



CONFESSION: A DOUBLE EDGED SWORD

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Abstract— Despite increased evidence that confessions may be unreliable, they remain the gold standard of evidence for police investigations. One reason for the rejection of some confessional statements is that when confessions are not voluntary there is the danger of the accused falsely implicating himself. The belief that confession is the first step toward redemption is still present in India, where a sincere confession will commonly result in the reduction of an offender's sentence. A confession can only be in respect of a matter within the knowledge of the person confessing. Only voluntary and direct acknowledgment of guilt is a confession but when a confession falls short of direct admission of guilt it may nevertheless be used as evidence against the person who made it. These rules serve to guarantee that wrongful convictions do not occur. They also serve as a deterrent to abusive interrogation by the police. Some interrogative techniques violate the defendant's free-will or procedural rights. What confessions are, further examine the , the probative value of confessions, third degree practices by police, The role of the court in relation to confessional statements is also of utmost importance. This paper focuses on various aspects of confessions and its probative value and abuse.

Key Words: *confession, accused, evidence, admissible, police*

INTRODUCTION

The concept of confession which existed since time immemorial is nowhere defined. A confession is a free and voluntary admission of guilt by an accused person.¹ According to Lord Atkin "No statement that contains self exculpatory matter can amount to a confession"

Confessions have been used as evidence against criminal defendants since ancient times. Classical Indian law also stressed the virtues of confession and repentance. The *Manu-smriti* ("Laws of Manu"), generally thought to have been compiled about 100 CE, was based upon the ancient Hindu concept of dharma (generally, the religious and moral law governing individual conduct). Chapter 11 of the *Manu-Smriti* warns sinners of the necessity of expiating their misdeeds and attaches a purifying effect to confession and repentance. Despite increased evidence that confessions may be unreliable, they remain the gold standard of evidence for police investigations. One reason for the rejection of some confessional statements is that when confessions are not voluntary there is the danger of the accused falsely implicating him. Different countries have different rules governing the admissibility of confessions. These rules serve to guarantee that wrongful convictions do not occur. They also serve as a deterrent to abusive interrogation by the police. The belief that confession is the first step toward redemption is still present in India, where a sincere confession will commonly result in the reduction of an offender's sentence. The admissibility of the confessions of accused persons, however, has always raised concerns of fairness and accuracy. The provisions of evidence relating to confession which was passed way back in 1872, not only provide blanket to the accused against police atrocities, but also give way to bring the crime in light by the aid of Section 27. On one hand confession to police is not admissible, on the other side the confession under a promise of secrecy, deception, drunkenness, interrogation and want of warning is admissible under Section 29, doesn't hit by Section 25.

It is naturally hard to understand why anyone would confess to a crime they had not committed, but in situation like:

"The police probably put him between a rock and a hard place, like, 'You are going to be convicted anyways. If you go to trial, even though you didn't do it, you will be convicted. If you are convicted, you will get twenty years. If you tell us you did it, then we can get you eight years.' So it is more like, 'Well, I would rather leave for eight years than twenty'."—Mock juror

"In any kind of interrogation, anybody with any common sense wouldn't agree to confessing to a murder. I mean that is...that is absurd."—Mock juror

¹ Oseni V State 2012 Vol 2 MJSC Pt. II 123



DOMAIN OF CONFESSION

Lord Atkin observed:

*“A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not in itself a confession”.*²

Sections 24 – 30 of the Indian Evidence Act deals with the confession, as such it is defined nowhere in the Indian Evidence Act. The definition of the admission as given in Section 17 becomes applicable to confessions also. According to Black’s Law Dictionary, the distinction between admissions in criminal cases and confessions by the accused is the distinction in effect between admissions of fact from which the guilt of the accused may be inferred by the jury and the express admission of guilt itself.³ A confessional statement must identify the perpetrator of the offence. In the case of a bride burning a confession was made before the village panchayat by a large number of peoples of whom the accused was only one. Who among them had burned the bride was not mentioned. Such confession was held to be not capable of being used against any person. Specifically it was not a confession in any sense of the word.⁴ A confession can only be in respect of a matter within the knowledge of the person confessing. A confession is worthless if it relates to matters outside of that knowledge or experience. He cannot confess to the acts of other persons which he has not seen and of which he can only have knowledge by hearsay. The confession must be made by the accused himself and not by any other person.⁵ Only voluntary and direct acknowledgment of guilt is a confession but when a confession falls short of direct admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an admission under Section 21 of the Indian Evidence (Amendment) Act, 2002 (4 of 2003).⁶ Section 24 of the Evidence Act: Confession caused by inducement, threat or promise, when irrelevant in criminal proceedings- “A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of temporal nature in reference to proceeding against him”.

While under Section 29, the confession under a promise of secrecy, deception, drunkenness, interrogation and want of warning is admissible. So this section should be reworded so as to include inducement as an option to the accused to confess to the crime committed by him. A provision should be made that if the person confesses to his crime then the inducement given by a person in authority should fulfil that. The inducement should be made a legal one and an obligation to be fulfilled by the authority. That would tempt the accused to confess the crime and would severely lessen the burden of the courts. As it is the concept of plea bargaining has been reinvigorated in the Indian Criminal System with an amendment in the Criminal Procedural Code. With inducement as an option being allowed in case of confessions, this with plea bargaining would help in clearing the tremendous backlog of criminal cases which exist in our legal system. This promise or inducement should be made a legal obligation for the person in authority. To prevent abuse by the police officers of this provision, “person in authority” should not include police officers. It should comprise of magistrates, civil servants, etc.

Section 25 of the Evidence Act: Confession to police officer not to be proved

“No confession made to a police officer, shall be proved as against a person accused of any offence.”

The object of this rule is to prevent the extortion of confessions by police officers who in order to gain credit by

² Pakla Narayan Swamy v. Emperor, AIR 1939PC 47

³ Bryan Garner (Editor in Chief), 8th Edition, page 254

⁴ Kishan Lal v. State of Rajasthan, AIR 1999 SC 3062; (2000) 1 SCC 310; 1999 Cr LJ 4070; 1994 (4) Crimes 103.

⁵ R v. Asuquo Etim Inyang (1931) 10 NLR 33

⁶ C.B.I v V.C Shukla, A 1998 SC 1406; 1998 Cri LJ 1905.



securing convictions go to the length of positive torture. A series of conflicting suggestions as to the rational underlying this inflexible statutory bar emerges from the decided cases:

- (1) An objective and dispassionate attitude cannot be confidently be expected from police officers.
- (2) The privilege against self incrimination has been thought to lie at the root of the principle.
- (3) Importance has been attached to the discouragement of abuse of authority by the police that could erode the fundamental rights of the citizen.

Section 25 is an inflexible and a very wide provision disallowing any confessional statement made to a police officer. Section 26 which recognizes one exception that is, if the accused confesses in the immediate presence of a Magistrate, the confession will be valid should not be changed. It should be kept as it is. This section will come into play when the person in police custody is in conversation with any person other than a police officer and confesses to his guilt. The section is based on the same fear, namely, that the police would torture the accused and force him to confess, if not to the police officer himself, at least to someone else.

In *Pulukari Kottaya v Emperor*⁷ the scope of Section 27 was explained by their lordships: "Section 27 provides one exception to the prohibition imposed by Section 26 and enables certain statements made by a person in police custody to be proved. The condition necessary to bring Section 27 in operation is that the discovery of fact in consequence of information received from accused must be deposed to, and thereupon so much of the information as related distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. Normally the section is brought into operation when a person in police custody produces from some place of concealment, some object e.g. a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is accused."

The section is quite apparently laid out as a proviso or an exception to the preceding section which deals with confessions in police custody and other involuntary confessions. Thus it seems that the intention of the legislature is that all objections to the validity of that part of the statement are washed off which leads to the discovery of an article connected with the crime. Whether such a statement proceeds out of inducements, threats or torture are absolutely immaterial. This provision is liable of abuse by the police officers. With a view to finish of cases, police officers can subject the accused to torture and then plant evidence so as to proclaim the accused as guilty. This provision should be amended. The discovery of fact as purported by this section should be made in front of two witnesses so that there could be no planting of evidence done. This should be included in substantive law, irrespective of the fact that it exists in procedural law. Also, the statement of the accused which has lead to the discovery of a relevant fact would be invalid if it had been taken because of extortion, threat or torture. The accused should sign a document stating whether any fact discovered is not due to extortion or threat. The accused can be induced only if it is a valid and legal inducement. In the case of *Palvinder Kaur v State of Punjab*⁸ the Supreme Court approved the Privy Council decision in *Pakala Narayan Swami* case over two scores.

Firstly, that the definition of confession is that it must either admits the guilt in terms or admit substantially all the facts which constitute the offence. Secondly, that a mixed up statement which even though contains some confessional statement will still lead to acquittal, is no confession. Thus, a statement that contains self-exculpatory matter which if true would negate the matter or offence, cannot amount to confession. However there was nothing wrong or relying on a part of the confessional statement and rejecting the rest, and for this purpose, the Court drew support from English authorities. When there is enough evidence to reject the exculpatory part of the accused's statements, the Court may rely on the inculpatory part.⁹ Section 28 of the Evidence Act, Confession made after removal of impression caused by inducement, threat or promise relevant:

⁷ AIR 1947 PC 67

⁸ AIR 12 SC 34

⁹ *Nishi Kant Jha v State of Bihar*, 1959 SCR 1033



“If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed it is relevant.” Section 29 of Evidence Act: Confession otherwise relevant not to become irrelevant: “If such a confession is otherwise relevant it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk or because it was made in answer to questions he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.”

TYPES OF CONFESSIONS

Confessions are of two types: *Judicial or formal confession* is made in court in the course of the proceedings. *Extra judicial or informal confessions* are those made outside the court. Telephone calls made to the media owning responsibility of crime (e.g. bomb blast) amounts to extra judicial confession.¹⁰ Extra judicial confessions should be proved by the evidence of the persons to whom they were made or who heard them made or by the document (if any) in which they were recorded. Before a confession is relied upon it must be clear whether it is to be put in the category of judicial or extra judicial confessions. An extra judicial confession may properly be made to any person, or collection of or body of persons. But there must be something to show that the accused had previous association with those people and that he could repose confidence in them and make an extra judicial confession involving him in a crime. It is not necessary that it be addressed to any definite individual. It may take the form of a prayer but majority of confessions are received by persons in authority upon the arrest of the accused or while in custody. Extra judicial confessions may or may not be weak evidence. For example, the accused cannot be convicted on the basis of an extra judicial confession made to a person not shown to be a friend of the accused who would be taken into confidence and was wholly unconnected with the police.¹⁶ Extra judicial confessions may be oral or written though as a practical matter police interrogators normally record confessional statements volunteered by an accused person since these are generally viewed as more reliable. These statements are usually tendered in court during trials. Confessional statements may be made before or during trial but before judgment. Judicial confession is to be recorded by a Magistrate under section 164 Criminal Procedure Code, and it can then be used to the extent to which it may be admissible under the Indian Evidence Act

Section 164 of Criminal Code: a safety valve

The object of section 164 of Criminal Procedure Code, is to provide a method of securing a reliable record of statements or confessions made during the course of the Police investigation, which could be used, if necessary, during the enquiry or trial. Under section 25 of the Indian Evidence Act, a confession to a Police officer is inadmissible in evidence, and hence when an accused person confesses during the Police investigation the Police frequently get it recorded by a Magistrate under section 164 Criminal Procedure Code, and it can then be used to the extent to which it may be admissible under the Indian Evidence Act. 3. Under section 80 of the Indian Evidence Act, a Court is bound to presume that a statement or confession of an accused person, taken in accordance with law and purporting to be signed by any Judge or Magistrate, is genuine, and that the certificate or note as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such statement or confession was duly taken. The words "taken in accordance with law" occurring in this section are very important and it is essential that in recording a statement or confession under section 164; the provisions of that section Important features of section 164, Criminal Procedure Code should be strictly followed. The evidential value of a confession depends upon its voluntary character and the precision with which it is, reproduced and hence the section provides safeguards to secure this end. These safeguards are of great importance, as confessions are often retracted at a later stage and it becomes necessary for the Court to ascertain whether the alleged confession was actually and voluntary made. The mere fact that a confession is retracted does not render it inadmissible in evidence, but the Court has to scrutinize any such confession with the utmost care and accept it with the greatest caution. It is a settled rule of evidence that unless a retracted

¹⁰ Farida Dar v. State, 2005 SC 3616 (3619 – 20): (2006) 2 SCC (Cr L) 121 : 2005 (4) Crimes 77



confession is corroborated in material particulars it is not prudent to base a conviction in a criminal case on its strength alone,¹¹ unless from the peculiar circumstances under which it was made or judging from the reasons alleged or apparent, of retraction, there remains a high degree of certainty that the confession; notwithstanding its having been realised from, is genuine.¹²

CONFESSIONS AND CO-ACCUSED

When more than one person are being tried jointly for the same offence, and a confession is made by one such persons affecting himself and some other of such persons is proved, the court may take in to the consideration such confession as against such other person who makes such confession. This Section is an exception to the general of the English Common Law the confession is only evidence against the confessor and not against the other.

The Section 30 of the Indian Evidence Act, 1872 will apply if the following conditions are fulfilled:

1. that more persons than one are being tried jointly,
2. that the joint trial is permissible by law,
3. and that the joint trial is for the same offence or for its abetment or attempt,
4. there must be a confession,
5. the confession of guilt must implicate the maker substantially to the extent as the other accused and the confession must be duly proved.

As against the maker, there can be conviction solely on a retracted confession if the unhesitating conclusion is that it is voluntary and true but as a rule of practice, it is unsafe. As against a co-accused, the value is almost nil and there can ordinarily be no conviction without the fullest corroboration both as to the crime and the criminal. A retracted confession is always open to great suspicion, but a confession cannot be regarded as involuntary merely because it has been retracted afterwards. Every case must be judged on its particular circumstances. A retracted confession, though can be used to contradict the person making it, it not being substantive evidence cannot be used to contradict a co-accused's confession.¹³

PROBATIVE VALUE OF CONFESSION

A confession is the best evidence in criminal proceedings.¹⁴ A confession made in judicial proceedings is of greater force or value than all other proofs. If it is direct and true and satisfactorily proved, it should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. That is why such a confession by itself alone is sufficient without further corroboration to warrant a conviction. And there cannot be such a conviction unless the trial court is satisfied that the case has been proved beyond reasonable doubt. The denial or retraction of a confession is a matter to be taken into consideration to decide what weight to be attached to the confession. A confessional statement that is free, direct, positive and voluntary is enough to ground a conviction.

The burden of proving that a confession was voluntarily made rests on the prosecution in criminal proceedings. The burden involves the same standard as the proof of guilt, i.e. beyond reasonable doubt. In the view of an author, the truth of the confession is irrelevant, so long as it proceeds voluntarily from the maker and no law or rule laid down is breached.¹⁵ Where the issue is one of identity, where an accused by his confession has identified himself, there is no need for any further identification parade. This belief illustrates the reality that most of us have no idea of what it feels like to undergo an interrogation.¹⁶

¹¹ Vide A.I.R. 1953 Supreme Court 459

¹² Vide 30 P.R. 1914 (cr.) and A.I.R. 1954 Supreme Court 4.

¹³ 8 Baliram v. R, A 1939 N 295

¹⁴ Igri v. State 2012 Vol. 6-7 (Pt. III) MJSC 107, Mbang v. State 2012 Vol. 6-7 Pt. IV MJSC 119

¹⁵ Principles Of Evidence 2nd Edition Alan Taylor Cavendish Publishing Ltd London 2000, Page 234

¹⁶ Kassin, SM (2010). False confessions. Albany Law Review, 73(4), 1227-1234.



An affirmative nod in response to direct accusation of crime is no less a confession than an oral statement. Acknowledgement of guilt by signs or gestures may strictly come within confessions as they may be regarded as verbal statements.¹⁷ But the danger of interpreting signs or gestures as confession lies in the fact that the maker may not be able to communicate intelligence to another person and is liable to be misunderstood. The other person may not be able to convey his meaning to the accused by signs or words intelligible to him. There is also the danger of making acknowledgments of guilt in answer to leading questions imperfectly understood. Confessions made while talking in sleep though not legal evidence may furnish indicative evidence.¹⁸ According to Sarkar, the rule may be stated to be that whereas the evidence in proof of a confession having been made is always to be suspected, the confession if once proved to have been made and made voluntarily is one of the most effectual proofs in law.¹⁹

Where an extra judicial confession was the result of the consumption of liquor by the accused and the witnesses fail to reproduce the confession in the exact words of the accused or in even the words as nearly as possible it should be excluded.²⁰

THIRD- DEGREE PRACTICES

These techniques ranged from the direct and explicit use of physical assaults to tactics that were both physically and psychologically coercive to lesser forms of duress. Among the most commonly used “third-degree” techniques were physical violence (e.g., beating, kicking, or mauling suspects); torture, prolonged incommunicado confinement; deprivations of sleep, food, and other needs; extreme sensory discomfort (e.g., forcing a suspect to stand for hours on end, shining a bright, blinding light on the suspect); and explicit threats of physical harm.²¹ Today the third degree is virtually non-existent, psychological interrogation is inherently compelling, if not coercive, to the extent that it relies on sustained pressure, manipulation, trickery, and deceit.

Confessions are received in evidence, or rejected as inadmissible, under a consideration whether they are or are not entitled to credit. A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape, that no credit ought to be given it; and therefore it should be rejected.²² The basis for excluding involuntary confessions is a concern that confessions procured by torture or other forms of coercion must be prohibited because of the risk that such tactics could cause an innocent person to confess. In other words, involuntary confessions were to be prohibited because they were unreliable.

Police induced the confessions; the process of interrogation is designed to overcome the anticipated resistance of individual suspects who are presumed guilty and to obtain legally admissible confessions. The single-minded objective, therefore, is to increase the anxiety and despair associated with denial and reduces the anxiety associated with confession. To achieve these goals, police employ a number of tactics that involve isolating the suspect and then employing both negative and positive incentives. On the negative side, interrogators confront the suspect with accusations of guilt, assertions that are made with certainty and often bolstered by evidence, real or manufactured, and a refusal to accept alibis and denials. On the positive side, interrogators offer sympathy and moral justification, introducing “themes” that normalize and minimize the crime and lead suspects to see confession as an expedient means of escape. Presentations of False Evidence Once suspects are isolated, interrogators, armed with a strong presumption of guilt, seek to communicate that resistance is futile. This begins the confrontation process, during which interrogators exploit the psychology of inevitability to

¹⁷ R.v. Abdulla 7 A 385 FB Chandrsakhar .v. R. 1937 AC 220.

¹⁸ Sarkar, Law of Evidence 16th Edition Reprint 2008, Wadhwa & Nagpur, India. The Criminal Law Revision Committee in England also supports the position that it is sufficient if the accused person nods his head in reply to an accusation.-via its 11th Report, Cmnd. 4991, Annex 2, at 214

¹⁹ Ibid 16

²⁰ C.K. Raveendran v. State of Kerala (2000) 1 SCC 225 (SC)

²¹ Leo, R. A. (2004). The third degree and the origins of psychological police interrogation in the United States. In G. D. Lassiter (Ed.), Interrogations, confessions, and entrapment (pp. 37–84). New York: Kluwer Academic.

²² King v. Warrickshall, 1783, pp. 234–235). The King v. Warrickshall (1793), 168 Eng. Rep. 234, 234-35 (K.B. 1783).



drive suspects into a state of despair. In their anxiety to obtain a commendation for activity and zeal they are likely to oppress and torture prisoners to obtain confessions or to magnify slight grounds of suspicion into sufficient proof.²³

Promises Implied but not spoken in addition to thrusting the suspect into a state of despair by the processes of confrontation, interrogators are trained to minimize the crime through “theme development,” a process of providing moral justification or face-saving excuses, making confession seem like an expedient means of escape. Interrogators are thus trained to suggest to suspects that their actions were spontaneous, accidental, provoked, peer-pressured, drug-induced, or otherwise justifiable by external factors. It is naturally hard to understand why anyone would confess to a crime they had not committed. Though any attempts by persons in authority to bully a person into making a confession or any threat or coercion would at once invalidate such a confession if the fear was operating on the mind of the accused at the time he claimed to have made the confession.²⁴ The burden of proving the voluntary nature of the confession lies on the prosecution. Section 24 of the Indian Law would apply even if the person who is said to have made the confession was not an accused at the time he made it. But where statement is a information about a discovery of a fact, it may be presumed to be untainted and is therefore, declared provable in so far as it relates to the fact there by discovered as observed by Bhagwati J. “The section seems to be based on the view that if a fact is actually discovered in consequences of information given, some guarantee is afforded thereby that information was true and accordingly can be safely allowed to be given in evidence.”²⁵

RECOMMENDATION AND CONCLUSION

1. Burden on prosecution must be heavy to prove the confession beyond reasonable doubt.
2. The extra judicial confession also has to weigh by the Court with great caution.
3. The person in custody must, prior to interrogation, be clearly informed that he has the right to remain silent, and that anything he says will be used against him in court;
4. He must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation, and that,
5. If he is indigent, a lawyer will be appointed to represent him during interrogation.
6. Magistrate shall explicitly ensure that accused is not under pressure, impression, allurements.

Indian Evidence Act safely designed the confession segment and accused is guarded from confessions, which often taken for granted by the habitual offenders and use the shield of Section 25, yet the information about discovery of fact, prove to be a step ahead to bring the culprits in clutches of justice. But confessions gained by tactics in hope of freedom leads to false confessions and implication of accused by police by planting proofs is also matter of great concern. It seems as either accused has to confess the crime or otherwise proved by so called “discovery of facts”.

²³ This is known in America as ‘as sweat box’ or ‘3rd degree’ methods

²⁴ Director-General Border Security Force v. Vijendar Prakash Gautam 2001 (3) MPLJ 111 (MP)

²⁵ Ram Kishan v. Bombay, AIR 1955 SC 104