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**RESEARCH PAPER**

**Evidentiary Value of Dying Declaration: A Case Study**

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**ABSTRACT**

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Dying declaration is a weaker type of evidence based on the belief of humanity that a dying man does not lie before meeting his creator. In this paper researchers explore the admissibility of the dying declaration in the court of law the conditions attached to its acceptance and describe different cases where it has been the base of causing conviction and also the cases where it has been nullified. This is a qualitative analysis discussing the traditional approaches of the court until now and the future prospects. It is concluded that the court needs to be vigilant of the possibility of lie and must scrutinize the dying declaration under the circumstances of the given case.

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**Introduction**

A renowned scholar and writer Sir William Shakespeare in the Act II of his famous play King Richard II describes the feeling of a dying person

What is 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?

Interestingly Shakespeare speaks of the religious maxim in the above statement describing that a dying man has a different perception than a living person. And it's the truth that makes him live forever in the immortal world. Dying

declaration is based on the maxim “Nemo moriturus praesumitur mentire” meaning that a dying man does not lie and he will not meet his maker with a lie in his mouth. It is also an acceptable principle in the eye of law that a dying person usually speaks truth (Akbar Ali v Shanaz and others, 1981). Usually the court does not give weightage to hearsay evidences. Such evidences are controversial as the witness does not share his own experience rather represents another person’s perspective who cannot be cross questioned. Whereas dying declaration enjoys an exception to the rule here. There might be certain situation where the only witness was the one who passed away. In such cases not giving weightage to the dying declarations risks the justice. Owing to the fact that the evidence cannot be cross examined dying declaration is taken as weak evidence. But the conviction is based on the fact that a dying person who has no hopes to gain the materialistic desires of this world is not expected to lie to gain any benefits (Niaz-ud-Din and another v The State and another, 2011).

Prosecution was bound to prove that in fact the deceased was well oriented in time and space and that all legal precautions were taken when the scribe was giving his report (Imtiaz khan v The state, 2020 ). The object that, while making a dying declaration, its maker must be in full control over all his/her faculties so as to exclude the possibility that the words so spoken by him were not out of stupor of death, can be achieved by obtaining opinion of doctor regarding fitness of dying person to make a lucid statement.

There is no doubt that relying completely on the dying declaration without any further scrutiny on the part of court can lead to false judgment and ultimately affect the safe dispensation of justice (Rafaqat ullah alias Paka –v Umar Fayaz (deceased) through brother Muhammad Riaz and another, 2020). If court is satisfied about its genuineness and truthfulness, dying declaration can be considered without any corroboration (Mashad Ali v The state and another, 2021). However, the intrinsic worth of such statement/evidence is to be adjudged in consonance with general principles laid down for appraisal of evidence.

This research paper explores the scope of Dying Declaration whether it’s admissible or not, what criteria needs to be followed to determine the genuineness of dying declaration and to know the legal status of Dying Declaration which needs corroboration through confidence inspiring evidence.

### **Admissibility of Dying Declaration**

The admissibility of dying declaration is derived from Article 46 of Qanun-e-Shahadat Order, 1984 which is placed in Chapter-III titled as "OF THE RELEVANCY OF FACTS". According to Article 46(1), a statement to be considered as dying declaration must be made by a person about the reasons leading to his death. It is not necessary that while making such statement, its maker must be having a looming danger of losing his life (Haq Nawaz v The state and others, 2018) . It is also of immense importance to mention here that such statement can only be used in cases where the aim is to find the cause of the death of the maker of the statement.

It must be clarified here that according to the established principle of law, dying declaration is not sufficient to sustain conviction but it is admissible in evidence. It is also required that it is free from all sorts of doubts and defects and is relied upon independently to be considered as evidence to record conviction. To judge the truthfulness or falsification of a dying declaration it has to be analyzed keeping in view the overall physical environment and circumstances. It must be understood that dying declaration is only a corroborative piece of evidence which requires a support from eye witness and is taken as weak evidence (Pato and another v The state , 2012).

There are no specified guidelines regarding the procedure of recording a dying declaration. As the only aim of the dying declaration is to show the cause and the circumstances of the death therefore the size of declaration is of no importance (Raja ali shan and another v Shakeel and 4 others, 2014). However, a dying declaration may not be refused on the sole ground that there was delay in recording the same( Imran Ashraf v The state, 2012 ). Delay in first information report (subsequently on informant complainant's demise treated as dying declaration) satisfactorily explained as being due to lack of transportation facilities. No serious enmity existing between accused qua deceased and eye witnesses so as to lead to a false charge of capital offence Recovery of stolen licensed gun of deceased from accused's house satisfactorily proved Abscondence of accused after occurrence not satisfactorily explained Discrepancies in dying declaration and witnesses' statements minor and not such as to lead to rejection of dying declaration and ocular testimony Conviction, held, not rightly quashed -Appeal allowed (Ghani khan v Sail Badshah and 3 others ,1971 )

Police Officer who was investigating the case was not to be encouraged to record dying declaration. However if the Medical officer is not available then the police officer can record the gestures and words of the victim (Riyasat Hussain and another v Muhammad sabir and 3 others , 2018 ). Similar situation was witnessed in Imran Ashraf v. The State 2012 YLR 325, case, it was observed there that:

"We are conscious of the fact that a police officer should not be encouraged to record dying declaration in a case which he is investigating himself. He could have been influenced by the course of events in favor of one or the other party but of course, there can be situation, when the medical officer is not readily available and the witnesses are either not present at the spot or if accessible around the victim yet they are unable to record the statement. In such an eventuality the police officer may, instead of relying upon mere memory, take down notes or may even record the actual spoken words or gestures of the victim. The document so prepared can then be proved by the scribe formally during the trial, subject to scrutiny in cross examination."

Person who recorded dying declaration was the most important witness to verify veracity thereof, but in the present case, such person was conspicuously missing in the array of witnesses and thus dying declaration, could not be relied

upon and it would be grievously unsafe to maintain the conviction of accused. Benefit of the doubt was extended to the accused and he was acquitted of the charge of murder---Appeal was allowed accordingly (Somaid and another v Ali gohar 2019). In Muhammad Nawaz khan v The State and another 2015 M L D 690 Scribe of the report and dying declaration was not produced before the court being dead. Nothing was on record to establish that prior to death of the deceased, he was examined. As to why dying declaration was not documented in presence of doctor was not explained. No certificate was on record as to whether the dying man was in conscious, semi-conscious, oriented in space and time and was able to make rational talking. What prevented the prosecution for not obtaining fitness certificate was not on record. Dying declaration of the deceased, in circumstances, was not worth reliance.

In Murad v The State 1957 PLD 332, On the question of divisibility of a dying declaration, a dying declaration was not discarded as a whole on account of its having been found partially incorrect and it was made a basis for conviction qua some of the accused named therein; relevant portion is reproduced below:-

"Learned counsel for the appellant attacks the dying declaration on the ground that it contains false recitals for in it Shera and Haider are stated to be armed with ballams and to have caused injuries using them as dangs and the learned Sessions Judge has found this part of the prosecution case to be untrue. We are prepared to accept that this part of the statement of the deceased is not altogether correct, for although one of the two acquitted accused may have given a blow, both of them could not have done so, there being only one blunt-weapon injury on the deceased, But we cannot on this ground discard the whole dying declaration, for there is no reason why the deceased should substitute someone else for the person who had fired at him."

However, in a subsequently decided case of Rang Ali and others v The State 1958 PLD 242 it was held by a learned Division Bench that veracity of a dying declaration is indivisible; relevant portion is reproduced below:-

"It was entirely out of question to accept a portion of the dying declaration and to reject the rest. There must be absolute guarantee of the truth of the entire statement before it can be acted upon. A 'touched up dying declaration' has no evidentiary value".

Courts holds that veracity of a dying declaration would be indivisible. As statement of maker of a dying declaration sans the sanctity of oath as well as opportunity of cross-examination, it would be extremely unsafe to allow its division so as to partially convict a person from the array of accused implicated therein. It would also be antithetical to the solemnity attached with a dying declaration (Paira and 2 others v. The State , 2016) .

### **Test for Determination of the Genuineness of Dying Declaration**

Dying declarations require scrutiny. Though it is admissible in law as evidence but it cannot be rigidly laid down that a dying person would speak only truth. The only reason for considering the dying declaration inviolable is the belief that a dying person who is apprehending death is not expected to be getting into worldly affairs at that time and would not tell a lie. He may not put false charges and involve innocent persons. In such situation the whole decision relies upon the power of human judgment to evaluate the case and to find out whether the statement is true or false. This requires a thorough analysis of the physical environment as well as the circumstances. It has been judicially recognized in Pakistan that people added innocent along with the guilty to satisfy their revenge and to harm the others. The magical purity of mind and conscience cannot be expected from the deceased in Pakistan's social environment. Even if the dying person is considered to be of clear conscience but the surrounding pressure of relatives and peers also needs to be considered before relying solely on the dying declaration (Tawaib Khan and another v The State, 1970). Since a dying declaration is already an exception to the hearsay rule therefore it needs to be thoroughly scrutinized especially under the guidance of observations made by the court. At different occasions, the august Supreme Court of Pakistan has settled some of the well-known tests for determining the genuineness of dying declaration which include the following:

- i) If it sounds true
- ii) Whether the dying man was capable of making it
- iii) Whether it was free from outside prompting and was consistent with other evidences, facts and situations of the case
- iv) Whether the deceased then injured was capable to identifying the assailant(s) (Abdul Ghafoor v. The State, 2020).

To reach to the truthful conclusion and to avoid falsity of a dying declaration a case must be considered in the midst of its' physical environment and circumstances. It is necessary to find out how far the evidence or its different parts fit in with the circumstances and possibility that can safely be deducted in a particular case. For this purpose a dying declaration needs to be scrutinized to qualify for the test of reliability (Waheed and another v The State and another, 2021).

Likewise, rule 25-21 of the Police Rules, 1934, speak about the essential ingredients to be followed during the recording of dying declaration, which for the sake of convenience and ready reference is reproduced below:-

- (1) When possible, a dying declaration has to be recorded by the magistrate.
- (2) If possible the Medical officer shall examine the person making declaration to ascertain his sound mental state.

(3) In case of absence of the magistrate and the gazetted officer a statement will be recorded in the presence of the two witnesses not related either to the police officer or to the concerned parties.

(4) If such witness is not available and there is a chance of the death of the injured person then the statement can be recorded in the presence of two or more police officers.

(5) Under section 162, Code of Criminal Procedure, if the statement is made to the police officer then it must be signed by the person making it.

The most suitable form of dying declaration is considered to be the one in the form of questions and answers, however in the form of narration it is also considered to be good as there is no provoking and everything is considered to be coming from the mind of the person making it. Though the person making the statement can also nod and use gestures if he is not capable of speaking. While recording it in the form of question and answers care should be taken that exact questions and answers are written as are asked and answered. Moreover the preferred vernacular is the one that is comprehensible for the patient.

### **Nature of Corroboration**

It is established principle of law that dying declaration by itself is a weaker type of evidence which needs corroboration through confidence inspiring evidence (Said Karam alias Ajarr and others---v. The State and others 2019). In this regard, wisdom is derived from the case of Tahir Khan v. The State 2011 SCMR 646 in the following manner:-

"Mere dying declaration shrouded by mystery and fraught with so many infirmities is not enough to convict a person. Dying declaration is weaker type of evidence, which needs corroboration when fully corroborated by other reliable evidence. Facts and circumstances of each case have to be kept in view and also credibility, reliability and acceptability of such declaration by Court."

Medical report plays an important role in determining the genuineness of the dying declaration. In Abdul khaliq v. The State 2021 S C M R 325 Dying declaration made in presence of doctor that was corroborated by recovery of weapon and medical evidence. According to the doctor's deposition, he endorsed/attested statement given by the deceased, which was subsequently treated as a dying declaration. Doctor was subjected to extensive cross-examination but remained unambiguously categorical about deceased's capacity to communicate at the time when he examined him in an injured condition. Doctor further confirmed that the statement of deceased was recorded in his presence, and he denied connivance with the police. Evidence given by the doctor was found to be straightforward and confidence inspiring throughout without any taint. Dying declaration was further corroborated by the weapon recovered from the accused at the time of his arrest, found wedded with the casings secured from the spot and consistent with the

injuries that cost the deceased his life. Statement of a witness, who was a resident of the same locality, was in line with the details of events given in the dying declaration. Petition for leave to appeal was dismissed and leave was refused. In *Mashad Ali v The state and another* 2021 P Cr. L J Note 16 Factum of orientation and consciousness of the deceased, then injured, at the time of making report was gathered from the testimony of Medical Officer, who medically examined the deceased, then injured, deposed that the deceased, then injured, was aerodynamically stable. Both, the author of Murasila and the Medical Officer, had been subjected to cross-examination by the defense but nothing was brought from them that the deceased was not capable to make statement/report. Dying declaration bore the thumb impression of the deceased as well as signature of its author. Appeal against conviction was dismissed accordingly. In *Laxman v. State of Maharashtra* 2002 6 SCC 710, in India it was observed by the Supreme Court that if it is mentioned in the medical certificate that patient was conscious then it will be incorrect to object regarding certification related to state of mind of the patient. Moreover, the sound state of mind gets obvious by the testimony of the doctor who recorded the statement.

In *Waheed and another v The State and another* 2021 P Cr. L J 719 Dying declaration not supported by medical evidence. In view of the said injuries on most vital parts, capability and ability of the deceased, then injured, to make statement/talk was beyond the comprehension of a prudent mind. Alleged dying declaration of the deceased, then injured, had not been corroborated by any circumstantial evidence to prove the participation of the accused in the commission of the offence. Appeal against conviction was allowed, in circumstances. In *Mst. Ghulam Zohra v Malik Muhammad Sadiq and another* 1997 S C M R 449 Police Officer had not obtained certificate from the Doctor before recording the statement of the deceased in an injured condition that he was in a fit condition to give the statement, nor he had given a plausible explanation for such omission and fitness of the deceased to make the statement, thus, remained doubtful. Attesting witnesses of the dying declaration did not fully support the prosecution case and their evidence suffered from glaring contradictions adversely reflecting upon the genuineness/veracity of the dying, declaration. Police Officer had also failed to procure the presence of the Magistrate at the time of recording the statement of the deceased. Statement of the deceased, in circumstances, could not be safely acted upon for maintaining the conviction of accused on the murder charge Leave to appeal was refused in both the petitions accordingly.

Statement of deceased in the form of an F.I.R. can be treated as a dying declaration which by itself is good enough for sustaining the conviction on a capital charge (*Mst. Ghulam Zohra v Malik Muhammad Sadiq and another* 1997). In *Zaka ullah v. The State* 2021 P Cr. L J 1 , *Altaf Gohar* SI on receipt of information of the occurrence reached at THQ, Hospital Kallar Syedan and found *Naheed Akhtar* lying in injured condition with burn marks; that he after permission from the Doctor got recorded statement of *Naheed Akhtar* and thereafter sent it to the police station,

which later on was reduced into formal FIR and thereafter prepared injury statement. The facts of the case were that accused was charged that he sprinkled petrol on the complainant/deceased and then kindled fire with lighter, and victim later succumbed to the injuries. Record showed that dying declaration of the deceased was made in the presence of Medical Officer and Investigating Officer in hospital, within one hour and twenty minutes of the occurrence and accused was the sole perpetrator nominated therein. Since victim died subsequently, hence her statement was used during trial as "dying declaration" and was projected the bastion of prosecution case. Medical Officer affixed her signature upon statement of victim as certificate of correctness. Medical Officer gave opinion on a police query that victim was fit to make statement. Neither the Medical Officer nor the Investigating Officer was either related with deceased or had any affair of abhorrence with the accused, thus by no stretch they could be treated as mendacious. Nothing as such was available from which it might have even remotely insinuate that deceased was pitched in an affair of grouse or grudge with accused so as to substitute him in her dying declaration as the sole perpetrator of crime by letting the actual culprit go scot-free. Evidence of dying declaration was found to inspire confidence, thus conviction could be awarded thereupon. Appeal against conviction was dismissed with modification in sentence. In *Niamat Ali v. The state* 1981 S C M R 61, Supreme Court declared that Din Muhammad's declaration was rightly treated as F . I. R. The court did not find any reason that a person having an eminent danger of death would have lied and taken the name of the innocent person as a culprit. This stands as evidence against the appellant so no further corroboration is required.

Dying declaration was to be made by the deceased with the clarity of mind that he was going to die otherwise FIR, could not be considered as dying declaration. In *Ali Gul Abro and another--v. The State* 2018 P Cr. L J 858 First Information Report was considered as dying declaration by the Trial Court against the accused-appellants and they were sentenced for life imprisonment. FIR was written by the police in a routine manner, the deceased was in his senses and he had signed the FIR himself after verifying its contents. Said FIR did not fulfill the requirements of a "dying declaration"--- Record showed that deceased himself had gone to the police station and lodged FIR, deceased had received injury on non-vital part of the body, as such he was not under the expectation of death at the time of lodging FIR. In such circumstances, FIR could not be considered as dying declaration. In *Muhammad Ismail v. The State* 1985 P Cr. L J 2272 Dying declaration a verbatim copy of First Information Report and inspiring no confidence Although it was recorded in hospital yet it did not bear signature of doctor Held, in view of these infirmities it would be highly unsafe to rely on such dying declaration or to use same as corroboration of statement of partisan eye witnesses. In *Nawab v. The State* 1989 P Cr. L J 1 Trial court rejected the F.I.R to be taken as a dying declaration owing to the fact that there was no reporting from the doctor to testify the mental health of the patient, Moreover, patient was accompanied by his relatives and therefore court had doubts that the patient might have been influenced by them. Furthermore there was no record available that showed that the deceased was aware that his statement is the last one and death was imminent.



However, Dying declaration once believed is not legally required to be supported by independent corroboration, especially in the absence of allegation of the substitution of real culprit with the accused . In *Parvez v. Farhad Ali* and another 2005 172, Court held that:-

"No doubt, sometimes a dying declaration alone cannot be made a basis of conviction and as a matter of abundant caution the superior courts ask for its corroboration but it is not a rule of law, but requirement of prudence, and if it is proved that it is influence free or does not suffer from any infirmity, it becomes a substantive piece of evidence and it alone can become a basis of conviction."

### **Conclusion**

It is noted that the dying declaration is important evidence to an extent that it can become the cause of conviction. Dying declarations enjoy sacrosanct status in evidence. However in the present world of declining morality and raising corruptions there are doubts that how many still believe in the cliché that a man will not meet his maker with a lie on his lips. This belief seems shaken in the midst of modern rivalries, hatred and competitions. However this evidence is admissible on the grounds that these declarations are made on the death bed where the charms of the worldly life seem to vanish. Nevertheless dying declaration remains a weak evidence which need to be scrutinized minutely by the court along with its physical environment and the circumstances. It has been observed in this paper that admissibility of the dying declaration varies from case to case and its' solemnly a responsibility of the court to analyze and verify the truthfulness of the evidence.

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