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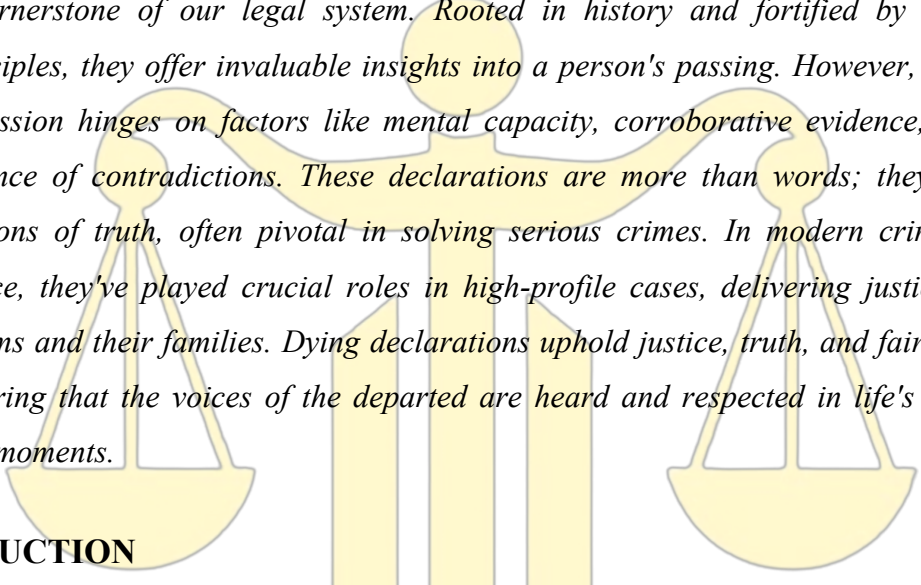
# FROM LAST WORDS TO LEGAL EVIDENCE: THE SIGNIFICANCE AND LEGAL IMPLICATIONS OF DYING DECLARATIONS

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## ABSTRACT

*Dying declarations, the final utterances of individuals facing imminent death, are a cornerstone of our legal system. Rooted in history and fortified by legal principles, they offer invaluable insights into a person's passing. However, their admission hinges on factors like mental capacity, corroborative evidence, and absence of contradictions. These declarations are more than words; they are beacons of truth, often pivotal in solving serious crimes. In modern criminal justice, they've played crucial roles in high-profile cases, delivering justice to victims and their families. Dying declarations uphold justice, truth, and fairness, ensuring that the voices of the departed are heard and respected in life's most dire moments.*



## 1. INTRODUCTION

The concept of a dying declaration holds immense importance in the legal system. It serves as crucial evidence in cases where the person who made the declaration is no longer alive to testify. This article will explore the significance of dying declarations, its admissibility as evidence in court, and how it helps the legal system.

The concept of a dying declaration is rooted in the Latin phrase "*leterm mortem*," which translates to "words said before death." Dying declarations are statements made by individuals who are aware of their imminent death and provide details about the circumstances surrounding their death.

These statements can be made orally or in writing and are considered admissible evidence in a court of law. The admissibility of a dying declaration is based on the principle "*Nemo moriturus praesumitur mentire*" which claims that a person on their deathbed will not lie.

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Dying declarations carry significant weight in legal proceedings as they offer insight into the cause of death directly from the individual who experienced it. In criminal cases, dying declarations can provide crucial information about the events leading to a person's death and help establish the guilt or innocence of a suspect.

Dying declarations are especially valuable in cases where there may be no other witnesses or when the victim's account is crucial for determining the course of events. Nevertheless, this assertion is seen as a deviation from the general principle of Hearsay Evidence. Since there are no other individuals besides the crime victim to provide testimony, excluding their statement would hinder the pursuit of justice.

## 2. HISTORICAL BACKGROUND

The concept of dying declarations can be traced back to medieval England, where it was recognized that statements made by individuals on their deathbeds had a high degree of reliability. The legal scholar Henry de Bracton, in his 13th-century treatise "De Legibus et Consuetudinibus Angliae" (On the Laws and Customs of England), mentioned the principle of dying declarations. He highlighted the admissibility of statements made by individuals in extremis (at the point of death) in legal proceedings.

This concept was further solidified by Sir Matthew Hale, an influential English jurist in the 17th century, who emphasized the reliability of dying declarations due to the solemn awareness of imminent death.

The recognition of dying declarations in English law served as the foundation for its incorporation into American jurisprudence, where it became an essential component of evidence law. As the practice of law evolved, the criteria for admitting a statement as a dying declaration became more refined. Courts began to establish specific requirements such as the declarant's belief in imminent death, a statement regarding the cause of death, and voluntariness. In more recent times, the concept of dying declarations has continued to evolve and vary somewhat from jurisdiction to jurisdiction. Historical developments have played a crucial role in shaping the admissibility of dying declarations in modern legal proceedings.

## 3. EXCEPTION TO THE HEARSAY RULE: DYING DECLARATION AND SECTION 32 OF THE EVIDENCE ACT

The general rule in legal proceedings is that hearsay evidence, which consists of statements

made by someone other than the witness testifying in court, is considered inadmissible. However, there are exceptions to this rule, one of which is the dying declaration. The principle underlying the admission of dying declarations is encapsulated in the legal maxim "*nemo moriturus proesmitur mentim*," which can be translated as "a man will not meet his creator with a lie in his mouth"

Lord Chief Justice Baron Eyre, in the case of **R v. Woodcock**<sup>2</sup>, articulated the rationale behind admitting dying declarations as follows:

"Dying declarations are statements made in extreme situations, when the individual is on the verge of death and all hope for this world has vanished. In such dire circumstances, all motives for falsehood are extinguished, and the person is compelled by the most compelling reasons to speak the truth. The gravity and solemnity of this situation are regarded by the law as imposing an obligation on par with that of a formal oath administered in a court of justice."

Section 32 of the Evidence Act carves out an exception to the hearsay rule, allowing for the admission of statements made by a person who has since passed away, regardless of whether the death resulted from homicide or suicide. However, for such statements to be admissible, they must pertain to the cause of death or reveal circumstances leading to the death. Now, let's explore the legal aspect with a particular focus on Section 32(2) of the Indian Evidence Act, 1872. This provision, distinct from Section 32(1), complements it by broadening the scope of dying declarations. While Section 32(1) deals primarily with statements related to the cause of death, Section 32(2) broadens its reach to encompass statements that provide insights into a person's mental or physical state at the time of their statement. Section 32(1) of the Evidence Act is widely recognized as the "dying declaration" provision, even though this precise terminology is not explicitly stated within the Act. Over time, the courts have extensively explored the extent and implications of Section 32, specifically focusing on its first subsection. This section presents a departure from the standard hearsay rule, allowing for the admission of dying declarations as an exception. These exceptions are based on three primary grounds:

- a. Death of the Declarant:** The foremost condition for admitting a dying declaration is the demise of the person who made the statement. This declaration becomes significant as it often represents the only available evidence, particularly in cases where the victim is the sole eyewitness to the crime.

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<sup>2</sup> (1789) 1 Lea 507.

- b. **Necessity:** Dying declarations are admitted out of necessity, recognizing that the exclusion of such statements could undermine the pursuit of justice. Since the victim is frequently the only eyewitness to the crime, their statement becomes indispensable.
- c. **Sense of Impending Death:** Dying declarations gain validity due to the belief that a person facing imminent death has no motive to deceive. This sense of impending death is seen as a solemn equivalent to taking an oath, where the person is compelled by powerful considerations to speak the truth. It aligns with the legal maxim, "*Nemo moriturus presumitur mentiri*" (no one who is about to die is presumed to lie), and the notion that "Truth sits upon the lips of dying men."

This legal exception ensures that the voice of the deceased can still be heard in the pursuit of justice.

#### 4. KEY PRINCIPLES AND CONDITIONS GOVERNING ADMISSIBILITY OF DYING DECLARATIONS

In the case of **P.V. Radhakrishna v. State of Karnataka**<sup>3</sup>, the Apex Court established a set of core principles guiding the use of dying declarations in legal proceedings. These principles are pivotal in cases where a person's statement made just before death becomes a critical piece of evidence. The principles are as follows-

"12. ...This Court has laid down in several judgments the principles governing dying declaration, which could be summed up as under as indicated in **Smt. Paniben v. State of Gujarat**:<sup>4</sup>

- (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.
- (iii) The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.
- (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.

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<sup>3</sup> (2003) 6 SCC 443.

<sup>4</sup> AIR 1992 SC1817.

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction.

(vii) Merely because a dying declaration does contain the details as to the occurrence, it is not to be rejected.

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth.

(ix) Normally the Court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye-witness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted.”

By elucidating these principles, the Supreme Court has sought to strike a delicate balance between ensuring justice for victims and safeguarding against potential abuse or manipulation of dying declarations.

Now, let's dive into the conditions and criteria that govern the acceptance and reliability of dying declarations in legal proceedings. These conditions serve as a litmus test, ensuring that the use of such declarations aligns with the principles of justice and fairness in the Indian legal system.

- a. Corroboration in Dying Declarations:** In legal proceedings, it is important to note that a dying declaration does not necessarily require additional evidence for corroboration. The Supreme Court of India, in the case of **Shakuntala v. State of Haryana**<sup>5</sup>, has emphasized that an uncorroborated dying declaration can lead to a conviction if deemed true and reliable. However, when necessary, corroboration may be introduced to strengthen the evidential value of such declarations. It is worth mentioning that there is no absolute rule, as stated in **Munnu Raja vs. State of Madhya Pradesh**<sup>6</sup>, mandating the automatic corroboration of dying declarations with other independent evidence at all times.

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<sup>5</sup> (2007) 10 SCC 168

<sup>6</sup> (1976) 3 SCC 104.

- b. Mental Fitness of the Declarant:** To deem a dying declaration admissible, it is crucial that the declarant was of sound mind during the time of making their statement. Although medical opinion typically holds weight in this determination, it is not an absolute prerequisite. In cases like **Laxman vs. State of Maharashtra**<sup>7</sup>, the court may consider eyewitness testimony to assess the declarant's mental fitness instead of relying solely on medical opinion. The objective is to evaluate the reliability of the statement by examining the declarant's mental state at that time.
- c. Death of the Declarant:** In instances involving statements made under the expectation of imminent death, it is essential to establish the actual demise of the person who made the statement. If the declarant survives, their statement does not qualify as a dying declaration according to Section 32 of the Evidence Act. Instead, for a statement to be considered a dying declaration under this section, it must meet specific criteria and be related to eventual mortality, as demonstrated in **Maqsoodan vs. State of U.P.**<sup>8</sup>. Furthermore, statements given to a magistrate under Section 164 of the Code of Criminal Procedure can also be utilized in legal proceedings either for corroborating or contradicting evidence depending on its context.

These principles and legal interpretations, reinforced by notable cases, provide the foundation for the acceptance and evaluation of dying declarations in Indian legal proceedings.

## 5. RECORDING OF DYING DECLARATION: LEGAL REQUIREMENTS

In India, the process of recording dying declarations follows specific legal prerequisites based on the identity of the recorder:

Firstly, when recorded by an ordinary person, such as a bystander, the dying declaration is considered admissible if it can be established that the declarant was of sound mind and conscious during the statement.

In situations where urgency prevents involving a judicial magistrate, a doctor or police officer may record the dying declaration. Crucially, one or two witnesses must be present during this recording, reinforcing the statement's authenticity. This witness presence holds weight even if subsequent medical opinions question the declarant's condition.

Dying declarations recorded by competent magistrates are highly regarded within the legal

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<sup>7</sup> (2002) 6 SSC 710

<sup>8</sup> 1983 AIR 126.

system. Empowered by Section 164 of the Criminal Procedure Code (Cr. P. C.), magistrates possess the requisite knowledge and expertise for proper recording. They must ensure that the statement is voluntary and explicitly inform the accused that it should not be treated as a confession. Additionally, magistrates are obligated to ask questions to satisfy themselves regarding the voluntary nature of the statement.

These legal prerequisites are integral to the process of recording dying declarations in India, ensuring that these critical statements are accepted as valuable evidence in the pursuit of justice.

## 6. EXCEPTIONS TO DYING DECLARATION

Dying declarations, while often pivotal in legal proceedings, can encounter exceptions that raise questions about their admissibility and reliability. The key exceptions surrounding the use of dying declarations as evidence are as follows-

### a. **Narrow Admissibility Based on Cause of Death**

The statement may be admissible as evidence, irrespective of whether it was made prior to the occurrence of the cause of death or before the deceased had any inkling of the possibility of harm. However, in order for it to be considered admissible, the statements must pertain to the specific incident in question and must manifest fear or suspicion, either directed towards a particular individual or in a manner directly connected to the circumstances surrounding the demise. General expressions of fear or suspicion that are unrelated to the incident are not considered admissible.

### b. **Declarant is not competent to give a dying declaration**

A dying declaration that holds legal admissibility must originate from an individual of sound mental capacity. This principle was affirmed in the case of **Bhagwan Das v. State of Rajasthan**<sup>9</sup>, emphasizing that if the court determines the declarant's ability to communicate the facts was compromised or lacks corroborative evidence, the declaration may not be accepted as credible evidence. Additionally, the court does not permit a dying declaration from a child, as demonstrated in the **Amar Singh vs. State of MP**<sup>10</sup> case. Likewise, a dying declaration made by a person of unsound mind cannot be considered trustworthy and reliable.

### c. **Statement is inconsistent or contradictory in nature**

When multiple declarations within a case are inconsistent or contradictory, the court

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<sup>9</sup> AIR1957 SC 589

<sup>10</sup> 1996 CriLJ 1582

retains the discretion to reject them. This discretion is exercised due to the potential lack of credibility and reliability when there are conflicting accounts of events. In such situations, the court may choose not to give weight to these declarations as evidence, as they can create confusion and uncertainty about the true facts of the case. Courts generally seek consistency and reliability in the evidence presented to ensure a fair and just adjudication of the matter at hand.

#### **d. Inadequate Mental Competency**

When the doctor's opinion and accompanying medical certificate fail to confirm that the deceased was mentally competent to understand the statement made. In such cases, the dying declaration may be deemed inadmissible due to the absence of conclusive medical validation.

## **7. SIGNIFICANCE IN CONTEMPORARY CRIMINAL JUSTICE SYSTEM**

In the intricate realm of law, there are certain important rules and evidentiary tools that help us uncover the truth and ensure fair judgments. Among these is the dying declaration stands as a very powerful tool. It gives us a special look into the last moments of a person's life, bearing great weight in court proceedings. These last words not only shed light on the events leading to a tragic demise but also offer a glimpse into the individual's thoughts and veracity.

Dying declarations play a crucial role in the legal system, bridging the gap between life and what comes after, allowing the voice of the person who has passed away to be heard in the search for justice. They are more than mere words; they are the sincere thoughts of a person who is about to leave this world. Often, they provide important information about the circumstances of a crime. These declarations tell us the real, unvarnished truth, without any pretense or deceit.

In a courtroom, a dying declaration carries profound significance. It holds a lot of weight and demands careful attention because it marks a critical moment. However, for it to be allowed as evidence, specific rules must be followed. The victim's mental state, the clarity of what they said, and making sure no one forced them to say it are all looked at very closely. But when a dying declaration is accepted, it can greatly affect a trial. It gives a direct and honest account of what happened before the victim was fatally hurt. This can potentially point to who caused the harm. Also, it lets us understand the victim's thoughts, which supports their testimony. This is because it comes from a time when they were very



vulnerable and fully aware of their approaching death.

India has witnessed several cases where dying declarations proved pivotal in dispensing justice. One such case is the infamous "Nirbhaya" gang-rape and murder case of 2012 **State vs. Mukesh & Ors.**<sup>11</sup> The victim's dying declaration played a vital role in establishing the guilt of the perpetrators. Even though the dying declaration was conveyed solely through the victim's gestures, the Supreme Court of India found it to be genuine, willingly provided, and consistent in its narrative. This judicial verdict highlights the court's acknowledgment of the statement's credibility and voluntariness, underscoring its pivotal role in the legal proceedings that sought justice for the victim.

In another notable case, that of **Bimla Rani v. State of Haryana**<sup>12</sup>, the Supreme Court of India emphasized the significance of a dying declaration. It held that if the court is satisfied that the declaration is true and reliable, it can form the sole basis for conviction, even in the absence of corroborative evidence.

These cases show how dying declarations can bring justice by revealing the truth about what happened in difficult criminal situations. Dying declarations hold a crucial significance in the field of criminal justice. These statements, made by individuals who believe they are on the brink of death due to their injuries or medical condition, are considered highly reliable pieces of evidence. One of the primary reasons for their reliability is that individuals in their final moments tend to be more inclined to tell the truth.

## 8. CONCLUSION AND SUGGESTIONS

Dying declarations are a vital component of our legal system. They consist of the final statements made by individuals who are on the brink of death, and these utterances carry significant weight in uncovering the truth. They serve as a bridge between life and death, offering profound insights into the circumstances surrounding a person's passing. Despite their importance, the use of dying declarations comes with certain conditions and complexities. Legal standards, as established through landmark cases and legislation, ensure that these statements are admitted judiciously and fairly. As we reflect on the intricate world of dying declarations, we recognize that they are more than just words uttered in the final moments of life; they are a testament to the unwavering pursuit of justice, an embodiment of the principles of truth and fairness. In the quest for a just society, these declarations continue to illuminate the path towards a legal system that values and upholds the voices of those who

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<sup>11</sup> (2013) 14 SCC 282.

<sup>12</sup> (2008) 16 SCC 135.

can no longer speak for themselves.

However, while dying declarations can provide valuable information, it is crucial to consider their limitations and potential biases.

To enhance the integrity and effectiveness of dying declarations in legal proceedings, several key recommendations should be implemented. Firstly, there is a critical need for standardized recording procedures irrespective of the recorder's identity. This should encompass a predefined set of questions meticulously designed to extract pertinent information from the declarant.

Moreover, a comprehensive training program must be established for all individuals involved in the process of recording dying declarations. This includes doctors, police officers, and magistrates. The training should encompass a thorough understanding of legal requirements, effective communication skills, and sensitivity training to ensure that the process is conducted with the utmost care and respect.

The integration of technology, particularly video recording, should be explored as a means to document dying declarations. This technological advancement can serve as an additional layer of authenticity and transparency, further reinforcing the veracity of the recorded statement.

In tandem with technological measures, it is imperative to implement legal safeguards to guarantee that the declarant is providing their statement free from any form of duress or coercion. This necessitates a rigorous assessment of the declarant's mental state and a robust verification process to ascertain the voluntariness of their statement.

Continual evaluation of the procedures for recording dying declarations is crucial to identify potential areas for improvement or refinement. This process should involve soliciting feedback from a diverse range of stakeholders, including legal experts and medical professionals, to ensure that the procedures remain aligned with evolving best practices and legal standards.

Lastly, increasing public awareness regarding the significance and legal validity of dying declarations is paramount. This can be achieved through targeted educational campaigns, seminars, and workshops tailored for both legal professionals and the general public. By disseminating knowledge on this critical aspect of the legal process, we empower individuals to understand and appreciate the profound impact of dying declarations on the pursuit of justice.

Incorporating these recommendations and acknowledging the limitations of dying declarations will further refine the process, ensuring that the statements obtained are accurate,

reliable, and legally sound. This, in turn, will strengthen the role of dying declarations in the pursuit of justice.

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