

COGENCY OF DYING DECLARATION: ANALYSIS

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Abstract

The task of a judge is to find out the truth in respect of a particular disposition process which is part of justice delivery mechanism. To this end the facts have to be scrutinized, analysed and evidence have to be adduced in order to substantiate the narrated story. Dying declaration being statement of a man who is no more to assist the judge in order to ascertain the facts which cumulatively or in isolation constituted crime of which he has been the victim. More so the significance and weight of such version happens to be crucial in arriving at a conclusion about the incidence fixing the criminal liability. It invites dichotomy in relation to application of judicial mind as the same statement should either be considered or may invite doubt for punishing the criminal. Examination of textual law and its interpretation by the courts throw light on the issue which needs to be critically weighed in a given situation. This small piece of paper seeks to evaluate the judicial propriety of dying declaration and its logical interpretation by the Indian Courts in order to ascertain the guilt of the offender.

I Introduction.....

Organic Structure

II Dying declaration and hearsay principle

Defining Statement

Evidentiary Value

First opportunity rule

Precision and clarity rule

Consistency *vis-à-vis* inconsistency rule

Exclusion of intervention in the mind of dying man

Precision and definite indication rule

Fit physical and mental condition rule

III Competency of taking dying declaration.....

Magistrate

Police officer

Doctor

Family

IV Standards of recording statement

V Dying declaration: Value in present scenario

VI Concluding the perspective

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I Introduction

ULTIMATE END of law is to ensure justice a fact to which denial is a jugglery. Truth being the backbone of justice constitutes its strong pillar. Evidence is the career of truth and the proof is the eye to which truth can be perceived. The job of jury or for that matter a judge is to find out the truth from the facts deposed and the evidence advanced in respect thereof. All the legal systems of the world have their own justice delivery process to which evidence seems to be paramount. Naturally courts are away from the facts which create liability and corresponding rights to the parties who recourse to litigation for securing justice in the form of reparation of the loss caused under the given facts. Remedies to be sought may either be civil or criminal or other than these two as the circumstances address but the facts irrespective of the nature of liability have to be established before the jury or the trial judge.

Wittingly no legal system or justice delivery mechanism reasonably allow either the parties or the judge to grapple in the dark in order to establish all the ensuing facts of a particular enquiry. This may lead to confusion and further time consuming process. Thus, there are barriers imposed by law on the limit and scope of facts which are to be deposed before a court of law in order to make one's claim or right genuine so that court may proceed accordingly. Basic rules around which the entire evidentiary process rotate are three:¹

1. Evidence may be given in a suit or proceeding only of the relevant facts and of no others;
2. Best evidence in all the cases should be given;
3. Hearsay evidence should be excluded.

Needless to delve at this juncture on the explanatory note of these rules as the compass of the theme hardly suggests so. cursory look on these rules may suffice the purpose. Amongst all the different kinds of evidences likely to be allowed under the provisions of Indian Evidence Act, 1972 (*hereinafter* the Act) the statement made by a person under section 32(1) is the matter of

1 See, generally-James F. Stephen, *Digest on Law of Evidence* (Macmillan, London, 1887); John Henry Wigmore, *A Treatise on the Evidence*, (Gale, 1923); Ratanlal & Dhirajlal, *Law of Evidence*, 235-282 (Wadhwa, Nagpur, 2005).

scrutiny in this paper. It further examines the relevancy and the evidentiary value of such statements, weight which the courts are likely to attach to such piece of evidence, the mode and method of recording such statements also find place in the discussion.

Organic Structure

The law of evidence in India mandates says that the evidence may be given of relevant facts only and of no others.² Accordingly the relevancy denotes connectivity of facts in such a manner which logically suggest the happening of a particular matter which is in issue. Indian legal system of evidence largely coincided with English model which classifies connectivity in two ways, i.e., legal and logical. Even though a fact is logically connected with the other but if the same has not been declared legally relevant under the provisions of the Act³ will never qualify relevancy clause. Thus, the Act envisages events, statements, entries, judgment of Courts, expert opinion and the character of the parties to the suit or proceeding as relevant for which evidence is admissible before a court of law. Although as has been conceived by scholars of the subject that whatever has been declared legally relevant are logically relevant and the facts declared relevant are the result of extreme foresight and innovation.

Under the scheme of the Act statements either oral or documented have been declared to be relevant under various sections in a different manner.⁴ The statement to which the present research is concerned has been declared relevant under section 32(1) of the Act which runs as under:⁵

Statements, written or verbal of relevant facts made by a persons 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 following cases-

- (1) When it relates to cause of death- when the statement is made by a person as to cause of his death or as to any of the circumstances of the transaction

2 Indian Evidence Act, 1872 (Act 1 of 1872), s. 5 (*hereinafter* the Act)

3 *Ibid.* ss.6-55 (Relevancy of facts).

4 *Ibid.* ss.17-33 (Statements in the form of Admissions and Confessions).

5 Section 32 of the Act has 8 *sub-clauses* which make relevant various kinds of statements dealing with the issues as mentioned therein.

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 the expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes in to question.

Plain reading of opening words of section 32 amply suggest that the statement of a person who comes under any of the four groups⁶ will be relevant for the purpose of adducing evidence if it relates to eight subjects as mentioned under different clauses of the section.⁷ Clause 1 of the section speaks that when a 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 a case in which the cause of death of the person 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 cause of death comes into question.⁸ Such statements like English law are admissible under the phrase 'dying declarations', i.e. statements made by a dying person as to the injuries which have brought him or her to that condition, or the circumstances under which those injuries came to be inflicted.⁹ Supreme Court of India in *Moti Singh*¹⁰ case propounded the thesis that when a person is not proved to have died as a result of the injuries received in the incident his statement cannot be said to be a statement as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. Another category of statement envisaged under this section is statement as to any of the circumstances which resulted his death which in itself is capable of expanding the width and contour of admissibility. This category may have wider amplitude.¹¹ When the word 'circumstances' is linked to the "transaction which resulted in his death" the sub section casts the net in a very wide dimension. Anything which had a nexus with his death, proximate or distant,

6 Who is dead, cannot be found, become incapable of giving evidence and cannot be procured within reasonable time.

7 These are in relation to cause of his death, made in the course of business, against the interest of the maker, relates to public right or custom, existence of relationship, deed relating to family affairs, AIRs, transaction under sec. 13(a), group statements.

8 M.C Sarkar and P.C. Sarkar, *Law of Evidence Vol.-1* 724 (Wadhwa, Nagpur, 2008).

9 *Id.* at 724.

10 *Moti Singh v. State of U.P.*, AIR 1964 SC 900; See also *Tahal Singh v. State of Punjab*, AIR 1979 SC 1347.

11 M. Monir, *Law of Evidence Vol.1* 765 (Universal, Delhi, 15th edn.).

direct or indirect, can also fall within the purview of the sub section. As the possibility of getting the maker of the statement has been closed once for all, the endeavour should be how to include the statement of a person who is no more within the sweep of the sub section and not how to exclude it there from.¹² To explain the implications of this clause reference may be made to Hon'ble Supreme Court in *Rattan Singh v. State of H.P.*¹³ Very aptly it is said that the collection of words in section 32 (1) 'circumstances of the transaction which resulted in his death' is apparently of wider amplitude than saying circumstances which caused his death. There need not be a direct nexus between 'circumstances' and the 'death'. It is enough if the words spoken by the deceased have reference to any of the circumstances which have connection with any of the transactions which resulted in the death of the deceased. In other words it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub section provided it has nexus with the transaction which resulted in his death. In other words, statement of the deceased relating to the cause of or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction.¹⁴ In order to make phrases more clear statement of Lord Atkin, Privy Council verdict in *Pakala Narain Swamy v. Emperor*¹⁵ may be referred at this juncture: 16

"Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous used in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than 'res gestae' circumstances must have some proximate relation to the actual occurrence and must be 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 of the

12 *Id.* at 765.

13 (1997) 4 SCC 161 at 166-167.

14 *Supra* note 11 at 766.

15 AIR 1939 PC 47.

16 *Id.* at 50: For elaborate discussion also see, *Sharad B. Sarda v. State of Maharastra*, AIR 1984 SC 1622; *Hanumant Narghandkar v. State of MP*, AIR 1952 SC 343; *Ratan Gond v. State of Bihar*, AIR 1959 SC 18; *Manohar v. State of Punjab* 1981 Cr. L.J. 1373; *G.S. Wallia v. State of Punjab* (1998) 5 SCC 150; *Moti Singh v. State of U.P.*, AIR 1964 SC 900; *Rajinder Kumar v. State*, AIR 1960 Punj 310; *Chinnavalayan v. State of Madras* (1959) MLJ 246; *State of U.P. v. Kanchan Singh*, AIR 1954 All. 153; *State of MP v. Paltan Mallah*, AIR 2005 SC 733.

admissibility of the evidence is that the cause of (the declarant's) death comes into question. 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 the statement made by the deceased that he was proceeding to the spot where in fact he was 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 the circumstances of the transaction and would be so whether the person was unknown or was not the person accused.

Thus, whatever Lord Atkin had propounded, Indian Courts unhesitatingly followed and preferred to proceed on the same path. As has been mentioned earlier such statements have been declared relevant as dying declaration on the pattern of English Law. However, Indian Law stands on a different footing in accepting the evidence of such declaration. Under English Law person making statement must be under the anticipation of death or impending death whereas under the Indian Law it is not necessary for the admissibility of dying declaration that the deceased at the time of making the statement should have been under expectation of death.¹⁷ Secondly, under English Law dying declaration is admissible only in a criminal charge of homicide or manslaughter whereas in India it is admissible in civil or criminal proceedings both where ever the question of death comes into question. In English law it is admissible only when death has ensued while under Indian Law such statement may be used even if the declarant survives. In such cases the statement is relevant under section 157 of the Act to corroborate the facts and not under section 32 as dying declaration. Fourthly, in Indian law such statements are admissible in cases of suicide whereas in English law it is inadmissible in such cases.¹⁸

II Dying declaration and hearsay principle

One of the cardinal principles of law of evidence suggests that facts must always be proved by direct evidence. In other words only direct evidence of the facts is admissible. No matter how cogent particular evidence may be unless it comes within a class admissibility it is

17 *Inayat Khan v. Emperor* 158 IC 336; *B. Sharda v. State of Maharashtra*, AIR 1984 SC 1622; *Tahal Singh v. State of Punjab*, AIR 1979 SC 1347.

18 Distinction between Indian and English Law may be seen in *Kishan Lal v. State of Rajasthan*, AIR 1999 SC 3062; See, Syed Amir Ali and John Woodroffe, *Law of Evidence* 1760 (Butterworth, Delhi, 17th edn.).

excluded.¹⁹ In case of dying declaration the direct oral evidence of the fact and the opportunity of examining the truth of such evidence by cross examination is dispensed with because the maker of the statement is dead or has become incapable of giving evidence or cannot be found and no better evidence of the circumstances one can have other than the statement of the person so made. Obviously it is made long before the enquiry or for that matter before the occurrence of death or incapacity. However, the character of the statement and the subject to which it refers indicate highest degree of truth. For the purpose of establishing an averred fact when the maker is no more seems appropriate even the statement suffers from major disqualification. That is why the statement has been declared to be relevant and constitutes an exception to the hearsay rule.

M. Sarkar has very categorically pointed it out as to why exceptions to hearsay rule have been allowed.²⁰ Accordingly the idea of necessity for the evidence and circumstantial probability of trustworthiness with conjoined value has been responsible for exceptions to the hearsay rule. Few other reasons have also been advanced to this end which are: 21

- i. where the circumstances are such that the sincere and accurate statement would naturally be uttered and no plan of falsification be formed;
- ii. danger of easy detection or the fear of punishment would avoid falsification or counteract its force;
- iii. Where the statement made under the conditions of publicity that an error if occurred probably have been detected.

Dying declaration being exception to the hearsay rule rests on the reason of divine punishment. It is thus amply clear that dying declaration as provided under section 32(1) of the Act may be proved by evidence.²² This clause constitute another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused would be valueless because the place of cross examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of

19 *Myers v. DDP* (1965) AC 1001 at p. 1024 as per Lord Reid. See *Halsbury Laws of India Vol. 15* 216-219 (Butterworth, Delhi, 2000); R. Cross, *Evidence* 38 (Butterworth, London, 6th edn.) hearsay has been defined.

20 *M.C Sarkar, supra* note 8 at 709.

21 *Ibid.*

22 *Tapinder Singh v. State of Punjab* (1970) 2 SCC 113; *Sharad B. Sarda v. State of Maharashtra*, AIR 1984 SC 1622.

his death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.²³

Emson Ramond has very categorically mentioned various kinds of facts which are admissible under law of evidence to prove the fact. Such are, statements forming part of *res gestae* (excited utterances, state of mind of declarant, his physical condition, statements relating to the declarant's performance of a particular act), statements made by person now deceased, (8 groups as mentioned under the Act i.e., about his death, against pecuniary or proprietary interest, course of duty, about pedigree, public or general right, group statements), statements made by parties to a common enterprise, statements in public documents, works of reference, evidence of reputation and the opinion of third parties.²⁴ Thus, because of significance of the nature of evidence such statements are being considered to prove certain fact. What Wigmore²⁵ says that the purpose and reason of hearsay rule is the key to the exceptions to it which reflect the importance of hearsay and exceptions in the law of evidence. It is pertinent to devote few lines as to the rationale and logic of exclusion of hearsay evidence to prove a particular fact in a suit or proceeding.

As a general rule hearsay evidence is not admissible and authority must be found to justify its reception within some established and existing exception to the rule.²⁶ One of the cardinal principles of evidence is the outright rejection of any evidence which is based on the hearsay proposition. Now a plausible question crops as to what is the meaning of hearsay. It is an assertion other than one made by a person while giving oral evidence in the proceedings.²⁷ Where a representation of any fact is made other than a person but depends for its accuracy on the information supplied by a person it is hearsay and excluded to prove the information supplied. In other words when the final statement of a person is influenced by human involvement to be testified before the Court hearsay comes in. Scholars are on agreement on denial of such evidence.²⁸ The rule against the admission of hearsay is fundamental. It is not the

23 *Sarda, id.* at 1630.

24 Raymond Emson, *Evidence* 154-169 (Macmillan, London, 1999).

25 *Supra* note 8 at 708.

26 See, Lord Morris in *Myers v. DPP* (1965) AC 1001 at p. 1028.

27 *R. v. Sharp* (1988) IWL 7 HL. Lord Havens.

28 *Ibid.*

best evidence and also is not delivered on oath. The truthfulness and the accuracy of the person whose words are spoken by another witness cannot be tested by cross examination and the light which his demeanor would throw on his testimony is lost.²⁹ The rationale for exclusion of such evidence is as follows: ³⁰

- i. it is not a best piece of evidence;
- ii. it is not delivered on oath;
- iii. resulted possible inaccuracy through repetition;
- iv. demeanor of the maker may not be seen;
- v. veracity of the matter cannot be tested in cross examination, and
- vi. Accuracy of the maker also cannot be tested in cross-examination.

Defining Statement

Section 32 of the Act begins with the words statements, written or verbal' of the relevant facts invite a closer look. There can be two ways to explain the term, i.e., conceptualizing and its implication. In other words the meaning of the statement, to whom it is addressed and its different modes have to be genuinely explained.

The word statement, though used in different sections³¹ is scattered over the entire text of the Act but has not been defined therein, therefore, dictionary meaning should be taken into consideration to explain it. Oxford English Dictionary defines the term as a clear expression of something.³² In its primary meaning it denotes something stated, asserted or expressed.³³ Obviously, stated things must have some reference or subject matter with some meaning in a context which is to be enquired in a judicial process. Sequel to it is the manner or mode of stating a fact which can either be by using oral expressions or written words or that even may be with the use of gestures or the body language to be interpreted by an intermeddler. Sign, as dictionary meaning suggests is an action or gesture conveying information. It also mean something perceived that suggests, existence of a quality or a future occurrence. Such a situation came up

29 *Jepper v. R* (1952) AC 480; *Per* Lord Normand at 486.

30 *Ibid*; also see, *supra* note 24 at 126-152.

31 *Supra* note 2 at ss. 17-21, 32, 33, 39, 145, and 157.

32 Oxford English Mini Dictionary (Oxford University Press, 1999).

33 *Bhogilal Chunnilal Pandey v. State of Bombay*, AIR 1959 SC 356.

before judicial scrutiny in a famous case of *Queen Empress v. Abdullah*.³⁴ Sign made by a dying women in answer to questions as to circumstances under which the injuries were inflicted on her were admitted as verbal statements as to the cause of her death as she was unable to speak but was conscious to make signs. Nodding the head and making signs are verbal statements.³⁵ Observations of J. Broomfield³⁶ and Mahmood J.³⁷ very clearly and emphatically suggest that a nod of assent in answer to a question clearly constitutes a verbal statement. Thus, it is established that something stated invariably may be by mouth, writing or even signs or gestures. Signs and motions are verbal statements.³⁸ Ancillary to it the issue is whether such statement essentially required to be communicated. There is no doubt that a statement may be made to someone in the sense of a communication but that is not its primary meaning. The element of communication is not the essence of statement as this may be monologue.³⁹ This being the purposive definition of K.N. Wanchoo J. in reference to section 157 of the Act. The same view has been taken by the Apex Court⁴⁰ suggesting that communication of the statement is not essential element to justify a confessional version. However, statements said to be relevant under section 32 in *clause* (1) are grouped as dying declaration and enunciates a different connotation. In principle this may be accepted that a statement need not be communicated to other even then it will not lose its character but such statement have to be used for a certain purpose its communication is essential. In cases of dying declaration recording of the statement is the essence of its admissibility and, thus, communication unlike other sections of the Act is essential. This is also because of the reason that person whose statement has to be used for the purposes of evidence in order to fix the liability on someone is no more to be verified on the contents of the statement so made.

Evidentiary Value

Statements oral or written of relevant facts made by a person who is dead called dying declaration. It is an important piece of evidence and conviction can be based solely on the

34 (1885) 7 All. 600; See also *Man Chand v. R*, 5 L324; *R. v. Motiram* 1937 Bom. 68; *Somatigir v. State of M.P.*, 1989 Cr. L.J. NOC 9.

35 *Ranga v. R.* (84 IC 552).

36 *R v. Motiram* 1937 Bom. 68.

37 *R. v. Abdullah* (1885) 7 ACP 600.

38 *Chandrasekhar v. R* 1937 PC 24.

39 *Bhogilal Pandey v. State of Bombay*, AIR 1959 SC 356 at p. 357.

40 *Sahoo v. State of U.P.*, AIR 1966 SC 40; *Ajay Singh v. State of Maharashtra*, AIR 2007 SC 2188.

declaration of a dead man. The principle on which the dying declaration is admitted in evidence is indicated in the maxim '*Nemo moriturus praesumitur mentire*', i.e., a man will not meet his maker with a lie in his mouth. Mathew Arnold said, truth sits on the lips of dying man. Recognising the value of dying declaration Indian Supreme Court in a famous case stated as follow: ⁴¹

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 the most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying man 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 personthe 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; situations 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.

Law on the dying declaration has very beautifully been summed up by the Supreme Court in *Kundanbala Subrahmanyam v. State of A.P.*⁴² which is further endorsed by R.C. Lahoti J. in *Laxmi v. Omprakash.*⁴³ The Court very categorically said that a dying declaration made by a person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the cause or circumstances leading

41 *Babulal v. State of M.P.*, AIR 2004 SC 45; *Laxman v. State of Maharashtra*, AIR 2002 SC 2973; *Vijai Pal v. Delhi*, AIR 2015 SC 1495 at 1501; *Muthu Kutty v. State of Tamil Nadu*, AIR 2005 SC 1473. See *Halsbury Laws of India* Vol. 15 pp. 222-238 (Butterworth, Delhi, 2000). These aspects have been eloquently stated by Lyre LCR in *R. v. Wood Cooch* (1989) Leach 500. Shakespeare makes the wound Melun finding himself disbelieved wife announcing the intended treachery of the Dauphin Lewis explain; Have I met hideous death within my view, Retaining but a quantity of life, which bleeds away even as a form of way, Resolveth from the figure against the fire ? What is the world should make me now deceive, since I must lose the use of all deceit? Why should I then be false since it is true that I must die here and live hence by truth? King John Act 5. Sect. 4.

42 (1993) 2 SCC 684

43 (2001) 6 SCC 118.

to his death. A dying declaration, therefore, enjoys almost a sacrosanct status as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment, such a dying declaration by itself can be sufficient for recording conviction even without looking for any corroboration. It has always to be kept in mind that though a dying declaration is entitled for great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross examination it is essential for the court to insist that the dying declaration should be of such nature as to inspire full confidence of the Court in its correctness. The Court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or a product of imagination. Before relying upon a dying declaration, the court should be satisfied that the deceased was in a fit state of mind to make the statement. Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as a rule, requiring corroboration is not a rule of law but only a rule of prudence.⁴⁴ Thus, law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness there is no justification to discard the same.⁴⁵ Supreme Court in *Ram Nath Mahadeo Prasad v. State of M.P.*⁴⁶ said that it is not safe to convict an accused merely on the evidence furnished by a dying declaration without further corroboration because such a statement is not made on oath and is not subject to cross examination and because the maker of it might be mentally and physically in a state of confusion and might well be drawing his imagination while he was making that declaration. This was overruled by the Court by saying that dying declaration if found true can safely be relied upon

44 *Uka Ram v. State of Rajasthan* (2001) 5 SCC 254; *Tapinder Singh v. State of Punjab* (1970) 2 SCC 113; *Dandu Laxmi Reddy v. State of A.P.* (1999) 7 SCC 69.

45 *Vijay Pal v. Delhi*, AIR 2015 SC 1495 at p. 1502.

46 AIR 1953 SC 420. *Lakhan v. State of MP* (2010) 8 SCC 514 (Conviction is valid solely on the basis of Dying Declaration even without corroboration)

even if it is not corroborated.⁴⁷ Supreme Court in *Kushal Rao v. State of Bombay*⁴⁸ very clearly summarized the proposition in the following manner:

- i. That it can't be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated.
- ii. Each case must be determined on its own facts keeping in view the circumstances in which dying declaration was made.
- iii. It cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other piece of evidence.
- iv. A dying declaration stands on the same footing as any other 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.
- v. A dying declaration recorded by the Magistrate in question answer form stands on a much higher footing.
- vi. In order to test the reliability of dying declaration court has to keep in mind the circumstances like the opportunity for observation of the dying man i.e., sufficient light when crime was committed, capacity to remember the facts, statements are consistent and the statement has been made at the earlier opportunity and was not the result of tutoring by interested parties.

Before moving ahead to discuss the evidentiary value in detail synoptic view adopted by Justice Arijit Pasayat in one of his pronouncements may be depicted.⁴⁹ Though a dying declaration is entitled to great weight, it is worthwhile to note that accused has no chance of cross examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason that the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to guard that the

47 *Kusa v. State of Orissa*, AIR 1980 SC 559; *State of Orissa v. Bansidhar Singh* (1996) 2 SCC 194; *Ronal Kiprono Ramakant v. State of Haryana*, AIR 2001 SC 2488.

48 AIR 1958 SC 22; followed in *State of U.P. v. R.S. Yadav*, AIR 1985 SC 416; *Padmaben Shamalbhai Patel v. State of Gujarat* 1991 SCC (1) 744; *State of Orissa v. B. Singh* (1996) 2 SCC 194; *CJaikaran v. State of Delhi*, AIR 1999 SC 3512; *L.N. Yadav v. Shivjee Yadav* (1999) 6 SCC 63. For details see *Atbir v. Govt. of NCT Delhi* (2010) 9 SCC 1.

49 *Muthukutty v. State of T.N.*, AIR 2005 SC 1473 at pp. 1478-1479, followed in *Panniben v. State of Gujarat*, AIR 1992 SC 1817.

statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary undoubtedly it can base its conviction without any further corroboration. 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 only a rule of prudence. Thus, there is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.⁵⁰ If the court satisfies that it is true and voluntary conviction can be acted upon without corroboration.⁵¹ The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination.⁵² Where dying declaration is suspicious it should not be acted upon without corroborative evidence.⁵³ A dying declaration which suffers from infirmity cannot be relied upon for conviction.⁵⁴ Merely because a dying declaration contain short statement or details of the circumstances of event need not be discarded.⁵⁵

From a careful scrutiny of the authorities and the judicial pronouncement what is clearly established that a dying declaration is an important piece of evidence and may form sole basis of conviction. Even if it suffers from two major infirmities in the strict legal sense it stands on a strong footing. The rule of caution is also established norm for recording such a declaration. As has been noted in the present work that format of recording is not prescribed either by the Act or the Court's verdict. Caution which the courts usually take into consideration may follow different tests. For this purpose there seems different rules which if a dying declaration follows stands on a much higher footing and such an important piece of evidence may be relied upon. These rules are first opportunity, precision and clarity, consistency *vis-à-vis* inconsistency,

50 *Munnu Raja v. State of M.P.*, AIR 1976 SC 2194.

51 *State of UP v. Ram Sagar Yadav*, AIR 1985 SC 416; *Ramavati v. State of Bihar*, AIR 1983 SC 183; *Gangotri Singh v. State of UP*, AIR 1992 SC 948; *Goverdhan Raoji v. State of Maharashtra*, AIR 1993 SC 2971; *Meesala Ramkrishna v. State of A.P.* 1994 SCC (4) 182.

52 *K.R. Reddy v. Public Prosecutor*, AIR 1976 SC 1994.

53 *R. Beg v. State of M.P.* (1974) 4 SCC 264.

54 *Kaka Singh v. State of M.P.*, AIR 1982 SC 1021.

55 *State of Maharashtra v. Laxmipati Naidu*, AIR 1981 SC 617; *Surajdeo Oza v. State of Bihar*, AIR 1979 SC 1505; *M.A. Nadaf v. State of Karnataka*, AIR 2007 SC 2666; *S.A. Bhansode v. State*, AIR 2009 SC 1626; *S.P. Devraj v. State of Karnataka*, AIR 2009 SC 1925.

exclusion of intervention, tutoring or concoction, definite indication, identification of assailant with all precision, healthy mental and fit physical condition of the maker could be followed as caution by the courts. All these need separate discussion in the forgoing pages.

First opportunity rule

Although courts have prescribed various standards to rely upon a dying declaration before it can be taken to its utmost reliability. What seems convincing and desirable that the statement must be taken down at the earliest available opportunity avoiding any chance of an unforeseen event as well as possible human intervention in the mind and mouth of a dying man. Such a caution definitely would infuse a meaning in the substance as there is every likelihood of its being free from cloud and mist as to crime as well as offender including the narration of location, incidence and development of all the events which culminated in the criminal behaviour. It's rather pertinent to define first opportunity. In other way what is required that statement should be recorded without delay to avoid manipulation and intervention of others. Delay of two days was allowed to accept the declaration. In *G.S. Walia v. State of Panjab*⁵⁶ delay of two days in recording the statement was held to be excusable as the injured person was not in a fit condition to make the statement. Delay may be explained as justified and it depends upon each case. Delay of two hours may not be justified while two days are excused. If the deceased was in a fit condition to narrate the story no delay is permitted while if he is unfit medically and physically, time taken in recovery could be excused. Thus, the first opportunity rule seems to be reasonable and mandatory to make the declaration as pious as it should be. Opportunity to make the statement in the form of declaration at the earliest depends upon each case and the circumstances in which the person whose declaration is to be accepted.⁵⁷ Sometimes delay of not only hours but even the days or the month could be taken as earliest while in other even an hour may be described as late leading to rejection or undering the value of the statement.

Precision and clarity rule

What appeals to anybody is the clear and precise statement of any person which has to be accepted in evidence after his death. It does not matter whether the statement is short or lengthy,

56 AIR 1998 SC 2857; See also, *Kishanlal v. State of Rajasthan*, AIR 1999 SC 3062.

57 *State of Maharashtra v. H.K. Chanriwal*, AIR 2016 SC 287.

what is required is its precision, clarity, completeness and specificity.⁵⁸ Merely because a declaration does not contain all the details as to the occurrence it is not to be rejected. Economy of words are not required as the person making the statement has neither calculative mind nor digestive capacity to chew the words in order to project something in an indirect and lucid manner. Declarant is supposed to narrate all that happened to him and his perception in an innocent and simple manner which add weight to the statement and the contents thereof.

Consistency *vis-a-vis* inconsistency rule

This applies in cases of multiple dying declarations. Consistency in the dying declaration is the relevant factor for placing reliance. Where there are more than one dying declarations one prior in time should be preferred.⁵⁹ If the plurality of dying declaration could be held to be trustworthy it has to be accepted.⁶⁰ If some inconsistencies are noticed between the two declarations Court has to examine the nature of inconsistencies whether they are material or not. When there are more than one dying declaration genuinely recorded in a proper manner it must be tested on the touchstone of consistency and probabilities. It is the duty of the Court to consider each of them in its correct perspective and satisfy which one of these reflects the true state of affairs.⁶¹ The intrinsic contradictions in twin dying declarations are extremely important. Duty is cast on the Courts to winnow truth from falsehood. Accused should be given benefit of doubt in cases of inconsistent dying declarations. It is quite natural that injured person will be questioned by series of persons who come for rescue, support, medical treatment, investigation etc. and, thus, he is supposed to answer each one of them. This seems to be rather herculean task for a wounded master to recapitulate the same facts all the time either before his death or after complete recovery and in both the situations his words matter in order to fix the criminal liability. Thus, the caution speculated on the part of a dying man is consistent and coherent approach in his narration before all those who come to him for any purpose. Slight variation either in respect of facts and circumstances resulting such incidence or in terms of naming the

58 AIR 1981 SC 617; See *Atbir v. Govt. of NCT Delhi* (2010) 9 SCC 1.

59 *Supra* note 11 at 754.

60 *Paneershelvan v. State of Tamil Nadu* 2008 Cr. L.J. 3531 (SC).

61 *R.V. Satyanandam v. P.P. Andhra Pradesh High Court*, AIR 2001 SC 1708.

perpetrators of crime may mar the beauty and consequential weight of the statement. There are cases in which Courts did not rely upon the inconsistent statements of a dead man so what is required primarily is the reliable statement carving out the scope of any suspicion or doubt. If there happens variation in declaration or different contents have been delivered at different places such a statement even if voluntary and neutralises the story of concoction need not be acted upon and requires corroboration. However, slight variation may not be fatal but substantive variation in declaration may lead to distrust. Again what is substantive variation and what is not needs a serious look. Name, title, description, number of culprits and the surroundings in which the incidence took place must resemble in each and all statements. And to make a compact nature of statement absolutely fit mental and physical condition is essential. Minute to minute change in the psyche, physique and the consciousness of a wounded man should also be considered by presiding officer before relying upon the statement. More so there should not be prevarication in the statement. The declarant who is in great mental agony and who has suffered extensive injuries is bound to commit minor mistakes and omission in the narration.⁶²

Exclusion of intervention in the mind of dying man

The statement as to death must be made by the person himself if it has to be trusted. If the statement is the result of infusion of any information in the mind of the declarant it should not be relied upon. Before the dying declaration is to be acted upon the Court has to ensure that the statement is free from any tutoring or concoction.⁶³ Tendency to implicate innocent persons is imbibed in our social system, thus, chance to doctrienate such things is quite high. Scope of tutoring a dying man not only in terms of persons involved but also to the other incidents is always possible and this needs to be neutralised before statement is to be considered for conviction. Impurity degenerates the value and weight of such declaration. So where the condition of the deceased was serious but the alleged dying declaration contains a detailed and graphic narration of the prosecution story starting from the motive, enmity and the minute details of the assault, statement smacks of concoction and fabrication, dying declaration should be

62 *State of Maharastra v. Gopichand* 1985 Cr. L.J. 784.

63 *Bakshish Singh v. State of Punjab*, AIR 1957 SC 904; *Govt. of NCT Delhi v. Nitin G. Shah* (2016) 1 SCC 472; *Atbir v. Govt. of NCT Delhi* (2010) 9 SCC 1.

discarded.⁶⁴ Dying declaration cannot be held as tainted merely because the deceased was carried by his friends and relations to the hospital for urgent medical assistance.⁶⁵

Precision and definite indication rule

Indistinct and obscure statements repel suspense and doubt and hardly be considered to prove a fact. What is germane to the process is precision in the statement. Brevity of dying declaration in few words would not warrant its rejection on that ground.⁶⁶ Dying declaration need not be exhaustive and disclose all the surrounding circumstances. It cannot be ruled out entirely because of an omission to refer to a particular circumstance of the transaction,⁶⁷ nor can any argument be built upon what the declarant has not said in his declaration.⁶⁸ Where all the particulars mentioned in the dying declaration leave no doubt regarding the identity of the accused conviction may be based on it.⁶⁹ Where a dying declaration does not contain the complete names and addresses of the accused persons which help in establishing their identity is not reliable.⁷⁰

Fit physical and mental condition rule

The first and the foremost condition to rely upon the dying declaration is that the declarant must be in a fit physical and mental condition. The physical fitness of the deponent at the time of the alleged dying declaration must be carefully examined to dispel all the doubts of concoction.⁷¹ The Court needs certification of the medical expert to this effect. Usually if the doctor has certified and deposed before the Court that the deceased was in a fit condition and conscious state of mind to make the statement, the court would unhesitatingly conclude that the deceased

64 *Mohar Singh v. State of Punjab*, AIR 1981 SC 1578; *Tahal Singh v. State of Punjab*, AIR 1979 SC 1974.

65 *State of U.P. v. Ramsevak*, AIR 2003 SC 2141.

66 Joga Rao. op. cit., p. 1781; *Surajdeo Ojha v. State of Bihar*, AIR 1979 SC 1505

67 *State v. Govinda Pillai*, AIR 1952 Trav. & ch 449.

68 *Rambali v. State*, AIR 1952 All. 289

69 *Gopal v. State of M.P.*, AIR 1972 SC 1557.

70 *Gopal v. State of U.P.*, 1994 JIC 487 (SC)

71 *State v. Laxman*, AIR 1986 SC 250; *Darshan v. State*, AIR 1983 SC 554; *Jagga Singh v. State of Punjab*, AIR 1995 SC 135; *P. Rosamma v. State of AP*, AIR 1999 SC 3455; *Panniben v. State of Gujarat* (1992) 2 SCC 477; *Mafabhai Nagarbai v. State of Gujarat* (1992) 4 SCC 69; *Bitthal v. State of Maharashtra* (2006) 13 SCC 54; *Amar Singh v. State of Maharashtra* (2007) 15 SCC 455; *Sher Singh v. State of Punjab* (2008) 4 SCC 265; *D.S. Koli v. State of Maharashtra* (2008) 16 SCC 705; *Surinder Kumar v. State of Punjab* (2012) 12 SCC 120; Also see, (2017) 16 SCC 466.

was mentally fit to make the statement. Certificate of the doctor endorsing that the victim was not only conscious but also in a fit condition to make statement is must. In the absence of thereof the declaration may be subjected to suspicion.⁷² But in certain cases if the circumstances so permit the statement could be relied upon even if doctor's certificate is not attached. Supreme Court⁷³ is of the view that the absence of the medical certificate of fitness does not render dying declaration to be always unacceptable. What essentially required is that the person who records the statement must itself be satisfied that the injured person was in a fit state of mind.⁷⁴ Medical certificate is a rule of caution. Truthful dying declaration can be assured even otherwise.⁷⁵ The question as to whether a dying declaration is of impeccable character would depend upon several factors of which physical and mental condition of the deceased is paramount.⁷⁶ Signature on the recorded dying declaration come for enquiry before Supreme Court in *Narendra Kumar's Case*⁷⁷ where the court rejected any such criteria and held that it need not necessarily be signed or bear thumb impression. If the court has even slight doubt about the mental condition of the author of dying declaration it would be unsafe to base conviction.⁷⁸ There is no requirement of law that dying declaration necessarily be made to a Magistrate. Evidentiary value to be attached to such statement depends on the facts and circumstances of each particular case. In a proper case it may be permissible to convict a person only on the basis of dying declaration keeping in view facts and circumstances of the case.⁷⁹

III Competency of recording dying declaration

The Act does not prescribe as to whom declaration is to be addressed. This may be made to anyone i.e., Magistrate, Police officer, Public servant, Doctor, Police constable, family members,

72 *V.S. Gaikwad v. State of Maharashtra* 1994 Cr. L.J. 2035 (Prom).

73 *Laxman v. State of Maharashtra*, 2002 Cr. L.J. 4095 (SC); *State of M.P. v. Dal Singh*, AIR 2013 SC 2059; *Nathu Ram v. State of Rajasthan*, 2016 Cr. L.J. 2098.

74 *Ratanlal*, *supra* note 1 at 253. Also see, *Atbir v. Govt. of NCT Delhi* (2010) 9 SCC 1.

75 *Gulzarilal v. State of Haryana*, AIR 2016 SC 795; Also see, *W. Y. Singh v. State of Manipur*, AIR 2011 SC 783

76 *Id* at 798; Also see, *P. Mani v. State of Tamil Nadu*, AIR 2006 SC 1319; *Narandra Kumar v. NCT Delhi*, AIR 2016 SC 150.

77 *Ibid*. Also see, *M. Raju v. State of Karnataka*, AIR 2001 Karn. 3044.

78 *Dandu Laxmy Reddy v. State of A.P.*, AIR 1999 SC 3255.

79 *Ramavati Devi v. State of Bihar*, AIR 1983 SC 164.

friends or even to private persons. What essentially required is that the person who records a declaration must be satisfied that the deceased was in a fit state of mind.⁸⁰ However, the evidentiary value and the weight may vary in each of the above condition. Logically dying declaration recorded by Magistrate stands on a much higher footing.⁸¹

Magistrate

There is no denying the fact that dying declaration recorded by Judicial Magistrate implies higher evidentiary value as he knows the process and method of recording it. He is not only supposed to be an independent and neutral person having nothing to shield but the justice.⁸² Even Executive Magistrate may also record the declaration and the courts have to place reliance on it.⁸³ In no case it is essential that it should be made before the Magistrate only. There may be circumstances which warrant quick and emergent recording of words as the person who is under the acute agony may shut his lips any time depriving others to listen.

Police officer

Police is the most important segment of criminal justice system and her role in preventive measures and prosecuting criminals can never be obviated. But the unfortunate part of the whole story is such an agency has not been put with proper faith but suffers a blemish of distrust in India. He is rather supposed to be present at the scene. Naturally a wounded person has to be attended quickly by him or her or him and to reach over there for investigation process. So the statement recorded by him should be relied upon. In *Bhagirathi v. State of Haryana*⁸⁴ where a head constable on receiving message about an injured man from the hospital rushed to the spot after making an entry in the police register. The dying declaration recorded by him on doctors fitness certificate was held to be admissible in evidence. In another case Supreme Court held the declaration recorded by sub Inspector reliable and admissible.⁸⁵ However, in other cases where assistance of Magistrate was not taken or he was not informed the declaration was held not to be

80 *Laxman v. State of Maharashtra*, AIR 2002 SC 733.

81 *Kushal Rao v. State of Bombay*, AIR 1958 SC 22.

82 *S.D. Koli v. State of Maharashtra*, AIR 2009 SC 1059.

83 *Ravichander v. State of Punjab* (1998) 9 SCC 338; *Harijit Kumar v. State of Punjab* (1999) 6 SCC 545; *K.C. Sauji v. State of Gujarat* (1999) SCC 562.

84 AIR 1997 SC 234; Also see, *State of Karnataka v. Shariff*, AIR 2003 SC 1074; *Munna Raja v. State of MP* 1976 2 SCR 764.

85 *Gullam Husain v. State of Delhi* (2007) 7 SCC 254.

admissible in evidence.⁸⁶ Court took the view that before recording any such statement either by Police officer or the constable the presence of Magistrate if possible needs to be ensured. But this can never be a general rule. Caution is required and due certification of the doctor is extremely essential to attach higher value to the declaration. In *Dilip Singh's* case reliance was placed on recording of Investigating Officer.⁸⁷ But in *Amarjeet Singh's* case Court said that no hard and fast rule can be laid down.⁸⁸

Doctor

Statement recorded by Doctor who is totally an independent person can never be disbelieved.⁸⁹ As he is an expert not only to certify his physical and mental fitness but even to cure him and to understand the nature of injury, consequences and the follow up. Where the doctor, after examining the patient, finds that the life is ebbing fast in the patient and there is no time either to call the Police or the Magistrate in such a situation the doctor is justified, indeed he is duty bound to record the dying declaration. He is not only respectable witness but an impartial expert and, thus, his recording of declaration deserves respect.⁹⁰

Family members

Family members are the first one besides police to encounter the deeply injured man who is looking for some solace and in this situation the statement made to any close one should be taken with proper weight and value. Simultaneous danger which the courts have to face is the partitioning and bias to the witness who has recorded the dying declaration. The chance of malefic, concoction and the tampering of the declaration can hardly be ruled out. And perhaps this is the reason that courts always discouraged recording of the statement by private person

86 *Dayal Singh v. State of Maharashtra*, 2000 Cr. L.J. 3265 (SC); *Saheb v. State of A.P.*, AIR 2003 SC 1014.

87 *Dilip Singh v. State of Punjab*, AIR 1979 SC 1173.

88 *State of Punjab v. Amarjeet Singh*, AIR 1988 SC 2013.

89 *Sripatrao v. State of Maharashtra* (2000) 10 SCC 320; *State of TN v. Karuppasamy*, AIR 209 SC 948

90 *AMA Rehman v. State of Gujarat*, AIR 1976 SC 1782; *Suresh v. State of M.P.*, AIR 1987 SC 860; *Gulzarilal v. State of Haryana*, AIR 2016 SC 795

more so family members. Statement made to the mother was not relied upon by the court in numerous cases.⁹¹ In *R.K. Ramkant*⁹² case Supreme Court held that dying declaration made to brother can hardly be relied upon.⁹³

IV Standards of recording statement

Dying declarations are not necessarily either written or spoken. Any method of communication between mind and body may be adopted which reflect the thought, i.e., the pressure of hand, a nod of the head or a glance of the eye.⁹⁴ Any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive, definite and seems to proceed from an intelligence of its meaning. Even the nodding of the head could be sufficient.⁹⁵ There cannot be any cavil over the proposition that a dying declaration cannot be mechanically relied upon. In fact it is the duty of the court to examine a dying declaration with scrutiny to find out whether the same is voluntary, truthful and made in a conscious state of mind and without any influence.⁹⁶ Indian Supreme Court through Dr. B.S. Chauhan J. summarized the position of law in relation to recording of the statement.⁹⁷ Law does not provide as to who can record a dying declaration, nor there is any prescribed form, format or the procedure for the same. The person who records a dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making such a statement. Moreover, the requirement of a certificate from the doctor in respect of such state of mind of the deceased is not essential in every case.⁹⁸ A dying declaration if possible should be recorded and taken down in exact words which the person who makes it generally uses. Possibly from these words precise

91 *Baldeo Raj v. State of H.P.*, AIR 1980 SC 436; *Arvind Singh v. State of Bihar*, AIR 2001 SC 2124; *State of Orissa v. Parasuram Naik*, AIR 1997 SC 3569; *Danddu Laxmi Reddy v. State of AP*, AIR 1999 SC 3255.

92 *Ramakant Mishra v. State of U.P.*, AIR 1982 SC 1552

93 *Ibid.*

94 J. Mines, in *Mockabee v. Com* 78 Ky 382 referred in M. Sarkar., *supra* note 8 at 732; *Surinder Kumar v. Delhi Administration*, AIR 1987 SC 692.

95 *Vijay Pal v. State of Delhi*, AIR 2015 SC 1495 at 1501.

96 *Ibid.* at 1502.

97 *State of M.P. v. Dal Singh*, AIR 2013 SC 2059 at 2064; *Koli Chunni Lal Savji v. State of Gujarat*, AIR 1999 SC 3695.

98 *Govindappa. v. State of Karnataka* (2010) 6 SCC 533; *Laxmi v. Omprakash*, AIR 2001 SC 2383; *State of M.P. v. Dal Singh*, AIR 2013 SC 2059.

conclusion could be drawn as to what the person making the declaration meant to convey.⁹⁹ Moreover, statement must be *ipsissima verba* (in exact words of the person making declaration).¹⁰⁰ While recording such statements every care and caution needs to be exercised in respect of language, tone, pause, expression of the body, physical motion and the pressure on the words. Technical terms used in local language especially in respect of explaining the surroundings, reaction of the offender, his conduct as well as the past history which culminated the injury which sometimes or always suggest meaning for the criminal conduct. This is why that recording carries weight and meaning in respect of charges to be proved against a culprit. Tale of dying man decides the future of not only of an individual but the family of both the parties and more so of a system which is meant for delivering justice to the human being. Dying declaration recorded evening the local or speaking language of the declarant acquires added strength and reliability.¹⁰¹ Thus, statement made in *Kannada* and *Urdu* was taken to be reliable. Where declaration was recorded by an executive Magistrate in a language different from that in which it was spoken court valued it and did not discard the same on that reason alone.¹⁰²

Regarding the process as how to record the statement courts are quite clear that it can be in any form. This can be a simple narration about the incidence, person involved, time, place, cause of such happening and could be in question answer format. In *State of Karnataka v. Shariff*¹⁰³ the court said that very often the deceased is merely asked as to how the incident took place and the statement is recorded in a narrative form. In fact such a statement is natural and gives clear version of the incident as has been perceived by the victim. The question whether a dying declaration which has not been recorded in question answer form can be accepted or not in evidence. The law is settled in *Ram Bihari Yadav v. State of Bihar*¹⁰⁴ in which apex court has observed in the following manner: 105

99 *Syed Amir Ali, supra* note 18 at 1810.

100 P.R Aiyer, *Law Lexicon* 986 (Wadhwa, Nagpur, 2004).

101 *Najjam Foruqui v. State of W.B.* 1992 Cr. L.J. 2574; *State of Karnataka v. Shariff*, AIR 2003 SC 1074.

102 P. Babu v. State of A.P. (1993) Cr.L.J. 3547; *State of Karnataka v. Shariff*, AIR 2003 SC 1074; *Daya Singh v. State of Maharashtra* (2007) 12 SCC 452.

103 *Supra* note 101 at 482

104 (1998) 4 SCC 517; Also see, *Padmaben Shamalbai Patel v. State of Gujarat* (1991) 1 SCC 744.

105 *Ibid* at 521-22; Also see, *State of Rajasthan v. Bhupram* (1997) 10 SCC 675; *Jaiprakash v. State of Haryana* (1998) 7 SCC 284.

It cannot be said that unless dying declaration is in question answer form it could not be accepted. Having regard to the sanctity attached to a dying declaration as it comes from the mouth of a dying person....it should be in actual words of the maker of the declaration. Generally the dying declaration ought to be recorded in the form of question and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of dying declaration the certificate of a medically trained person is insisted upon.

A clear dying declaration is admissible even if it is not recorded in question answer form.¹⁰⁶ The fact that Magistrate did not record the declaration in a question answer form does not invite its rejection.¹⁰⁷ Dying declaration recorded before the *taluka* Magistrate in question and answer form was considered an important evidence as it amounted to *verba dicta* statement of the deceased.¹⁰⁸ The court also opined that it should preferably be in question answer form as it would help in arriving at a conclusion as to the extent to which the question raised could elicit the proper answer and, thus, it is necessary to provide the exact statement made by the deceased.

V Dying declaration : Value in present scenario

Indian society is facing twin realistic challenges in context of judicial enquiries. A judge sitting to decide the claim of rival parties is absolutely unaware of those facts on the basis of which remedy is to be offered. It largely depends upon the nature and weight of evidence adduced before the presiding officer. Law of evidence admits best evidence or for that matter direct evidence of the facts. Obviously in case of dying declaration direct evidence lacks as the

106 *Ganpati M. Mane v. State of Maharashtra*, AIR 1993 SC 1180; *State of U.P. v. Ameer Ali* (1996) 8 SCC 523; *Harjeet Kaur v. State of Punjab*, AIR 1999 SC 2571; *Ravichander v. State of Punjab* (1998) 9 SCC 338.

107 *Mafabhai Nagarbhai Rawal v. State of Gujarat*, AIR 1992 SC 2186.

108 *Ravi Chandra Padhan v. State of Orissa*, AIR 1980 SC 1738; *T. Pompiah v. State of Mysore*, AIR 1965 SC 939.

person whose statement is to be relied on is no more. In the present scenario procuring evidence of direct facts are not a cake walk as the witnesses are usually becoming hostile, a term not precisely and exactly been used in the Act, leaving the party at the option of judicial discretion. Secondly, the tendency of tutoring to the witnesses to gain an advantage is germane to our system and, thus, the relatives and family members of the dying man may find favorable opportunity to falsely implicate a person who may not be the actual culprit or perpetrator of the crime. This being the passive criminality option, dying declaration in matters of judicial enquiry becomes an effective weapon for the prosecution. Justice lies in the mouth of a witness who is supposed to depose honestly the facts which he encountered at the time of occurrence. Any manipulation either self-propelled or tutored marred the charm of judicial propriety. Therefore, what law expects and what is presented before a court of law poses now days a serious challenge. No one would deny the present horrific social construct where sanctity of an individual has become a conundrum. The basic character and ideology of the society largely hampers the entire system. Drawing a difference of a human being to that of an animal Hindu texts clearly says:

vkgkj funzk Hk; eSFkque p] lkekU;esr~ i'kqfHk% ujk.kkeA

/kekZs fg rs" kka vf/kdks fo'ks" k% /keZs.k ghuk% i'kqfHk% lekuk~AA¹⁰⁹

Accordingly a human being differs with an animal only in respect of internal character which is expressed by way of *Dharma*, a term largely denotes the dimension of human conduct not in terms of offering prayers as majority do believe. *Dharma* has been defined as:

/kkj;rs bfr /keZ%A¹¹⁰

What one can beholden is the *Dharma*. Again the texts says:

/k`fr% {kek neksLrs;a 'kkSpe bfUnz; fuxzg%A

/kh% foZ|k IR;e vØks/kks n'kde /keZd y{k.ke~AA¹¹¹

109 *Manusmriti*, Chapter 6, Slok 92.

110 Bashistha Narain Tripathi, *Bibhinna Dharmo ka Tulnatmaka Adhyayan(Hindi)* p.8, Aradhana Pub Varanasi (2014)

There are ten symptomatic perceptions of *Dharma* and truth is one of the dispositions of the Dharma to which a person standing in the witness box has to testify to the facts so deposed and needs to substantiate. The Court has to judge the weight and value of a particular fact objectively assessing the whole gamut of evidence adduced before it. And this is what justice expects of. The witnesses are eyes of the judge and for all practical purposes he has to look seriously with the hope of getting every possible positive cooperation. This is what justice demands from both the sides.

VI Conclusion

Dying declaration no doubt is an important piece of evidence to guide the courts in the onerous task of finding the truth. Though it suffers from a serious blemish still carries much weight. It constitutes radical departure from the established principles of evidence as the statement and its veracity cannot be cross examined and virtually admissibility of hearsay evidence. Courts have never been allergic to allow conviction solely on the basis of testimony of a witness who cannot be available before the court to testify the substance of the statement which forms the basis of its judgment. Basic to the whole process is the avowed sanctity of a man who utters last word before leaving the world and honestly averring the involvement of a person who inflicted injuries on him leading his ultimate death. Such a statement has got statutory permission but the courts have cautioned before endorsing such permission. Real danger which tempted courts to formulate rigid parameters of caution is the misuse of such statements by either parties to the proceeding. Obviously prosecution will try to find force in it enabling him to punish the offender and the defense in shattering the prosecution story by weakening the force therein to establish doubts for getting exonerated from the criminal liability for which he is facing trial. Between these two extremes much depends upon the adjudicating officer to give due and reasonable weight to such evidence. In due course of time Indian courts have evolved the principle of caution and what is marshaled is clarity rule. If the statement is clear, unambiguous, pointed and match or support the prosecution story beyond and unerringly courts will lean heavily in favour of using the statement. Conclusion drawn on the basis of the statement of a dying man clearly indicating an inference that no person other than the person named in the

narration has committed the offence deserves appreciation. Such an important piece of evidence must carry sufficient preponderant weight as to the truthfulness of the contents therein. Thus, courts emphatically suggested for due caution and if the statement stands to meet the parameters there is enough scope to rely upon it. Evidence of a fact is to be adduced and the balance of its admissibility has to be accepted by the presiding adjudicator.

Section 32(1) of the Act has been intelligently designed in such a manner as to cover any eventuality in respect of a statement which happens the last words of a person who directly perceived the offender. It is wider than English proposition and stands on a totally different plank. Indian courts have unhesitatingly accepted the veracity of such statement to prove the fact impugned in any case where the death and involvement of the suspected offender is questioned.