

# "Dying Declaration by Rape

## Victims:

### A Critical Analysis"

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# **CHAPTER-1**

## **Introduction**

Dying Declarations are the statements made by a dying person as to injuries which culminated in his death or the circumstances under which the injuries were inflicted<sup>1</sup>. Statements made by a deceased long prior to the occurrence resulting in death are not Dying Declaration and not admissible in Indian Evidence Act<sup>2</sup>. The general ground of admissibility of the evidence is that no better evidence is to be had.

Dying declaration is based on the maxim “*Nemo moriturus praesumitur mentire*” which means ‘a man will not meet his maker with a lie in his mouth’. It operates as an exception to the hearsay rule<sup>3</sup>. Hearsay evidence is excluded because it is considered not sufficiently trustworthy. It is rejected because it lacks the sanction of the tests applied to admissible evidence i.e. the oath and cross examination<sup>4</sup>. They are not given any importance in the courts because the person who is giving this evidence is not telling his experiences but that of another person and who cannot be cross examined to verify the facts. It is an exception because if this evidence is not considered the very purpose of the justice will be forfeited in certain situations when there may not be any other witness to the crime except the person who has since died.

A Dying Declaration as envisaged by S 32 of the Indian Evidence Act need not necessarily be from a person who is dying at the time of making the statement. In addition, at the time of making such declaration, it is necessary that he or she should know that there is impending death. In other words, at the time of making such declaration it is a legal mandate that such person must entertain expectation of death<sup>5</sup>.

A rule peculiar to criminal cases is the exception to the rule respecting hearsay evidence which renders dying declarations as to the cause of death admissible in trials for murder and manslaughter. The earliest emphatic statement of it is to be found in *woodcock's case*, decided in

<sup>1</sup> P Ramnatha Aiyar (2007). *Advanced law lexicon*, New Delhi: Wadhwa & Company

<sup>2</sup> Autar Singh v. The Crown, AIR 1924 Lah 253

<sup>3</sup> Bryan Garner (2004). *Black's Law Dictionary*, United States of America: Thomson Business

<sup>4</sup> Rao Sripada venkata Joga (2001). *Sir John Woodroffe & Syed Amir Ali's Law of Evidence*, New Delhi: Butter worths India

<sup>5</sup> Sen Krishnayan (2004). 'Dying Declaration: An Exception to the rule of Hearsay', *Criminal Law Journal*. Vol-III, July-September,

1789. This case refers to a decision in 1720 and to the case of *R v. Reason and Tranter*, decided in 1722. That case, however say nothing as to any limitation on the rule. A series of cases from 1678 to 1765 shows that during that period declarations of deceased persons as to the cause of their death were admitted even though the declarants had hopes of recovery when they were made<sup>6</sup>.

Dying Declaration is a statement made by a person who is conscious and knows that death is imminent concerning what he or she believes to be the cause or circumstances of death that can be introduced into evidence during a trial in certain cases. A dying declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that they are about to die do not lie. As a result, it is an exception to the Hearsay Rule, which prohibits the use of a statement made by someone other than the person who repeats it while testifying during a trial, because of its inherent untrustworthiness. If the person who made the dying declaration had the slightest hope of recovery, no matter how unreasonable, the statement is not admissible into evidence. A person who makes a dying declaration must, however, be competent at the time he or she makes a statement, otherwise, it is inadmissible.

A dying declaration is usually introduced by the prosecution, but can be used on behalf of the accused. As a general rule, courts refuse to admit dying declarations in civil cases, even those for Wrongful Death, or in criminal actions for crimes other than the Homicide of the decedent.

A dying Declaration is fairly well crystal by judicial decisions. But before it is relied on, it must pass a test of reliability as it is a statement made in the absence of the accused and there is no opportunity to the accused even to put it through the fire of cross-examination to test its genuineness or veracity.

Section 32 of the Evidence Act is an exception to the general rule of exclusion of the hearsay evidence. Statement of a witness, written or verbal, of relevant facts made by a person who is dead or cannot be found or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense, are deemed relevant facts under the circumstances specified in Sub-sections (1) to (8). Sub-section (1) of Section 32

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<sup>6</sup> James Fitzjames Stephen, (1883). A history of Criminal Law of England,

provides that when the statement is made by a person as to the cause of his death or as to any circumstances of the transaction which resulted in his death, being relevant fact is admissible in evidence. Such statements are commonly known as dying declarations. Such statements are admitted in evidence on the principle of necessity. In case of homicidal deaths, statements made by the deceased are admissible only to the extent of proving the cause and circumstances of his death. To attract the provisions of Section 32 for the purposes of admissibility of the statement of a deceased, it has to be proved that:

- (a) The statement sought to be admitted was made by a person who is dead or who cannot be found of whose attendance cannot be procured without an amount of delay and expense or is incapable of giving evidence.
- (b) Such statement should have been made under any of the circumstances specified in Sub-sections (1) to (8) of Section 32 of the Evidence Act<sup>7</sup>.

The language of Section 32(1) of the Evidence Act depicts the following propositions:

- (1) Section 32 is an exception of the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as Indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.
- (2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a strait-jacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be

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<sup>7</sup> Sudhakar & Anr v. State of Maharashtra, AIR 2000 SC 2602

admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of Clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a telltale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant<sup>8</sup>.

A suicidal note written found in the clothes of the deceased it is in the nature of dying declaration and is admissible in evidence under section 32 of Indian Evidence Act<sup>9</sup>. The death referred to in Section 32(1) of the Evidence Act includes suicidal besides homicidal death. This was held by Justice Fazal Ali in *Sharad Birdhichand Sarda v. State of Maharashtra*<sup>10</sup> after referring to the decisions of this Court in *Hanumant v. State of Madhya Pradesh*<sup>11</sup>, *Dharambir*

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8 State v. Kanchan Singh, AIR 1954 All 153; Sudhakar & Anr v. State of Maharashtra, AIR 2000 SC 2602

9 State v. Maregowda, 2002 (1) RCR (Criminal)376 (Karnataka) (DB)

10 Sharad Birdhichand Sarda v. State of Maharashtra , 1984CriLJ1738

11 Hanumant v. State of Madhya Pradesh , 1953CriLJ129

*Singh v. State of Punjab, Ratan Gond v. State of Bihar*<sup>12</sup>, *Pakala Narayana Swami*<sup>13</sup>, *Shiv Kumar v. State of Uttar Pradesh*<sup>14</sup>, *Manohar Lal v. State of Punjab*<sup>15</sup>.

First information report got recorded by the police has been taken as dying declaration by the Honorable Supreme Court, when the person did not survive to get his dying declaration recorded<sup>16</sup>. But when patient remained admit in hospital for sufficient days i.e. for 8 days FIR cannot be treated as dying declaration<sup>17</sup>.

It is not necessary that the circumstances should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act<sup>18</sup>.

The death of declarant long after making the dying declaration did not mean that such a statement lost its value merely because the person making the statement lived for a longer time than expected. But to make the statement admissible, it has to be shown that the statement made was the cause of the death or with respect to the circumstances of the transaction which resulted in his death<sup>19</sup>.

The Court in *G.S. Walia v. State of Punjab*<sup>20</sup> held that the injuries were only directly responsible for causing death of the deceased and as his death cannot be said to have been caused due to the injuries caused, the statement made by him would not fall within Section 32 of the Indian Evidence Act.

12 Ratan Gond v. State of Bihar , 1959CriLJ108

13 Pakala Narayana Swami v Emperor, AIR 1939 PC 47

14 Shiv Kumar v. State of Uttar Pradesh , 1966 Cri AR 281,

15 Manohar Lal v. State of Punjab , 1981CriLJ1373

16 Munnu Raja and Anr. v. The State of Madhya Pradesh AIR 1976 SC 2199

17 State of Punjab v. Kikar Singh, 2002 (30 RCR(Criminal) 568 (P & H) (DB)

18 Sudhakar v. State of Maharashtra

19 Najjam Faraghi in alias Nijjam Faruqui v. State of West Bengal 1996CriLJ866 (SC)

20 G.S. Walia v. State of Punjab 1998 CriLJ 2524 (SC)

In *Onkar v. State of Madhya Pradesh*<sup>21</sup> while following the decision of the Privy Council in *Pakala Narayana Swami v Emperor*<sup>22</sup>, the Madhya Pradesh High Court has explained the nature of the circumstances contemplated by Section 32 of the Evidence Act, “The circumstances must have some proximate relation to the actual occurrence and they can only include the acts done when and where the death was caused.... Thus a statement, merely suggesting motive for a crime cannot be admitted in evidence unless it is so intimately connected with the transaction itself as to be a circumstance of the transaction. In the instant case evidence has been led about statements made by the deceased long before this incident which may suggest motive for the crime”. In *Allijan Munshi v. State of Maharashtra*<sup>23</sup>, the Bombay High Court has taken a similar view.

### **Distinction between English law & Indian Law**

The Indian law on the question of the nature and scope of dying declaration has made a distinct departure from the English Law where only the statements which directly relate to the cause of death are admissible. It is well settled by now that there is difference between the Indian Rule and the English Rule with regard to the necessity of the declaration having been made under expectation of death.

This distinction between the Indian Evidence Act and English law depicts the following observations:

1. Clause (1) of Section 32 of the Indian Evidence Act provides that statements, written or verbal of relevant facts made by a person who is dead are themselves relevant facts when the statement is made by a person as to the cause of his death, or as to why of the circumstances of the transaction which resulted in his death. While in the English Law the declaration should have been made under the sense of impending death whereas under the Indian Law it is not necessary for the admissibility of a dying declaration that the deceased at the time of making it should have been under the expectation of death<sup>24</sup>.

21 Onkar v. State of Madhya Pradesh , 1974 CriLJ 1200 (MP)

22 Pakala Narayana Swami v Emperor, AIR 1939 PC 47

23 Allijan Munshi v. State of Maharashtra , (1959) 61 BOMLR 1620

24 Rajendra Kumar v. State AIR 1960 Punjab 310 : 1960 Cri LJ 851

2. The second part of Clause (1) of Section 32 of Indian Evidence Act viz., "the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question" is not to be found in the English Law<sup>25</sup>.

As distinguished from the English Law Section 32 does not require that such a statement should have been made in expectation of death. Statement of the victim who is dead is admissible in so far as it refers to cause of his death or as to any circumstances of the transaction which resulted in his death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relation to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction.

Due weight is required to be given to a dying declaration keeping in view the legal maxim "*Nemo moriturus praesumitur mentire*" i.e. 'a man will not meet his Maker with a lie in his mouth'. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of a statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. However, in cases where the original recorded dying declaration is proved to have been lost and not available, the prosecution is entitled to give secondary evidence thereof.

### **Principle and the basis of admissibility of Dying Declaration**

Clause (1) of S 32 makes relevant what is generally described as dying declaration, though such an exception has not been used in any statute. It means statements made by a person as to cause of his death as to the circumstances of the transaction resulting in his death. The grounds of admission are: (1) necessity for the victim being generally the only principal eye-witness to the crime, the exclusion of the statement might defect the ends of justice (2) the sense of impending death, which creates a sanction equal to the obligation of an oath. It is admitted is

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25 Sudhakar & Anr v. State of Maharashtra, AIR 2000 SC 2602

that they are declarations made in extremity, when the party is at point of death and when every hope of his words is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth, a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in the court of justice<sup>26</sup>.

The principle on which Dying Declaration is admitted in evidence is indicated in legal maxim, “*Nemo Moriturus Prosesumitur Mentiri*” i.e ‘a man will not meet his maker with a lie in his mouth’<sup>27</sup>. The juristic theory regarding acceptability of Dying Declaration is that such declaration is made in extremity when the party is at the point of death and when every scope of this world is gone, when every motive to falsehood is silenced and the man is induced by the most powerful consideration to speak only the truth<sup>28</sup>. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept in law to accept the veracity of his statement<sup>29</sup>. The Hon’ble Supreme Court in *Lallubhai v. State of Gujarat*<sup>30</sup> held that the law regarding Dying Declaration is very clear. A Dying Declaration must be Closely scrutinized as to its truthfulness like any other important piece of evidence in the light of the surrounding facts and circumstances of the case bearing in mind on the one hand, that the surrounding is by person who has not been examined in court on oath and on other hand the Dying man is normally not likely to implicate innocent persons falsely<sup>31</sup>.

The admissibility of Dying Declaration is based on the maxim ‘*Nemo Moritur Praesumntur Mentiri*’ which means ‘a person who is about to die would not lie’. It is said that truth sits on the lips of a person who is about to die. The SC in *Kundabal subramanyam v state of AP*<sup>32</sup> , “A Dying Declaration is made by a person on the verge of its death has a special sanctity as at that solemn moment a person is most unlikely to make an untrue statement. The shadow of

<sup>26</sup> Nirmal Lousi v. State of Banaswadi police, Bangalore, 2005 (1) Kar L J 213

<sup>27</sup> P v Radha Krishna v. state of Karnataka, AIR 2003 SC 2859 p 2862

<sup>28</sup> Chaturvedi Gopal S (2008). *Filed’s Commentary on Law of Evidence*, New Delhi: Delhi law House.

<sup>29</sup> Laxman v. State of Maharashtra, 2002 Cri L J 4095 P 4097, (2002) 6 SCC 710

<sup>30</sup> Lallubhai v. State of Gujarat, AIR 1972 SC 1776

<sup>31</sup> Dil Bahadur Tamag v. State of sikkim, 2005 CrLJ 786 p 798

<sup>32</sup> *Kundabal subramanyam v state of AP*, 1993 Cri LJ (SC) 1635

the impending death is by itself the guarantee of the true of the statement made by the deceased regarding the cause or circumstances leading to his death”.

Thus declarant's death is pre-condition before the admissibility of statement. In *Maqsoodan v state of UP*<sup>33</sup> the court held that when a person who has made a statement, may be in expectation of death, is not dead, it is not a dying declaration and is not admissible under S 32.

The Second condition is that the injuries must have caused the death. If a person dies not on account of injuries which are inflicted on him but on account of some other reasons or ailment, the Dying Declaration would not be admissible. The SC in *Moti singh v state of UP*<sup>34</sup> held that Dying Declaration is not admissible as the death of the person was not proved.

The statement of the declarant should restrict itself having a direct and proximate relation to the cause of his death or to the transaction which resulted in his death, In *Shiv kumar v state of UP*<sup>35</sup>, the SC made observation regarding that the circumstances must have some proximate relation to the actual occurrences and that general expressions indicating fear or suspicion whether of a particular individual otherwise and not directly to the occasion of death will not be admissible.

### **Reliability of Dying Declaration**

A dying declaration, before it could be relied upon, must pass a test of reliability as it is a statement made in absence of the accused and there is no opportunity to the accused and there is no opportunity to the accused even to put it through the fire of cross examination to test its genuineness or veracity. Therefore, it becomes the duty of the court to subject to it to close scrutiny.

Though in law there is no bar in acting on the part of Dying Declaration, it has to pass the test of reliability. S 32 is an exception to the hearsay rule and unless evidence is tested by cross

<sup>33</sup> Maqsoodan v state of UP, AIR 1983 SC 126

<sup>34</sup> Moti singh v State of UP, AIR 1964 SC 900

<sup>35</sup> Shiv kumar v state of UP, 1996 Cri APP R (SC) 281

examination it is not credit worthy. A Dying Declaration made by a person on the verge of his death has a special sanctity as at that solemn moment by a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding circumstances leading to his death. But at the same time the dying declaration like any other evidence has to be tested on the touchstone of creditability to be acceptable. It is more, so, as the accused does not get an opportunity of questioning veracity of the statement by cross examination. The dying declaration if found reliable can form the base of conviction<sup>36</sup>.

Conviction can be based on it without corroboration if it is true and voluntary. But it becomes unreliable if it is not as per prosecution version. This has been summed up by the Hon'ble Supreme Court:

1. It is for the court to see that dying declaration inspires full confidence as the maker of the dying declaration is not available for cross examination
2. Court should satisfy that there was no possibility of tutoring or prompting.
3. Certificate of the doctor should mention that victim was in a fit state of mind. Magistrate recording his own satisfaction about the fit mental condition of the declarant was not acceptable especially if the doctor was available.
4. Dying declaration should be recorded by the executive magistrate and police officer to record the dying declaration only if condition of the deceased was so precarious that no other alternative was left.
5. Dying declaration may be in the form of questions and answers and answers being written in the words of the person making the declaration. But court cannot be too technical<sup>37</sup>.

Therefore, it can be concluded that once the statement of Dying person and the evidence of the witnesses testifying the same passes the test of careful scrutiny of the courts, it becomes very important and reliable piece of evidence and if the court is satisfied that the dying

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<sup>36</sup> Narain Singh v. state of Harayana , AIR 2004 SC 1616

<sup>37</sup> State of UP v. Madan Mohan. AIR 1989 SC 1519:1989 Cri LJ 1485h

declaration is true and free from any embellishment such a Dying Declaration by itself can be sufficient for recording conviction even without looking for conviction<sup>38</sup>.

### **Reasonable probability to Prove**

It is one thing for an accused to attack a Dying Declaration in a case where the prosecution seeks to rely on a Dying Declaration against the accused but it is altogether different where an accused relies on a Dying Declaration in support of the defense of the accidental death. The burden on the accused is much lighter. He has only to prove reasonable probability. Under these circumstances, the Dying Declaration could not have been rejected on the ground that it does not contain the endorsement of the doctor of the fitness of the lady to make the statement as the certificate of the doctor only shows that she was in a conscious state. The endorsement of a doctor aforequoted is not only about the conscious state of a lady but is that she made the statement in a conscious state.

### **Sole basis of Conviction**

In order to involve the appellant in the alleged offence, the solitary evidence is the dying declaration made by the deceased. Though the dying declaration was made by her, repeatedly at an interval of one hour in between, the basic factum remains that the only material of prosecution is her Dying Declaration. If the dying Declaration would pass the test of scrutiny it can be relied on as the sole basis of conviction. There is no dispute on the aforesaid legal proposition<sup>39</sup>. It is well settled that conviction can be based on the dying declaration itself provided it is satisfactory and reliable.

Conviction can be based on the strength of Dying Declaration without corroboration provided it is found trustworthy. However, before it is acted upon, it has to closely scrutinized since dying declaration given by a person before his death is a one sided affair and before

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<sup>38</sup> Viramji Mohatji Thakore v. State of Gujarat, 2005 (2) GLR 1622

<sup>39</sup> Raja Ram v. State of Rajasthan, (2005) 5 SCC 272

placing reliance on it and closing case for seeking corroboration, it is not only desirable but also essential to eliminate the chances of suspicion after careful and close scrutiny<sup>40</sup>.

Though a Dying Declaration is entitled to a great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the Dying Declaration should be such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of tutoring, prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state after a clear opportunity to observe and identify the assailants. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, a conviction can be based on that without any further corroboration. It cannot be laid down as an absolute rule of law that Dying Declaration cannot form a basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence<sup>41</sup>.

The law is settled that there can be conviction on the basis of Dying Declaration and it is not at all necessary to have corroboration provided the court is satisfied that the Dying declaration is truthful dying declaration and not vitiated in any other form. The court must be satisfied that the deceased was in a fit state of mind to make the statement after the deceased had a clear opportunity to observe and identify the accused and that he was making the statement without any influence and rancour. Once the court is satisfied that the dying declaration is true and voluntary it can be sufficient to found the conviction even without corroboration<sup>42</sup>.

### **Competency and credibility of Dying Declaration**

When coming to the competency and credibility of the deceased and statement respectively, the same may be impeached or confirmed in the same manner as that of a witness where the doctor was not present at the time when the Dying Declaration was made to certify that the deceased was in a fit mental condition to make statement not there is mention in a dying

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<sup>40</sup> State of HP v Hem raj, 1992 SLC 158 P 169 (HP)

<sup>41</sup> Smt. Paniben v state of Gujarat, 1992 (2) SCJ 509

<sup>42</sup> State of Punjab v. Savitri Devi, 1983 (2) Crimes 547

declaration that the deceased was in a fit mental condition to make the statement no reliance can be placed on the Dying Declaration. The 1st question arises whether the deceased was in a fit mental condition to make the statement and his physical fitness and consciousness must be clearly examined to dispel all doubts of the same being concocted as held in *State v. Laxmann*<sup>43</sup>.

The form of statement may be oral or written. Any statement made to the witnesses that he had been killed by the accused, was held admissible in the absence of Doctors certificate with regard to his fit state of mind. DD can be recorded by the attending Doctor, who is the best person to opine about the fitness of the deceased to make the statement and when the doctor finds no time to call the police or Magistrate, in such situation, the doctor is justified indeed duty bound to record DD, which is admissible in law<sup>44</sup>.

### **Corroboration of Dying Declaration**

As regards to corroboration of the Dying Declaration is concerned, the Supreme Court in *Harbans Singh v State of Punjab*<sup>45</sup>, held that “it is neither a rule of law nor of prudence that a dying declaration requires to be corroborated by other evidence before conviction can be based thereon. The evidence furnished by the dying declaration must be considered just as the evidence of any witness, though undoubtedly some special consideration arises in the assessment of Dying Declaration which does not arise in the case of assessing the value of a statement made in the court by a person claiming to be a witness of the occurrence”. In brief, a Dying Declaration must satisfy the court that it was “true and voluntary” and that the declarant was in a fit state of mind’.

Once a Dying Declaration withstands the test of scrutiny and turns out to be a truthful version of the circumstances of death and assailants of the victim, no further corroboration is necessary to base a conviction on its basis. It was similarly held by SC in *Munna Raja v State of MP*<sup>46</sup>.

<sup>43</sup> *State v. Laxmann*, AIR 1986 SC 250

<sup>44</sup> Rajendran A (2002). ‘Evolution of Dying Declaration or whether Dying Declaration still Sacrosanct?’, *Criminal Law Journal*. Vol-I, Jan –march, PP

<sup>45</sup> *Harbans Singh v State of Punjab*, AIR 1962 SC 439

<sup>46</sup> *Munna Raja v State of MP*, AIR 1976 SC 2199

In *Lallubhai Devchand Shah v State of Gujarat*<sup>47</sup>, in *Vithal Somnath More v State of Maharashtra*<sup>48</sup> and in *Kundabala subramanyam v State of AP*<sup>49</sup> it was held that once the court is satisfied that the dying declaration is true and voluntary, it can sufficiently become the basis for conviction even though without any further corroboration.

In *State of Rajasthan v kishore*<sup>50</sup>, the court held that the Dying Declaration if found to be true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there is no legal impediment to form such Dying Declaration as basis of conviction even though there is corroboration. Thus the primary duty of the court of the court is to find out whether the Dying Declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the Dying Declaration are not clear or convincing, the court may, for its assurance, look for corroboration<sup>51</sup>

It is not the requirement of law that the person making the Dying Declaration should make an elaborate and exhaustive statement as to cover each and every aspect of the incident and narrate the whole history of the case<sup>52</sup>.

## **Aims and Objectives of the Study**

In view of the foregoing discussion, the main purpose of the present work is to introduce the concept of Dying Declaration and discuss its importance during the trial of Rape Victims. Keeping in view this aim, the researcher has analyzed the legal provision and regulatory framework dealing with Dying Declaration and concentrated on the practical aspects covering various judicial interpretations throwing a light upon the scope and application of the concept.

The researcher in the present study has attempted to highlight the object of the provision relating to Dying Declaration. The effort has been made to evaluate the efficacy and adequacy of

<sup>47</sup> *Lallubhai Devchand Shah v State of Gujarat*, AIR 1972 SC 1776

<sup>48</sup> *Vithal Somnath More v State of Maharashtra*, AIR 1978 SC 519

<sup>49</sup> *Kundabala subramanyam v State of AP*, 1993 Cri LJ (SC) 1635

<sup>50</sup> *State of Rajasthan v kishore*, AIR 1996 SC 3035

<sup>51</sup> *State of UP v Ram Sagar Yadav*, AIR 1985 SC 416

<sup>52</sup> *Charipally shakaararao v Public prosecutor HC of AP* AIR 1995 SC 777

the existing laws in combating and providing relief & remedy; to examine the interpretation given by the Courts. While dealing with such a vast topic, it is not possible to make the work exhaustive as the subject is holding ever-growing importance and scope. Nevertheless a line has to be drawn somewhere for accomplishing the present research work in an effective way. Accordingly, the present work covers the analysis and social investigation regarding factual status, dimensions and paradigms of law on the Dying Declaration and laws dealing with ancillary issues which help to explain these areas such as admissibility, reliability and conviction on its basis. The work covers critical analysis of the Dying Declaration, its admissibility, reliability etc.

The main focus of the study is to undertake the evaluation of judgment and interpretation of Dying Declaration. Therefore this research work is intended to make an extensive and analytical study of Dying Declaration. In the backdrop of above, an attempt has been made to review the accepted conclusions in the light of newly discovered facts and judgments.

## **Hypothesis**

In order to conduct a research work, some important hypotheses are to be formulated. The focal points and assumptions are normally available through the formulation of hypothesis. The major hypotheses developed on the basis of study of available literature, day to day observations of the people from various walks of daily life and evaluation of primary as well as secondary data and work done earlier including related studies are:

1. That the Dying declaration is weak kind of evidence even though it is based on the principle that a man will not meet his maker with a lie in his mouth
2. That conviction cannot be based on the sole basis of dying declaration and it has to pass a reliability test.

## **Significance of the Study**

The research work further assumes its importance when the judicial pronouncement of various High Courts and Supreme Court is analyzed. The study reveals that some facts are

attacking at the existence and worth of these legislations as law must keep its pace with the objective and it should prove its worth through proper application.

In the upshot of aforesaid discussion, it is hoped that the study would provide valuable and comprehensive information regarding meaning and interpretation of the laws. It would also provide sufficient insight into the object, implementation of laws.

## **Research Methodology**

The quality and value of research depends upon the proper and particular methodology adopted for the completion of research work. Looking at the vastness of the research topic doctrinal legal research methodology has been adopted. To make an authenticated study of the research topic ‘dying declaration by Rape victims’ enormous amount of study material is required. The relevant information and data necessary for its completion has been gathered from both primary as well as secondary sources available in the books, journals, periodicals, research articles and websites, and Acts of the Parliament.

Keeping in view the need of present research, various cases filed in the Supreme Court as well as in the High Courts on the issue of and the judgments therein have also been used as a source of information. The judgments pronounced in the cases have been analyzed in detail and used as a means of diagnosis to know the basic lacunae arising in the way of providing the remedy.

## **CHAPTER-2**

## **Legal Provisions**

### **Section 32 - Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.**

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:--

- (1) *When it relates to cause of death.*-When the statement is made by a person as to the 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 made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.
- (2) *or is made in course of business.*-When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.
- (3) *Or against interest of maker.*-When the statement is against the pecuniary or proprietary interest of the person making it or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.
- (4) *or gives opinion as to public right or custom, or matters of general interests.*-When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) *or relates to existence of relationship.*-When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons as to whose relationship [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) *or is made in will or deed relating to family affairs.*-When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) *or is document relating to transaction mentioned in section 13, clause (a).*-When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

(8) *Or is made by several persons and expresses feelings relevant to matter in question.*-When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

### **Illustrations**

(A) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(B) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(C) The question is, whether A was in Calcutta on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(D) The question is, whether a ship sailed from Bombay harbour on a given day. A letter written by a deceased member of a merchants firm, by which she was chartered to their correspondents in London to whom the cargo was consigned, stating that my ship sailed on a given day from Bombay harbour, is a relevant fact.

(E) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders is a relevant fact.

(F) The question is whether A and B were legally married? The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(G) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(H) The question is, what was the cause of the wreck of a ship? A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(I) The question is, whether a given road is a public way. A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(J) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business is a relevant fact.

(K) The question is, whether A, who is dead, was the father of B. A statement by A was that B was his son, is a relevant fact.

(L) The question is what was the date of the birth of A? A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(M) The question is, whether, and when, A and B were married. An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(N) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libelous character. The remarks of a crowd of spectators on these points may be proved.

## **CHAPTER-3**

## **Judicial Trend**

In *State of Assam v Mahim Barakataki*<sup>53</sup>, A Statement was made by the victim of rape and murder. She died of burns. She made the statement to one of the witnesses while she was under severe pain due to grievous burns. It was alleged that the accused had committed rape on her and later by pouring kerosene on her, burnt her alive. The court found the Dying declaration to be truthful and reliable and thus, admissible. The Hon'ble court held that the conviction could be based on the dying declaration which is found to be truthful and reliable.

In *Jagga Singh v. State of Punjab*<sup>54</sup>, the accused attempted rape on a young girl and the next day by setting the girl to fire by pouring kerosene killed the girl. The father of the girl was a tenant of the accused and left the girls in the house alone. The brother of deceased (Nihalo) who has deposed about seeing her sister in burning condition has not deposed about the attempted rape the previous night. The Statement in Dying declaration contained that after deceased (Nihalo) had been set on fire, which was in the court-yard, she rushed to her room which was bolted from outside by the appellant. The Appellant contented that if the deceased (Nihalo) would have been set on fire in the court-yard, she would not have rushed inside the room to save herself - this would have been unnatural conduct; she would have instead gone outside the house to attract the attention of others who could have come forward to save her. The court considered this contention as a strong point. The court also observed that none of the witnesses had seen the appellant setting Nihalo on fire. The brother of the deceased (Ram Pal) did state in his examination-in-chief that deceased (Nihalo) was crying that Jagga (the appellant) had set her on fire. But he admitted in cross-examination that he had not stated about the same to the police.

The Hon'ble Court held that the aforesaid material only points the needle of suspicion, towards the appellant and nothing more. Suspicion, however, is no substitute for proof; and in criminal law the prosecution has to prove the guilt beyond reasonable doubt. The offence alleged in the present case being murder, which visits the perpetrator of the crime with the minimum sentence of imprisonment for life, a Court of law would be justified in demanding full

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<sup>53</sup> *State of Assam v Mahim Barakataki*, AIR 1987 SC 98

<sup>54</sup> *Jagga Singh v. State of Punjab*, AIR1995 SC 135

satisfaction before the lethality of Section 302 can be used against anyone. The materials on record in the present case do not have so much of cutting-edge as to penetrate the fortress of innocence built round on accused in our criminal jurisprudence.

The Hon'ble Supreme Court, therefore, held that the infirmities are sufficient to throw doubt on the correctness of the statements which find place in dying declaration. It is a settled law that for a dying declaration to provide the basis for conviction, the same has to be beyond any reproach. As the present dying declaration is not of such a status at all, the court was of the view that the conviction of the appellant can not be based on what has been recorded in the dying declaration and therefore in the absence of any other proof the Hon'ble Court acquitted the appellant.

In *Sudhakar & Anr v. State of Maharashtra*<sup>55</sup>, Ms. Rakhi, a young girl of about 20 years of age, was working as teacher. One Morning Ms, Rakhi went to her school in the morning as usual. When the school was closed at about 12 'O' Clock in the afternoon and all students had gone back to their homes, the appellants i.e. the headmaster and the other teacher came in the room where Rakhi was sitting and closed the door and windows of the room. She was forcibly subjected to sexual intercourse by the appellants and her wailing cries did not have any effect upon them. She was thus subjected to gang-rape by the appellants. After few days, the matter was reported to the police. After the matter was reported to the police, the prosecutrix was sent to stay with her married sister Saraswatibai PW-14 as it was found that she had lost her equilibrium of mind and was mentally upset. Having failed to withstand the humiliation to which she was subjected to on account of rape committed by the appellants; Ms. Rakhi is stated to have committed suicide. The Trial Judge of the Sessions Court convicted the appellants under Section 376(2) (g) read with Section 34 of the I.P.C. and sentenced each one of them to suffer rigorous imprisonment of seven years and to pay fine of Rs. 1,000/- each.

The matter went in appeal in High Court and even High Court Convicted him. Then the matter went to Hon'ble Supreme Court. The Hon'ble Supreme Court Observed that the Courts below have relied upon the aforesaid statement treating as dying declaration being admissible in

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<sup>55</sup> Sudhakar & Anr v. State of Maharashtra, AIR 2000 SC 2602

evidence under Section 32 of the Evidence Act. Admissibility of the statement of Ms. Rakhi is of paramount importance for deciding the present appeal. If the statement is held to be admissible in evidence, being the dying declaration of Ms. Rakhi, the appellants may not escape of their liability to conviction and sentence as there exists other corroborative evidence against them. However, if the aforesaid report/statement is not admissible in evidence, the appellants may be entitled to all consequential legal benefits. In that even the offence of rape may not be held to have been proved against them and if rape is not proved, the appellants cannot be held responsible for the commission of the offence under Section 306 of the I.P.C.

The Court further observed that the prosecution has failed to prove its case against, the appellants beyond all reasonable doubt, they are entitled to acquittal. Before parting with the judgment we would, however, observe that in the present case the Investigating as well as the prosecution agency has not acted promptly and diligently as was expected under the circumstances. Therefore, the court allowed the appeal and the judgment of the High Court is set aside and the appellant was acquitted.

In *Ronal Kiprono Ramkat v State of Haryana*<sup>56</sup>, the Deceased was raped by appellant and then stabbed with kitchen knife on neck and head. The Injuries inflicted by appellant resulted in death of deceased. Therefore, the appellant was charged for offence under Sections 302 and 376. The Trial Court convicted appellant for offences under Sections 302 and 376/511. The matter went to the High Court. The Conviction was upheld by High Court. Therefore, the matter went to the Hon'ble Supreme Court. The Hon'ble Supreme Court observed that there were no eyewitnesses to incident and the prosecution mainly relied on oral dying declaration. The Hon'ble Court held that Dying declaration suffered from a number of infirmities and absence of explanation of serious nature of injuries sustained by appellant raises serious doubt as to very genesis of incident. Fact that deceased was totally naked probalises theory of intercourse by consent and negatives theory of rape. The Court concluded that in view of seriousness of injuries sustained by appellant it cannot be said that injuries were self inflicted. Also Dying declaration does not appear to be in language of deceased and therefore does not inspire confidence. The Hon'ble Supreme Court held that in view of infirmities, improbabilities and contradictions dying

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<sup>56</sup> *Ronal Kiprono Ramkat v State of Haryana* , AIR 2001 SC 2488

declaration cannot be relied upon and therefore, the appeal was allowed and the appellant was acquitted.

In *Santosh Kumar v State of UP*,<sup>57</sup> A statement was made by rape victim to her mother that she was raped by the accused and if she disclosed this fact to any one she would be killed. She died of burns.

The learned Additional Sessions Judge on considering the evidence of the prosecution and that of defence held that offences punishable under Sections 376 and 302 read with Section 34, IPC had been fully established against appellants Manoj Kumar Gupta and Santosh Kumar while offence punishable under Section 302 read with Section 34, I.P.C. was established against the appellants Kanhaiya Lal and Rajesh alias Raju. Accordingly, he convicted them under said sections. He further held that the act of appellants Manoj Kumar Gupta and Santosh Kumar falls within the category of rarest of rare cases and therefore, they were liable to extreme penalty of death. With these findings he sentenced the appellants Manoj Kumar Gupta and Santosh Kumar to be sentenced to death under Section 302 read with 34 I.P.C. and imprisonment for life under Section 376, I.P.C. The appellants Kanhaiya Lal and Rajesh have been sentenced to imprisonment for life under Section 302 read with Section 34, I.P.C.

The Hon'ble Supreme court held that that there was a great probability of Km. Anita (deceased) committing suicide and there is a great deal of doubt that she was set at fire by the appellants in the manner alleged by the prosecution. Therefore, the Court was unable to sustain conviction of appellants under Section 302 read with Section 34 I.P.C.

Accordingly, the appeal was partly allowed. The Hon'ble court set aside their conviction and sentence under Section 302 read with Section 34, I.P.C. and they are acquitted under Section 302/34, I.P.C. The Hon'ble Supreme Court rejected the references made by the trial court. However, their conviction Under Section 376, I.P.C. was made confirmed by the Supreme Court. But sentence of life imprisonment under said section is reduced to a sentence of Rigorous Imprisonment for a period of ten years each.

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<sup>57</sup> *Santosh Kumar v State of U.P.*, 2002 CriLJ (SC) 301

In *Shyam Singh Hada v State of Rajasthan*<sup>58</sup>, where a women who became the victim of gang rape and murder, disclosed the offence to her husband and died, her statement was allowed to be proved by the examination of her husband. The court said that the statement was directly connected with and related to her death. The fact of non-disclosure to other relatives could not be given undue importance because of the sensitive nature of the happening.

In *Shambhu v State of Madhya Pradesh*<sup>59</sup>, the deceased Sunder Bai went to the house of appellant Shambhu requesting him to repay the sum of Rs. 1,000/. The appellant committed rape on Sunder Bai and thereafter, the appellant's wife, Sadhna Bai poured kerosene oil on the body of Sunder Bai and the appellant set fire to her. Amritlal, one of the witnesses, heard the sound of "bachao, bachao". He saw the deceased Sunder Bai set on fire by appellant-Shambhu. In the meantime, the husband of the deceased Sunder Bai also reached the place of incident. Amritlal, went to the Police Station. The Husband also visited the M.Y. Hospital where the deceased was admitted with burn injuries. The Executive Magistrate reached the hospital and recorded the dying declaration of deceased Sunder Bai.

The learned Sessions Judge acquitted the appellant for the reasons that the First Information Report was recorded belatedly and there were a series of discrepancies. Statement and that the dying declaration recorded was not reliable as there was no satisfactory evidence to show that Sunder Bai was in a fit state to give the dying declaration. Learned Sessions Judge also disbelieved the Magistrate on the ground that he was not in a position to state the percentage of the burn injuries on the body of the deceased Sunder Bai; he had not brought the memorandum received from the police station; and that he did not verify whether the doctor had given sedatives to the deceased. He was disbelieved on the ground that he deposed that he reached the hospital in a scooter whereas the Police Inspector had deposed otherwise.

The High Court, in appeal, reversed the finding of the Sessions Judge and held that the prosecution had succeeded in proving that appellant-Shambhu had caused the death of deceased

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<sup>58</sup> *Shyam Singh Hada v State of Rajasthan*, 2000 Cri LJ 1437 (Raj)

<sup>59</sup> *Shambhu v State of Madhya Pradesh*, AIR 2002 SC 1307

Sunder Bai. The High Court held that the dying declaration was reliable and that there was no reason to disbelieve the evidence of Magistrate.

The Hon'ble Supreme Court held that the High Court has erred in finding the appellant guilty of murder. Even if the evidence of the witness-Amritlal is eschewed, there is convincing and satisfactory evidence to prove that the appellant was responsible for the murder of the deceased Sunder Bai. Sessions Judge disbelieved the dying declaration on flimsy grounds based on irrelevant considerations. Whether the Executive Magistrate reached the hospital in a scooter or any other conveyance or whether the Magistrate had noted the percentage of burn injuries on the body of the deceased are irrelevant matters which should not have weighed with the Sessions Judge in disbelieving the dying declaration. The Hon'ble Court held that if the dying declaration is truthful and reliable, conviction can be based solely.

In *State of Punjab v. Chatinder Pal Singh and Ors*<sup>60</sup>, the Deceased (Kumari Poonam) was aged about 16-1/2 years. She was a student of 9th class. She had committed suicide by putting kerosene oil on her clothes and putting the same on fire on account of misbehaviour by accused Honey who was resident. It was alleged by the prosecution that when she was going to the school at about 7.00 a.m. along with her brother Anil, on the way accused (Honey) met them and he asked her to accompany him failing which he would not spare her brother and out of fear she went with him and he took her to Rose Garden, Chandigarh. Again, on the date of incident, in the same manner she was coming to the school at about 7.00 a.m. along with her brother Anil and her friend Rajni when accused Honey along with two others who she could recognise met them in white coloured Ambassador car and they made her brother Anil sit in the said car and told her that if she wanted her brother then she should sit with them and out of fear she sat in the car and they also made Rajni sit in the said car. Thereafter they took them to a hotel in Sector 22 Chandigarh and there they forcibly committed rape on her and thereafter they left them at Mohali at about 1.00 P.M. on that day. It was further alleged that thereafter she had told the entire occurrence about these two dates to her mother. It was further alleged that on that day the said boy i.e. Honey came to their house and rang the door bell and went away after giving a signal to her and at that time there was no one else in the house. Her mother had stopped her from going

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<sup>60</sup> State of Punjab v. Chatinder Pal Singh and Ors, AIR 2009 SC 974

to the school. It was alleged that she put herself on fire as she had been defamed in the eyes of the public and it was useless to live. She further alleged that on hearing her cries, another tenant Darshan Singh who was residing in the adjoining room came there and he put off the fire and he also called her mother and thereafter they brought her to PGI Chandigarh where she was under treatment. She further stated that she had put herself on fire because of the earlier incident concerning Honey accused and hence accused Honey and his friends were responsible for the same. The matter was reported to police.

The learned Additional Sessions Judge directed the acquittal of the four accused persons of the various charges. State filed an appeal before the High Court. The stand of the State before the High Court was that even though the brother of the deceased (Anil Kumar) and her friend (Rajni) had not supported the prosecution case, the two dying declarations clearly established the accusations. The accused persons took the stand that in the so-called two dying declarations, there were various inconsistencies which were irreconcilable. Therefore, the trial court was justified in directing the acquittal. The High Court accepted the plea of the accused persons and upheld the acquittal.

The Hon'ble Supreme Court held that the discrepancy pointed by the trial court is that in there is mention about one incident of rape on her in a hotel at sector 22 Chandigarh by Honey and two other accused. She does not state in the dying declaration that she was raped and stated that accused Honey had simply taken her to Rose Garden. Also, she does not mention the date of the first incident but states that her friend Rajni was also with her and they were taken to some unknown hotel while Honey raped her and accused Longowal raped Rajni. She also did not mention the second incident to have taken place and stated that it was 2/3 days ago and not yesterday, when the boys took them to a hotel in sector 22 and raped them. There are several inconsistencies and contradictions in the Dying declarations.

The Hon'ble Court held that when two courts on analysis of the evidence found the respondents not guilty, there is no scope for interference in this appeal. The reasons indicated by the trial court and affirmed by the High Court discarding the two dying declarations do not suffer from any infirmity and therefore the appeal was dismissed and the accused were acquitted.

## **CHAPTER-4**

## **Conclusion & Suggestion**

As a piece of evidence, Dying declaration is now fairly crystal clear by judicial decisions. The importance of Dying declaration as a piece of convincing evidence is increasing with the escalation of cases, wherein the Dying declaration laid the foundations for prosecution. Notwithstanding that there may be no direct and ocular evidence to prove a crime, a dying declaration may be self speaking and prove much more than eye witnesses could depose. Truly said, men may lie but not the circumstances. It is as good as any other piece of evidence and it is sacrosanct.

A dying declaration is the morality or religious condition of the dying man, Truth sits on the lips of a dying man who has a sense of impending death. But if the dying man was under no expectation of death, could it be presumed that even then his religious or moral fiber would get strengthened impelling him to speak the truth. It is strongly felt that it is not always the case. Truth would sit on the lips of a dying man only if he is under expectation of death.

A Dying Declaration made by a person on the verge of his death has a special sanctity, as at that solemn moment, a person is most unlikely to make any untrue statement. The sanctity attached to Dying Declaration is that a person on the verge of death would not commit sin in implementing somebody falsely. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding circumstances leading to his death. The general principle on which this species evidence is admitted is that they are declarations made in extremity, when the person is at point of death and when every hope of this world is gone. At that point of time every motive to falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. Such a Solemn situation is considered by the law as creating an obligation equal to which is imposed by a positive oath administered in a court of justice.

A Dying Declaration is a weak kind of evidence because the accused do not get any opportunity to cross-examine the declarant. Uncrossed version of the declarant is thrust upon the accused and they could be held guilty of the crime alleged in the declaration. Under these circumstances, the courts are expected to be very cautious and circumspect in accepting the dying declaration. Therefore, the hypothesis put forward by the researcher is found to be true.

The dying declarations are weak kind of evidence even though they are based on the principle that a person would not die with a lie in his mouth.

A Dying Declaration enjoys almost a sacrosanct status as a piece of evidence, coming as it does from the mouth of the deceased victim. The Dying declaration if found to be true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there is no legal impediment to form such Dying declaration as basis of conviction even though there is corroboration. But once the statement of Dying person and the evidence of the witnesses testifying the same passes the test of careful scrutiny of the courts, it becomes very important and reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a Dying Declaration by itself can be sufficient for recording conviction even without looking for conviction. Therefore, the second hypothesis put forward by the researcher is found to be true. It cannot be sole basis of conviction; it has to pass through a reliability test which would be the duty of the court itself through a careful scrutiny.

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37. State of Assam v Mahim Barakataki, AIR 1987 SC 98
38. Shyam Singh Hada v State of Rajasthan, 2000 Cri LJ 1437 (Raj)
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40. State of UP v Ram Sagar Yadv, AIR 1985 SC 416
41. Charipally shakaararaao v Public prosecutor HC of AP AIR 1995 SC 777
42. Viramji Mohatji Thakore v. State of Gujarat, 2005 (2) GLR 1622