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The Principles of Dying Declaration Evidence: A Principled Critique of Phulel Singh v. State of Haryana (2023)

LOKESH MITTAL¹ AND SANIGHDHA²

ABSTRACT

The Indian Evidence Act 1872 is an Act formulated by J.F. Stephens and is the Act that must be consciously kept in mind while adjudicating civil and criminal cases. The whole of the Act is extremely important for arriving at the most justified and legally logical decision in any given case. However, the most important part of the Act is the concept of dying declaration. It is mentioned under Section 32 of the Indian Evidence Act that dying declaration can be accepted in any given four circumstances, if all the essentialities and qualifications are fulfilled. For better understanding of the issue, Section 32(1) is reproduced- “32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. Statements, written or verbal, or 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 is 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 person's death comes into question.” However, it must be understood that only reliable and factually as well as circumstantially justifiable and legally admissible statements must be accepted as dying declarations. The present manuscript in the form of a case comment tries to enlighten this concept only.

Keywords: Indian Evidence Act; Dying Declaration; Section 32; Reliable; Legally Justifiable.

I. INTRODUCTION

The Indian Evidence Act 1872, now the Bhartiya Sakshya Sanhita 2023, talks about the dying declaration. Section 32(1) of the former and Section 26(1) of the latter talk about the same. It

¹ Author is an Advocate at District and Sessions Court, Sirsa And Punjab And Haryana High Court, Chandigarh, India.

² Author is a Junior Research Fellow at Department Of Laws, Panjab University, Chandigarh, India.

must be noted that Indian Evidence Act is the only Act that deals with the procedural aspect laid down for trying cases, both civil and criminal and contains the guidelines specifically for the Presiding Officer of the Court. It is the only Act that deals exclusively with Judges and the only Act that has Judges as the centerpiece of the same. It comes under the Chapter of Relevancy, i.e. Chapter II and Part I of the Indian Evidence Act, occupying the same under the new legislation, effective from 1, July 2024. Dying declaration means the statement given by an individual who is under such circumstances whereby death is quite possible. It must be noted that sure ascertainment or apprehension of death is not the pre-requisite under the Indian law, like the English Law. Section 32 is a part of admissibility and confessions under the Act and if, the person who has given a purported dying declaration does not die subsequently, then his/her statement can be used for corroboration and contradiction purposes under Section 157 and 145 of the Indian evidence Act. For better understanding of the issue, Section 32(1) is reproduced—*“32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. Statements, written or verbal, or 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 is 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 person's death comes into question.”*³ Juristically, the justification in a legal system for admitting such statements is the assumption that a dying man does not die with a falsehood on his lips. Shakespeare had occasion to allude to this aspect. In King John¹, when the wounded Melun finds himself disbelieved while announcing the intended treachery of the Dauphin Lewis, he exclaims: - *"Have I not hideous death within my view, retaining but a quantity of life, which bleeds away, even as a form of wax, Resolveth from his figure, against the fire? What in the world should make me now deceive, Since I must lose the use of all deceit? Why should I then be false, since it is true, That I must die here, and live hence by truth?"* (1. King John, Act 5, Scene 4).⁴ 12.28. We shall revert to this aspect later. It should be stated, however, that a person may lose his mental faculty when death is approaching. Thus, in King John² Prince Henry is made to say: *"Death's siege is now against the mind, which he picks and wounds. With many legions of strange fantasies: Which, in their throng and press to the last hold. Confound themselves."* (2. King John, Act 5, Scene 7). It is, apparently, for this

³ Indian Evidence Act, 1872, sec. 32(1), (India).

⁴ Report 69, Section 32(1), THE ADVOCATE KHOJ, <https://www.advocatekhoj.com/library/lawreports/indianevidenceact/118.php>?

reason that the statements are made relevant only for certain purposes. We now proceed to consider the clause in detail.⁵ Thus, the basic premise of dying declaration is mentioned afore and having an ethico-legal implication, must be taken seriously but the jurisprudential principles that govern the basic premise of dying declaration, must always be kept in mind, too. In the present case of Phulel Singh v State of Haryana 2023 (SCC On Line SC 1227)⁶, it was again reiterated that the authenticity of the dying declaration must be tested before accepting it as the sole proof of the case, because it is the head of the alleged accused which is on line of hanging, if and when it gets accepted. Through the honest effort of the present research, the introduction, brief facts, and the judgement discussion as well as analysis are thoroughly produced, for better understanding.

II. BRIEF FACTS

The present case was decided by a three-judge bench of the Supreme Court, comprising of Honourable Justice B.R. Gavai, Justice Pratham Kumar Mishra, and Justice Pamidighantam Sri Narsimha, with Justice B.R. Gavai being the author of the judgement. It is a majority judgement given on a very specific facet of law. As a matter of fact, the Dying Declaration should inspire the confidence of the court about the truthfulness of such a declaration. If the court, after careful evaluation of the entire evidence, feels that the same was the result of either tutoring, prompting or product of imagination, the Declaration will not be accepted. If the contents of the very Dying Declaration contradicts the core of the prosecution case, the declaration will not be the basis for conviction. Normally, a Dying Declaration should be recorded in the words of the declarant, but the same cannot be rejected merely because the exact words used by the declarant are not reproduced.⁷ In the leading case of *Pakala Narayana Swami v. Emperor*⁸ (AIR 1939 Privy Council p.47), the expression ‘circumstances of the transaction which resulted in his death’ has been eloquently explained. As per the facts of the said case, the deceased had left his house to go to Behrampur. While leaving his house, he had told his wife that he was going to Pakala Narayana Swamy’s house in Behrampur to demand him to pay back the amount given by him. Later on, his dead body was found in a trunk and his body had been cut into pieces. The question before the Privy Council was as to whether such a statement made by the deceased to his wife would really come within the purview of Section 32(1) of the Evidence Act. In fact, it was held by the Privy Council that the statement made by the deceased to his wife just prior to leaving

⁵ *Ibid.*

⁶ Phulel Singh v State of Haryana 2023 (SCC On Line SC 1227).

⁷ A.V. Chandrasekhara, *Dying Declaration- Its Application in Criminal Cases*, KARNATAKA JUDICIAL ACADEMY, https://kjablr.kar.nic.in/assets/articles/Dying_Declaration_Its_applicability_in_Criminal_Cases.pdf

⁸ *Pakala Narayana Swami v King Emperor* AIR 1939 Privy Council (India).

his house to go to Behrampur was a statement and one of the circumstances of the transaction which resulted in the death of the man. Therefore, the expression ‘any of the circumstances of the transaction which resulted in his death’ is necessarily wider in its interpretation than the expression ‘the cause of his death.’⁹ After describing and illustrating the circumstances of dying declaration, now, the brief facts of the present case law are given below, as taken up from the judgment:

- The present matter revolves around the death of the deceased after suffering 91% burns on her body which as per her dying declaration were caused by the Appellant. It was the prosecution case that the Appellant used to harass the deceased on account of insufficiency of dowry. On 5th November 1991, the family members of the deceased were informed about the burns suffered by the deceased and her admission in Daya Nand Medical College and Hospital, Ludhiana. The same day, the Medical Officer who had medico-legally examined the deceased sent ruqa to the Station House Officer, Police Station Sarabha Nagar, Ludhiana. Thereafter, on 7th November 2011, when the deceased regained consciousness, she told her family members that it was the Appellant who had burnt her. Following this, the father of the deceased made an application to the Sub-Divisional Magistrate, Ludhiana, for recording the statement of the deceased. The next day, on 8th November 2011, the Executive Magistrate, Ludhiana received the said application along with endorsements of the Sub-Divisional Magistrate, Ludhiana and consequently moved another application before the Medical Officer seeking his opinion regarding the fitness of the deceased. When the Medical Officer gave his opinion that the deceased was fit to make a statement, the statement of the deceased was recorded, read over and explained to her, who put her thumb impression on the same after admitting to its contents to be correct.
- Thereafter, a First Information Report was recorded based on the said statement of the deceased against the father-in-law of the deceased, the mother-in-law of the deceased and the Appellant for the offences punishable under Sections 498-A, 307, 406 and 34 of IPC. However, charges were framed by the Sessions Court for the offences punishable under Section 302 read with Section 34 of IPC and Section 304-B of IPC. The Ld. trial court acquitted the accused persons of the charge under Section 302 of the IPC but convicted all three accused persons for the offence punishable under Section 304-B of

⁹ A.V. Chandrasekhara, *Dying Declaration- Its Application in Criminal Cases*, KARNATAKA JUDICIAL ACADEMY, https://kjablr.kar.nic.in/assets/articles/Dying_Declaration_Its_applicability_in_Criminal_Cases.pdf

IPC for causing the dowry death of the deceased and accordingly sentenced them to undergo rigorous imprisonment for a period of seven years along with fine.

- Being aggrieved by the same, the accused persons preferred an appeal before the High Court concerning the conviction and sentence awarded by the learned trial court. Meanwhile, the State of Haryana and the brother of the deceased also preferred appeals before the High Court regarding the acquittal of the accused persons Section 302 of IPC. The High Court, while noting that the appeal preferred by the mother-in-law of the deceased stood abated as she had died during the proceedings, partly allowed the appeals preferred by the accused persons thereby acquitting the deceased's father-in-law of the charge levelled against him under Section 304-B of IPC, but confirmed the conviction and sentence awarded to the Appellant by the Ld. trial court.¹⁰
- The counsels on both the sides, vouched in strong arguments and propositions for their own clients, in the best way possible. The case was finally decided and opined upon by the Supreme Court.

III. JUDGEMENT DISCUSSION AND ANALYSIS

The Apex Court, in the present case, questioned the veracity of the dying declaration. The Apex Court noted that the Executive Magistrate, in his evidence, admitted that the family members of the deceased, who had brought the application containing the order of the Sub-Divisional Magistrate had told him that whatever they had to tell the deceased, they had told her. He further admitted that those family members and some other persons were in the room in which he recorded the statement of the deceased. Further, the Apex Court highlighted the Medical Officer's statement per which the Executive Magistrate had recorded the dying declaration of the deceased on 8th November 1991 at 04.40 p.m. whereas the opinion concerning her fitness was given by the Medical Officer at 06.00 p.m. on 8th November 1991. In these circumstances, the Apex Court was not convinced that the dying declaration was free from doubt.¹¹ It must be noted that *only reliable, trustworthy and confidence inspiring dying declaration should be made the sole basis of conviction in a criminal case, in which the stakes are actually very high*. It must be noted that Justice A.V. Chandrasekhara (Former Judge, Karnataka High Court) has opined rightly on the veracity and the trust meant to be imposed in dying declarations in the

¹⁰ *Only Reliable, Trustworthy and Confidence Inspiring Dying Declaration May form the Sole Basis of Conviction*, KHURANA AND KHURAN ASSOCIATES, <https://www.khuranaandkhurana.com/2023/12/05/only-reliable-trustworthy-and-confidence-inspiring-dying-declaration-may-form-the-sole-basis-for-conviction/#:~:text=The%20Hon'ble%20Supreme%20Court%20allowed%20the%20appeal%2C%20quashed%20and,the%20charges%20levelled%20against%20him.>

¹¹ *Ibid.*

following words, “*though a Dying Declaration is entitled to great weight, one cannot forget that the accused has no power to cross-examine the declarant to elicit the truth. Hence the court should be satisfied about the truthfulness of such a declaration and the same being not tutored in any manner. Section 32(1) of the Evidence Act does not prescribe any statutory guideline in the matter of recording dying declaration, and considering the same while appreciating the evidence. But the Hon’ble apex court, in several leading decisions, while considering the facts of each case, has laid down some broad guidelines and thus they have become binding precedents under Article 141 of the Constitution of India. While evaluating the evidence, especially in criminal cases, the court is expected to keep in mind the novel observation made by the apex court in the case of State of Uttar Pradesh v Krishna Gopal (AIR Q1988 SC relevant observation is as follows: ‘.....There is an unmistakable subjective element in the evaluation of the degree of probability and quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice.’*”¹² Conclusively speaking, it must be kept in mind that the acceptance of dying declaration should only be made when all the other circumstances have been proven and the Court has extreme confidence on the veracity and trustworthiness of the statement. This will ensure an effective justice delivery system.

¹² A.V. Chandrasekhara, *Dying Declaration- Its Application in Criminal Cases*, KARNATAKA JUDICIAL ACADEMY, https://kjablr.kar.nic.in/assets/articles/Dying_Declaration_Its_applicability_in_Criminal_Cases.pdf