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Nemo Moriturus Praesumntur Mentire: Dying Declaration under the Indian Evidence Act: An Analysis

SHEIKH ABBAS BIN MOHD¹

ABSTRACT

The concept of the Dying declaration is based on the principle of Nemo Moriturus Praesumntur Mentire, which means the person who is going to die, or he is expecting that he is going to die will not lie at his deathbed. It is the settled principle that the person would not lie at the time of his death, and therefore the statement made by him at that point of time will be admissible although the same is the part of the hearsay evidence. The Dying declaration is the hearsay exception that everyone loves to hate.² The dying declaration is an exception to the general rule against hearsay. The grounds of admission are first, the victim is generally the only principal eye-witness to the crime; secondly, a sense of impending death creates a sanction that is equal to an obligation of an oath. A man would not like to meet his maker with a lie in his mouth. The requirements of oath and cross-examination are dispensed with³. Though a dying declaration is not recorded in the court and nor is it put to strict proof of cross-examination by the accused, still, it is admissible in evidence against the general rule that hearsay evidence is not admissible in evidence.⁴

Keywords: *Dying Declaration, Evidence, Corroboration, Hearsay, Credibility.*

I. INTRODUCTION

The words “Dying declaration” mean a statement written or verbal of relevant facts made by a person who is dead.⁵ Dying declaration is the statements made in the extremity when the person is at the point; when every motive for falsehood is silenced and when every hope of this world is gone and when his mind is induced by the most powerful spiritual considerations to speak

¹ Author is an Advocate at Wadwani's Solicitors District Court Complex Srinagar J&K, India.

² McCormick on Evidence deems it “the most mystical in its theory and traditionally among the most arbitrary in its limitations.” 2 MCCORMICK ON EVIDENCE § 309, at 363 (Kenneth\ S. Broun Eds., 6th Eds. 2006); see also Fritz, Thurston v. (Kan. 1914). 138, 625, 627, We are confronted with a restrictive rule of evidence commendable only for its age, its respectability resting solely upon a habit of judicial recognition, formed without reason, and continued without justification

³ Dashrath v State of MP, AIR 2008 SC 316: (2007) 12 SCC 487, can be the sole basis of conviction, requiring corroboration is merely a rule of prudence.

⁴ Umakant v State of Chhattisgarh, AIR 2014 SC 2943 (para 18).

⁵ Sant Gopal v State of UP, 1995 Cr LJ 312 (All).

the truth.⁶ A dying declaration is any statement made by the deceased stating the cause of his death or stating the circumstances which resulted in the death of the victim. A dying declaration is admitted as evidence under the mandate of Section 32(1) of the Indian Evidence Act, 1872. This section describes what class of statements of relevant facts made by persons who can't be called witnesses can be proved.⁷ The principle on which the dying declaration is admitted is stipulated in the legal maxim "*Nemo moriturus praesumitur mentiria*" which means a man will not meet his maker with a lie in his mouth. This principle is based on the fact that a dying man would not falsely implicate an innocent person, apart from evident religious underpinnings, the rationale suggests that the last moments of a person are attended by an involuntary desire to unburden the conscience. Under common law "Dying Declaration" is a statement made by a declarant relating to what the declarant believed to be the cause or circumstances of his impending death, while the original religious justification for the exception may have lost its conviction for some person over the years, it can scarcely be doubted that powerful psychological pressures are present.⁸ This principle is based on public policy as the said principle has been accepted by people around the world. A dying declaration isn't complete unless the full names and addresses of the persons involved are given in it. Therefore, only because the deceased in his dying declaration uttered first names similar to that of the accused, it was not proper to accept the prosecution version based on such an incomplete dying declaration.⁹ Evidence of dying declaration is admissible not only against the person causing death but also against other person participating in causing death,¹⁰ but it is to be noted, that an oath and cross-examination are not possible in such cases and so before relying on dying declaration or admitting such statement as legal evidence the court must invoke full confidence as held in the case of **K. Ramachandra Reddy Vs Public Prosecutor**,¹¹ and should not be the result of prompting, tutoring or a product of imagination. It is the well-settled principle of the law of evidence that, the hearsay evidence can't be considered as a shred of evidence as the witness giving the statement isn't of his own words but of the third person and the same cannot be cross-examined and the fact cannot come to the picture.¹² Hearsay Evidence is excluded on the ground that is always desirable in the interest of justice to get the person, whose statement

⁶ R. Vs. Woodcack (1789). 1 Leach 500

⁷ C.D Field's (Commentary on Law of Evidence 13th Ed., Vol 5)

⁸ FED.R.REVID.804, See: Notes of Advisory Committee on Proposed Rules.

⁹ Kajal Sarkar v State of Assam, 1993 Cr LJ 3869 (Gau).

¹⁰ Sant Gopal v State of UP, 1995 Cr LJ 312 (All); Arjun Kushwah v State of MP, 1999 Cr LJ 2538 (MP), the maxim of law is that a man will not like to meet his maker with a lie in his mouth. A dying declaration made by the victim in a fit mental state but on the verge of death has a special sanctity of the solemn moment.

¹¹ 1976 AIR 1994, 1976 SCR 542

¹² Gorea, R.K & Aggarwal, O.P. (2004). Critical appraisal of Dying Declaration, JIAFM, 26(1).

is relied upon, into the court for his examination in a regular way so that many possible sources of inaccuracy and untrustworthiness can be best brought to light and exposed, if they exist, by the test of cross-examination.¹³ The Dying declaration is an exception directed by necessity to such rule of the hearsay evidence¹⁴ mainly due to the two reasons, one is that the victim being the sole eye and secondly the said statement was made while expecting the death in the very near future which presume to be a true statement, hence the legal principle of *Leterm Mortem* which means words before death is given enough admissibility.¹⁵ In the case of the dying declaration, it is the duty of the Court to examine the said statement with proper care and caution as the dead person can't be produced before the court and cross-examined,¹⁶ in order to serve the ultimate ends of law to ensure justice a fact to which denial is 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 the jury for that matter stand to find out the truth from the deposed facts¹⁷.

II. HISTORY AND CONCEPT OF DYING DECLARATION

The principle of the Dying declaration is prevailing from the ancient period itself and is based on the religious and spiritual aspect that the person wouldn't like to meet his maker with lie on his lips. The concept of dying declaration as an exception to the hearsay evidence is there in the common law system and not anywhere else in the world. The principle of dying declaration was there in the statute books but said the concept was for the first time held by Justice Eyre in the case of **R. Vs. Woodcack**¹⁸ "Dying declaration are the statements made in the extremity when the person is at the point; when every motive for falsehood is silenced and when every hope of this world is gone and when his mind is induced by the most powerful spiritual considerations to speak the truth"

The transaction was followed in American Court, in the case of **State Vs. Moody**¹⁹ It was held that the "dying declaration may be received of one so near his end that no hope of his life remains, for then the solemnity of the occasion is a good security for his speaking the truth, as much so as if he were under the obligation of an oath". The case of **Mattox Vs United States**²⁰ held that the dying declaration is not only admissible based on the religious belief of the people.

¹³ RATANLAL & DHIRAJLAL, THE LAW OF EVIDENCE 168 (27th Ed Lexis Nexis)

¹⁴ Roderick Munday, Musings on the Dying Declaration, 22Anglo-AM. L.Rev.42,42 (1993)

¹⁵ Krishnamachari, V. (n.d). Law of Evidence, (7th Eds.), Hyderabad: Narendra Gogia & Company, 235.

¹⁶ Tyagi, S.P. (n.d.). Law of Evidence, Vinod Publication Pvt. Ltd., 1, 1231.

¹⁷ Dr. Onkar, Cogency of Dying Declaration, Summer Issue 2018, ILI Law Review.

¹⁸ (1789). 1 Leach 500

¹⁹ (1798).N.C. (2 Hayw.),3,50.

²⁰ (1892). U.S., 146,140.

But when the declaration has done before the immediate death of the person there would not be any chance of falsehood and therefore the said statement can be considered as the truthful one as given under the oath, but at the same time while considering the statement as a piece of evidence it is the duty of the court to take necessary care and caution.²¹

In Indian Legal Jurisprudence, It was held in **Tapinder Singh Vs State of Punjab**²² “Dying Declaration” is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations, courts attach an intrinsic value of truthfulness to such statement and such a statement doesn’t lose its value if a person dies long after making of dying declaration²³.

III. FORMS OF DYING DECLARATION

No specific form of dying declaration has been prescribed, factors of utmost importance to maintain the credibility and evidential value of dying declaration is that it must retain all necessary information with regard to all crucial factors. A dying declaration can either be oral or in writing, and that any adequate method of communication including the use of affirmative signs²⁴ or otherwise will suffice, provided that the indication is positive and definite. The famed case in which a major portion of dying declaration was given by victim by gestures only is “Nirbhaya Gang Rape case²⁵”, for the sake of best comprehension following are the most acceptable form of the Dying declarations

(A) Question-answer Form

The mere fact that a dying declaration isn’t in a question form doesn’t destroy its value.²⁶ A dying declaration not recorded in the question and answer form isn’t inadmissible on that ground when it’s complete.²⁷ A statement can’t be discarded for the reason that it was not recorded in question-answer form, a statement in narrative form may be more natural and may give a version of the incident as it was perceived by the victim²⁸. Merely because the dying declaration isn’t in a question-answer form, the sanctity attached to it, as it comes from the mouth of the dying person, cannot be brushed aside and its reliability can’t be doubted²⁹. A dying declaration was recorded by the

²¹ Idid.

²² (1970) 2 SCC 113,119.2.

²³ (1998). Cr. LJ 866.

²⁴ Queen-Empress V Abdulla 1885 ILR 7 ALL 385

²⁵ Mukesh v. State (NCT of Delhi) [(2017) 6 SCC 1

²⁶ Sant Gopal Vs State of UP, 1995 Cr LJ 312 (All)

²⁷ Surjeet Kaur V State of MP, 1994 Cr LJ 1886 (MP)

²⁸ State of Karnataka V Shariff, AIR 2003 SC 1074.

²⁹ Prem Kaur Gulati v State of Haryana, (2014) 14 SCC 646 (para 16); 2015 Cr LJ 159.

magistrate in narrative form in his own language and not in question-answer form. This was held to be not a ground for discarding it and was accepted as a good piece of evidence.³⁰

(B) Oral Dying Declaration

An oral dying declaration means a statement that wasn't recorded and is reproduced by the witness out of memory. The Supreme Court has laid down that the exact words of such a statement must be reproduced. Any variance in a statement of witnesses with regard to the exact words would materially affect the value of the oral dying declaration. The oral dying declaration has to be free from blemish and has to inspire confidence; any material difference will detract from the effect of the declaration.³¹

IV. FITNESS OF DECLARANT AN IMPORTANT PHENOMENON

A dying declaration is only admitted when it can retain confidence in itself. The court should be satisfied that the deceased was in a fit state of mind and capable of making a statement at the time when it was recorded.³² Courts of different judicatures have expressed different opinions regarding the presence of medical certificate and the endorsement of doctors as to the fitness of the victim at the time of making a statement. The Supreme Court has laid down that the absence of the medical certificate of fitness doesn't render a dying declaration to be unacceptable. What is essentially required is that the person who records it must be satisfied that the injured person was in a fit state of mind. The medical certificate is a rule of caution. Truthful dying declaration can be assured even otherwise³³ In the case of **Laxman Vs State of Maharashtra**³⁴ it was held in order to satisfy whether the deceased was in a fit medical condition to make the dying declaration looks up to the medical opinion, but where the eye-witnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that there is no certification of the doctor as to the fitness of the mind of the declarant. On the other hand, it was held by the High Court of Maharashtra Judicature only that a certificate from the doctor that the victim was not only conscious but also in a fit condition to make a statement is a must.³⁵

V. PROCEDURE AND COMPETENCY OF RECORDING DYING DECLARATION

Any person can record the dying declaration made by the deceased, but the person who is

³⁰ Rajendra Singh v State, 1997 Cr LJ 2668 (All)

³¹ Darshana Devi v State of Punjab, 1995 Supp (4) SCC 126; 1996 SCC (Cri) 38.

³² Laxmi v Om Prakash, 2000 Cr LJ 3302; AIR 2001 SC 2383; 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;

³³ Laxman v State of Maharashtra, 2002 Cr LJ 4095 (SC).

³⁴ AIR 2002 SC 2973

³⁵ Vithal Sadashiv Gaikwad v State of Maharashtra, 1994 Cr LJ 2035 (Bom).

recording the dying declaration must have some nexus with the deceased either circumstantially or by some fact, There is no particular form or procedure prescribed for recording a dying declaration nor is it required to be recorded only by a magistrate, However, logically dying declaration recorded by magistrate stands on a much higher footing.³⁶ There is no dying the fact that dying declaration recorded by Judicial Magistrate implies higher evidentiary value as he knows the process and methods of recording it. He isn't only supposed to be an independent and neutral person having nothing to shield but justice.³⁷ Even Executive Magistrates may also record the declaration and the courts have to place reliance on it.³⁸ It is no case essential that dying declaration be made before a magistrate only, there can be circumstances which warrant quick and emergent recording of words as the person who is under acute agony may shut his lips any time depriving others to listen, the Court can not reject the dying solely statement made before the person other than a magistrate.

(A) Police Officer

If there is no time to call the magistrate keeping in the mind the deteriorated condition of the declarant, the statement can be recorded by a police officer. But one condition must be coupled with it that while recording the statement there shall be one or two-person present there as a witness otherwise the Court may find the statement to be suspicious.³⁹ In **Bhagirathi v State of Haryana**⁴⁰ where a head constable on receiving a 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 the doctor's fitness certificate was held to be admissible in evidence. Supreme Court has held the declaration recorded by the sub-inspector reliable and admissible.⁴¹ A policeman is an independent public servant and doesn't have any grudge against the accused⁴² but a dying declaration recorded by an investigating officer stands on weaker grounds, court observed that the investigation officer is naturally interested in the success of the investigation and the practice of recording dying declaration during the course of investigation by investigation officer isn't encouraged.⁴³ The presence of a magistrate can never be a general rule but caution is required and due certification of a doctor is extremely essential to attach a higher value to the declaration.⁴⁴

³⁶ Kushal Rao v State of Bombay, AIR 1958 SC 22.

³⁷ S.D. Koli v State of Maharashtra, AIR 2009 SC 1059.

³⁸ 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.

³⁹ Akash R. Goswami, Dying Declaration, https://blog.ipleaders.in/dying-declaration-2/#Oral_and_written

⁴⁰ AIR 1997 SC 234; Also see, State of Karnataka v Shariif, AIR 2003 SC 1074; Munna Raja v State of MP 1976 2 SCR 764.

⁴¹ Gullam Hasain v State of Delhi (2007) 7 SCC 254.

⁴² Ameer Jan v State of Karnataka 2004 Cr LJ 4801.

⁴³ Munna Raja and Anr. vs State of Madha Pradesh 1976 2SCC 764

⁴⁴ Dilip Singh v State of Punjab, AIR 1979 SC 1173.

(B) Doctors

Statement recorded by a doctor who is an independent person can never be disbelieved.⁴⁵ 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 a respectable witness but an impartial expert and, thus his recording of the declaration deserves respect.⁴⁶

(C) Family Members

Courts always discourage recording of the statement by private persons more so by family members, although they are the first ones besides police to encounter the deeply injured man who is looking for some solace and statement made under these circumstances should be taken with proper weight and value. The fact of partitioning and bias to the witness who has recorded the dying declaration can't be ruled out in its entirety. The steep chances of malaise, concoction and the tampering of the declaration can hardly be ruled out. A statement made to the mother wasn't relied upon by the court in numerous cases.⁴⁷

VI. INVOCATION AND APPLICATION OF SECTION 32 EVIDENCE ACT

To attract the provisions of Sec- 32, the prosecution is required to prove that the statement was made by a person:

- a) Who is dead;
- b) Who can't be found;
- c) Who has become incapable of giving evidence; or
- d) Whose attendance can't be procured without unreasonable delay or expense
- e) Or he is incapable of giving evidence and such statement has been made under any of the circumstances specified in sub-section (1) to (8) of section 32 of the Indian Evidence Act.⁴⁸

The invocation, applicability and relevance of the instant provision of the Evidence Act have been subjected to contingencies by the Supreme Court of India in **Laxman v State of Maharashtra**.⁴⁹ As follow

⁴⁵ Sripatrao v State of Maharashtra (2000) 10 SCC 320; State of TN V Karuppasamy, AIR 209 SC 948.

⁴⁶ 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.

⁴⁷ Baldeo 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.

⁴⁸ The Indian Evidence Act, Act No. 01 of 1872 Sec. 32(1).

⁴⁹ (2002) 6 SCC 710.

- i) The statement is made by a person who is conscious and believes or apprehends that death is imminent.
- ii) The statement must pertain to what the person believes to be the cause or circumstances of his/her death.
- iii) What is recorded must be a statement made by the person concerned, since it is an exception to the rule of hearsay.
- iv) The statement must be confidence bearing, truthful and credible.

The Supreme Court added two more ingredients in **Mallella Shyamsunder v State of AP**.⁵⁰

As under:

- i) The statement shouldn't be one made on tutoring or prompting.
- ii) The court may also scan the statement to see whether the same is prompted by any motive of vengeance.

The word “**Verbal**” referred in the sectional language doesn't necessarily mean that the words should be spoken. The words of another person may be adopted by a witness by a nod or shake of the head.⁵¹ If the significance of the signs made by a deceased person in response to a question put to her shortly before her death is established satisfactorily to the mind of the court, then such questions, taken with her assent or dissent to them, clearly proved, constitute a verbal statement as to the cause of her death.⁵² The questions put to the injured person who is unable to speak and the signs made by him in reply taken together amount to “Verbal Statements” within the meaning of this section.⁵³

The Expression “**Any Circumstances of the transaction**”:- This phrase conveys some limitations. It is not as broad as the analogous use in “Circumstantial Evidence” which includes evidence of all relevant facts. It is 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.⁵⁴ The condition of the admissibility of the evidence is that the cause of the declarant's death comes into question. It is not necessary that the statement must be made after the transaction has taken place or that the person making it must be near death or that the “circumstances” can only include the act done when and where the death was caused.⁵⁵ The

⁵⁰ (2015) 2 SCC 486.

⁵¹ Chandrasekera v The King, (1937) AC 220; (1936) 39 Bom LR 359; Queen-Empress v Abdullah, (1885) 7 All 385, 397 FB.

⁵² Emperor v Sadhu Charan Das, (1921) 49 Cal 600; Chandrika Ram Kahar v King-Emperor, (1922) 1 Pat 401; Ranga v The Crown, (1924) Lah 305.

⁵³ Sudama v King-Emperor, (1949) Nag 301.

⁵⁴ RatanLal & DhirajLal, “The Law of Evidence”, 177 (27th ed. 2019)

⁵⁵ Pakala Narayana Swami v The king-Emperor, (1939) 66 IA 66:41 Bom LR 428: (1941) Ran 789 n. See further,

Supreme Court⁵⁶ examined the scope of the words “Statement as to any of the circumstances of the transaction which resulted in his death and said that these words expand the scope of admissibility on the facts of the case. The Supreme Court has emphasized the need for an effort by courts, as far as possible; to include a statement within the scope of section 32(1), hence, a statement as to any of the circumstances of the transaction which resulted in the death should be included.⁵⁷

VII. LEGAL PRINCIPLES GOVERNING A DYING DECLARATION

Dying declaration recorded voluntarily, pursuant to a fitness report of a certified doctor, nothing much remains to be questioned unless it is proved that the dying declaration was tainted with animosity and a result of tutoring.⁵⁸ The Supreme Court⁵⁹ summed up the legal principles governing a dying declaration as follow

- i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.⁶⁰
- ii) 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.⁶¹
- iii) Where the court is satisfied that the declaration is true and voluntary, it can be the sole basis of conviction without any further corroboration.⁶²
- iv) It can't be laid down as an absolute rule of law that the dying declaration can't form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.
- v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.⁶³
- vi) A Dying declaration that suffers from infirmity such as the deceased was unconscious and could never make any statement can't form the basis of

Tellu v State Cr LJ 1062 (Del), Sharad Birdichand Sarda v State of Maharashtra, 1984 Cr LJ 1738: AIR 1984 SC 1622, at 1630.

⁵⁶ Patel Hiralal Jottaram v State of Gujarat, AIR 2001 SC 2944, wife burning, original statement gave wrong name of the father of the accused, the mistake was rectified by further questioning, and even this process was held to be part of the transaction.

⁵⁷ Patel Hiralal Jottaram v State of Gujarat, AIR 2001 SC 2944 at 2949.

⁵⁸ Mukesh v State for NCT Delhi, AIR 2017 SC 2161: (2017) 6 SCC 1: LNIND 2017 SC 252.

⁵⁹ Atbir v Govt (NCT of Delhi), (2010) 9 SCC 1.

⁶⁰ State of U.P. vs Ram Sagar Yadav, 1985 (1) SCC 552.

⁶¹ K. Ramachandra Reddy vs Public Prosecutor, 1976 (3) SCC 618.

⁶² Ramavati Devi vs State of Bihar, AIR 1983 SC 164.

⁶³ Rasheed Beg vs State of M.P., 1974 (4) SCC 264.

conviction.⁶⁴

- vii) Merely because a dying declaration doesn't contain all the details as to the occurrence, it is not to be rejected.⁶⁵
- viii) Even if it is a brief statement, it isn't to be discarded.⁶⁶
- ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion can't prevail.⁶⁷
- x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even there is no corroboration.⁶⁸

In addition, the principle "*nemo moriturus proesmitur mentim*" which governs the credibility of dying declaration, doesn't require serious examination.

VIII. EVIDENTIARY VALUE OF DYING DECLARATION

The evidentiary value of the dying declaration can only be determined according to the separate set of facts and circumstances of each case. During the process of intensive research, the author was able to come across a huge number of cases decided by courts of different judicatures in which the evidentiary value of the Dying declaration was signified.

The Supreme Court of India in **K. R. Reddy v. Public Prosecutor**⁶⁹ The dying declaration is undoubtedly admissible under section 32 and not being a statement on oath so that its truth could be tested by cross-examination. The court has to apply the scrutiny and the closest circumspection of the statement before acting upon it. 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 connect a case as to implicate an innocent person, yet the court has to be on guard against the statement of the deceased being a result of either tutoring, prompting or a product of his imagination.

In **Panneerselvam v. State of Tamil Nadu**,⁷⁰ there is no absolute rule of law that a dying declaration cannot be the sole basis of conviction unless corroborated. A true and voluntary declaration needs no corroboration. A dying declaration is not a weaker kind of evidence than

⁶⁴ Ram Manorath vs State of U.P., 1981 (2) SCC 654.

⁶⁵ State of Maharashtra vs Krishnamurti Laxmipati Naidu, 1980 (Supp) SCC 455.

⁶⁶ Surajdeo Ojha vs State of Bihar, 1980 Supp SCC 152.

⁶⁷ Nanhau Ram vs State of M.P., 1998 (3) SCC 390.

⁶⁸ Ram Chandra Reddy vs Public Prosecutor, AIR 1976 SC 1994.

⁶⁹ 1976 (3) SCC 618.

⁷⁰ 2008 17 SCC 190.

any other piece of evidence. A dying declaration stands on the same footing as other pieces of evidence and has to be judged in the light of surrounding circumstances and concerning the principle governing the weight of evidence. A dying declaration which has been recorded by a competent Magistrate in the proper manner, 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.

In **Sham Shankar Kankaria v. State of Maharashtra**⁷¹ Hon'ble Apex Court held that The situation in which a person is on a death bed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in the law to accept the veracity of his statement. It is, for this reason, the requirements of oath and cross-examination are dispensed with. If a dying declaration is excluded it will result in the miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

All the aforementioned and many other judgments have very beautifully summed up the Law on the dying declaration. 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. It becomes a very important and reliable piece of evidence and a dying declaration is entitled to great weight.

IX. 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 a radical departure from the established principles of evidence as to the statement and its veracity can't be cross-examined and remains unchecked due to inherent belief in its trustworthiness, being admitted in a homicide case without any need for corroborating evidence, sounds highly unfair to the accused who is being charged. Keeping in mind the above-mentioned opinions of various courts it is suggested that whenever a dying declaration is to be recorded it should be recorded very carefully keeping in view the sanctity which the courts attach to this piece of evidence. It retains its full value if it can justify that victim could identify the assailant, version narrated by the victim is intrinsically sound and accords with probabilities and any material evidence is not proved wrong by any other reliable evidence.

LORD LUSH, L.J., Quoted that, "A dying declaration is admitted in evidence because it is

⁷¹ 2006, 13 SCC 165.

presumed that no person who is immediately going into the presence of his Maker will do so with a lie on his lips. But the person making the declaration must entertain settled hopeless expectation of immediate death. If he thinks he will die tomorrow it will not do.”
