



FACULTY OF JURIDICAL SCIENCES

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DYING DECLARATION (SEC 32(1))

Sec 32 and 33 of the Indian Evidence Act provides an exception to the hearsay rule. Sec 32(1) is one of that exception under which a statement of deceased is admissible if it is related to cause of his death or the circumstances which resulted in his death, in a case when cause of death of such person is in question. Such statement is called as 'dying declaration'. Sec 32(1) provides

“When a statement is made by a person as to cause of his death or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person’s death comes into question.

Such statements are relevant whether the person who make them was or was not, at the time when they were made under expectation of death or and whether may be nature of the proceeding in which the cause of his death comes into question.”

Essentials of the Dying declaration to be relevant

i. Person making statement must die and cause of his death is in question before the Court

As dying declaration is a statement of a person about the cause of his death' or 'circumstances which resulted in his death' in case where his death is in 'question'. The death may be caused by either homicide or suicide. Therefore if a person survived after making such statement, such is not dying declaration. Statement of deceased is dying declaration. Therefore the death of the person making statement must be proved before the Court to use the statement of the person making it as 'dying declaration' under sec 32(1). If such person survived after making statement as 'dying declaration' such statement later may be used to corroborate the testimony of the person making it under sec 157 of the Indian evidence Act or to contradict him under sec 145 of the Indian Evidence Act.

Statement about the death of another person is not dying declaration

Statement must relate to the cause of his death or the circumstances of the transaction which resulted his death

The expression 'cause of death' is concerned with reason of the death of the person making the statement. For example, A makes a statement that B assaulted him with spear and died.

Such statement of A is admissible as 'dying declaration' in the case where cause of death of A is in question. The immediate death is not required, If A dies after some time, it don't affect the nature of 'dying declaration' because cause of the death was the injury given by the B. As held in Moti Singh v State of UP AIR 1964 SC 900 the death of the person making statement caused by the injury he received in the incident for which accused is being prosecuted. If death is caused by any other reason, such statement would not be admissible as dying declaration.

For example, A was tried for the murder of B. B narrated the story of his death to the Police. But in medical examination the reason of the death was 'tetanus'. The statement of the B is not admissible as dying declaration.

The expression 'circumstances of the transaction which resulted in his death' is a wide application. It is not restricted to 'caused the death of the maker of statement' but includes all 'proximate relation to the actual occurrence'. For example, statement made by the deceased that he was proceeding to the spot where he was in fact killed, or statement of the deceased that is reason of the proceeding to the particular spot, or he was going to meet the particular person, all such statements are dying declaration as these includes 'circumstances of the transaction which resulted his death'(read the fact of the Pakla Naraiyan swamy Case).

The circumstances must have some proximate relation to the actual occurrence.(Kans raj v State of Panjab AIR 2000 SC 2324. **For example**, a married woman had been writing to her parents and other relatives about her critical condition at the hands of her inlaws. She lost her life after four months later. Her letters were held to be admissible as dying declaration.(Sharda Birdhi chand Sharda v State of Maharastra AIR 1984 SC 1622).

Statement can be made with or without expectation of death

If the statement has direct relation to the cause or the occasion of the death of a deceased, it is immaterial that it made before the person has received any injury or before the cause of death raised or before the deceased has any reason to anticipation of being killed. For example

Where the fact in issue was whether A had committed murder of B. Statement of B before he was assaulted that A has taken cash and ornament form him and that he going there to demand , is admissible as dying declaration.(Jainand v Rex AIR 1976 ALL 291)

Forms of Dying declaration

There is no particular form to be required in making dying declaration. It may be in oral or writing, or even may be partly oral or partly writing. It may be in form of signs or gesture by the deceased. (*Queen Empress v Abdullah*, ILR(1885)7 All 385. There is no particular form or procedure prescribed for a dying declaration nor it is required to be recorded by the Magistrate. (*Ashabai v State of Maharashtra* AIR 2013 SC 341). Not even any format is required to record the dying declaration such as question answer or otherwise. The presence of magistrate, certificate of the doctor as to mental or physical status of the person making the declaration, were all developed by judicial pronouncements (read the case *Ram Bihari Yadav v state of Bihar* AIR 1998 SC1850).

In case an injured person lodged the FIR and died, it is dying declaration. (*K. Ramchand Reddy v Public Prosecutor* (1976) 3SCC 104. Same in case where complaint made to police is relating to cause of death or circumstances of the transaction which resulted death of the maker is dying declaration(*Jai Prakash v state of Haryana*1999 Cr LJ 837 SC).