

## CRIMINAL CONFESSION: A CRITICAL ANALYSIS UNDER LAW OF EVIDENCE

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### *Abstract*

*Under the Law of Evidence, one fact is said to be relevant to another when one is connected to the other in any ways given in Sections 5 to 55 of the Indian Evidence Act, 1872. Admission and Confession are the two of them through which one fact becomes relevant to another. These two are very important concepts in the law of evidence that make the advocates' cases strong enough in the eye of the jury. Both concepts are used as sources of evidence.*

*The paper mainly focuses on the concept of "Confession" and its admissibility. Further, it analyses the types of confession and how they can be used as evidence and also their evidentiary values in detail. This paper also focuses on the relevant sections of the Indian Evidence Act (Sections 24 to 30) along with some recent judgments.*

**Keywords:** *Relevant, Confession, Admission, Admissible, Evidence, Evidentiary Values, Indian Evidence Act, 1872, The Code of Criminal Procedure, 1973.*

### **Introduction**

Evidence plays an important role in administering justice to the parties and prevents the wastage of valuable time of the court upon the irrelevant facts. Hence, there are two legal terms known as "Admission" and "Confession" which may be admissible as evidence. Sections 17 to 31 deal with admissions generally and include sections 24 to 30 which deal with confession as distinguished from admission.

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Admission is a statement that suggests any inference to a fact in issue or relevant fact, this statement is usually seen in a civil case (explained under sections 17 to 23 of the Indian Evidence Act, 1872). While a confession has no precise definition but still can be explained. Under criminal law, it is a statement made by an accused which can be used against him in a criminal proceeding to establish his guilt of an offence. It is important to note that all confessions are admissions but all admissions are not confessions.

An admission may be oral or written or even contained in an electronic form while a confession may be oral or written.

Now, I am going to discuss all the important aspects of a *confession* in detail.

### **Meaning of Confession**

The word 'Confession' is not defined in the Indian Evidence Act. Mr Justice Stephen in his Digest "Digest of the Law of Evidence" defined a confession as "*a confession is an admission made at any time by a person charged with a crime stating or suggesting an inference that he has committed that crime*".<sup>2</sup>

**Example** If *X* is charged for the murder of *Y*. If *X* said that he has murdered *B*, then, the statement of *X* is a confession.

According to this definition a statement of an accused will amount to a confession if it fulfils any of the following two conditions:

- i. If he states that he committed the crime he is charged with, or
- ii. if he makes a statement by which he does not admit his guilt, yet from that statement, some conclusion may be drawn that he might have committed the crime.<sup>3</sup>

### **A Confession to be voluntary**

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<sup>2</sup> BATUK LAL, THE LAW OF EVIDENCE 205 (22<sup>nd</sup> ed. 2018).

<sup>3</sup> *Ibid.*

It is an important piece of evidence, so it is necessary to examine whether the confession made by an accused is voluntary, true and trustworthy or not.<sup>4</sup> A confession that is voluntary and free from any pressure can be accepted.<sup>5</sup>

A full bench of Sikkim High Court has observed that administering of oath on an accused at the time of recording of confession is an act that is prohibited and unlawful. The court also said that if a person in authority records a confession of an accused on oath, the statement becomes non-voluntary and hence such act violates Article 20(3) of the Constitution of India.<sup>6</sup>

Recently, the Supreme Court has held that the statement recorded during the enquiry of the pre FIR stage is neither a confession nor a statement under Section 160 of the Code of Criminal Procedure.<sup>7</sup>

### **Types Of Confessions & Their Evidentiary Values**

There are four types of confessions:

#### ***1. Judicial Confessions***

Judicial Confessions are also known as “*Formal Confessions*”. These are those confessions that are made before a Magistrate or in court at the time of legal proceedings. Such confessions are recorded under Section 164, CrPC.

Suppose *A* is accused of having murdered *G*. Before the trial he may confess the guilt to some Magistrate who may record it under the provisions of Section 164, CrPC. At the committal proceedings before the Magistrate or at the trial before Sessions Judge, *A* may confess his guilt. This is an example of Judicial Confession.

It has been held by the SC that voluntariness of a confession recorded by the Magistrate can't be doubted.<sup>8</sup> A magistrate has to keep the following things in mind while recording the confessions of the accused:

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<sup>4</sup> Shivappa v. State of Karnataka, AIR 1995 SC 980.

<sup>5</sup> Francis Stanly v. Intelligence Officer, NCB, Thiruvanthapuram, AIR 2007 SC 794 at 796 (India).

<sup>6</sup> State of Sikkim v. Suren Rai, Crim. App. No. 17 of 2016.

<sup>7</sup> Charansingh v. State of Maharashtra, Crim. App. No. 363 of 2021.

- i. A magistrate before recording the confessional statement must warn the accused that he is not bound to make such a statement but if he does so then that statement may be used as evidence against him.<sup>9</sup>
- ii. The Magistrate should not record the confession unless he is satisfied that the accused is confessing voluntarily.
- iii. If the accused says that he is not willing to confess then the Magistrate should not hand over him to the police custody.<sup>10</sup>
- iv. A confession should be signed by the person confessing in the manner provided in section 281 of the Code of Criminal Procedure, and the Magistrate must add a memorandum at the foot of the confession.<sup>11</sup>
- v. The Magistrate should give enough time (at least 24 hours or even more) to the accused before recording a confession so that the accused would be able to decide whether he should confess or not, and it will establish that he is free from any fear or influence of the police officers.

### **Evidentiary Value:**

- A confession when proved and declared relevant it is called an evidentiary value of confession. The confession of the victim and accused is the most valuable in court.
- Section 80 of the Indian Evidence Act gives the evidentiary value to the judicial confession and expresses that a confession made in the presence of a magistrate or the court which is recorded by the magistrate as prescribed by the law then such confession is presumed to be genuine and the accused can be tried for the committed offence.
- Section 164 of CrPC empowers the magistrate to record confession so it is not necessary to examine the magistrate who recorded it to prove the confession<sup>12</sup>.

### **2. Extra-Judicial Confessions**

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<sup>8</sup> Lokman Shah and Ors v. State of West Bengal, AIR 2001 SC 1760.

<sup>9</sup> CODE CRIM. PROC., 1973, § 164(2), No. 2, Acts of Parliament, 1974 (India).

<sup>10</sup> CODE CRIM. PROC., 1973, § 164 (3).

<sup>11</sup> *Id.* § 164(4).

<sup>12</sup> Kashmira Singh v. State of M.P., AIR 1952 SC 159.

Extra-Judicial Confessions are also known as “*Informal Confessions*”. These are those confessions that are made by an accused elsewhere than before a Magistrate or in a court. These confessions are made to any person or a body of persons. It may have taken place in the form of prayer. A confession to a private person is an ‘Extra-Judicial Confession’.

It also includes a Magistrate not empowered to record the confessions under Section 164 of CrPC or a Magistrate so empowered but recording the confessions where Section 164 is not applied.<sup>13</sup>

In *Sahadevan v. State of Tamil Nadu*<sup>14</sup>, the SC while deciding the case has made few principles in the form of guidelines where the court has to check such principles before admitting the confession of the accused, The following principles mentioned by the SC are:

- i. Extra-judicial confessions are generally a very weak kind of evidence by itself and the court must examine such statements efficiently.
- ii. Extra-judicial confession should be made by the person’s own will and such statements must be true.
- iii. The evidentiary value of an extra-judicial confession instantly increases if it is supported by other such evidence.
- iv. The statements of a confessor must prove his guilt like any other fact in issue is proven in the judicial proceedings.

### **Evidentiary Value:**

- An extra-judicial confession is a weak piece of evidence.<sup>15</sup>
- An extra-judicial confession must be recorded with great care and caution.
- The court can rely upon such confession only when it is proved beyond any doubt or when it is corroborated by other evidence on the record.
- The Supreme Court has reiterated that it is not safe to convict an accused solely based on “Extra-Judicial Confession” if other circumstances remain unproven.<sup>16</sup>

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<sup>13</sup> State of Punjab v. Harjagdev Singh, AIR 2009 SC 2693 at 2695.

<sup>14</sup> AIR 2012 SC 2435.

<sup>15</sup> State of Punjab v. Bhagwan Singh, AIR 1975 SC 258.

- The Supreme Court has said that if a court is satisfied that an extra-judicial confession is made voluntarily then it can be acted upon to convict a person.<sup>17</sup>

### ***3. Retracted Confessions***

The English meaning of the word “retraction” is *‘the action of drawing back something’*.

Retraction confession is a type of confession which is voluntarily made by an accused before the trial begins, by which he admits that he has committed the offence but at the trial, it is revoked or retracted by the same accused.

#### **Evidentiary value:**

- It is unsafe to base the conviction on a retracted confession unless it is corroborated by trustworthy evidence.
- There is no definite law that a retracted confession can't be the basis of the conviction but it has been laid down as a rule of practice and prudence, not to rely on retracted confessions, unless corroborated.<sup>18</sup>
- A Judge can convict an accused on the sole testimony of retracted confession only when he is fully satisfied with the truthfulness of the statement and entertains no doubt about its being voluntary.

### ***4. Confessions by Co-accused***

When there are more than one accused in a case and they are jointly prosecuted for the same offence, and when any of them confesses against himself in such a way that he may be proved guilty of that offence then the court on such belief may prosecute other accused also who are jointly prosecuted in the same offence.

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<sup>16</sup> Chakarai @ Chakaravarthi v. State, Crim. App. No. 1016 of 2010 (Decided Jan. 24, 2019) (India).

<sup>17</sup> Ram Lal v. State of H.P., Crim. App. No. 578 of 2010 (Decided Oct. 3, 2018).

<sup>18</sup> Ram Chandra Prasad Sharma v. State of Bihar, AIR 1967 SC 349 : 1967 CrLJ 409.

**Illustration-** If three persons *A*, *B* and *C* are charged jointly for the same offence and they are prosecuted for the murder of *Z*. And during the judicial proceedings, *A* gives confessions that he along with *B* and *C* killed *Z* and if the statement of *A* is recognised to be a true statement then the court may use the confession of *A* against all the accused.

We will discuss this later in detail (i.e. in section 30 of the Indian Evidence Act, 1872).

### **Evidentiary value:**

The Supreme Court in the case of *Pancho v. State of Haryana*<sup>19</sup> held that a confession made by a co-accused does not have much evidentiary value and it can not be considered as a substantive piece of evidence. Hence the confession made by the co-accused can only be used to corroborate the conclusion drawn out by other supportive evidence.

### **Confession When Irrelevant**

Section 24 of the same Act describes different instances when a confession based on such instances becomes irrelevant.

Section 24 of the Indian Evidence Act provides that a confession made by a person who is accused of some offence is irrelevant if such confession is the result of any inducement, threat or promise and such instances have been proceeded by a person in authority such as magistrate, police officer, court etc. The other condition of this section is that inducement, threat or promise should be about a charge of any offence and all such inducements, threats or promises should provide the benefit of temporal nature.<sup>20</sup>

For better understanding, we may divide the complete structure into four different essentials these are:

- i. The confession must be a result of any inducement, threat, or promise.
- ii. Such confession should have made to a person in authority.
- iii. It should relate to the charge in question.

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<sup>19</sup> (2011) 10 SCC 165.

<sup>20</sup> Indian Evidence Act, 1872, § 24, No. 1, Acts of Parliament, 1872 (India).

- iv. It should have the benefit of temporal nature (it means the accused can gain any advantage or avoid any evil of a temporal nature directly related to the proceedings against him).

Thus, when these conditions are satisfied then the confession becomes irrelevant.

The term “inducement” involves a threat of prosecution if the guilt is not confessed and a promise of forgiveness if it is done so. Hence, there is no hard and fast rule as to what constitutes “inducement” and it is for the Judge to decide in every case.

### **Confession To Police Officer & In Custody Of Police**

- ❖ **SECTION 25** of the Act lays down that a confession made to a police officer can not be proved against a person who is accused of some offence.

It must be borne in mind that Section 25 excludes only confessions. All the statements made to the police officers are not excluded. The statements that do not amount to confessions are not excluded by this section and can be brought on record and proved against any accused.

The statement to be excluded must be made to a police officer at any time (before or after the investigation).<sup>21</sup> The mere presence of the police officer will not make the statement irrelevant if it was made to some other person.

### **Who are Police Officers?**

Unless and until a person has to make an investigation and frame a charge against an accused under Section 173 of CrPC, he is not a “Police Officer” within the meaning of Section 25 of the Indian Evidence Act, 1872.

Under Section 53 of Narcotic Drugs and Psychotropic Substance Act 1985, if a person, other than in charge of Police Station, has some powers of an officer of Police Station, then he is not empowered to exercise all the powers granted under Chapter XII of the Code of Criminal Procedure. He has neither the power to file a report nor the power to frame a charge under

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<sup>21</sup> Pakala Narain Swami v. Emperor, AIR 1939 PC 47 (India).



Section 173 of CrPC. Therefore he is not a “Police Officer” within the meaning of Section 25 of the Evidence Act.<sup>22</sup>

The Supreme Court in *Tofan Singh v. State of Tamil Nadu*<sup>23</sup> comprising three Judges Bench has held that the officers appointed under NDPS Act are “Police Officers” so the confession recorded by them is not admissible.

Apart from this, the following persons are “Police Officers” within the meaning of this section:

- Police Sub-Inspector,
- Police-Constable,
- Police-Head Constable,
- Chaukidar, and
- Excise Officers (exercising the powers of detection and investigation of the crimes committed under Excise Law).

The following persons are not “Police Officers” :

- Deputy Commissioner of Police, and
- Custom Officers.

❖ **SECTION 26** provides that a confession that is made in the custody of a police officer can’t be proved against him unless it is made before a Magistrate.<sup>24</sup>

This section deals with a confession made in the presence of a police officer who has the custody of an accused, i.e. of a police officer who is concerned more or less in the investigation of the

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<sup>22</sup> Raj Kumar Karwal v. State of Maharashtra, AIR 1991 SC 45.

<sup>23</sup> Crim. App. No. 152 of 2013 (Decided Oct. 29, 2020).

<sup>24</sup> Kishore Chand v. State of H.P., AIR 1990 SC 2140.

case, then those confessions are excluded whether made to a police officer or any other person unless made in the immediate presence of a Magistrate.

The word ‘custody’ does not mean physical custody, it means police control even if it is exercised in a house, in an open area or the course of a journey and not necessarily in a prison only.

The “police custody” commences from the time where the movements of the accused are restricted or controlled and is direct or indirect under police surveillance.

It has been held by Supreme Court in *Commissioner of Police, New Delhi v. Nandan Singh*,<sup>25</sup> that Sections 25 and 26 are not applied to disciplinary or departmental proceedings.

### **How much information received from an accused may be proved**

Section 27 is based on the view that if some facts are discovered in consequence of information given by the accused of an offence in the custody of a police officer, that much of the information as relates to the facts discovered can be proven.

Let us take an example, *R* is accused of the murder of *P*. He is arrested and kept in the custody of the Sub-inspector of the police. In the course of the investigation, *R* confesses his guilt and says that he murdered *P* with an axe and after the murder, he buried the axe in a tank.

The Sub-inspector proceeds to that particular tank with the accused and some independent witnesses. The axe is recovered from the tank from that very place where the accused said that he had buried it. Now, the statement of the accused that he murdered and buried the axe in the tank is a confession to a police officer, and according to Section 25 it must not be proven against him.

But, according to Section 27, if some fact is discovered in consequence of information given by an accused, that much of the information which leads to discovery will be proven. Hence, the sub-inspector will depose in the court that in consequence of the information given by *R* the axe was recovered and then his statement “I have buried the axe in the tank” will be proven.

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<sup>25</sup> (2006) 4 SCC 265 (India).

The part of the confession by the accused to the Police leading it and identifying the place where a dead body was lying is admissible<sup>26</sup>. The word “fact” in this section is not limited to “actual physical object” but also the place from which it is produced and the knowledge of the to this.<sup>27</sup>

These are the conditions necessary for the application of Section 27:

- i. The person giving the information must be accused of an offence,
- ii. Such a person must be in police custody,
- iii. The fact must have been discovered in the consequence of the information received from the accused,
- iv. That portion only of the information which relates distinctly to the fact discovered can be proved,
- v. Before the statement is proved, somebody must depose that some articles were discovered in consequence of the information received from the accused,
- vi. The fact discovered must be relevant, in other words, it must relate to the commission of the crime in question,
- vii. The discovered fact must not be known to the other person, i.e., to the investigation officer (Police) or even to the public at large. So, in this case, it can't be said that the fact was discovered in consequence of information given by the accused.

#### **Article 20(3) of the Constitution and Section 27:**

Article 20(3) provides that “*a person accused of some offence can't be compelled to become a witness against himself*”.<sup>28</sup>

Article 20(3) applies to discoveries under Section 27 of the Evidence Act if these discoveries are the results of compulsion. The mere fact that the accused while making the statement was in police custody will not attract the provision of Article 20. It has to be decided whether or not the accused has been compelled to make the statements.<sup>29</sup>

#### **Section 27: The Proviso to the Preceding Sections-**

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<sup>26</sup> Anuj Kumar Gupta v. State of Bihar, AIR 2013 SC 3013 at 3017.

<sup>27</sup> Charandas Swami v. State of Gujarat, AIR 2017 SC 1761 at 1784.

<sup>28</sup> INDIA CONST. art. 20, cl. 3.

<sup>29</sup> State of Bombay v. Kathe Kalu, AIR 1961 SC 1808.

The SC has held that Section 27 is an exception to Section 24 to 26.<sup>30</sup> It may be submitted that ingredients of Section 24 are so embracing that they may co-exist with cases covered by Section 25 and 26. The correct position is that Section 27 is a proviso to Sections 24 to 26.

### **Confession after removal of threat or promise**

Section 28 speaks about “Confession made after removal of threat, inducement, threat or promise, relevant”.

This section provides that if there is inducement, threat or promise given to an accused to obtain a confession from him but the confession is made after an impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed, the confession would be relevant because it becomes voluntary.

### **Confession on the promise of secrecy, etc**

Section 29 speaks about “Confession otherwise relevant not to become irrelevant because of the promise of secrecy, etc”.

Under this section, all confessions will be relevant which are made under: –

- i. A promise of secrecy, or
- ii. By deceiving him, or
- iii. When he was drunk, or
- iv. Because it was made clear in answer to a question he need not have answered, or
- v. Because warning was not given that he was not bound to make a confession and whatever he might confess would be used as evidence against him (except in Judicial confession under Section 164, CrPC).

The SC in *State of U.P. v. Singhara Singh*<sup>31</sup> held that if confession recorded by a Magistrate is not recorded as directed under Section 164, CrPC, it would not be admissible. Therefore, it would be implied that a Confession recorded under Section 164, CrPC, without warning would

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<sup>30</sup> Inayatulla v. State of Maharashtra, AIR 1976 SC 483.

<sup>31</sup> AIR 1964 SC 358.

not be admissible. It is, therefore, submitted that the correct view is that Section 29 applies to Extra-Judicial confessions.

### **Use of Confession by One Accused Against Others**

Section 30 provides that if two or more persons are tried jointly for the same offence, and the confession made by one of them is proven during the trial, the Court may take into consideration that confession against the other accused as well as the accused confessing.

**Illustration:-** *A* is on his trial for the murder of *C*. There is evidence to show that *C* was murdered by *A* and *B* and that *B* said “*A* and I murdered *C*”.<sup>32</sup>

This statement can not be taken into consideration by the Court against *A*, because *B* is not jointly tried.

The expression “*same offence*” in Section 30 means the identical offence and does not mean offence of the same kind. ‘*Offences of the same kind*’ are those offences that are punishable with the same amount of punishment under the same section of the I.P.C or any special or local l

If two persons are charged under Section 325, I.P.C., they are said to be charged with an offence of the same kind.<sup>33</sup>

If different offences are committed in course of the same transaction and many persons are tried jointly for different offences, then the confession of one of such persons can’t be used against the others.

### **Evidentiary Value of Confession of Co-accused**

- The Supreme Court has held that the confession of co-accused solely without corroboration is not sufficient to convict.<sup>34</sup>
- It is not appropriate to take a confession of a co-accused as a substantive piece of evidence against another co-accused.<sup>35</sup>

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<sup>32</sup> Indian Evidence Act, 1872, § 30, No. 1, Acts of Parliament, 1872 (India).

<sup>33</sup> BATUK LAL, *supra* note 1, at 275-276.

<sup>34</sup> Asar Mohammad and Ors. v. State of U.P., Crim. App. No. 1617 of 2011 (Decided Oct. 24, 2018).

- The Supreme Court has expounded that if there is no joint trial then the confession of a co-accused would not be at all admissible in evidence.<sup>36</sup>

## **Conclusion**

There should be no doubt that the Evidence Act, 1872 does not contain the definition of the term “Confession”. But, after analyzing and interpreting the topic I have concluded that a Confession is a statement made by an accused to any person in authority to acknowledge the guilt of a crime. Since, it is an important piece of evidence so the court would examine whether or not the confessional statement made by the accused is voluntary, true and trustworthy. Now, it is a settled law that a conviction can be based solely on a confession only if it is proved to be voluntary and trustworthy.

Section 24 of the act lays down the rule for the exclusion of the confession which is made non-voluntary (as a result of any threat, promise or inducement). According to sections 25 and 26, a confession to a police officer and in the custody of a police officer can never be proved against an accused respectively unless it is made in the immediate presence of a Magistrate. The main reasons for such exclusions are to avoid the danger of admitting a false confession in consequence of severe torture by the police officers and to prevent the abuse of their powers. But, a statement made before a police officer can be proved as an admission in civil law.

Section 27 lays down that a confession is admissible if it leads to the discovery of some fact and this section provides an exception to the rule of excluding the confession. Section 28 provides that a confession after removal of inducement, threat or promise becomes relevant because it becomes voluntary and trustworthy.

Section 29 covers the field of confessions other than those dealt with in the preceding sections (24 to 28) or in other words this section applies to extra-judicial confessions. Under section 30 the statement of one accused is admissible as against his co-accused only when they are tried jointly.

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<sup>35</sup> Surinder Kumar Khanna v. Intelligence Officer, DRI, Crim. App. No. 949 of 2018 (Decided July 31, 2018).

<sup>36</sup> Raja @ Ayyappan v. State of T.N., Crim. App. No. 1120 of 2010 (Decided Apr. 1, 2020).