
FROM LAST WORDS TO LAST TEXT: CAN A WHATSAPP MESSAGE BE A DYING DECLARATION?

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ABSTRACT

The emergence and evolution of digital communication have completely changed the way human experiences, statements and final communications are preserved. In India, this technological change has raised a new evidentiary question: Can a WhatsApp Message Be a Dying Declaration? Traditionally, dying declarations have been studied in the form of oral statements, written documents, letters and statements recorded by the competent authorities. The increasing reliance on instant messaging platforms, however, challenges conventional notions of form, authenticity, and reliability.

This paper deals with the legal recognition and evidentiary value of WhatsApp messages in the light of the Bharatiya Sakshya Adhiniyam, 2023. It examines the principles governing dying declarations, such as the need for the statement to concern the cause or circumstances of death, and considers if these principles are adaptable to electronically transmitted communications. The study delves into issues of authorship, voluntariness, mental fitness, contemporaneity, electronic authentication, preservation of digital evidence, and the possibility of fabrication or manipulation.

The research critically analyses the landmark judicial precedents on dying declarations, electronic evidence and the emerging judicial treatment of e-communications, including the recent judgement of Dharmendra v. State of MP (2026). It argues the legal validity of a WhatsApp message should be determined not only by its digital form, but by the substantive reliability of the statement and the authenticity of the electronic record. The paper concludes by attempting to answer whether the existing evidentiary principles are flexible enough to accommodate digital dying declarations or whether clearer judicial and legislative safeguards are required.

Keywords: Dying Declaration, Electronic Evidence, Bharatiya Sakshya Adhiniyam, 2023

Digital communication has become an ordinary part of personal life, and WhatsApp in particular has emerged as one of the most widely used platforms for instantaneous communication. A person facing threats, assault, harassment or other circumstances leading to death may instinctively communicate with a parent, spouse, friend or relative through WhatsApp. Such communication may contain the identity of an alleged perpetrator, the circumstances preceding the death, the reason for the victim's distress, or a description of the events that ultimately resulted in death. Unlike a traditional dying declaration, such a communication may not have been made in the presence of a magistrate, doctor, police officer or independent witness. Nevertheless, its contemporaneity and spontaneity may make it highly significant.

A dying declaration is a statement made by a person who believes their death is imminent, concerning the cause or circumstances of their death. Under Section 26(a) of the BSA, such statements are admissible in court even if normally considered hearsay, because the law presumes that a person facing imminent death is unlikely to lie, based on the maxim "*Nemo moriturus praesumitur mentire*"—a person about to die is presumed not to lie.

Generally, evidence is expected to be tested through the testimony of a witness who appears before the court and is subjected to examination and cross-examination. A dying declaration operates differently because the maker of the statement is not able to be examined due to death. Its admissibility rests upon the legal recognition that statements made by a person concerning the cause or circumstances of their death may possess a special degree of reliability, particularly when the declarant is conscious of the seriousness of the situation or the statement is otherwise shown to be voluntary and trustworthy.

The law does not ordinarily require a dying declaration to follow one particular physical format. What matters is whether the statement is attributable to the deceased, whether it concerns the cause or circumstances of death, whether it was voluntarily made, and whether it is sufficiently reliable to be acted upon. Therefore, the fact that a statement appears in a WhatsApp chat rather than on paper should not determine its legal status by itself.

The statutory provision of Section 26(a) of the BSA recognises statements that are written or verbal and makes relevant statements relating to the cause of death or circumstances of the transaction resulting in death. Section 63 governs the admissibility of electronic records in Indian courts. It provides that information contained in an electronic record, whether printed

on paper, stored on a computer, or copied onto optical or magnetic media, is deemed to be a document and can be admitted as evidence without producing the original device, provided the conditions set out in the section are satisfied. The important distinction, however, is between the substantive relevance of the deceased's statement and the procedural proof of the electronic record in which that statement is contained. The former concerns dying-declaration doctrine; the latter concerns electronic evidence.

This creates two distinct but interconnected questions. Whether the WhatsApp communication is legally relevant as a statement made by a deceased person concerning the cause or circumstances of death. Whether the electronic record produced before the court is authentic and legally admissible. A WhatsApp message cannot acquire evidentiary value merely because a screenshot exists. The court must be satisfied that the message is genuinely attributable to the deceased and that the electronic record has not been manipulated, fabricated, selectively altered or taken out of context.

The distinction between admissibility and reliability is particularly important. An electronic record may satisfy the formal requirements for admission but still require little evidentiary weight if its authenticity or context is doubtful. However, a message may appear highly persuasive because it was sent immediately before death, but its evidentiary value may be undermined if there is insufficient proof that the deceased actually authored it. The law must therefore avoid two opposite extremes. treating digital communication as inherently unreliable merely because it is digital, or treating every WhatsApp message allegedly sent by a deceased person as automatically conclusive.

In any handwritten dying declaration, handwriting, signature, witnesses and circumstances of execution may assist in establishing identity. In an oral declaration, the person who heard the statement may possibly try to testify about its contents and circumstances. A WhatsApp message presents a different evidentiary environment and is associated with a telephone number and account, but ownership of a telephone number does not necessarily establish authorship beyond doubt. A mobile device may be shared, accessed by another individual, compromised, or used by someone who knows the device's password. A WhatsApp account may also remain logged into another device. Consequently, the prosecution must establish a credible connection between the deceased and the particular electronic communication.

A dying declaration has value because it represents the deceased's own account rather than the

result of coercion, tutoring or manipulation. Digital communications create new questions in this respect. A person may send a message under pressure, after receiving threats, or while another person controls the device. However, the spontaneity of a message sent privately to a trusted family member may strengthen the inference that it represents the sender's genuine account. The court must therefore examine the circumstances surrounding the creation and transmission of the message rather than merely its contents.

A dying declaration is not rendered invalid merely because it was not medically certified, but the court must be satisfied that the declarant was capable of understanding and communicating the relevant facts. In the digital context, mental fitness may sometimes be inferred from the coherence, sequence and nature of the messages. A series of logically connected messages sent within a short period may provide contextual evidence of conscious communication. At the same time, incoherent or contradictory digital messages may require scrutiny, particularly where the deceased was suffering from serious physical or psychological distress.

The possibility of fabrication and manipulation presents an even greater challenge. Digital information can be copied, edited, deleted, selectively presented or manipulated. A screenshot is particularly vulnerable because it may display only a portion of a conversation without providing the underlying electronic record. The absence of the original device or complete chat history can create uncertainty concerning whether messages were deleted or whether the displayed conversation has been selectively extracted. For this reason, preservation of the original device, extraction of the relevant data, maintenance of chain of custody, forensic examination where necessary, and compliance with the BSA's electronic-evidence requirements assume considerable importance.

The special difficulty with WhatsApp messages is that they occupy an intermediate space between documentary evidence and personal communication. The content may resemble a written statement because it appears as text, but its existence depends upon an electronic system. The communication may therefore simultaneously raise questions concerning the substantive doctrine of dying declarations and the procedural requirements governing electronic records. The court cannot resolve the issue simply by classifying the message as a "document" or "chat." It must examine both dimensions.

The recent decision of the MP High Court in *Dharmendra v. State of Madhya Pradesh*, Criminal Appeal No. 5816 of 2026, demonstrates the practical importance of this issue. In that

case, the deceased had sent three WhatsApp messages to his father shortly before his death, naming the persons allegedly responsible. The Court treated the WhatsApp communication as a crucial prima facie dying declaration while considering the appellants' challenge to the denial of bail. They relied upon the mobile-phone panchnama and concluded that a strong prima facie case existed.

The importance of *Dharmendra* lies not merely in the fact that a WhatsApp message was considered by the Court. More significantly, it illustrates the judiciary's willingness to assess the evidentiary substance of electronic communication within existing principles rather than reject it simply because it does not resemble a conventional dying declaration. At the same time, the decision arose at the stage of bail consideration, where the court is not expected to conduct a detailed trial or finally determine the admissibility and ultimate evidentiary weight of every piece of evidence.

The distinction between a message being capable of consideration and a message being sufficient for conviction is critical. A court may find that a WhatsApp message has prima facie evidentiary significance while ultimately requiring stronger proof at trial. At the trial stage, questions of authorship, authenticity, voluntariness, mental fitness, completeness and electronic integrity can be examined through witnesses, forensic evidence and the original device or relevant electronic record.

There is also an important distinction between a WhatsApp text message and other forms of digital communication. A voice note may more closely resemble an oral declaration because the deceased's voice is preserved. A video message may provide additional evidence of identity, physical condition and mental state. A text message may provide stronger contemporaneous documentation but less direct evidence concerning the physical condition of the sender. A video call may contain substantial contextual information but present greater questions concerning recording, storage and preservation. The reliability concerns surrounding electronic evidence will become increasingly complex as technologies capable of generating synthetic text, cloned voices and manipulated videos become more accessible. The legal principle should therefore remain technology-neutral.

Another concern is the expectation of death. The phrase "circumstances of the transaction which resulted in his death" is therefore particularly significant. A WhatsApp message need not necessarily contain the exact words "I am going to die because of X." It may describe a

sequence of events, threats, assaults, demands, harassment or other circumstances connected with the eventual death. The court must determine whether the communication has a sufficient nexus with the death in question. The connection cannot be so remote that the statement merely concerns the deceased's general grievances unrelated to the death.

This requirement also prevents the doctrine from becoming excessively broad. A deceased person's WhatsApp history may contain hundreds or thousands of messages. Not every statement made by a deceased person should be converted into a dying declaration merely because the person later died. The statutory exception is concerned with statements relating to the cause of death or circumstances of the transaction resulting in death. Relevance must therefore be established through a demonstrable nexus between the content of the communication and the death.

The answer to the central question is consequently neither an unconditional "yes" nor an unconditional "no." A WhatsApp message can potentially be sufficient as a dying declaration where it satisfies the substantive requirements governing dying declarations and the procedural requirements applicable to electronic evidence.

The most appropriate approach is to treat the WhatsApp message as a potentially valid mode of communication of a dying declaration rather than as a separate category of evidence requiring an entirely new doctrine. The electronic-evidence provisions should then operate as an additional layer ensuring that the record presented to the court is genuinely the communication attributed to the deceased. Such an approach is consistent with the broader philosophy of evidence law. The law of evidence should not become technologically obsolete merely because the mode of communication changes.

A cautious judicial framework could require courts to examine several interconnected factors, whether the communication can reliably be attributed to the deceased; whether the device or account has been properly identified; whether the complete conversation has been preserved; whether the message was sent voluntarily; whether the deceased was mentally capable of communicating; whether the message is sufficiently proximate to the death or otherwise connected with the circumstances causing it; whether there is evidence of manipulation or alteration; whether the electronic record satisfies the applicable statutory requirements; and whether the communication is consistent with independent evidence.

This is where judicial discretion becomes particularly important. The court should examine the entire evidentiary aspect rather than isolate technical defects from the substantive reliability of the communication. Where a message is recovered from the deceased's original phone, corresponds with other evidence, was sent shortly before death, is addressed to a known family member, contains details subsequently verified by investigation, and shows no apparent signs of manipulation, its evidentiary value may be considerably stronger than that of an unexplained screenshot produced by an interested party long after the death.

Ultimately, the phrase "from last words to last text" represents more than a technological shift. It represents a transformation in how the law understands human communication at the boundary between life and death. The final communication of a person may no longer be a spoken sentence recorded by a magistrate or a handwritten declaration discovered after death. It may be a message sent from a mobile phone in the middle of the night, a voice note delivered to a parent, or a final text explaining who was responsible and why.

The law should be capable of hearing that final communication without being blinded by the medium through which it was delivered. At the same time, the court must ensure that the digital record genuinely represents the deceased's communication and has not been fabricated, altered or taken out of context.

The evolution from last words to last text therefore calls for neither blind acceptance nor technological scepticism. It calls for a principled, technology-neutral and reliability-centred approach. The WhatsApp message of a deceased person can potentially speak from beyond the grave, but before the law allows that digital voice to influence a person's liberty or conviction, it must first establish that the voice truly belonged to the deceased.