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A Study on Dying Declaration and it's Importance for the Rape Victims

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ABSTRACT

The paper titled 'A study on dying declarations and its importance for the rape victims' focuses on the concept of the dying declarations and the paper further highlights the importance of dying declaration in the trials of the rape victims. Statements made by any dying person regarding the injuries that culminated in the death or the situations under which the injuries were inflicted are known as the dying declarations. Maxim "nemo moriturus presumitur mentire" governs the principle of dying declaration. Dying declaration is an exception to the hearsay rule. The paper has analyzed the regulatory frameworks and the legal provisions in regard to the dying declarations throwing a light on the scope and application of the concept of dying declaration. The paper analyzes that in what circumstances the dying declaration can be a sole basis of conviction especially in rape trials. The paper further gives the insights of the various provisions under the Indian evidence act and the principles governing the declaration. The paper talks about the reliability test that the dying declaration has to pass to be the basis on conviction in the case trials. The paper also deals with the famous rape cases in which the dying declarations led to the conviction and further sentencing of the offenders. In the conclusion the paper gives the insights of the dying declarations, the merging importance of the dying declarations and how this is being used by the court of law in different cases where the dying declaration is established to be a strong evidence after passing the scrutiny if the courts and the reliability test.

Keywords: Dying declarations, hearsay, rape trials, reliability test, conviction basis

I. INTRODUCTION

Statements made by any dying person regarding the injuries that culminated in the death or the situations under which the injuries were inflicted are known as the dying declarations. Maxim "nemo moriturus presumitur mentire" governs the principle of dying declaration. The maxim means that 'a man will not meet his maker with a lie in his mouth'. Dying declaration is an

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exception to the hearsay rule. Dying declarations is considered as an exception because if the dying declaration is not considered then the purpose of the justice can be forfeited in circumstances where there are chances that no other witness to the crime is available except the person who died. Under section 32 of the Indian evidence act a dying declaration need not necessarily be from the person who is dying at the time of the making of the statement.

The necessity here is that at the time of making the said declaration the person should know that there is impending death³. The person making any such statement should be in a conscious state and should also know that imminent. The dying declaration is regarded as a trustworthy and credible evidence based upon the general belief that person who knows that he or she is about to die do not lie. If the person who made the dying declaration has any slight amount of chances of recovery, no matter how unreasonable that chance of recovery is, such statement will not be admissible as evidence. The person making the said dying declaration must be competent at the time of making the dying declaration; otherwise the statement will not be admissible as the evidence.

In general terms the dying declaration is usually introduced by the prosecution in the court, but can also be used on the behalf of the accused. A dying declaration is generally well crystal by the judicial decisions. Before the dying declaration is believed upon or relied upon, the declaration has to pass the test of reliability. As the dying declaration is a statement made in the absence of the accused, therefore the accused has no opportunity or chances of cross examination to check the veracity or genuineness of the dying declaration⁴.

A dying declaration is the religious condition or the morality of the dying man, as it is the notion that truth sits on the lips of the man who is awaiting his death. These kinds of declarations made by the person who is on the verge of death has a special sanctity, as at that moment of his impending death the person is the most unlikely to say a lie. The importance of the dying declaration is now days increasing as a piece of strong and convincing evidence, with the cases where the dying declaration laid the basis for the investigation and prosecution. Dying declaration is as good as any other piece of evidence and it is sacrosanct. If the statement of the witnesses and the statement giving by the dying person as a dying declaration passes the test of careful scrutiny of the courts, the declaration becomes a very reliable and importance piece of evidence. In the situations where the court is satisfied that the dying declaration is free

³ Dignath Raj Sehgal, *dying declaration and its importance for the rape victims*, (Apr 30, 2021 11:40AM), <https://blog.ipleaders.in/dying-declaration-importance-rape-victims/>

⁴ Shipra Arora, *Dying declaration- section 32(1) of Indian evidence act*, (Apr 30, 2021 11:42AM), [http://www.legalservicesindia.com/article/1682/Dying-Declaration-Section-32\(1\)-of-Indian-Evidence-Act.html](http://www.legalservicesindia.com/article/1682/Dying-Declaration-Section-32(1)-of-Indian-Evidence-Act.html)

from any kind of embellishments and is a true statement such a dying declaration in these cases can be in itself a sufficient evidence for the recording of conviction.

(A) Research problem

Statements made by any dying person regarding the injuries that culminated in the death or the situations under which the injuries were inflicted are known as the dying declarations. Maxim “*moriturus nemo presumitur mentire*” governs the principle of dying declaration. The maxim means that ‘a man will not meet his maker with a lie in his mouth’. So the problem here arises that whatever the victim says regarding the crime and the offenders during the impending death of the victim is regarded as the dying declarations. So can these statements made by the victim form the sole basis of the conviction of the accused or this statement should also undergo scrutiny check and reliability check before holding the convict guilty on the basis of dying declaration.

(B) Research question

Whether the conviction can be done on sole basis of dying declaration without passing a reliability test?

(C) Hypothesis

For the conviction based on the dying declaration can only be done when the declaration has passed a reliability test.

(D) Scope and objective

The scope of the paper is limited to the dying declarations section 32 of the Indian evidence act and section 32(1) of the Indian evidence act. The objective of the paper is to focus on the concept of dying declarations and highlight its importance in the trials of the rape victims.

(E) Literature review

- Varsha Rajora, *Dying declarations by rape victims*, (Apr 30, 2021) <http://www.legalserviceindia.com/article/1421-Dying-Declaration-by-Rape-Victims-A-Critical-Analysis.html>

The author in this article looked on dying declarations as the statements made by a dying person as to injuries which culminated in his death or the circumstances under which the injuries were inflicted. Statements made by a deceased long prior to the occurrence resulting in death are not dying declaration and not admissible in Indian Evidence Act. The general ground of admissibility of the evidence is that no better evidence is to be had.

- Dignath Raj Sehgal, *dying declaration and its importance for the rape victims*, (Apr 30, 2021 11:40AM) <https://blog.ipleaders.in/dying-declaration-importance-rape-victims/>

The author in this article talks about the dying declaration left by rape victims and their reliability. The Indian law has adopted a wider scope for the nature and interpretation of a dying declaration as compared to the English law. The article states that a man may lie, but the circumstances do not lie. As a dying declaration is an important piece of evidence and it holds much more value than the statement of the eye-witnesses. The only drawback is that the accused cannot cross-examine the same. It enjoys almost a sacrosanct status when it comes to evidence and if found true and free from coercion. There is no legal obstruction in considering it the sole basis of conviction provided there is corroboration of evidence that it is self-speaking.

- Ratanlal and Dhirajlal, *The law of evidence*, Wadhwa and company Nagpur, 2007

In this book the author discussed about the pivotal role of the law of evidence in the effective functioning of the judicial system as the existence of substantive rights can only be established by the relevant and admissible evidence. It lays down the quintessential aspects of judicial investigation for effective administration of justice. With rapid advances in diverse fields of life, human relations have undergone an unforeseen transformation, presenting new conflicts and controversies. Further the author discusses that the law of evidence has to therefore regularly groom itself for facing the emerging developments which pose unprecedented problems in the collection of evidence and proof of facts. Over the years, the Courts through judicial precedents and diverse case law have enriched the lexicon of the law of evidence.

(F) Methodology

The research in the present research paper has adopted doctrinal method for collecting required data. This research will base on analytical and critical studies. The research paper also includes secondary source of date, which includes articles, books and journals.

II. PROVISIONS UNDER THE INDIAN EVIDENCE ACT AND THE PRINCIPLES GOVERNING THE DECLARATION

The provision for dying declaration comes under Section 32 of the Indian Evidence Act. It is very important that at the time of making such a declaration the death should be impending upon that person and the person should have complete knowledge of the situation. According to Section 32 of the Indian Evidence Act, it is stated that the statement could be written or verbal⁵. The appropriate situation should come from the person who is dead or cannot be found. The statement could also come from someone who has ceased to be capable of giving evidence.

⁵ Varsha Rajora, *dying declarations by rape victims*, (Apr 30, 2021) <http://www.legalserviceindia.com/article/1421-Dying-Declaration-by-Rape-Victims-A-Critical-Analysis.html>

Furthermore, there are eight sub-clauses under Section 32 of the Indian Evidence Act. The basic grounds of admission of a dying declaration are as follows:

- There is a necessity that the victim should be the sole eyewitness to the crime.
- There should be a sense of impending death to the victim.

The sense of impending death generally creates an obligation that is not less than an oath. The declaration is basically made in extremity when the victim has no hope left of surviving and the victim is at a point where his words will have no motive of falsehood and dishonesty behind it. The victim's mind is under the most powerful consideration that it will induce him to speak nothing but the truth. Further if a person is dying due to some other reason than any kind of injuries which is inflicted upon him by the offender then in that case the dying declaration will not be acceptable. There should be a close proximity between the declarant's cause of death and his statement. As it could be said that the statement was made on the basis of suspicion or fear and hence the statement will not be admitted as a dying declaration⁶.

Reliability of the Declaration

It is necessary that a dying declaration must go through a test of reliability before it could be depended upon as the statement was not made in the presence of the accused. The accused is the one who lacks the opportunity to put it through any sort of cross-examination in order to test its veracity. Hence, it is generally the duty of the court to subject it to scrutiny. If the dying declaration is found reliable then in that case the dying declaration can become the sole basis of the conviction of the accused. The dying declaration must be true and it should be voluntary. In the circumstances where it is not in accordance with the prosecution's version then in that case the declaration becomes unreliable. The Supreme Court of India laid few directives in this regard in the case of *State of UP v. Madan Mohan*. It is basically to the court to see that the dying declaration should inspire the full confidence as the maker of the dying declaration is not available for cross-examination. The court should also ensure that there should be no possibility of prompting or tutoring. Thus, the certificate of the doctor should mention that the victim was in a fit state of mind. If the doctor is available then in that case the magistrate need not to record his own satisfaction about the fit mental condition of the declarant as it will not be acceptable. When the medical condition of the declarant is so doubtful then in that situation there is uncertainty about his or her existence till the time of the doctor arrival then in that case the dying declaration should be recorded by the executive magistrate and police officer. The dying

⁶ Dignath Raj Sehgal, *dying declaration and its importance for the rape victims*, (Apr 30, 2021), <https://blog.ipleaders.in/dying-declaration-importance-rape-victims/>

declaration may be in the form of questions and answers which are being written in the words of the person who is making the declaration but the court cannot be so technical in this process. Therefore, the dying declaration is quite valuable in a case as it is considered as an important and reliable document once it generally passes the scrutiny of the court⁷.

III. CAN A DYING DECLARATION BE THE SOLE BASIS OF CONVICTION

Yes, a dying declaration in certain cases can be a sole basis for the conviction of the accused. As said by the courts if the dying declaration passes the scrutiny test then such a dying declaration can be the sole basis of conviction of the accused. In such a circumstance the accused will not have any right to cross examine the dying declaration. In the situations where the dying declaration is established to be true any kind of corroborative evidence is required against the accused. Therefore in order to completely rely upon the dying declarations it is necessary that there is no scope and chance of any kind of suspicion regarding the veracity of the dying declaration. During the making of the dying declaration, it should be looked upon that the victim was not under any kind of force or coercion. It should also be satisfied that the victim was in a fit state of mind while giving the dying declaration and identifying the offenders. If these conditions are satisfied then the dying declaration can be a basis of conviction⁸.

It is important for the dying declaration that the credibility and the competency of the statement given by the deceased is maintained. In order to maintain this there should be a presence of a doctor to declare that the victim is in a fit mental state⁹. After the doctor certifies so, then only the dying declaration can be considered and regarded as a credible one. If any doctor is not present to certify that the victim is mentally fit to give the statement, then such a dying declaration is not regarded as a credible statement and such a statement given by the victim will not be relied upon. This is necessary because the court needs to be sure that while giving the dying declaration the victim was in a very clear state of mind in order to identify and observe the situation and the circumstances or to identify the accused responsible for the situation of the victim. The dying declaration can be written or can also be oral. The victim can also make the dying declaration to any of the witnesses present if the situation is too critical to wait for the doctor to come. This will also be regarded by the court as the dying declaration of the

⁷ Rajora, *dying declarations by rape victims- a critical analysis*, (Apr 30, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1539345

⁸ Shree Lekha V, *a critical analysis on dying declaration by the rape victims*, (Apr 30, 2021) <https://acadpubl.eu/hub/2018-120-5/2/114.pdf>

⁹ Rajora, *dying declarations by rape victims- a critical analysis*, (Apr 30, 2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1539345

victim. In such a situation the victim can help in providing information and clarifying the mental condition of the victim¹⁰.

Generally the presence of the magistrate is required to record the dying declaration of the victim. But in the situation where the victim is in the hospital and the situation is critical and the victim can pass away anytime then the doctor is also considered to be fit to record the dying declaration of the victim, in such a situation it is not required to wait for the presence of the magistrate. The doctor can record the dying declaration of the victim and then that statement is admissible in the court of law. The victim is not required to give every single details of the incident that occurred. An exhaustive and elaborate statement covering every single detail is not required by the court of law, although a detailed narrative is very easy to examine and scrutinize. Once the dying declaration meets all the necessary conditions to pass the test of scrutiny, the dying declaration made by the victim can be sufficed without any kind of further evidences, moreover the accuse will not have any right to cross examine the dying declaration made by the victim¹¹.

IV. IMPORTANT CASE LAWS IN REGARD OF DYING DECLARATIONS BY THE RAPE VICTIMS-

- **Nirbhaya case [Mukesh & Anr vs State of NCT of Delhi and Ors (2017)]**

Facts of the case

This case is commonly known as the Nirbhaya case. This was to mark a symbol of resistance against the rape cases. In the year 2012, in a bus a girl was brutally raped by six persons. She was travelling in the bus with her friend. The intestines of the girl were ripped out of the body and the girl and her friend were thrown out of the bus on the road and were left to die. They both were taken to the Safdarjung hospital immediately and later the girl was shifted to Mt Elizabeth hospital in a Singapore¹². In the Singapore hospital the girl died due to her injuries. Before doing the girl made a dying declaration. In the dying declaration the girl asked for the justice and also named her attackers, Ram Singh, Pawan Gupta, Vinay Sharma, Mukesh Singh, Akshay Thakur and the juvenile.

Judgment of the case

As a result of the strong evidence that is the dying declaration and the corroborative evidence

¹⁰ Ratanlal and Dhirajlal, *The law of evidence*, Wadhwa and company Nagpur, 2007

¹¹ Dignath Raj Sehgal, *dying declaration and its importance for the rape victims*, (Apr 30, 2021), <https://blog.ipleaders.in/dying-declaration-importance-rape-victims/>

¹² V R Dinkar, *scientific expert evidence*, 1st edition, Eastern law house, Calcutta, 2013

all the six accused were convicted. The juvenile accused was tried separately and then he was sentenced to three years in the reform facility. The case was considered as the 'rarest of the rare' cases and all the remaining five accused were given the capital punishment. Later in the year 2023 the bus driver committee suicide in the Tihar jail In the year 2020 the remaining four accused were hanged till death. In this case, the dying declaration made by the victim was the sole evidence that was enough to convict all the six of the accused. The dying declaration passed the test of reliability and was also supported by the prosecution¹³. In the case the dying declaration was made by the hand gestures of the victim the declaration was found to be voluntary, true and consistent by the apex court of the country, that is, Supreme Court.

- **Unnao rape case [Kuldeep Singh Sengar vs Union of India (2018)]**

This case can be considered as an appropriate example for the dying declaration. In the year 2017, a minor in the unnao district of Uttar Pradesh was allegedly raped. She was raped by the BJP MLA Kuldeep Sengar along with his brother and other compliances. The FIR of the case was also not lodged as the police department refused to file the FIR. The incidence came into the limelight in the year 2018. In 2018 the victim tried to immolate herself in front of CM Yogi Adityanath's residence due to the inaction of the police department. The father of the victim was beaten by the family of the MLA and further he was wrongfully arrested, five days prior to the 2018 incident. Later the father of the victim passed away in the judicial custody. After this incident the brother of Kuldeep Sengar was arrested and other four associates were also arrested¹⁴. They all were booked under section 323 (voluntarily causing hurt), section 304 (culpable homicide) and section 504 (intentional insult with intent to provoke breach of peace) of the Indian penal code 1860. The matter was looked after the National Human Rights Commission and later the case was handed over to the CBI. In the year 2019, the family of the victim was hit by a truck in which two aunts of the victim died and the victim and her lawyer were in a critical condition.

Judgment of the case

Kuldeep Sengar was earlier given a clean chit in the case was arrested for rape as well as conviction in relation to the road accident which led to the death of the family of the victim. He was given life imprisonment¹⁵. MLA Sengar and his brother both are in the police custody.

¹³ Shipra Arora, *Dying declaration- section 32(1) of Indian evidence act*, (Apr 30, 2021) [http://www.legalservicesindia.com/article/1682/Dying-Declaration-Section-32\(1\)-of-Indian-Evidence-Act.html](http://www.legalservicesindia.com/article/1682/Dying-Declaration-Section-32(1)-of-Indian-Evidence-Act.html)

¹⁴ Dignath Raj Sehgal, *dying declaration and its importance for the rape victims*, (Apr 30, 2021) <https://blog.ipleaders.in/dying-declaration-importance-rape-victims/>

¹⁵ Varsha Rajora, *dying declarations by rape victims*, (Apr 30, 2021) <http://www.legalserviceindia.com/article/1421-Dying-Declaration-by-Rape-Victims-A-Critical-Analysis.html>

In the case the father of the victim gave the dying declaration before passing away in which he accused Sengar for the rape of his daughter.

- **Hathras Case [Sandeep & Ors vs Union of India & Ors (2020)]**

Facts of the case

In the year 2020, September 14th, the victim (19 years old) went to the farm to collect fodder. Four men- Ramu, Sandip, Ravi and Lavkush dragged her with her duppatta and thus injured her spinal cord. The four accused were of the upper caste. The violence left the victim paralyzed and her tongue was cutoff. Her cries were heard by her mother who later found her lying in the farm. In the three recorded statement of the victim the victim admitted that she was raped and was strangled when she resisted the rape¹⁶. The victim died on 29th September 2020. The autopsy admitted the cause of death as the injury to the cervical spine by the blunt force trauma. It was written as the rape and strangulation in the medical history.

Judgment of the case

The final judgment is yet to come. The CBI has held good the charges that were contained in the FIR. The charges are based on the dying declaration made by the gang rape victim on 22nd September, 2020.

V. CONCLUSION

As a piece of evidence, it is stated that a dying declaration is now fairly crystal clear by judicial decisions. The importance of the Dying declaration as a piece of compelling evidence is increasing with the intensification of cases wherein the Dying declaration generally laid the foundations for the prosecution. Notwithstanding that there may be no direct and ocular evidence to prove a crime but a dying declaration may be self-speaking and it can prove much more than eyewitnesses could depose. It is truly said that a man may lie but the circumstances cannot lie. A dying declaration is considered as good as any other piece of evidence as it is sacrosanct. A dying declaration is the religious or moral condition of the person who is dying. Generally, it is said that the 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, then in that case it could be presumed that even then his moral or religious fiber would get strengthened as it will be impelling him to speak the truth¹⁷. It is strongly felt that it is not always the case because the

¹⁶ V Vekatesan, *why the dying declaration of the Hathras victim a legally admissible evidence*, (Apr 30, 2021) <<https://thewire.in/law/hathras-victim-dying-declaration>

¹⁷ Varsha Rajora, *dying declarations by rape victims*, (Apr 30, 2021), <http://www.legalserviceindia.com/article/1421-Dying-Declaration-by-Rape-Victims-A-Critical-Analysis.html>

truth would sit on the lips of a dying man only if he is under the expectation of death. A dying declaration which is made by a person on the periphery of his death has a special sanctity as at that solemn moment as a person is most unlikely to make any untrue statement.

The general principle on which the species of evidence is admitted is that they are the declarations that are made in extremity only when the person is on the verge of his death and when for him every hope of this world is gone¹⁸. At this point in time, his every motive of falsehood is basically silenced and his mind is further induced by the most powerful consideration which is to speak the truth. Such a solemn situation is basically considered by the law in order to create an obligation that should be equal to the one which is imposed by a positive oath administered in a court of justice. A dying declaration is considered as a weak kind of evidence because in this the accused do not get any opportunity in order to cross-examine the declarant. Thus, the uncrossed version of the declarant is generally thrust upon the accused and they could further be held guilty of the crime which is alleged in the declaration. Under these circumstances, it is said that the courts are generally expected to be very circumspect and cautious in accepting the dying declaration. Therefore, the hypothesis which was put forward by the researcher is found to be true. In spite of considering the dying declaration as a weak kind of evidence even though they are based on the principle that a person would not die with a lie in his mouth¹⁹.

¹⁸ V Vekatesan, *why the dying declaration of the Hathras victim a legally admissible evidence*, October 3rd 2020, <<https://thewire.in/law/hathras-victim-dying-declaration>> <accessed on 30th April 2021>

¹⁹ HP Gupta, *law relating to confession and dying declaration*, Dwivedi and Company, 2006

VI. REFERENCES

Websites-

- Dignath Raj Sehgal, *dying declaration and its importance for the rape victims*, 28th October 2020, <https://blog.ipleaders.in/dying-declaration-importance-rape-victims>
- Varsha Rajora, *dying declarations by rape victims*, <http://www.legalserviceindia.com/article/1421-Dying-Declaration-by-Rape-Victims-A-Critical-Analysis.html>
- Varsha Rajora, *dying declarations by rape victims- a critical analysis*, January 20 2010, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1539345
- V Vekatesan, *why the dying declaration of the Hathras victim a legally admissible evidence*, October 3rd 2020, <https://thewire.in/law/hathras-victim-dying-declaration>
- Shree Lekha V, *a critical analysis on dying declaration by the rape victims*, <https://acadpubl.eu/hub/2018-120-5/2/114.pdf>
- Shipra Arora, *Dying declaration- section 32(1) of Indian evidence act*, [http://www.legalservicesindia.com/article/1682/Dying-Declaration-Section-32\(1\)-of-Indian-Evidence-Act.html](http://www.legalservicesindia.com/article/1682/Dying-Declaration-Section-32(1)-of-Indian-Evidence-Act.html)

Books

- V R Dinkar, *scientific expert evidence*, 1st edition, eastern law house, Calcutta, 2013
- HP Gupta, *law relating to confession and dying declaration*, Dwivedi and Company, 2006
- Ratanlal and Dhirajlal, *The law of evidence*, Wadhwa and company Nagpur, 2007
