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Ayush Chandra

Publisher, Managing Director, & Founder



Mr. Ayush Chandra is the Publisher, Managing Director, and Founder.

He pursued an extensive legal education and practical experiences, significantly enriching his expertise. He graduated with first-division marks in a 5-year integrated BA-LLB course from Amity University. His education provided a solid foundation in legal studies. His internships included the District Legal Services Authority at a lower court, the Allahabad High Court under a seasoned advocate, and the Supreme Court of India.

These experiences deepened his understanding of the legal system, honing his analytical skills and expertise in drafting and pleading.

ayush.chandra@legalonus.com

+91 9140433246

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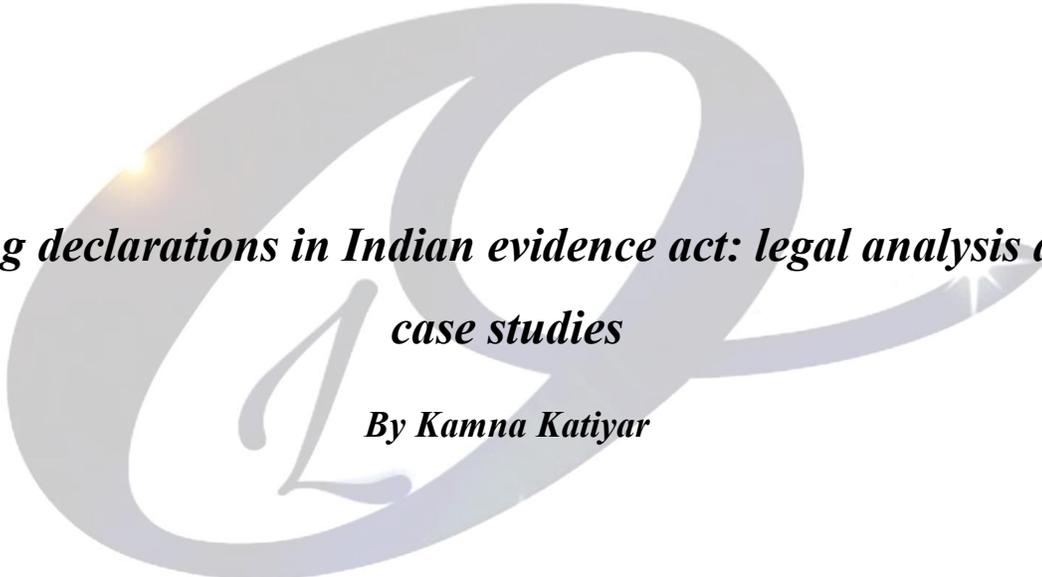
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***Dying declarations in Indian evidence act: legal analysis and
case studies***

By Kamna Katiyar

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In the hon'ble supreme court of India

Naeem vs state of Uttar Pradesh

Petitioner-Naeem & another

Vs

Respondent-state of Uttar Pradesh & another

- Citation- 1978 of 2022
- Date of judgement- 5th march 2024
- Hon'ble judges- hon'ble justice B.R.gavai and hon'ble justice Sandeep Mehta

Introduction

The law of evidence elaborates on the principle which governs the law is that evidence which cannot be tested is not admissible in the court of law. In other words, the administration of oath and cross examination of the maker of a statement establishes the veracity of the same. Thus, hearsay evidence is no evidence.

Nevertheless, in situations, the law makes an exception as a matter of necessity such as where a man is on his deathbed and makes a statement relevant to the cause of death. The law attaches great solemnity and sanctity to the words of the dying man on the ground that at the verge of his likely departure from the earthly world, he will not indulge in falsehood and secondly, the exclusion of such evidence may result in miscarriage of justice in as much as the victim may be the only eye witness of a serious crime.

Dying declarations have solely relied upon for the purposes of conviction. However, over the years, dying declaration & Indian evidence act section 32 of the Indian evidence act 1872 speaks of

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special statements. It comes into play only in specific situations, that is, when either the person is dead or not found or incapable of giving evidence or attendance cannot be procured without unreasonable delay. On proof of the former, the knowledge of the person who is unavailable should be transmitted to the court through some other person. Subsection (1) of the section enumerates that statements made by a person as to the cause and circumstances leading to his death are relevant and admissible in evidence as dying declarations.

The legal maxim "nemo moriturus praesumitur mentire"—"a man will not meet his maker with a lie in his mouth"—indicates the basis upon which dying utterances are allowed in evidence. These are extreme statements made when a person is near death, when all hope for the future has been lost, when all motivations for lying have been silenced, and when the mind has been moved to speak the truth by the strongest factors; a state so solemn and calm that the law feels compelled to acknowledge the statement's veracity.

In this case the supreme court focused heavily on the legal principle surrounding the admissibility and reliability of a dying declaration as the sole basis for conviction.

The court reaffirmed that a dying declaration holds significant evidentiary value in Indian law, especially when it is determined to be true, voluntary, and coherent. Consistent with past rulings, including *atbir v. Government of NCT of Delhi*, the court stated that a trustworthy dying declaration can independently support a conviction without the need for additional corroborative evidence. The rationale is that a person on the brink of death is unlikely to fabricate statements, making their declaration highly credible if verified by the court as genuine and unprompted.

Facts

- The complaint filed by Shahin Parveen (deceased), who was admitted to the district hospital in Moradabad at 02:20 pm on December 1, 2016, with 80% deep thermal and facial burns, was transcribed and sent to the police station katghar, district Moradabad, at 8:15 p.m. On December 1.

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- In her lawsuit, the deceased claimed that the accused/appellants had burned her alive because they were forcing her into becoming a prostitute and engaging in illegal trafficking. A first information complaint was filed at police station katghar, district Moradabad, for the offence punishable under section 307 of the Indian penal code, 1860, based on the written complaint.
- She had been living in her married home with her two children, her brother-in-law (devar), pappi mashkooor (accused no. 1), and his wife Naeema (accused no. 2) for two years before the incident, following the death of the deceased's husband. The brother of Naeema is Naeem (accused no. 3).
- The accused/appellants allegedly began pressing the deceased into pursuing a career in prostitution and illegal trafficking after the death of her husband. The deceased was physically and sexually abused and ordered to leave the house because she refused to accept the same.
- The accused grabbed the dead and doused her with kerosene at around 1:30 pm on the day of the crime. The matchstick was lit by pappi mashkooor (accused no. 1) and hurled at her by Naeema (accused no. 2).
- The accused/appellants then surrounded her, making it impossible for her to flee. When the house caught fire, the deceased fled, and her neighbours extinguished the flames. They then notified her mother and brother, Islam Babli, who transported her to the hospital.
- At 8:15 p.m. On December 1, 2016, the firm was filed based on this written report and the deceased's thumb impression. After that, between 08:48 and 09:15 that same day, the deceased's final declaration was recorded. In it, she claimed that she and pappi mashkooor (accused no. 1) were still at odds over how to divide their joint home.

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- The deceased and the accused/appellants got into another argument on the day of the occurrence at around 12:30 pm, during which accused no. 1 doused the dead with kerosene and lit her on fire. Naeem, his brother (accused no. 3), and his wife Naeema (accused no. 2) accompanied and helped him. After being brought to the district hospital in Moradabad by her brother Islam Babli, she was later transferred to Safdarjung hospital in new Delhi, where she ultimately passed away from her wounds.

Issues

- Whether Shahin Parveen's deathbed statement could be the only reason for the accused's conviction, especially considering the seriousness of the murder charge.
- Whether Shahin was in a state of mind that allowed him to make a trustworthy statement.
- If the court evaluates supporting evidence?

Argument of petitioner

- The petitioners argued that the dying declaration, made by the deceased, Shahin Parveen, was unreliable and could not be used exclusively to convict them. They pointed out inconsistencies in the timing of events, particularly that Shahin had been discharged from a district hospital in Moradabad and transferred to Safdarjung hospital in new Delhi, suggesting that her physical and mental state at the time of the declaration might have impaired her coherence.
- The defence argued that Shahin's severe burn injuries likely affected her ability to make a clear, voluntary statement. They contested that her critical condition would have

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compromised her mental clarity, questioning whether she was truly fit to make such an important declaration.

- The petitioners, especially Naeema and Naeem, argued that Shahin's declaration did not specify their precise roles in the incident. While papa (mashkoo) was directly accused of setting Shahin on fire, Naeema and Naeem were only generally mentioned as "assisting" him, without specific actions attributed to them. The defence argued that such vague mentions did not meet the legal threshold for a murder conviction.
- The defence also raised procedural issues, questioning the chain of events and whether due process was observed in recording the declaration. They highlighted inconsistencies in the medical officer's certification of Shahin's mental and physical fitness, suggesting potential lapses that could invalidate the declaration as a basis for conviction.

Argument of respondent

- The state argued that the dying declaration was both credible and admissible as primary evidence, highlighting that Shahin Parveen, the victim, had provided a clear, voluntary, and coherent account identifying her attackers. The prosecution argued that, under Indian law, a dying declaration can serve as the sole basis for conviction if it inspires confidence in the court.
- To counter the defence's claims about Shahin's mental state, the state presented evidence from rd. A.k. Singh, the emergency medical officer, who certified that Shahin was in a fit mental and physical state to give a statement. The state argued that this medical certification validated the dying declaration's reliability, underscoring that Shahin was fully aware and conscious when making her declaration.

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- The state cited established legal precedents where courts have upheld convictions based solely on dying declarations, if they are free from tutoring, coercion, or fabrication. The state argued that Shahin's declaration was in line with these precedents and should be considered sufficient to uphold the conviction.
- The prosecution highlighted that the defence did not produce any substantial evidence to challenge the declaration or contradict Shahin's account. With no eyewitnesses or material evidence opposing the declaration, the state asserted that there was no basis to doubt its credibility.

Court's reasoning

- The court emphasised that, because of the circumstances surrounding their making, dying declarations are presumed to be true. This approach has been upheld in earlier decisions such as *Khushal Rao v. State of Bombay* (1958)¹. In identifying papi as the culprit, the court determined that Shahin's statement was clear and consistent, which supported the use of her declaration as reliable evidence.
- The accompanying medical officer's certification, which the court cited, was essential in confirming the accuracy of her dying declaration. The court cited the 2002 decision in *Laxman v. State of Maharashtra*,² which held that for a declarant's statement to be accepted, their mental health had to be verified.
- The responsibilities that Shahin's declaration assigned to each accused were closely scrutinised by the court. Although papi was unmistakably implicated as the person who lit her on fire, it decided that the allusions to Naeema and Naeem were ambiguous and lacked precise acts. The court decided that for a conviction to be supported, a dying declaration must explicitly outline each accused person's involvement, citing the precedent established

¹ AIR 1958 SC 22

² AIR 2002 SC 2973

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in *panchhi v. State of up.* (1998)³. As a result, Naeema and Naeem were acquitted because of this lack of detail.

- The court restated that, provided it satisfies the requirements of specificity, voluntariness, and dependability, a dying declaration may be the only foundation for conviction. This position complies with earlier decisions, such as *atbir v. Government of NCT of Delhi* (2010)⁴, which determined that the statement's credibility is further increased by the lack of influence or pressure.
- The court concluded that Shahin's voluntary and cogent declaration adequately complied with these legal requirements.

Judgement

According to the court's unequivocal ruling, a dying declaration may serve as the only foundation for a conviction provided it engenders the court's complete trust. The court must be convinced that the dead were in a sound mental state when they made the statement and that it was not the product of coercion, imagination, or tutoring. Furthermore, it has been decided that the court might establish its conviction without any additional confirmation if it is confident that the dying declaration is accurate and voluntary.

Furthermore, it has been decided that there cannot be a legislation that states that a deathbed declaration cannot serve as the only foundation for conviction unless it is supported by evidence. It has been decided that the requirement for corroboration is just a precautionary regulation. According to the court, there will be no legal barrier to using it as the basis for conviction even in the absence of corroboration if, after careful examination, the court is convinced that it is true, free from attempts to persuade the deceased to make a false statement, and coherent and consistent.

³ 1998) 7 SCC 177

⁴ 2010) 9 SCC 1

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The court carefully analysed the evidentiary value of the declaration and assessed the specific roles attributed to each accused in the statement:

- The supreme court concluded that Shahin's clear and direct accusation against papi, coupled with her mental fitness at the time of the statement (certified by medical personnel), satisfied the legal standards for a conviction based solely on a dying declaration. The court sentenced him to life imprisonment under section 302 (murder) of the Indian penal code.
- For Naeema and Naeem, the court found that Shahin's declaration did not specify their actions with sufficient clarity. While Shahin mentioned that they "assisted" papi, the court held that this general reference was insufficient to establish their direct involvement in the crime beyond a reasonable doubt. Consequently, the supreme court acquitted both Naeema and Naeem, emphasising that a dying declaration, even if reliable, must provide clear details regarding the specific roles of each accused if it is to be the sole basis for conviction.
- The court reaffirmed the legal principle that a dying declaration can be used as the sole basis for conviction if it is consistent, voluntary, and given in a sound mental state. However, the court underscored that each accused's role must be explicitly described, especially in cases involving multiple individuals, for the declaration to justify a conviction without additional corroborative evidence.

Case analysis

The supreme court's ruling upholds the idea that, although though deathbed declarations can be effective means of obtaining convictions, their usage needs to be closely examined, particularly when there are several defendants. The significance of precision in deathbed pronouncements is highlighted by the supreme court's ruling to acquit Naeema and Naeem. This supports the idea that, even while emotional impact might influence a statement's impact, legal norms demand that acts be clearly attributed to support a conviction.

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The supreme court upholds the stability of legal principles pertaining to dying statements by drawing on well-established cases. The court supported its ruling by referencing earlier decisions, which also served as a model for instances with related difficulties in the future. Thus, the case is a prime example of the fine line the courts must draw between providing victims with justice and guaranteeing the accused receives fair treatment. As a precaution against unjust conviction, Naeema and Naeem's acquittal highlights the need for the legal system to uphold the rights of all parties. In situations where emotive narratives may result in rash decisions, this part of the decision is essential to preserving public confidence in the judicial system.

Conclusion

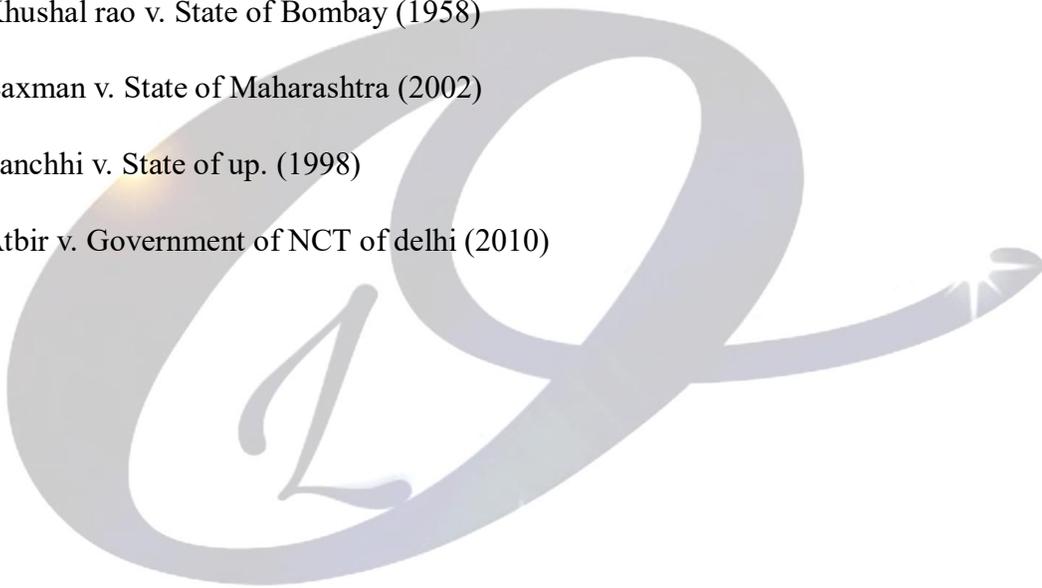
This case exemplifies the intricate relationship between the principles of justice and the evidentiary standards applied in criminal law, particularly regarding dying declarations. The supreme court's judgement reinforced the validity of such declarations as critical evidence, provided they are made voluntarily and with mental clarity also emphasised the necessity for specificity when multiple defendants are involved, as seen in the acquittal of Naeema and Naeem due to the lack of clear attribution of actions. This decision not only highlights the importance of protecting the rights of the accused but also underscores the legal system's commitment to ensuring fair trials.

The dying declaration is a significant piece of evidence. It may be the last and most pertinent available evidence concerning the commission of a crime. Accordingly, the law of evidence makes it relevant as well as admissible. It is also substantive evidence against the accused and a conviction can be based solely on a dying declaration. Given the importance attached to dying declaration, the courts have evolved various principles to guide it. It should strike to be genuine, free from all doubts, stating the true story of the maker. In case the court entertains any doubt about the same, it is imperative for the court to investigate corroborative evidence to test the truthfulness of the dying declaration. It is the duty of the court to consider the dying declaration in its correct perspective and satisfy itself of its truthfulness before it can proceed to convict an accused. This case serves as a vital reference point for future adjudications involving dying declarations, illustrating the need for scrutiny and adherence to established legal standards.

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