

CHAPTER 13-A

Dying Declarations

(Inserted vide Correction Slip No. 12-Rules/XII F-8, dated 26th May, 1966).

1. Statements made by a person as to the cause of his death or as any of the circumstances of the transaction which resulted in his death are themselves relevant facts and admissible in evidence under Section 32(1) of the Indian Evidence Act in cases in which the cause of the person's death comes into question. A statement commonly known "dying declaration" constitutes such an important evidence in criminals that their Lordships of the Supreme Court ruled in *Khushal v. State of Bombay* (AIR 1958 SC 22), which was followed in *Singh v. The State* (AIR 1962 SC 439) that it could form the sole basis of conviction. It is thus necessary that a Court trying the case should have before it a correct and faithful record of the statement made by the dead person. As far as possible the dying declaration should be recorded in the manner hereinafter prescribed, and in the event of death of the person making it, should be submitted at the enquiry or trial.

COMMENTS

The law does not make any distinction between a dying declaration in which one person is named and a dying declaration in which several persons are named as culprits. A dying declaration implicating one person may well be false while a dying declaration implicating several persons may be true. Just as when a number of persons are mentioned as culprits by a person claiming to be an eye-witness in his evidence in Court the Court has to take care in deciding whether he has lied or made a mistake about any of them, so also when a number of persons appear to have been mentioned as culprits in a dying declaration the Court has to scrutinise the evidence in respect of each of the accused. But it is wrong to think that a dying declaration becomes less credible if a number of persons are named as culprits. *Harbans Singh and Another, vs. State of Punjab*, AIR 1962 SC 439.

It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; 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, and, 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 and human character, and in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties. *Khushal Rao, vs. State of Bombay*, AIR 1958 SC 22, (*In re, Guruswami Tevar*, I.L.R. 1940 Mad. 158: A. I. R. 1940 Mad. 196 approved)

In order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not

reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, but from the fact that the Court, in a given case, has come to the conclusion that particular dying declaration was not free from the infirmities. Observations in A.I.R. 1953 S. C. 420, held to be in the nature of obiter. *Khushal Rao, vs. State of Bombay*, AIR 1958 SC 22.

2. Dying declarations to be recorded by Judicial Magistrates—(i) Where a person whose evidence is essential to the prosecution of a criminal charge or to the proper investigation of an alleged crime, is in danger of dying before the enquiry proceedings or the trial of the case commences, his statement, if possible, be got recorded by a Judicial Magistrate. When the police officer concerned with the investigation of the case or the medical officer attending upon such person apprehends that such person is in the danger of dying before the case is put in Court, he may apply to the Chief Judicial Magistrate, and, in his absence, to the seniormost Judicial Magistrate present at the headquarters, for recording the dying declaration.

(ii) On receiving such application, the Judicial Magistrate shall at once either himself proceed, or depute some other stipendiary Judicial Magistrate to record the dying declaration.

COMMENTS

It is mandatory for the investigating officer to apply to Chief Metropolitan Magistrate to depute some Magistrate for recording of dying declaration. *Smt. Madhu Bala vs. State (Delhi Admn.)*, 1989 (17) DRJ 178 : 1990 CrLJ 790.

3. Fitness of the declarant to make the statement should be got examined—Before proceeding to record the dying declaration, the Judicial Magistrate shall satisfy himself that the declarant is in a fit condition to make a statement, and if the medical officer is present, or his attendance can be secured without loss of time, his certificate as to the fitness of the declarant to make a statement should be obtained. If, however, the circumstances do not permit waiting or the attendance of the Medical Officer, the Judicial Magistrate may in such cases proceed forthwith to record the dying declaration but he should note down why he considered it impracticable or inadvisable to wait for a doctor's attendance.

4. The statement of the declarant should be in the form of a simple narrative—The statement, whether made on oath or otherwise, shall be taken down by the Judicial Magistrate in the form of a simple narrative. This, however, will not prevent the Judicial Magistrate from clearing up any ambiguity, or asking the declarant to disclose the cause of his apprehended death or the circumstances of the transaction in which he sustained the injuries. If any occasion arises for putting questions to the dying man, the Judicial Magistrate should record the question also the answers which he receives. The actual words of the declarant should be taken down and not merely their substance. As far as possible the statement should be recorded in the language of the declarant or the Court language.

5. Signatures or thumb impression of the declarant to be obtained to token of the correctness of the statement—At the conclusion of the statement, the Judicial Magistrate shall read out the same to the declarant and obtain his signature or thumb-impression in token of its correctness unless it is not possible to do so. The dying declaration shall be placed in a sealed cover and transmitted to the Judicial Magistrate having jurisdiction to deal with the case to which it relates.

COMMENTS

In case where the MLC report shows that the injuries were not such that the thumb impression of the deceased could not be obtained and yet the SDM and the investigating officer did not get the signatures or thumb impression, then such declaration is not to be acted upon. *Smt. Madhu Bala vs. State (Delhi Admn.)*, 1989 (17) DRJ 178 : 1990 CrLJ 790.

6. Recording of Dying declarations at a place away from the District Headquarters—Where in an emergency a dying declaration has to be recorded at a place away from the District Headquarters the investigated officer or the medical officer attending upon the dying man shall apply the nearest Judicial Magistrate to record the dying declaration, and the Judicial Magistrate shall immediately proceed to the spot and take the statement of the dying man in the manner stated above.

This, however, would not prevent the medical officer or the police officer connected with the investigation of the case from recording the dying declaration if he is of the opinion that death is imminent and there is no time to call a Judicial Magistrate. In such cases the police to the medical officer concerned must note down why it was not considered expedient to apply to a Judicial Magistrate for recording the dying declaration or to wait for his arrival.

7. Recording of a Dying declaration by a Police Officer or Medical Officer—Where a dying declaration is recorded by a Police Officer or a Medical Officer, it shall, so far as possible, be got attested by one or more of the persons who happen to be present at the time.

8. Fitness of the Declarant to make a statement to be certified by the Judicial Magistrate or other officer concerned—The Judicial Magistrate or other officer recording a dying declaration shall at the conclusion of the dying declaration certify that the declarant was fit to make a statement and it contained a correct and faithful record of the statement made by him as well as of the questions, if any, that were put to him by the justice recording the statement. If the accused or his counsel happens to be present at the time the dying declaration is recorded, his presence and objection, if any, raised by him shall be noted by the Judicial Magistrate or the officer recording the dying declaration, but the accused or his counsel shall not be entitled to cross-examine the declarant.

9. Dying Declaration should be a free and spontaneous—It is the duty of the person recording a dying declaration to take every possible question to ensure the making of a free and spontaneous statement by the declarant without any prompting, suggestion or aid from any other justice.

10. Welfare of the injured persons—The Judicial Magistrate, medical officer and police officials must all realize that the welfare of the injured person should be their first consideration, and in no circumstances must proper medical treatment be impeded or delayed simply to obtain the dying declaration of the injured person.”