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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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DETERMINATION OF WEIGHTAGE OF DYING DECLARATION

AUTHORED BY - PALLAVI PRAKASH

Research Question

The research question that this paper aims to analyse and answer is:

“Whether the 11 factors laid down by the Supreme Court in its recent judgement to determine the weightage of dying declaration justified?”

Research Objective

“Recently, the Supreme Court, in its judgement in the case *Irfan vs. State of U.P.*¹, has laid down 11 factors to determine the weightage of dying declaration. The author aims to analyse and determine whether these 11 factors laid out by the apex court are adequate concerning the current scenario. The author aims to conclude with suggestions regarding the same.”

Introduction

“Under section 32 (1) of the Indian Evidence Act, a dying declaration is admissible evidence.

“Dying declaration is the last statement that is made by a person as to the cause of his imminent death or the circumstances that had resulted in that situation, at a stage when the declarant is conscious of the fact that there are virtually nil chances of his survival.”²

The concept of the “Dying Declaration” is based on the foundation of the legal maxim “Nemo moriturus praesumitur mentire,” which means “a man will not meet his Maker with a lie in his mouth.”

This research paper aims to determine whether the 11 factors laid out by the apex court judgement to determine the weightage of dying declaration in its judgment “*Irfan vs. State of U.P.*” are adequate.

¹ Irfan vs State of U.P., 2023 SCC OnLine SC 1060 (India)

² Uttam vs State of Maharashtra, (2022) 8 SCC 576 (India) Para 11

The eleven factors laid down by the court were:

1. *“Whether the person making the statement was in expectation of death?
Whether the dying declaration was made at the earliest opportunity? “Rule of First Opportunity”*
2. *Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?*
3. *Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?*
4. *Whether the statement was not recorded properly?*
5. *Whether, the dying declarant had opportunity to clearly observe the incident?*
6. *Whether, the dying declaration has been consistent throughout?*
7. *Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?*
8. *Whether, the dying declaration was itself voluntary?
In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?*
9. *Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?”³*

Critical Analysis

“The court frequently considers the probative significance of dying statements made under various circumstances and in instances of multiple dying declarations. A conviction can be established simply on the dying declaration, without any additional evidence, if the court is persuaded that it is genuine and submitted voluntarily by the deceased. The idea that a deathbed declaration should only be trusted in conjunction with supporting evidence is neither legal nor prudent. When a deathbed declaration is unreliable, only corroborating evidence should be used to support it. The court must carefully review the dying declaration to ensure it was not the product of coaching, prodding, or imagination. The victim has to be in a sound mental state in order to name and describe the attackers. A dying proclamation cannot be disbelieved simply because it does not include all the specifics of what happened. If it is only a brief remark, it is even more dependable because its briefness is proof of its veracity. If the dying declaration has a flaw, it cannot serve as

³ Irfan vs State of U.P., 2023 SCC OnLine SC 1060 (India) Para 62.

the sole justification for conviction.

There are two schools of thought concerning the Dying Declaration –

Firstly, the credibility of a dying declaration is under question because the defence attorney cannot cross-examine the witness during the trial. The psychological condition of the victim is also challenged as that person is on the verge of death; therefore, his psychological condition is not fit. The person who is on their deathbed is vulnerable and could be either hallucinating or might be manipulated.

Secondly, dying declaration is considered to be credible because the declarations are made when a person is at their breaking point when all motivation for lying has been silenced, when all hope for this world has been lost, and when his mind has been moved to declare the truth by the most potent spiritual considerations. While the primary faith-based justification for the exemption might have dropped its conviction for some over the years, it can hardly be disputed that intense psychological pressures are present. According to common law, a "Dying Declaration" is a declaration submitted by an individual associated with something the person making the declaration believed to be the reason or events of his impending death. Since the notion has been embraced by people worldwide, it is founded on public policy.”

Comparative Analysis

The disparity between English and Indian law concerning dying declarations was thoroughly examined in the case of *Rajindra Kumara v. State of Haryana*⁴. According to English law, a dying declaration must have the following components:

1. The declarant should have been in immediate danger of passing away when the dying declaration was given.
2. He should have known that his time was running out.
3. The outcome should have been death.

Before it can be regarded as a dying declaration, these conditions must be established to the judge's satisfaction. A dying declaration cannot be used as testimony in civil or criminal cases in England or the United States; it is also not admissible for homicide charges beyond the declarant's own. However, Section 32 of the Indian Evidence Act excludes these circumstances. Such a declaration

is not restricted to homicide cases and does not require the declarant to anticipate actual death. This structure makes it crucial to ascertain whether the dying person discloses the truth because, even if he survives, his statement may be utilized against the accused. A dying declaration may additionally serve as proof in civil and criminal cases whenever the cause of death is questioned.

Judicial Pronouncements

1. *Munnu Raja vs State of M.P.*⁵ – “There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.”
2. *State of U.P. v. Ram Sagar Yadav*⁶ - “If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration.”
3. *K. Ramachandra Reddy v. Public Prosecutor*⁷- “This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.”
4. *Rasheed Beg v. State of M.P.*⁸ - “Where dying declaration is suspicious it should not be acted upon without corroborative evidence.”
5. *Ram Manorath v. State of U.P.*⁹ - A dying declaration which suffers from infirmity cannot form the basis of conviction.
6. *State of U.P. v. Madan Mohan*¹⁰- “Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.”

Conclusion & Suggestions

“Undoubtedly, a dying declaration is crucial evidence that will help the courts in their challenging quest for the truth. Even though it has a significant flaw, it still has much weight. Being admitted in a homicide case lacking the need for corroborating evidence sounds exceptionally unjust to the accused who is being charged as it represents an abrupt deviation from the conventional rules of evidence in that the statement's veracity cannot be challenged and continues to be unchecked due to inherent belief in its reliability. It is advised that anytime a dying declaration is to be recorded,

⁵ *Munnu Raja vs State of M.P.*, (1976) 3 SCC 104 (India)

⁶ *State of U.P. v. Ram Sagar Yadav*, (1985) 1 SCC 552 (India)

⁷ *K. Ramachandra Reddy v. Public Prosecutor*, (1976) 3 SCC 618 (India)

⁸ *Rasheed Beg v. State of M.P.*, (1974) 4 SCC 264 (India)

⁹ *Ram Manorath v. State of U.P.*, (1981) 2 SCC 654 (India)

¹⁰ *State of U.P. v. Madan Mohan*, (1989) 3 SCC 390 (India)

it should be done carefully and with consideration for the sanctity that the courts attribute to this piece of evidence. This is in light of the views above of various courts. If it can demonstrate that the victim could identify the attacker, if the victim's version of events is credible and consistent with probability, and if no other trustworthy evidence contradicts the material evidence, it keeps all its weight.

The argument that "the developing disbelief in eternal vengeance, the apparent protection from human vengeance conferred by impending death, and the wide range of motives to deception which can have an impact, especially against a dying man, render it still tougher to justify the" might be made. Acceptance of death declarations based on any justification that does not require admission of all honest statements made by people whose testimony is no longer available due to death.

The factors laid down by the court truly determines the weightage and accuracy of the dying declaration, the words are not taken by its face value by the judges rather each dying declaration is analysed by the judges.

The author would suggest that rules and regulations regarding the proper procedure of recording dying declaration, so that the defence could not put a doubt in the minds of the judges regarding the credibility of the declaration.”

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