
DYING DECLARATION IN BURN CASES

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INTRODUCTION

Evidence is defined as everything which is required to substantiate a claim, such as the fact in question or the *factum probandum*. Before the applicable laws and their provisions may be implemented, facts must be established. Evidence is what leads to the verification of facts and, in turn, aids the legal authorities in reaching a reasoned conclusion.

Furthermore, the law of evidence aids in the avoidance of lengthy investigations and the acceptance of more evidence than is required, reducing trial time and saving money.

The Indian Evidence Act of 1872 governs the law of evidence in India. The 1872 Indian Evidence Act is primarily based on English evidence law. The Act does not pretend to be exhaustive, and courts may resort to relevant English common law for interpretation if it is not contradictory with the Act. The Act unifies, specifies, and modifies evidence laws.

The Indian Evidence Act of 1872 is founded on the work of Sir James Fitzjames Stephen, who is known as the "Father of the Act." It's important to remember that the parties cannot negotiate out of the Act's requirements. In addition, courts cannot reject evidence that is relevant under the Act's requirements.

The idea of making a dying declaration has changed over time. The notion originated in European mediaeval courts and was later adopted by common law courts.¹ In India, Section 32 clause 1 of the Indian Evidence Act, 1872² declares that any statement made by a dying person is relevant and admissible in court if it relates to the reason or circumstances surrounding their death.³ A dying declaration has been given significant weight in identifying the culprit and serving as decisive evidence in confirming the accused's guilt.

The following are some of the fundamental concepts the Indian Evidence Act is built on:

¹ Aviva A Orenstein, —Her Last Words: Dying Declaration and Modern Confrontation Jurisprudencel, Articles by Maurer Faculty, Paper 6, Maurer School of Law: Indiana University,2010,

² Section 32 of The Indian Evidence Act, 1872

³ Uka Ram v. State of Rajasthan AIR 2001 SC 1814

1. Evidence must be limited to the issues at hand.
2. Hearsay evidence is not admissible.
3. In every situation, the finest evidence must be presented.

RESEARCH OBJECTIVE

This study intends to investigate the usage of dying declaration in bride burning instances involving dowry issues in India and other countries.

RESEARCH QUESTION

1. What is the minimum proximity between a statement and a dying declaration that it is deemed relevant?
2. How significant are dying declarations in the case of dowry burn victims?

RESEARCH METHODOLOGY

This is a doctrinal paper, with references to books, journals, and case law. The important material for the subject is collected from books, and the wellsprings of vital study are law-making bodies, resolutions, and the legal executive's knowledge of the law in various case laws.

STATEMENT OF PROBLEM

Bride burning has always placed a high value on dying declarations. In India, the matter becomes more pressing since a large number of dowry murders, domestic violence murders, honor killings, and hate crimes include the victims being burned alive. However, the court has given a lot of weight to a dying declaration, and if all of the necessary elements are present during the recording, it might lead to a conviction.

Various procedural regulations have been put down governing the recording technique, admission policy, and others as a result of a catena of decisions expanding the scope of dying declaration. However, declaring one's intention to die has two sides. Overzealousness in enforcing the law frequently has the unintended consequence of allowing actual criminals to go free and weakening prosecution cases. Because it is not unusual for individuals to spite people in death, the practice of treating dying declarations as acceptable evidence sometimes leads to trouble. It can be difficult to determine if a burn injury is homicidal, suicide, or accidental in origin in burn instances. In this scenario, understanding the nature of the case as well as how the person died becomes extremely essential.

However, it also brings with it an overzealousness in relying too heavily on dying declarations and not enough on other evidence to convict the guilty. As a matter of fact, a dying declaration, which is typically hearsay, can be manufactured, pressured, and forced, as well as malevolent. As a result, courts frequently rely on additional evidence to back up fading evidence. However, how far does the concept lend credence and is judicially implemented in situations of burns when a dying statement has been delivered remains a question. A dying declaration is not given under oath and is not subject to cross-examination, the court must carefully consider all of the advantages and disadvantages of the circumstances while assessing it.

In *Ram Nath v. State of Madhya Pradesh* Hon'ble Supreme Court held that: "Because such a statement is not made under oath and is not subject to cross-examination, and because the maker of it might be mentally or physically in a state of compassion and drawing on his imagination while making the declaration, it is established law that it is not safe to convict an accused person solely on the evidence of a dying declaration without further corroboration." As a result, the Supreme Court has placed a premium on verification of the dying pronouncement before it is acted upon as a protection.⁴

However, in *Khushal Rao v. State of Bombay* the Supreme Court of India decided that this statement was obiter dictum and stated, "It cannot be put down as an absolute rule of law that a dying declaration cannot form the only basis of conviction unless it be confirmed."⁵

Following that, the Hon'ble Supreme Court declared in *Harbans Singh V. State of Punjab* "It is not a rule of law nor wisdom that a dying declaration requires verification by other evidence before a conviction may be founded thereon."⁶

Further, the Hon'ble Supreme Court remarked in *State of U. P. v. Ram Sagar Yadav* that "The primary effort of the court is to find out whether the dying declaration is true.....for its assurance look for corroboration to the dying declaration."⁷

THE COMPONENTS OF DYING DECLARATION DEFINED UNDER THE INDIAN EVIDENCE ACT

The IEA's Section 32 deals with statements made by those who cannot be summoned as

⁴ *Ram Nath v. State of Madhya Pradesh* AIR 1953 SC 420

⁵ *Khushal Rao v. State of Bomaby*(1958 SCR 552)

⁶ *Harbans Singh v. State of Punjab* 1962 AIR 439

⁷ *State of U.P v. Ram Sagar Yadav* (1985 AIR 416)

witnesses. The word "dying declaration" does not appear in the Act. The relevant legislation relating to dying declaration is clause 1 of Section 32. In order to grasp the applicable law on the problem, it is critical to examine the various parts of the provision. The Section 32(1) reads as follows:

*“Statements, written or verbal, of relevant facts made by a person who is dead,whatever may be the nature of the proceeding in which the cause of his death comes into question.”*⁸

The first consideration is the manner in which it is delivered. It can be either written or spoken.

In *Queen Empress v. Abdullah*,⁹ the court addressed the question of whether signs and gestures are considered spoken expressions under Section 32. In the instance, the deponent was a prostitute whose neck was slashed by the accused. As a result, she was unable to talk and had to rely on hand signals to respond to the Deputy Magistrate's queries. The Court determined that the term "verbal" refers to the use of words and that the words do not have to be uttered.¹⁰ Despite agreeing with his colleagues, Justice Mahmood did not believe signals to be equivalent to vocal remarks. Instead, he considered such actions to be significant as party activity under Section 8. The other judges, on the other hand, concluded that "conduct" under Section 8 encompasses natural behavior rather than induced behavior in which the individual was requested to answer questions about her state.

The second factor is the individual who made the statement's later death. In the event that the declarant lives, her declaration will no longer be relevant under Section 32. It may then be relevant under the IEA's Section 21(1) or Section 157.¹¹

The third key consideration is that the declaration should be related to the declarant's cause of death. Clause (1) broadens the scope of this factor by embracing comments made "as to any of the circumstances of the transaction which resulted in his death," in instances where means of death is disputed.

The statement of the dead, made to his wife approximately two days prior to passing away, regarding going to the accused's residence to retrieve a due sum was allowed under Section

⁸ Section 32(1), Indian Evidence Act, 1872

⁹ *Queen Empress v. Abdullah* (1885) 7 All. 600

¹⁰ *Id*

¹¹ *Maqsoodhan v. State of UP*, AIR 1983 SC 126

32 in the landmark case of *Pakala Narayana Swamy v. Emperor*,¹² Lord Atkin pointed out that the conditions must have some resemblance to the real incident. Thus, if not directly connected to the cause of death, generic remarks expressing suspicion or dread of a specific individual were deemed inadmissible.

With time, the stance evolved to encompass any remark that had a plausible link to the death, whether direct or indirect, close or far. In *Sharad Birdhi Chand Sarda v. State Of Maharashtra*,¹³ the Supreme Court stated that proximity test cannot be applied rigorously and realistically reduced to a hard and fast universal formula. In determining whether a remark was sufficiently close in time to constitute a dying declaration, the facts and circumstances of each case must be considered.

For being a part of such circumstances, comments linked to or providing an immediate motivation may be admissible in some situations. Observed the court –

“ [...]where death is a logical culmination of a continuous drama long in process and is..... an organic whole and not torn from the context.”¹⁴

In *Rattan Singh v. State of Himachal Pradesh*,¹⁵ the Supreme Court clarified the situation significantly. The terms "circumstances of the transaction that resulted in his death" have a far larger amplitude than "circumstances that caused his death," according to the report. A direct link is not required, according to the court. It is not essential for such conditions to be close by; even far-flung events might be acceptable under Section 32(1) if they have some connection to the transaction that resulted in his death.

The fourth component states, statements made by the deceased even if they were not made with the expectation of death in mind are relevant under Section 32(1). As a result, the law goes well beyond the traditional interpretation of a dying declaration, in which the dying person's utterances are considered to be true owing to the imminence of her death.¹⁶

The absence of compelling reasoning supporting the inclusion of such declarations is odd, especially given that the imminence of death is a requirement for admission of a dying

¹² *Pakala Narayana Swamy v. Emperor* AIR 1939 PC 47

¹³ *Sharad Birdhi Chand Sarda v. State Of Maharashtra* AIR 1984 SC 1622

¹⁴ *Id.*

¹⁵ *Rattan Singh v. State of Himachal Pradesh* (1997) 4 SCC 161

¹⁶ Onkar Nath Tiwari, *Cogency of Dying Declarations: Analysis*, Indian Law Institute Law Review 92 (2018)

¹² *Babulal v. State of M.P.*, AIR 2004 SC 45; *Laxman v. State of Maharashtra*, AIR 2002 SC 2973; *Vijai Pal v. NCT of Delhi*, AIR 2015 SC 1495

declaration under English law. This opens up a lot of room for abuse, such as when someone anticipates a definite death in the near but not immediate future and tries to make someone else's life merable by falsely accusing them. In India, where even suicide deaths are included in the dying statement, this presents even more complicated problems.¹⁷

The absence of any specification, rather than the language of Section 32(1), is the sixth component of the dying statement. The declaration does not need to be communicated to any responsible authority in order to be valid. As a result, any speech to anybody might be seen as a dying declaration.¹⁸ The declaration is rigorously investigated if it is not made to a police officer, doctor, or magistrate. The Supreme Court has ruled that declarations given to family members or other interested persons are untrustworthy on several occasions.^{19,20}

DYING DECLARATION IN BURN VICTIM CASES

Bride burning is kind of a domestic abuse in which a young lady is murdered by her husband or family members for refusing to pay dowry. The woman is usually doused with flammable liquid and set on fire, culminating in her death by fire.

According to figures provided by the National Crime Records Bureau, 8391 dowry killing incidents were registered across India in 2010, implying that a bride was burnt every 90 minutes. This figure was 6995 a decade ago, but by 2007 it had risen to 8093 dowry fatalities.²¹

Dowry is an old custom practiced by most Indian families, despite the fact that it was outlawed by law in 1961 but never really enforced.

Due to dowry demands, interpersonal abuse, or mental cruelty, cases of burning women have surfaced. Due to these circumstances, a small number of women commit suicide by self-immolation. In the majority of these cases, the prosecution's case is based exclusively on the deceased's dying declaration.²²

¹⁷ M.R. Sreenivasa Murthy & K. Syamala, Do Dying Lips Always Speak the Truth? Admissibility of Dying Declaration in Case of Suicide, 2 SCC Cri J-22 (2018)

¹⁸ Kulwant Singh v. State of Punjab, (2004) 9 SCC 257

¹⁹ Baldeo Raj v. State of Himachal Pradesh, AIR 1980 SC 436; Arvind Singh v. State of Bihar, AIR 2001 SC 20 ; Ramakant Mishra v. State of Uttar Pradesh, AIR 1982 SC 1552

²¹ Sylvine, "Dying declaration importance in burn cases" (Blogpleaders, August 22,2016)

<https://blog.ipleaders.in/dying-declaration-importance-burn-cases/>

²² Singh, Amit. "DYING DECLARATION IN BURN CASES." (2018).

It is difficult to obtain proof against the accused individuals, such as the spouse, his family, and relatives, in these types of instances. On the negative, there has been a tendency of exploiting death declarations to falsely incriminate the husband's family. According to Justice Krishna Iyer, "To discredit such dying declarations for shortfalls here or there or even in many places is unrealistic, unnatural and unconscionable if basically there is credibility."²³

In instances where a person makes a statement about the events that led to death, it is considered serious evidence. Courts seldom give hearsay evidence any weight since the individual making the remarks cannot be cross-examined to corroborate his allegations. Because a person lying on his death bed seldom lies about the causes of his death.

In *Paniben vs. Gujarat State*,²⁴ standards regarding dying statements were established. In the House, the deceased was sleeping alone. The accused went and poured kerosene on her, then started the fire and fled the room as the deceased got up. The mother-in-law was the defendant in this case. In this case, the court determined that a dying declaration, if properly documented and including all of the necessary elements, might serve as the foundation for a conviction. The court has enlarged the scope of Section 32(1) via numerous decisions and announcements, including procedures for recording dying declarations and standards for admission etc. In light of the rising number of female atrocities. It's a touchy subject with a variety of social, legal, ethical, and moral implications.²⁵ The drawback to this is that the overzealousness with which people are prosecuted and families are enlisted often weakens the prosecution against the genuine criminals. Furthermore, the deceased's family may abuse this clause in order to extort money from the spouse and his relatives. The court must examine the evidence in each case and only condemn the accused after careful deliberation if the dying declaration establishes the accused's guilt beyond a reasonable doubt.

In *Ashabai vs State of Maharashtra*²⁶, the victim in this case was burnt by her in-laws, and while in the hospital, she gave four distinct dying statements, each accusing a different individual. Despite the victim's changing claims, the court decided that the court must value the trustworthiness of each and every dying declaration without being swayed by prior dying declarations' inconsistencies. As a result, each and every declaration was given weight.

²³ *Som Nath v. State of Haryana* 1980 AIR 1226, 1980 SCR (3) 280

²⁴ *Paniben vs. Gujarat State* 1992 AIR 1817

²⁵ Gupta BD, Jani CB. Status of *compos mentis* in relation to dying declaration in burn patients. *JIAFM*. 2004; 25(4):133 – 136

²⁶ *Ashabai vs State of Maharashtra* (2013) 2 SCC 224

In *P.V Radhakrishna vs State of Karnataka*,²⁷ the offender in this instance poured kerosene on his wife and set her on fire. The court placed significant emphasis on the victim's dying declaration, holding that if the court is convinced that the dying declaration is truthful and voluntary, it can convict simply on that basis, without any further evidence.

*Puran Chand v. State of Haryana*²⁸ stated that, Oral death statements are extremely poor evidence in the event of numerous dying declarations, yet it is not uncommon for a scorched lady to confide in her family. When weighing the credibility of a dying declaration, the courts must evaluate all of the surrounding circumstances at the moment of the declaration.

In *Muthu Kutty and Others vs. Tamil Nadu State Inspector of Police*.²⁹ The victim was set on fire in this case by the appellants, who were her father-in-law and mother-in-law. In this case, the Court also concluded that even in the lack of supporting evidence, a conviction can be securely based on a deathbed claim.

The first appellant's wife was set on fire by the appellants and died of her injuries in hospital in *Om Prakash Vs. State of Punjab*.³⁰ The victim gave first information report to the police, which subsequently became her dying declaration. On appeal, the Supreme Court found that the victim's dying declaration was genuine and could be relied on in court because no evidence was shown indicating she was not in a position to do so. If a dying declaration is to be refuted, materials on record are necessary.

In *Balbir Singh & Anr Vs. State of Punjab*³¹, The deceased had been complaining about mistreatment by her in-laws. She suffered 90% burn damage. She was brought to a hospital for treatment. Despite the fact that she was conscious, the medics caring to her believed that her dying statement should be taken due to the severity of her burn injuries. It was established that death declarations must be provided willingly, and that if there are several dying declarations, the first one in time shall be preferred.

Furthermore, in *State of UP Vs. Santosh Kumar*³², the deceased was tortured daily for dowry by her husband and in-laws. Getting frustrated by daily torture she got frustrated and asked

²⁷ *P.V Radhakrishna vs State of Karnataka* AIR 2003 SC 2859

²⁸ *Puran Chand v. State of Haryana* (2010) 6 SCC 566

²⁹ *Muthu Kutty and Others vs. Tamil Nadu State Inspector of Police* (2005) 9 SCC 113

³⁰ *Om Prakash Vs. State of Punjab* (1992) 4 SCC 212

³¹ *Balbir Singh & Anr Vs. State of Punjab* AIR 2006 SC 3221

³² *State of UP Vs. Santosh Kumar* (2009) 9 SCC 626

her husband to just burn her. The husband poured kerosene on her and burned her. The Court clarified that small discrepancies among the victim's dying declarations would not be fatal to their credibility as long as the case's 'material particulars' and 'real origins' were consistent. This was shown in the case of *Keesari Madhav Reddy vs. State of Andhra Pradesh*.³³

CONCLUSION

In a court of law, a person's dying declaration is more valuable if it includes information on the circumstances that led to the person's death. Because the declarant is unable to confirm or dispute the facts, hearsay testimony is heavily weighted in these situations. The practice of cross-verifying court facts is incompatible with dying declarations. Because if the only person who saw the circumstances that led to his death is the declarant himself, and his statement is not taken into account because he is unavailable to witness to it, the cause of justice will be thwarted.

Bride burning has a long and illustrious tradition in India. These situations develop due to a variety of circumstances, the most notable of which is the desire for dowry.³⁴In many of the 'bride burning' instances, the prosecution's only evidence is a dying declaration, as proofs against the in-laws are difficult to come across in such circumstances. Because deathbed statements have such sway, many people have made a habit of fabricating them and harassing the spouse and his family in recent years. With these options in mind, determining the truth of the situation has grown difficult in recent years.

Through numerous decisions and announcements, the court has enlarged the scope of Section 32(1), established procedures for recording dying declarations, criteria for admission, and so on. Regarding the increasing number of atrocities against women, this piece of legislation allows the deceased to seek justice from those who mistreated her. The court must examine the evidence in each case and, only after careful deliberation, condemn the accused if the dying declaration establishes the accused's guilt beyond a reasonable doubt.

³³ *Keesari Madhav Reddy vs. State of Andhra Pradesh* (2011) 2 SCC 790

³⁴ Dr. R. K. Gorea, —Critical Appraisal of Dying Declaration‖*JIAFM*, 2004, 26(1)

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