

Dying declaration – If a dying declaration suffers from some infirmity, it cannot be the sole basis for convicting the accused – In those circumstances, the court must step back and consider whether the cumulative factors in a case make it difficult to rely upon the said dying declaration.

“46. It is the duty of the prosecution to establish the charge against the accused beyond reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. The evidence of the Professor of Forensic Medicine casts considerable doubt as regards the condition of the deceased to make a voluntary and truthful statement. It is for that reason non-examination of Dr. T. Narasimharao, Casualty Medical Officer, who was said to have been present at the time of recording of both the dying declarations attains some significance. It is not because it is the requirement in law that the doctor who certified about the condition of the victim to make a dying declaration is required to be examined in every case. But it was the obligation of the prosecution to lead corroborative evidence available in the peculiar circumstances of the case.

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52. The dying declaration must inspire confidence so as to make it safe to act upon. Whether it is safe to act upon a dying declaration depends upon not only the testimony of the person recording the dying declaration—be it even a Magistrate but also all the material available on record and the circumstances including the medical evidence. The evidence and the material available on record must be properly weighed in each case to arrive at a proper conclusion. The court must satisfy itself that the person making the dying declaration was conscious and fit to make statement for which purposes not only the evidence of persons recording the dying declaration but also cumulative effect of the other evidence including the medical evidence and the circumstances must be taken into consideration.”

Nallapati Sivaiah v. Sub-Divisional Officer, Guntur, Andhra Pradesh, (2007) 15 SCC 465