e in his last parting words the man will never lie as anyone will meet his maker with a lie on his lips. This is because a man who is going to die, end with all his needs and wants and his interest is no more passionate for self deeds so he seldom lies.

However, the dying declaration is found to be maliciously made then the court has the right to reject the statement. Or there are other situations and circumstances which coupled with dying declaration for its admissibility which discussed above.