
DYING WORDS, LIVING EVIDENCE: A LEGAL ANALYSIS UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023

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ABSTRACT

The Dying Declaration as an essential exception to the hearsay rule within the framework of the Bharatiya Sakshya Adhiniyam (BSA), 2023. The legal basis for its admissibility is codified in Section 26(a) (formerly Section 32(1) of the Indian Evidence Act), which pertains to statements made by persons who cannot be called as witnesses (e.g., those who are deceased or incapable of testifying). The foundation of a dying declaration lies on *nemo moriturus praesumitur mentire* ("a person who is about to die is presumed not to lie"), which establishes the statement's inherent reliability. Admissibility is strictly contingent upon two pillars: necessity, i.e., the maker's unavailability as a witness, and the solemnity of the occasion.

The declaration is deemed a high-value piece of evidence and can form the sole basis for a conviction without mandatory corroboration. However, courts must exercise extreme caution, ensuring the maker was in a fit state of mind and that the statement was voluntary, consistent, and free from any possibility of tutoring or influence. The BSA, 2023, thus integrates this crucial doctrine, allowing vital testimonial evidence to be considered when the cause of a person's death is in question.

Keywords: Dying Declaration, Bharatiya Sakshya Adhiniyam, Nemo Moriturus Praesumitur Mentire.

INTRODUCTION

A dying declaration is a statement made by a person regarding the cause of their death or the circumstances leading up to it. Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023, outlines the legal status of dying declarations under Indian law. This statement is considered valid under the belief that a person who is about to die is unlikely to lie. This principle is rooted in the maxim *nemo moriturus praesumitur mentire*, which translates to "a person who is about to die is presumed not to lie." This provision is regarded as an exception to the hearsay rule, which generally requires that oral evidence be direct.

STATEMENT BY PERSONS WHO CANNOT BE CALLED WITNESSES

On account of Section 26 of the BSA, any statement which is oral or written of a relevant fact by a person:

- (i) Who is dead.
- (ii) Who cannot be found.
- (iii) Who has become incapable of giving evidence
- (iv) Or when the person's attendance in the court can cause delay or expense.

In the following cases, the statement made by them would become a relevant fact themselves-

- (a) As to the cause of the death or the circumstances leading to his death.
- (b) If it is made in the ordinary course of business.
- (c) When it is against his pecuniary or proprietary interest.
- (d) When it is given an opinion as to a public right or custom or a matter of general interest.
- (e) A statement about a relationship by blood, marriage, or adoption is relevant if made by someone with special knowledge of it, provided it was made before the dispute arose.
- (f) A statement about the relationship of deceased persons is relevant if recorded in family documents, pedigrees, tombstones, portraits, or similar sources, made before the dispute

arose.

(g) when the statement is contained in any deed, will, or other document which relates to any such transaction as is specified in clause (a) of section 11.

(h) A statement made collectively by several persons, expressing relevant feelings or impressions, is admissible.¹

Thus, various circumstances are dealt with under Section 26. However, Section 26(a) pertains to the legal provision regarding a dying declaration.

DYING DECLARATION

According to the legal interpretation of section 26(a), a dying declaration is an oral or written statement of relevant facts made by a person, regarding the cause of their death or any circumstances of the transaction that led to their death. Such a statement is considered relevant when the cause of the declarant's death is in question. Under this section, two categories of statements are admissible as evidence: they are cause or circumstance of his death. For the admissibility of a dying declaration, it must meet the criteria of necessity and occasion. The grounds of admissibility of a dying declaration are:

- **Cause of death:** The declaration made by the person must be related to the cause or the circumstance leading to the death of that person, as mentioned under section 26(a) of BSA.
- **Presumption of truth:** The occasion is “*nemo moriturus praesumitur mentire*,” i.e., “man will not meet his maker with a lie in his mouth.” There is a presumption by the court that a person facing imminent death has no motive to lie. This makes the dying declaration a reliable source of conviction.
- **Necessity:** When a person dies, his statement becomes the sole evidence. There may be no other witness to support the events that occurred.

The legal principles of cause of death, presumption of truth, and necessity ensure that these

¹ S. 26(a), The Bharatiya Sakshya Adhiniyam, 2023.

declarations are handled with the utmost seriousness in judicial proceedings.

ESSENTIALS OF A VALID DYING DECLARATION.

For a dying declaration to be reliable and admissible, certain conditions must be met. They are:

i. The declarant must be dead.

To make the statement admissible, the declarant must have died as a result of the incident. In *Maqsoodan & Others v. State of Uttar Pradesh*², the court held that if the declarant of any statement survives, their statement cannot be used as a dying declaration under Section 32(1) (now Section 26(a) BSA) of the Indian Evidence Act. Thus, if the declarant survives, the statement can be used only for corroboration rather than as admissible evidence for conviction.

ii. The statement can be made orally or in writing.

A dying declaration can be made either verbally or in writing. But, in some cases, courts have interpreted that such a declaration can also be inferred from an individual's conduct. In the case of *Queen Emperor v. Abdullah*³, the court ruled that conduct can be relevant as a form of dying declaration. The conduct must relate to the cause of death and the circumstances leading to it, providing a clear assertion about the event.

iii. The statement must be related to the cause of death.

The statement made by the deceased must be related to the cause of their death or the circumstances that led to their death. The statement, which is unrelated to the death, is inadmissible as a dying declaration under Section 26(a) of BSA.

iv. Recording of statement.

The dying declaration statement made by the deceased can be recorded by any person present. There is no strict rule that a magistrate or police officer can only record the dying declaration to make it admissible as evidence under the law. But if a Judicial Magistrate records it, it will have more reliability. And also, in the case of *State of Jharkhand v. Shailendra Kumar Rai*

² 1983 AIR 126, 1983 SCR (2) 45.

³ (1885) ILR 7 All 385.

Alias Pandav Rai⁴, the court held that there is no rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of a magistrate. Although a dying declaration ought to ideally be recorded by a magistrate, if possible, it cannot be said that a dying declaration recorded by police personnel is inadmissible for that reason.

v. Proximity to death.

The statement as to the cause and circumstance must be made as closely as to the death of the declarant. As in the case of *Pakala Narayana Swami v. Emperor*⁵, the court held that the statement made to his wife about going to collect debt constituted a relevant dying declaration under Section 32(1) of the Indian Evidence Act (now Section 26(a) of the BSA).

vi. The death must be in question.

To make the statement as to the cause or circumstance leading to death relevant, the cause of death must be in question. Section 26(a) clearly states that where the cause of a person's death comes into question, a statement made by that person is relevant when it is related to the cause of death or any circumstances of the transaction which resulted in death.

vii. Competency of person.

The person who is making the declaration must be in a fit state of mind. The case *Laxman v. State of Maharashtra*⁶ It is succinctly explained that medical certification is not a sine qua non for accepting the Dying Declaration. Thus, the case clarifies that while medical fitness is preferred, it isn't a strict prerequisite, and the statement's truthfulness must be established through other satisfactory evidence.

viii. Voluntary statement.

Another point to consider is whether the statement made by the person is made voluntarily or not. This means the dying declaration must be made freely, without any threat or fear. It must be unambiguous for reliable reliance on it.

⁴ 2023 (1) ACR696.

⁵ [1939] 1 MLJ 59.

⁶ AIR 2002 SC 2973.

These are the core essentials of a valid dying declaration. The court, while examining the admissibility or reliability of a statement of dying declaration, must consider these essentials.

MULTIPLE DYING DECLARATIONS.

Is it possible to make a dying declaration to multiple persons?

In the case of *Kamala v. State of Punjab*⁷ The court clarified that it is possible to make a dying declaration to multiple persons. “In a case where there is more than one dying declaration, if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances”.

Further, in the case of *State of Punjab v. Parveen Kumar*⁸, it was observed, “If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations. It may be that if there was any other reliable evidence on record, this court could have considered such corroborative evidence to test the truthfulness of the dying declarations...”

However, in *Amol Singh v. State of M.P.*⁹, the two-judge bench held that “if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”

The duty of the court regarding plural dying declarations is to check whether there is any material difference between them. If there is a difference in content, it can be rejected based on that, unless corroborative evidence is produced. So, each declaration must be scrutinized based on the surrounding facts and circumstances of each case.

⁷ AIR 1993 SC 374.

⁸ (2005) 9 SCC 769.

⁹ (2008) 5 SCC 468.

JUDICIAL INTERPRETATION

1. **Kushal Rao v. The State of Bombay** ¹⁰

This is a landmark judgment that established certain principles regarding the admissibility of dying declarations. They are as follows:

- a) That it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;
- b) That each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;
- c) That it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;
- d) That a dying declaration stands on the same footing as another 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;
- e) That a dying declaration which has been properly recorded by a competent Magistrate, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human, memory and human character; and
- f) That in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it-; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

¹⁰ 1958 AIR SC 22.

2. Suresh v. State ¹¹

In cases where the dying declaration is suspicious, it is not safe to convict an accused without corroborative evidence. A dying declaration is an important piece of evidence, and a conviction can be made by relying solely on a dying declaration, as it holds immense importance in criminal law. However, such reliance should be placed after ascertaining the quality of the dying declaration and considering all the facts of a given case. If a dying declaration is surrounded by doubt or there are inconsistent dying declarations by the deceased, then the Courts must look for corroborative evidence to find out which dying declaration is to be believed. This will depend upon the facts of the case, and Courts are required to act cautiously in such cases. (Para 12-14).

3. Mukesh & Ors. v. State of NCT of Delhi ¹²

The breakthrough case of the Indian judiciary, that is the “Nirbhaya Gange Rape” case, made a bold move by admitting the victims' gesture or sign as a form of dying declaration, under Section 32(1) of the Indian Evidence Act (now Section 26(a) of BSA). In this case, the victim's statement was recorded three times. The third statement, which was made to the metropolitan magistrate on December 25, primarily consisted of gestures and signs. When the court considered the admissibility of this third declaration, it upheld it as a valid dying declaration under the Evidence Act.

4. K. Ramachandra Reddy v. Public Prosecutor ¹³

This case deals with the admissibility of an FIR as a dying declaration. The Supreme Court of India held that an FIR (First Information Report) recorded from a victim who later dies can be considered a dying declaration under Section 32(1) of the Indian Evidence Act, provided it relates to the cause of their death. The case emphasized that a dying declaration must be voluntary, truthful, and made by a person in a fit state of mind, free from tutoring or prompting, to be used as evidence without corroboration.

¹¹ 2025 INSC 318.

¹² (2017) 6 SCC 1.

¹³ AIR 1976 SC 1994.

5. Atbir v. Govt. (NCT of Delhi)¹⁴

In this case, the court upheld that a dying declaration can be the sole basis of conviction if it inspires the full confidence of the court. The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting, or imagination. Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration. (para 22).

CONCLUSION

To sum up, we can understand that Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023, addresses the admissibility of a dying declaration. When a person, anticipating their death, makes a statement regarding the cause or circumstances surrounding that impending death, this declaration becomes admissible in court if their death is later questioned, especially if the person making the declaration is the sole witness to the event. In legal proceedings, the court anticipates various elements such as the mental capacity of the maker, voluntariness, proximity of death, etc. Thus, the provision finds a balance between fairness and justice through the voice of the deceased.

¹⁴ [2010] 9 SCC 1.