



LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 3

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.312>

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MULTIPLE DYING DECLARATIONS AND THE SEARCH FOR RELIABILITY: JUDICIAL APPROACHES UNDER SECTION 26(A) OF THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Jiya Dargar¹

I. ABSTRACT

*A dying declaration is admissible under Section 26(a) of the Bharatiya Sakshya Adhinyam, 2023 even though the maker cannot be cross-examined. The rule rests on the assumption that a person facing death is unlikely to speak falsely. In practice, however, a victim may make more than one statement before death. When such statements differ on material points, including the identity of the assailant or the manner in which the injury was caused, courts must determine which declaration, if any, can safely be relied upon. This paper addresses that precise doctrinal and practical difficulty. Its focus is not on restating every condition for a valid dying declaration, but on examining judicial treatment of multiple and inconsistent declarations under Section 26(a). The paper adopts a doctrinal methodology by analysing the statutory text, leading Supreme Court decisions, standard Indian commentaries on evidence law, and limited comparative reference to the narrower English rule. Particular attention is given to authorities such as *Amol Singh v State of Madhya Pradesh*, *Jagbir Singh v State (NCT of Delhi)*, and the recent decision in *Jemaben v State of Gujarat*. The central argument is that the admissibility of a dying declaration is only the starting point; its reliability must be tested independently and contextually. Building on the multi-factor approach in *Jagbir Singh*, the paper proposes a compact five-step judicial sequence: chronological mapping, scrutiny of voluntariness and fitness, classification of material inconsistencies, conditional preference for independent recording, and reasoned judicial selection. This structured approach does not alter the existing doctrine. Rather, it converts established*

¹ BALLB (hons.), IX semester student at National Law Institute University, Bhopal (India). Email: jiyadargar.ballb@nliu.ac.in

principles into a clearer procedural checklist, reduces the risk of selective acceptance, and promotes greater transparency in cases where the deceased has left behind conflicting accounts.

II. KEYWORDS

Dying Declaration, Bharatiya Sakshya Adhiniyam, s 26(a), Multiple/Inconsistent Declarations, Reliability, Corroboration.

III. INTRODUCTION

The law of evidence in India has always recognised that certain statements made by a person who later dies may be received in evidence even though the maker cannot be cross-examined. The most important of these is the dying declaration. Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023 continues this rule. The underlying idea is expressed in the well-known maxim that a person who is about to die is not presumed to lie.² Standard textbooks on evidence have explained this principle for many years and continue to treat it as a settled part of Indian law.³⁴⁵

In actual trials the matter is rarely so simple. A victim of a serious assault or burn injury may make several statements over a period of hours or days. One statement may be recorded by a police officer at the hospital, another by a doctor while treating the patient, and a third by a magistrate after the victim has been declared fit to speak. These statements sometimes agree with one another. More often they contain differences, sometimes minor, sometimes substantial. When the differences go to the heart of the case, such as the identity of the attacker or the manner in which the injury was caused, the court must decide which statement can be trusted.

This paper concentrates on that precise difficulty. It does not attempt to restate every condition for a valid dying declaration. Its purpose is narrower: to examine how courts

²Khushal Rao v State of Bombay AIR 1958 SC 22, 28; Laxman v State of Maharashtra (2002) 6 SCC 710, 714.

³Ratanlal and Dhirajlal, The Law of Evidence (27th edn, LexisNexis 2021) 512–18.

⁴Sarkar, Law of Evidence (20th edn, LexisNexis 2021) vol 1, 1089–95.

⁵M Monir, Textbook on the Law of Evidence (12th edn, Universal Law Publishing 2022) 289–97.

should approach a situation in which more than one dying declaration is on record and the declarations are not consistent with each other. The discussion draws upon the statute, the decisions of the Supreme Court, and the observations of the leading Indian commentaries on the law of evidence.

A. Research Objectives

The principal objective of this paper is to clarify the judicial treatment of multiple inconsistent dying declarations under Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023. More specifically, the paper seeks to:

1. Identify the doctrinal foundations that permit a dying declaration to be received despite the absence of cross-examination;
2. Map the principles evolved by the Supreme Court for assessing successive or conflicting declarations;
3. Examine the practical difficulties — selective acceptance, fluctuating fitness, the presence of interested persons, and the absence of a rigid hierarchy among recording authorities — that continue to produce uneven outcomes;
4. Propose a structured five-step sequence that converts the Court's substantive factors into an ordered procedural checklist, thereby enhancing transparency and reducing the appearance of selective reliance.

A secondary objective is to demonstrate how recent decisions, particularly *Jemaben v State of Gujarat* (2025 INSC 1268), reinforce the independent assessment of each declaration while underscoring the value of the first statement recorded by an independent medical officer when it is free from suspicion.

B. Research Questions

The inquiry is guided by the following research questions:

1. How should courts rank or prefer conflicting dying declarations that have been recorded by different authorities (police, doctor, magistrate) when the

statements differ on core facts such as identity of the assailant or the manner of causing injury?

2. What weight, if any, should be given to the chronological sequence of declarations and to intervening events (medical treatment, presence of relatives, recovery of composure) when material inconsistencies appear?
3. To what extent does the multi-factor framework articulated in *Jagbir Singh v State (NCT of Delhi)* already supply an adequate analytical structure, and what, if anything, does a sequential procedural checklist add to that framework?
4. Under what conditions may a single reliable dying declaration form the sole basis of conviction even when other declarations on the record are inconsistent with it?
5. How can courts minimise the risk of selective acceptance, accepting the declaration that supports the prosecution while discarding the one that creates doubt, while still discharging their duty to evaluate each statement on its own merits?

C. Research Methodology

The paper adopts a doctrinal (black-letter) methodology. It proceeds through four interlocking steps.

First, the statutory text of Section 26(a) of the *Bharatiya Sakshya Adhiniyam, 2023* is analysed and compared with its predecessor, Section 32(1) of the *Indian Evidence Act, 1872*, and with the narrower English rule that still requires a settled expectation of death.

Second, a systematic survey of Supreme Court decisions is undertaken, beginning with foundational authorities such as *Khushal Rao and Laxman*, moving through *Nallam Veera Stayanandam*, *Atbir*, *Amol Singh* and *Jagbir Singh*, and culminating in the recent decisions in *Chaman Lal*, *Mitesh @ TV Vaghela* and *Jemaben*.

Third, the guidance offered by leading Indian commentaries—Ratanlal and Dhirajlal, Sarkar, Monir, Batuk Lal, Sarathi, and Woodroffe and Ameer Ali—is examined for points of convergence and divergence.

Fourth, the paper synthesises these materials into a practical five-step sequence intended for use by trial and appellate courts. Comparative reference to English law is limited to highlighting the deliberate breadth of the Indian provision; no attempt is made at a full comparative study. The analysis is confined to the treatment of multiple inconsistent dying declarations and does not extend to other species of statements under Section 26.

IV. STATUTORY FRAMEWORK UNDER THE BHARATIYA SAKSHYA ADHINIYAM, 2023

A. The Text of Section 26(a)

Section 26 of the Bharatiya Sakshya Adhiniyam, 2023 deals with statements made by persons who cannot be called as witnesses. Clause (a) provides that a statement 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, is relevant when the cause of that person's death comes into question. The statement remains relevant whether or not the maker was under expectation of death at the time it was made, and whatever may be the nature of the proceeding.

This formulation is substantially the same as the former Section 32(1) of the Indian Evidence Act, 1872. The change from the old Act to the new Adhiniyam has not altered the substance of the rule. Commentators have noted that the Indian provision is deliberately wider than the corresponding English rule. The Indian rule does not require expectation of immediate death, whereas the English rule continues to require that the declarant should have been under a settled expectation of death.⁶⁷

⁶⁷Phipson on Evidence (20th edn, Sweet & Maxwell 2022) para 30-12 (comparative discussion of the English approach, which still requires expectation of death).

⁷Monir (n 5) 291-92.

B. Why the Statement Is Admitted Despite the Absence of Cross-Examination

The ordinary rule of evidence is that a statement made outside the court is not admissible to prove the truth of its contents. The dying declaration is an exception to that rule. The justification usually offered is that the solemnity of the occasion makes falsehood unlikely. At the same time, because the maker cannot be cross-examined, the court is required to scrutinise the statement with care. Leading commentaries emphasise that admissibility and reliability are two different questions. A statement may be admissible under Section 26(a) and yet carry little weight if the circumstances surrounding it create doubt.⁸⁹¹⁰

V. THE NATURE OF THE PROBLEM WHEN MULTIPLE DECLARATIONS APPEAR

A. How Multiple Declarations Arise in Practice

In a typical homicide or burn case the first statement is often recorded by a police officer soon after the victim is admitted to hospital. If the victim survives for some time, a further statement may be recorded by a magistrate under proper medical supervision. In some cases, a doctor also records a short statement while examining the patient. Each of these statements is capable of being treated as a dying declaration if the victim later dies and the cause of death is in issue. In many reported cases the first statement is recorded by a police officer soon after the incident, while a later statement is recorded by a magistrate after the victim has received medical attention. The time gap and the change in the recording authority often become important points of argument.

When the statements are consistent, they strengthen one another. The difficulty begins when they differ. The differences may be minor, such as a variation in the exact time of the incident or the precise words spoken by the attacker. They may also be major, such

⁸Batuk Lal, *The Law of Evidence* (24th edn, Central Law Agency 2023) 341–52.

⁹Vepa P Sarathi, *Law of Evidence* (8th edn, Eastern Book Company 2021) 198–205.

¹⁰Woodroffe and Ameer Ali, *Law of Evidence* (21st edn, LexisNexis 2022) vol 2, 1456–68.

as a change in the name of the person accused or a complete alteration in the description of the motive. It is the major differences that create the real problem for the court.

B. Why Inconsistencies Create Difficulty

The court cannot simply choose the statement that appears most detailed or most favourable to one side. Nor can it average the different versions. It must decide whether any of the statements can be accepted as a true account of what happened. Leading writers on evidence have pointed out that the presence of inconsistencies does not automatically destroy the value of every declaration. Minor variations are common and should not, by themselves, destroy the value of an otherwise reliable dying declaration, but they do require the court to examine the surrounding circumstances with particular care.¹¹¹²¹³

VI. PRINCIPLES EVOLVED BY THE SUPREME COURT

A. Each Declaration Must Be Assessed Independently

The starting point is that every dying declaration must be examined on its own merits. One declaration should not be discarded merely because it differs from another. If a particular statement appears voluntary, free from tutoring, and made while the victim was in a fit condition, it may be accepted even if an earlier or later statement says something different.¹⁴¹⁵

This principle received fresh affirmation in *Jemaben v State of Gujarat* (2025 INSC 1268). The Supreme Court held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and that one cannot be rejected merely because of the contents of another. In that case the first declaration recorded by an independent

¹¹See the detailed discussion in Batuk Lal (n 8) 345–48 on the practical difficulties that arise when several statements are recorded at different times and by different persons.

¹²Woodroffe and Ameer Ali (n 10) 1462–64.

¹³Sarathi (n 9) 201–03.

¹⁴Nallam Veera Stayanandam v Public Prosecutor, High Court of AP (2004) 10 SCC 769.

¹⁵Nallam Veera Stayanandam (n 14); confirmed in more recent decisions such as *State of Himachal Pradesh v Chaman Lal* 2026 INSC 57.

medical officer (PW-3) naming the accused was accepted despite minor discrepancies in the versions given by prosecution witnesses regarding the declaration and the manner of occurrence.¹⁶¹⁷

B. Consistency Is Desirable but Not Essential

Complete consistency between successive declarations is helpful, but it is not a legal requirement. Material differences must be studied in the light of the facts of the particular case. Courts have accepted later statements even when they differed from earlier ones, provided a reasonable explanation for the change could be found. Common explanations include initial fear of the accused who was still present, gradual recovery of composure after medical treatment, or the influence of relatives who were present at the time of the first statement.¹⁸¹⁹²⁰

The Supreme Court in *Amol Singh v State of Madhya Pradesh* (2008) 5 SCC 468 crystallised the governing idea: “it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case.” If a dying declaration is found to be voluntary, reliable and made in a fit mental condition, it can be relied upon without corroboration. Where inconsistencies appear, the court must examine the nature of those inconsistencies and the circumstances surrounding each statement rather than discard the entire body of declarations.²¹

C. Greater Weight Is Usually Given to Statements Recorded by Independent Authorities

A statement recorded by a magistrate, or by a doctor who has certified that the victim was fit to speak, ordinarily carries greater weight than a statement recorded by a police

¹⁶*Jemaben v State of Gujarat* 2025 INSC 1268.

¹⁷*Jemaben* (n 16); the Court relied inter alia on *Nallam Veera Stayanandam* (n 14).

¹⁸*Atbir v Government of NCT of Delhi* (2010) 9 SCC 1.

¹⁹*Jagbir Singh v State of NCT of Delhi* (2019) 8 SCC 779.

²⁰See also *Paniben v State of Gujarat* (1992) 2 SCC 474; *State of Gujarat v Jayrajbhai Punjabhai Varu* (2016) 14 SCC 151.

²¹*Amol Singh v State of Madhya Pradesh* (2008) 5 SCC 468.

officer. This preference is not absolute. If the magistrate's statement itself raises suspicion, for example because interested persons were present or because the medical certificate is doubtful, the court may prefer an earlier police statement that appears free from such defects. Commentaries have consistently noted this relative ranking while reminding courts that the ultimate test remains the reliability of the particular statement under consideration.²²

Jemaben illustrates the point. The first dying declaration given before the independent medical officer was treated as reliable and capable of sustaining conviction; minor discrepancies in later accounts or in the testimony of prosecution witnesses did not justify discarding it. The decision underscores that independence of the recording authority, contemporaneous certification of fitness, and proximity to the incident remain powerful indicators of reliability.

D. A Reliable Declaration May Form the Sole Basis of Conviction

It is now well settled, following the foundational authority of *Khushal Rao*, that a dying declaration which fully inspires confidence can form the sole basis of a conviction. Corroboration is a matter of prudence, not a rigid rule of law. At the same time, if any declaration appears to have been influenced by tutoring or made when the victim was not in a fit state of mind, it must be discarded. The remaining declarations, if any, must then be examined afresh.²³²⁴²⁵

²²See the discussion in Sarkar (n 4) 1098–1101 and Monir (n 5) 295–96 on the relative weight of statements recorded by different authorities.

²³*Khushal Rao v State of Bombay* AIR 1958 SC 22.

²⁴*Khushal Rao* (n 23).

²⁵*Laxman* (n 2) para 8; *Atbir* (n 18) para 22.

These principles have been reaffirmed in recent decisions of the Supreme Court.²⁶²⁷ Standard commentaries continue to treat them as the guiding framework for trial courts and appellate courts alike.²⁸²⁹

E. The Multi-Factor Framework in *Jagbir Singh*

In *Jagbir Singh v State (NCT of Delhi)* (2019) 8 SCC 779, particularly in paragraphs 28–35, the Supreme Court distilled a multi-factor approach for assessing cases involving multiple dying declarations. The Court emphasised that conviction can rest solely on a dying declaration that inspires confidence; that the court must be satisfied there was no tutoring or prompting; that the imagination of the deceased was not at play; that the version is compatible with the reality emerging from the rest of the evidence; and that, where inconsistencies exist, the court must carefully attend to each declaration and to the surrounding material rather than automatically discard the later or the earlier statement.³⁰

The framework in *Jagbir Singh* supplies the substantive criteria. What it does not explicitly separate out is a mandatory chronological mapping of declarations and intervening events, nor does it prescribe an ordered sequence in which the criteria are to be applied. The structured approach proposed later in this paper builds directly on *Jagbir Singh* by converting those substantive factors into a sequential procedural checklist and by elevating the chronological reconstruction of circumstances to a distinct first step. In that sense the proposal is incremental rather than revolutionary: it seeks to make the existing doctrine more operational for trial courts confronted with a sheaf of inconsistent statements.³¹

²⁶State of Himachal Pradesh v Chaman Lal 2026 INSC 57.

²⁷Mitesh @ TV Vaghela v State of Gujarat 2026 INSC 469.

²⁸Ratanlal and Dhirajlal (n 3) 520–22; Sarkar (n 4) 1102–05.

²⁹Monir (n 5) 301–03; Batuk Lal (n 8) 355–58.

³⁰*Jagbir Singh* (n 19) paras 28–35.

³¹See the principles summarised in *Jagbir Singh* (n 19) and reaffirmed in subsequent decisions including *Chaman Lal* (n 26).

VII. PRACTICAL DIFFICULTIES IN APPLYING THE PRINCIPLES

1. The Risk of Selective Acceptance

Because each declaration is judged separately, the court retains a wide discretion. In some reported cases this discretion has been exercised in a manner that appears selective. The declaration that supports the prosecution case is accepted, while the declaration that creates doubt is rejected with only brief reasons. Commentators have critically discussed the problem of selective reliance, and the Supreme Court's observations in *Jagbir Singh* similarly underline the need to examine competing declarations with care. Such selective reliance may undermine the appearance of fairness, even if the final conclusion is correct on the facts.³²

2. Absence of a Rigid Hierarchy among Recording Authorities

Although statements recorded by magistrates and doctors are generally preferred, the preference is not absolute. A police-recorded statement that is free from suspicion may still be preferred if the later magistrate's statement appears influenced. The absence of a clear ranking can produce different results in cases that are otherwise similar. Courts and writers have recognised this flexibility as both a strength and a source of uncertainty.

3. Fluctuating Condition of the Declarant

When several statements are recorded over a period of days, the physical and mental condition of the victim may change. A medical certificate given at the time of one statement does not automatically cover a later statement. Courts have not always insisted on fresh medical evidence for each successive declaration. This has sometimes left a gap in the proof of fitness.³³³⁴ The Constitution Bench in *Laxman* clarified that medical

³²Ratanlal and Dhirajlal (n 3) 525; *Jagbir Singh* (n 19) paras 30–32.

³³*Laxman v State of Maharashtra* (2002) 6 SCC 710.

³⁴KI Vibhute, PSA Pillai's Criminal Law (16th edn, LexisNexis 2025) 350 – “the practical importance of contemporaneous medical evidence when the victim's condition is fluctuating”.

certification of fitness is desirable but not an absolute legal requirement. What matters is the court's satisfaction based on the totality of circumstances.

4. Presence of Interested Persons

The presence of relatives or other interested persons at the time a statement is recorded can raise a suspicion of tutoring. Even a consistent declaration may lose weight if the court is not satisfied that the victim spoke freely. Commentaries have repeatedly drawn attention to this risk. Ratanlal and Dhirajlal observe that the presence of interested persons at the time of recording can raise a suspicion of tutoring, even if the declaration is otherwise consistent.³⁵

VIII. SUGGESTIONS AND RECOMMENDATIONS

The principles developed by the Supreme Court need not be altered. They can, however, be applied through a clearer sequence of steps. The following five-step method is suggested as a practical guide for trial and appellate courts. It builds expressly on the multi-factor framework in Jagbir Singh by converting the Court's substantive criteria into an ordered procedural checklist and by adding an explicit chronological-mapping stage that the earlier decision left largely implicit.

1. Establish the Chronological Order and Surrounding Circumstances

The court should first note the exact order in which the declarations were made. For each declaration it should record the place, the persons present, the physical and mental condition of the victim, and any events that occurred between one statement and the next. This factual foundation is essential for any later comparison. Without a clear chronological map, explanations based on fear, recovery of composure, or subsequent medical treatment remain speculative.

2. Filter Each Declaration for Voluntariness and Fitness

³⁵Ratanlal and Dhirajlal (n 3) 523.

Each declaration should then be examined separately. The court must ask whether the statement was made voluntarily, whether the victim was in a fit condition to speak, and whether there is any indication of tutoring or prompting. Any declaration that fails this basic test should be set aside before the court proceeds further. This step operationalises the requirements of voluntariness and fitness that Jagbir Singh and the earlier authorities repeatedly emphasise.

3. Identify and Classify the Material Differences

The court should next list the differences that remain among the declarations that have survived the first filter. It should decide whether those differences can be reasonably explained, for example by fear, recovery of composure, or additional recollection, or whether they are truly contradictory on core facts such as the identity of the attacker. Minor variations in detail or description should not, by themselves, destroy the value of an otherwise reliable declaration.

4. Prefer the More Independent Recording Only When It Is Itself Reliable

Where the differences cannot be reconciled, the court may prefer the declaration recorded by a magistrate or a doctor, but only if that declaration itself is free from suspicion. If all the remaining declarations appear equally reliable yet remain contradictory, the safer course is to hold that the dying declarations do not provide a secure foundation for conviction and to look for independent corroborative evidence. The preference for independent recording authorities is thus conditional, not absolute, an approach consistent with both *Jemaben* and the relative-weight discussion in the commentaries.

5. Record Clear and Specific Reasons

Finally, the court should record clear reasons for accepting one declaration and rejecting the others. The reasons should deal with the specific differences that have been identified

and should explain why one version is preferred over the rest. General statements of principle are not enough.³⁶³⁷

This sequence does not remove the court's discretion. It only requires the court to demonstrate that the discretion has been exercised after a transparent examination of each declaration and of the conflicts among them. By making the analytical path visible, the structured approach reduces the risk of selective acceptance and supplies a more consistent template for appellate review.

IX. CONCLUSION

Section 26(a) of the Bharatiya Sakshya Adhiniyam, 2023 preserves a valuable exception to the ordinary rule against hearsay. When a single dying declaration is voluntary and reliable, it may safely support a conviction. When several declarations appear on the record and they differ on important points, the court's task becomes more delicate. The principles developed by the Supreme Court over many years, independent assessment of each declaration, the primacy of reliability over plurality, the relative weight of independent recording authorities, and the multi-factor framework articulated in *Jagbir Singh*, provide a sound foundation. Applying those principles through a clear sequence, first filtering each declaration for reliability, then classifying the differences, and finally explaining the preference with specific reasons, would reduce the risk of selective acceptance and make the court's reasoning more transparent.³⁸³⁹

Recent decisions such as *Jemaben v State of Gujarat* (2025 INSC 1268) confirm that a first declaration recorded by an independent medical officer can sustain conviction even in the face of minor later discrepancies, provided the declaration itself inspires confidence. *Amol Singh* remains the classic reminder that reliability, not mere plurality, is the touchstone. In a situation where the victim can no longer speak, the court must explain

³⁶*Atbir v Govt of NCT of Delhi* (2010) 9 SCC 1; *Jagbir Singh v State* (NCT of Delhi) (2019) 8 SCC 779 (sequential approach).

³⁷*Khushal Rao v State of Bombay* AIR 1958 SC 22.

³⁸KD Gaur, *Textbook on the Indian Penal Code* (8th edn, LexisNexis 2023) 521–25.

³⁹PSA Pillai, *Criminal Law* (14th edn, LexisNexis 2019) 348–52.

its choice with particular care. A structured approach does not guarantee the correct result in every case, but it does make the path to that result more visible and more consistent.

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