



FACULTY OF JURIDICAL SCIENCES

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Lecture-21



Evidentiary value of Dying declaration

Dying declaration is admissible in evidence being hearsay as an exception to the general rule of evidence that hearsay evidence is not admissible. Admissibility of dying declaration is based on the maxim "*Nemo Moriturus Prassumttur Mentire*" which means the man will not meet with his maker with a lie in his mouth. Mathew Arnold said "truth lies upon the lips of dying man". It is also said by Richard II "where words are scarce, They are seldom spent in vein; They breath the truth, That breath their words in pain".(See M. Monir, law of evidence, page 164). In **Ravi Kumar v State of Tamilnadu AIR 2006 SC 1448** it was held by the Supreme court that dying declaration is admissible upon the consideration that declarant has made it in extremity when maker is at the point of death and when every hope of this world is gone, when every motive of the falsehood is silence and mind is induced by the most powerful consideration to speak the truth.

Therefore, much weight is given to the dying declaration as an evidence. But as maker of the dying declaration is not subject to the cross examination, Court always is scrutinize that it must be of such nature as inspires the Court with its correctness. It can be said that Court must be satisfied that dying declaration is not product of tutoring, prompting and imagination, or conducive.

Further, it is not absolute rule of law that a dying declaration cannot form sole basis of conviction unless corroborated. The rule requiring corroboration is rule of prudence (**Panneerselvam v state of Tamil nadu (2008) 17 SCC 190**). A dying declaration which is truthful, consistent, coherent and without any infirmity don't need corroboration. A dying declaration which was recorded by the competent magistrate in the proper manner such as question and answer, and as practicable in the words of the maker of the declaration, stands on much higher footing than a dying declaration which depend upon oral testimony. The Court has to examine the circumstances, such as opportunity of the dying man of observation, whether the capacity of the man to remember the facts stated, had not impaired at the time of making statement, that the statement is consistent, if maker has several opportunity of making it, and it has been made at earliest opportunity and is not result of tutoring by the interested parties. (read the facts of **Kushal rao v State of Madhya Pradesh AIR 1958 SC 22**). In **Paniben v State of Gujarat (AIR 1992 SC 1817)** Supreme court laid down certain guidelines while dealing with dying declaration.

- (i) With all mentioned above about the evidentiary value of dying declaration it is held that

- (ii) In case dying declaration is suspicious it should not be acted upon without corroboration.
- (iii) Dying declaration which suffers from infirmity cannot be the basis of conviction.
- (iv) Merely the dying declaration does not contain details, is short, is not to be discarded
- (v) Where there are more than one version of dying declaration, the first in point of time be preferred.

Where the dying declaration is incomplete by the reason of death but clear and makes a clear accusation against the accused, it can be relied for conviction.

