

CHAPTER 13 Part-A

DYING DECLARATIONS

1. Statements 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 are themselves relevant facts and admissible in evidence under section 32(1) of the Indian Evidence Act in cases in which the cause of that person's death comes into question. A Statement commonly known as "dying declaration" constitutes such an important evidence in criminal cases that their Lordships of the Supreme Court ruled in *Khushal Lal vs. State of Bombay* (A.I.R. 1958 S.C. 22), which was followed in *Harbans Singh vs. The State* (A.I.R. 1962 S.C. 439) that it could form the sole basis of conviction. It is thus necessary that a Court trying the case should have before it a correct and faithful record of the statement made by the dead person. As far as possible the dying declaration should be recorded in the manner hereinafter prescribed, and in the event of death of the person making it, should be submitted at the enquiry or trial.

2. (1) Where a person whose evidence is essential to the prosecution of a criminal charge or to the proper investigation of an alleged crime, is in danger of dying before the enquiry proceedings or the trial of the case commences, his statement, if possible, be got recorded by a Judicial Magistrate. When the police officer concerned with the investigation of the case or the medical officer attending upon such person apprehends that such person is in the danger of dying before the case is put in Court, he may apply to the Chief Judicial Magistrate, and, in his absence, to the senior most Judicial Magistrate present at the headquarters, for recording the dying declaration.

Dying declarations
to be recorded by
Judicial Magistrates

(2) On receiving such application, the Judicial Magistrate shall at once either himself proceed, or depute some other stipendiary Judicial Magistrate to record the dying declaration.

3. Before proceeding to record the dying declaration, the Judicial Magistrate shall satisfy himself that the declarant is in a

Fitness of the
declarant to make
the statement
should be got
examined

fit condition to make a statement, and if the medical officer is present, or his attendance can be secured without loss of time, his certificate as to the fitness of the declarant to make a statement should be obtained. If, however, the circumstances do not permit waiting for the attendance of the Medical Officer, the Judicial Magistrate may in such cases proceed forthwith to record the dying declaration but he should note down why he considered it impracticable or inadvisable to wait for a doctor's attendance.

The statement of the Declarant should be in the form of a simple narrative.

4. The statement, whether made on oath or otherwise, shall be taken down by the Judicial Magistrate in the form of a simple narrative. This, however, will not prevent the Judicial Magistrate from clearing up any ambiguity, or asking the declarant to disclose the cause of his apprehended death or the circumstances of the transaction in which he sustained the injuries. If any occasion arises for putting questions to the dying man, the Judicial Magistrate should record the questions as also the answers which he receives. The actual words of the declarant should be taken down and not merely their substance. As far as possible the statement should be recorded in the language of the declarant or the Court language.

Signatures or thumb impression of the Declarant to be obtained in token of the correctness of the statement.

5. At the conclusion of the statement, the Judicial Magistrate shall read out the same to the declarant and obtain his signature or thumb-impression in token of its correctness unless it is not possible to do so. The dying declaration shall then be placed in a sealed cover and transmitted to the Judicial Magistrate having jurisdiction to deal with the case to which it relates.

Recording of Dying Declarations at a place away from the District Headquarters.

6. Where in an emergency a dying declaration has to be recorded at a place away from the District headquarters the investigating officer or the medical officer attending upon the dying man shall apply to the nearest Judicial Magistrate to record the dying declaration, and such Judicial Magistrate shall immediately proceed to the spot and take down the statement of the dying man in the manner stated above.

This however would not prevent the medical officer or the police officer connected with the investigation of the case from

recording the dying declaration if he is of the opinion that death is imminent and there is no time to call a Judicial Magistrate. In such cases the police or the medical officer concerned must note down why it was not considered expedient to apply to a Judicial Magistrate for recording the dying declaration or to wait for his arrival.

7. Where a dying declaration is recorded by a police officer or a medical officer, it shall, so far as possible, be got attested by one or more out of the persons who happen to be present at the time.

Recording of a Dying declaration by a police officer or medical officer.

8. The Judicial Magistrate or other officer recording a dying declaration shall at the conclusion of the dying declaration certify that declarant was fit to make a statement and it contained a correct and faithful record of the statement made by him as well as of the questions, if any, that were put to him by the person recording the statement. If the accused or his counsel happens to be present at the time of dying declaration is recorded, his presence and objection, if any raised by him shall be noted by the Judicial Magistrate or the Officer recording the dying declaration, but the accused or his counsel shall not be entitled to cross-examine the declarant.

Fitness of the Declarant to make a statement to be certified by the Judicial Magistrate or other officer concerned.

9. It is the duty of the person recording a dying declaration to take every possible precaution to ensure the making of a free and spontaneous statement by the declarant without any prompting, suggestion or aid from any other person.

Dying Declaration should be a free and spontaneous.

10. The Judicial Magistrate, medical officers and police officials must all realize that the welfare of the injured man should be their first consideration, and in no circumstances must the proper medical treatment be impeded or delayed simply to obtain the dying declaration of the injured man. (Pamphlet No. 2 dated 3rd July, 1966).

Welfare of the injured persons.