

RECORDING OF DYING DECLARATION

(I) IMPORTANCE OF DYING DECLARATIONS:

01. Dying Declaration is a legal concept refers to the effect that the statement which is made by a dying person explaining the circumstances of his death.

The word Dying Declaration itself tells the meaning. A statement by a person who is conscious and knows that death is imminent concerning what he believes to be the cause or circumstances of his death. A dying declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that their about to die "do not lie". As a result, it is an exception to the general rule "hear say", which prohibits the use of a statement made by some one other than the person who repeated it while testifying during trial.

02 **Section 32(1) of the Indian Evidence Act** deals with the admissibility of dying declaration, which reads as follows:

Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable are themselves relevant facts in the following cases:

(1) When it relates to cause of death:- When the statement made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases, in which the cause of that persons' death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

So, recording of dying declaration becomes very important.

(II) MANNER OF RECORDING DYING DECLARATIONS:

01. **Rule 33 of Criminal Rules of Practice** deals with the manner to be followed by the Magistrate while recording Dying Declarations: It reads as follows:

1. While recording a Dying Declaration, the Magistrate shall keep in view the fact that the object of such declaration is to get from the declarant the cause of death or the circumstances of the transaction which resulted in death.
2. Before taking down the declaration, the Magistrate shall disclose his identity and also ask the declarant whether he is mentally capable of making a declaration. He should also put simple questions to elicit answer from the declarant with a view to knowing his state of mind and should record the questions and answers, signs and gestures together with his own conclusion in the matter. He should also obtain whenever possible a certificate from the Medical Officer as to the mental condition of the declarant.
3. The declaration should be taken down in the words of the declarant as far as possible. The Magistrate should try to obtain from the declarant particulars necessary for identification of the accused. Every question put to the declarant and every answer or sign or gesture made by him in reply shall be recorded.
4. After the statement is recorded, it shall be read over to the declarant and his signature obtained thereon, if possible, and then the Magistrate shall sign the statement.

02. Rule 33 of Criminal Rules of Practice itself says about the precautions to be taken by the Magistrate while recording the Dying declarations. They are as follows

1. The Magistrate shall disclose his identity to the declarant first.
2. He shall ask the declarant whether he is mentally capable of making a declaration.
3. He shall ask simple questions to elicit answers from the declarant to know his state of mind.
4. Magistrate shall record questions and answers, signs and gestures together with his own conclusion.
5. He should also obtain whenever possible a certificate from the Medical Officer as to the mental condition of the declarant.

6. The declaration should be taken down in the words of the declarant as far as possible.
7. The Magistrate should try to obtain from the declarant the particulars necessary for identification of the accused.
8. Every question put to the declarant and every answer or sign or gesture made by declarant in reply shall be recorded.
9. After recording statement, it shall be read over to the declarant and his signature should be obtained thereon if possible.

03. Our Honourable High Court in a decision “**P. Srinivasulu Versus State of Andhra Pradesh**” reported in “**2004 Law Suit (AP) 121**” observed that:

“In the present case, as the deponent was unable to put the thumb mark since her hands were burnt, her toe mark was taken. The Court can always take judicial note of the fact that there used to be a practice previously prevailing of taking toe marks when it was not possible to take thumb impressions of the hands of the deponent. By mentioning the word 'signature', it causes considerable inconvenience to the Magistrate and creates a doubt whether he can take thumb impressions of the deponent or toe marks. Under the said circumstances, I am of the considered view that the Rule itself requires amendment and it should be clarified that in case of illiterate persons, and when a person is unable to put the signature, thumb marks can be obtained. It shall also be stated that in case hands were burnt, the toe marks could be taken. It is a matter to be considered by the High Court to bring about amendment to the necessary Criminal Rules of Practice and Circular Orders, 1990”

(III) WHO CAN RECORD DYING DECLARATIONS:

01. Rule 33 of Criminal Rules of Practice casts duty on Magistrate to record the Dying Declarations. Sub Rule (d) of Rule 2 of Criminal Rules of Practice says “*Chief Judicial Magistrate*” includes the Chief Metropolitan Magistrate, “*Magistrate*” includes the Metropolitan Magistrate, and “*Special Magistrate*” includes Special Metropolitan Magistrate. So, under Rule 33 of Criminal Rules of Practice, Judicial Magistrate is empowered to record the Dying Declarations. However, in some parts of the Country, Executive Magistrates are recording the Dying Declarations.

02. In case of non-availability of the Magistrate and in view of the urgency, some times the Dying Declarations recorded by the Police Officers and the Medical Officers working there, the Courts are accepting the Dying Declarations recorded by the Police Officers and the Medical Officers.

03. The proper method for recording dying declaration by a Magistrate or a doctor or a police official is that they should see that the declarant is in a fit state of mind to give declaration. If the declarant is not in a fit condition to give statement, the Magistrate should not proceed further beyond making a note that the declarant was not in a fit condition to give statement. The endorsement of the duty doctor is also equally important.

Some relevant case laws:

1. The deceased must be in a fit state of mind and capable of making a statement at the time of recording of dying declaration **AIR 2001 SC 2383.**
2. Prior to recording of statement of deceased, the doctor shall do a thorough and professional assessment of physical and mental condition of the patient. **1998 Cri.LJ 585.**
3. Dying declaration is not mandatorily required to be recorded by any Magistrate or particular person. However, it is normally accepted that such declarations would be recorded by Magistrate or by doctor to eliminate chances of any doubt of false implication. **2010 AIR SCW 5494.**
4. More sanctity is attached to a dying declaration recorded by Magistrate since the recording of dying declaration by a Magistrate assures the Court that the statement has been correctly understood and truthfully recorded by an impartial person. **2010(3) SCC (Cri.) = 2010 AIR SCW 5993.**
5. At the time of recording of dying declaration as far as possible the language used by maker of declaration should be used. **(1999)3 Mah. LJ 581 (DB) Bomaby.**
6. Dying declaration cannot be rejected merely because it was recorded in other language than that deposed by deceased 2001 Cri.LJ 3780.
7. The prosecution should specifically bring on record that deceased had heard the statement recorded by Executive Magistrate and she admitted it to be true and correct. This is not mere formality but an essential part while recording the dying declaration. **2000 (2) Mah. LJ 3 (DB) Bombay.**

8. The Magistrate who had recorded dying declaration and the doctor who certified about the condition of the deceased out to be summoned as a witness **2000(2) ALT (Crl.) 448.**
9. Where Magistrate was not present at the time of recording of statement of deceased and statement recorded by the Head constable was fully convincing, it can be safely relied upon. **AIR 1997 SC 234.**
10. Statement recorded by police officer is reliable when evidence of doctor was showing that the deceased was fit to making statement at that time **AIR 1983 SC 164.**
11. Although a dying declaration could not be rejected on the ground that in absence of any other person available it was recorded by a police officer as the deceased was in a critical condition, the dying declaration was left out of consideration as it contained a statement which was a bit doubtful **AIR 1979 SC 1173.**
12. Where police personnel who recorded dying declaration did not mention time required for recording it and did not obtain medical certificate on completion of recording of dying declaration that the victim was conscious such dying declaration was not reliable. **2010(3) AIR Bomb. R.27 (DB).**
13. Where doctor apprehended that the injuries could result into death of deceased and therefore he sent for Magistrate to record dying declaration but the Magistrate was reported to be out of town, the doctor was most capable and authorized person to record the dying declaration. The dying declaration recorded by doctor after certifying that deceased was in full senses and the statement was read over to him and on which after fully understanding the deceased had put his thumb impression, is itself sufficient to base conviction of accused. **1991 All (Crl.R.)303.**
14. Where dying declaration recorded by doctor was suffering from infirmities and also it was uncorroborated by other evidence, conviction solely on basis of such dying declaration was not proper. **1995 Crl.LJ 2412. (DB) (Orisha)**

Conclusion:

So, the role of Magistrates in recording dying declarations is very important.

B. GAUTAM PRASAD,
1st Additional District & Sessions Judge,
Srikakulam.

WORKSHOP-I

Paper presentation on
RECORDING OF DYING DECLARATIONS

By
B. GAUTAM PRASAD,
1st Additional District & Sessions Judge,
Srikakulam.