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Death and the Declaration: The Ante - Mortem Statement

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Abstract: **We all heard and have been taught since from childhood that truth is god. On the earth where "Life" is said to be the blessing of the supreme at the same time "Death" is the ultimate truth of one's life. In this world one can escape the life in one way or the other but on one can escape his or her death. Instead of all no one wants to die. According to the theoretical and scientific beliefs of man there is a huge difference between "Natural Death" and "Unnatural Death". But whatever be the situation it is traditionally believed without out any this and that – that no one will tell a lie on his death bed about anything. According to the theory of human Behavior the personality of human beings keeps modifying according to the span to time and according to his good and bad experiences.**

Keywords: **Mortem Statement, Death and the Declaration, the Ante**

I. INTRODUCTION

The study further explains that human personality permits a prediction of what a person will do in a given situation. Therefore the traditional belief that no one will tell a lie on his death bed can't be accepted in totality because it may possible that a person can lie in enmity or for fulfilling his revenge before dying. That's why the rule relating to the dying declaration under the law is also different. Thought the rule is an exception to the rule of hearsay evidence which provides that hearsay evidence should not be permitted. Under the rule of law the statement made by the person on his death bed or before dying requires corroboration. Because he who was having the knowledge of the incident or the cause of his death is no more therefore any person to whom the dead had made the statement could prove it in Court through rules of law. The reasons behind of admitting the evidence of such person are:-

1. That it is the best evidence available
2. That the dying man is from fact to face with his maker without any motive for telling a lie It does not matter to whom such statement is made by the person dead. If the condition under the relevant law are fulfilled.

II. WHAT THE DECLARATION BEFORE DYING MEANS?

Black's Law Dictionary defines Dying declaration as a statement by a person who believes that death is imminent, relating to the cause or circumstances of the person's impending death. It also termed as deathbed declaration or ante mortem statement.[i] The Indian evidence Act, 1872 does not define the term dying declaration specifically it only speaks about the cases in which statement made by a person who is dead or cannot be found are considered as relevant fact under Section 32. But the reading of entire section explains that a dying declaration means a statement written or verbal of relevant facts made by a person, who is dead. It is a statement of a person who had died explaining the circumstances of his death.

III. THE LAW

Section 32 of the Indian Evidence Act deals with the case in which statements of relevant fact by person who is dead or cannot be found, etc., is relevant. It Provides that 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.

As per Section 32 of the Act dying declaration mean a statement by a person as to cause of his death or as to any of the circumstances resulting in his death.

IV. DYING DECLARATION AS AN EVIDENCE IN COURT

A dying declaration is considered as an important piece of evidence which, if found veracious and voluntary by the court, could be the sole basis for conviction and can be relied upon even without corroboration if:-

1. It has been made Voluntary

2. It has been made in a fit mental condition
3. It must relate to the circumstances of the transaction which resulted in death

In Pakala Narayana Swami vs Emperor [1] the privy Council has observed that The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase, no doubt, that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant; facts. It is on the other hand narrower than "res gest". Circumstances must have some proximate relation to the actual occurrence: though as for instance in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition for the admissibility of the evidence is that "the cause of [the declarant's death comes into question". In the present case the cause of the deceased's death comes into question. The transaction is one in which the deceased was murdered on March 21, or March 22, and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on March 20 or 21 that he was setting out to the place where the accused lived, and to meet a person, the wife of the accused, who lived in the accused's house, appears clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. In Harbans *Singh and Another, vs. State of Punjab,*[2] *it was observed by the Supreme Court that* 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. In *Khushal Rao vs. State of Bombay,*[3] *it was held that* 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. It was further held that 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.

In *Laxman v. State of Maharashtra*[4] the law relating to dying declaration was succinctly put in the following words:-

[1] (1939) LR 66 1A 66
[2] AIR 1962 SC 439
[3] AIR 1958 SC 22
[4] (2002) 6 SCC 710

> A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

Supreme Court, in *Atbir v. Government of NCT of Delhi,* [5] taking into consideration the earlier judgment of this Court in *Paniben v. State of Gujarat*[6] and another judgment of this Court in *Panneerselvam v. State of Tamil Nadu*[7], has exhaustively laid down the following guidelines with respect to the admissibility of dying declaration: -

i. Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.
ii. The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.
iii. Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
iv. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
v. Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
vi. A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
vii. Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
viii. Even if it is a brief statement, it is not to be discarded.
ix. When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
x. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration."

In *Shudhakar v. State of Madhya Pradesh,*[8] the Supreme Court Court, after referring its decision of *Laxman v. State of Maharashtra* and *Chirra Shivraj v. State of Andhra Pradesh,*[9] has dealt with the issues arising out of multiple dying declarations and has gone to the extent of declining the first dying declaration and accepting the subsequent dying declarations. The Court found that the first dying declaration was not voluntary and not made by free will of the deceased; and the second and third dying declarations were voluntary and duly corroborated by other prosecution witnesses and medical evidence. In the said case, the accused was married to the deceased whom he set ablaze by pouring kerosene in the matrimonial house itself. The smoke arising from the house attracted the neighbours who rushed the victim to the hospital where she recorded three statements before dying. In her first statement given to the Naib Tehsildar, she did not implicate her husband, but in the second and third statements, which were also recorded on the same day, she clearly stated that the accused poured kerosene on her and set her on fire. The accused was convicted under Section 302 IPC. In this regard, the Court made the following observations:-

> Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased

[5] (2010) 9 SCC 1
[6] (1992) 2 SCC 474
[7] (2008) 17 SCC 190
[8] (2012) 7 SCC 569
[9] (2010) 14 SCC 444

> are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the court in such matters.

In *Sandeep and another v. State of Haryana,*[10] the first dying declaration which was given to a police officer was more elaborate and the subsequent dying declaration recorded by the Judicial Magistrate lacked certain information given earlier. After referring to the two dying declarations, this Court examined whether there was any inconsistency between the two dying declarations. After examining the contents of the two dying declarations, it was held that there was no inconsistency between the two dying declarations and non-mention of certain features in the dying declaration recorded by the Judicial Magistrate does not make both the dying declarations incompatible.

In Babulal and others v. State of M.P.[11] the value of dying declaration in evidence has been stated in following words:-

> A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (*nemo moriturus praesumitur mentire*). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

In *Prakash* and another *v. State of Madhya Pradesh,*[12] *the Supreme Court has ruled that:-*

> In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is perverse and requires to be interfered with.

Mukesh & Anr vs State of NCT of Delhi & Ors [13] *the question of admissibility of the* three dying declarations of the prosecutrix was decided by the Supreme Court and it was held that:- Appreciating the third dying declaration recorded on the basis of gestures, nods and writings on the base of aforesaid pronouncements, we have no hesitation in holding that the dying declaration made through signs, gestures or by nods are admissible as evidence, if proper care was taken at the time of recording the statement. The only caution the court ought to take is that the person recording the dying declaration is able to notice correctly as to what the declarant means by answering by gestures or nods. In the present case, this caution was aptly taken, as the person who recorded the prosecutrix's dying declaration was the Metropolitan Magistrate and he was satisfied himself as regards the mental alertness and fitness of the prosecutrix, and recorded the dying declaration of the prosecutrix by noticing her gestures and by her own writings. Considering the facts and circumstances of the present case and upon appreciation of the evidence and the material on record, in our view, all the three dying declarations are consistent with each other and well corroborated with other evidence and the trial court as

[10] (2015) 11 SCC 154
[11] (2003) 12 SSC 490
[12] (1992) 4 SCC 225

[13] Criminal Appeal No : 607 – 608 of 2017 , Arising out of S.L.P (Criminal) Nos. 3119 – 3120 of 2014, Supreme Court, Decided on May 5, 2017 (Reportable)

well as the High Court has correctly placed reliance upon the dying declarations of the prosecutrix to record the conviction.

V. CONCLUSION

It is now settled through judicial pronouncements, which themselves are said to be the Law in form of precedents for the Courts below that a Dying declaration can be the sole basis of conviction if the requirements under the Law is satisfied as per Section 32 of the Evidence Act and in the manner as explained by the Court through its valuable pronouncements. However no doubt that the admissibility and acceptability of a dying declaration depends upon the facts and circumstance of each case but there are or can be circumstances when maker of the dying declaration lose his conscience and presumed to be dead in general terms and also medically but survive later on but lose his memory thereafter or is in a mental state where he had forgotten that what was happened and who has done, because in such situation, though the person is available but is equal unavailable for all purposes. In the terms of medical science a patient who is unconscious or is in coma is at a very high risk of compounding their problems by adding to them by asphyxia, leading to death. It is a state in which a patient is totally unaware of both self and external surroundings, and unable to respond meaningfully to external stimuli. Such circumstances are also need to be Judicially interpreted.

[i] Black's Law Dictionary , 1230 (8th ed. 2004)

