

A STUDY ON A STUDY ON CONFESSION UNDER INDIAN EVIDENCE ACT, 1872

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ABSTRACT

There is an exception to the hearsay rule that allows testimony concerning someone else's confession to be admitted if the statement had a great enough tendency "to expose the declarant to civil or criminal liability". The theory is that a reasonable person would not make such a false confession. In U.S. law, a confession must be voluntary in order to be admissible. Confessions may feature in formal or informal show trials.

A confession is a statement, made by a person or by a group of persons, acknowledging some personal fact that the person would ostensibly prefer to keep hidden. The term presumes that the speaker is providing information that he believes the other party is not already aware of, and is frequently associated with an admission of a moral or legal wrong. Not all confessions reveal wrongdoing, however. For example, a confession of love is often considered positive both by the confessor and by the recipient of the confession, and is a common theme in literature. With respect to confessions of wrongdoing, there are several specific kinds of confessions that have significance beyond the social. A legal confession involves an admission of some wrongdoing that has legal consequence, while the concept of confession in religion varies widely across various belief systems, and is usually more akin to a ritual by which the person acknowledges thoughts or actions considered sinful or morally wrong within the confines of the confessor's religion. In some religions, confession takes the form of an oral communication to another person. Socially, however, the term may refer to admissions that are neither legally nor religiously significant.

KEYWORDS: confession, admission, statement, forcefully, voluntarily, evidentiary value, inducement

INTRODUCTION

The word “confession” appears for the first time in Section 24 of the Indian Evidence Act. This section comes under the heading of Admission so it is clear that the confessions are merely one species of admission. Confession is not defined in the Act. Mr. Justice Stephen in his Digest of the law of Evidence defines confession as “confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.” In *Pakala Narayan Swami v Emperor* 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”. In the case of *Palvinder Kaur v State of Punjab* the Supreme Court approved the Privy Council decision in *Pakala Narayana Swami* case over two scores.

Firstly, that the definition of confession is that it must either admit 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 in the case *Nishi Kant Jha v State of Bihar* the Supreme Court pointed out that 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 person’s statements, the Court may rely on the inculpatory part.¹

AIM

This paper aims to bring out that what is meant by confession statement and in what conditions the confession statement will be given, what are all the forms of confession statement and the distinction between the confession statement and admissibility statement

¹ "Indian Evidence Act, 1872- Confessions- Explained - LAWNN." 1 Sep. 2014, <https://lawnn.com/indian-evidence-act-1872-confessions-define> Accessed 3 Jun. 2018.

OBJECTIVES:

- To know the admission and confession
- To know the third degree methods by police on confession
- To know about judicial and extrajudicial confession
- To determine the methods of confession to police.
- To know the use of confessional statement by accused and recommendation.

RESEARCH METHODOLOGY

The methodology used in this study is Doctrinal. It is based on the information and data collected from secondary source. They include publication research ,journals, historical information of both past and present. When a research is concerned with legal problem, issue or question, it is referred to as doctrinal, theoretical or pure legal research. Doctrinal research is a theoretical study where mostly secondary sources of data are used to seek to answer one or two legal propositions or questions or doctrines. Its scope is very narrow and there is no such need of field work.

CHAPTERISATION

CHAPTER-I An overview about admission and confession under Indian Evidence Act 1872

CHAPTER-II To study about the confession to police under Indian Evidence Act 1872

CHAPTER-I AN OVERVIEW ABOUT THE ADMISSION AND CONFESSION UNDER INDIAN EVIDENCE ACT 1872

ADMISSION AND CONFESSION

Section 17 to 31 deals with admission generally and include Section 24 to 30 which deal with confession as distinguished from admission.

Admission

1. Admission usually relates to civil transaction and comprises all statements amounting to admission defined under section 17 and made by person mentioned under section 18, 19 and 20.

2. Admissions are not conclusive as to the matters admitted it may operate as an estoppels.

3. Admissions may be used on behalf of the person making it under the exception of section 21 of evidence act.

4. Admission by one of the several defendants in suit is no evidence against other defendants.

5. Admission is statement oral or written which gives inference about the liability of person making admission.²

Confession

1. Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him.
2. Confession if deliberately and voluntarily made may be accepted as conclusive of the matters confessed
3. Confessions always go against the person making it
4. Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused (section 30)
5. Confession is statement written or oral which is direct admission of suit.

The acid test which distinguishes a confession from an admission is that where conviction can be based on the statement alone, it is confession and where some supplementary evidence is needed to authorize a conviction, then it is an admission as stated in Ram Singh v. State Another test is that if the prosecution relies on the statement as being true it is confession and if the statement is relied on because it is false it is admission. In criminal cases a statement by accused, not amounting to confession but giving rise to inference that the accused might have committed the crime is his admission.³

FORMS OF CONFESSION

A confession may occur in many forms. When it is made to the court itself then it will be called judicial confession and when it is made to anybody outside the court, in that case it

² "Section 17 of the Indian Evidence Act, 1872." <http://www.shareyouressays.com/knowledge/section-17-of-the-indian-evidence-act-1872/120411>. Accessed 3 Jun. 2018.

³ "Confessions, Unfairly Obtained Evidence and Breaches of PACE | The" <https://www.cps.gov.uk/legal-guidance/confessions-unfairly-obtained-evidence-and-breaches-pace>. Accessed 3 Jun. 2018.

will be called extra-judicial confession. It may even consist of conversation to oneself, which may be produced in evidence if overheard by another. For example, in *Sahoo v. State of U.P.* the accused who was charged with the murder of his daughter-in-law with whom he was always quarreling was seen on the day of the murder going out of the house, saying words to the effect : "I have finished her and with her the daily quarrels." The statement was held to be a confession relevant in evidence, for it is not necessary for the relevancy of a confession that it should be communicated to some other person.⁴

Judicial confession

Are those which are made before a magistrate or in court in the due course of legal proceedings. A judicial confession has been defined to mean "plea of guilty on arrangement (made before a court) if made freely by a person in a fit state of mind."⁵

Extra-judicial confessions

Are those which are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may have taken place in the form of a prayer. It may be a confession to a private person. An extra-judicial confession has been defined to mean " a free and voluntary confession of guilt by a person accused of a crime in the course of conversation with persons other than judge or magistrate seized of the charge against himself. A man after the commission of a crime may write a letter to his relation or friend expressing his sorrow over the matter. This may amount to confession. Extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Extra-judicial confession is generally made before private person which includes even judicial officer in his private capacity. It also includes a magistrate not empowered to record confessions under section 164 of the Cr.P.C. or a magistrate so empowered but receiving the confession at a stage when section 164 does not apply⁶

Ingredients of Section 24

To attract the prohibition enacted in Section 24 the following facts must be established:

⁴ "Confession and Kinds of Confession - SRD Law Notes." <https://www.srdlawnotes.com/2017/02/confession-and-kinds-of-confession.html>. Accessed 3 Jun. 2018.

⁵ " International journal law of evidence"28th edition. Accessed 3 Jun. 2018.

⁶ "Evidentiary Value of Extra-Judicial Confession - AUJ LAWYERS." 25 Jan. 2016, <http://aujlawyers.com/evidentiary-value-extra-judicial-confession/>. Accessed 3 Jun. 2018.

- That the statement in question is a confession,
- That such confession has been made by the accused,
- That it has been made to a person in authority,
- That the confession has been obtained by reason of any inducement, threat or promise, proceeding from a person in authority,
- Such inducement, threat or promise must have reference to the charge against the accused, and
- The inducement, threat or promise must in the opinion of the court be sufficient to give the accused ground, which would appear to him reasonable, for supporting that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

EVIDENTIARY VALUE OF CONFESSION

Value of judicial confession- a case where there is no proof of corpus delicti must be distinguished from another where that is proved. In the absence of the corpus delicti a confession alone may not suffice to justify conviction.

A confessional statement made by the accused before a magistrate is a good evidence and accused be convicted on the basis of it. A confession can obviously be used against the maker of it and is in itself sufficient to support his conviction. Rajasthan High Court has also held that the confession of an accused person is substantive evidence and a conviction can be based solely on a confession.

If it is found that the confession was made and was free, voluntary and genuine there would remain nothing to be done by the prosecution to secure conviction. If the court finds that it is true that the accused committed the crime it means that the accused is guilty and the court has to do nothing but to record conviction and sentence him. No question of corroboration arises in this case. Normally speaking it would not be quite safe as a matter of prudence if not of law to base a conviction for murder on the confession of the alleged murder by itself and without more. It would be extremely unsafe to do so when the confession is open to a good deal of criticism and has been taken in the jail without adequate reason and when the story of murder as given in the confession is somewhat hard to believe.

This observation was made by the Supreme Court and therefore it cannot be said to be a good law in the case of judicial confession.

Now the settled law is that a conviction can be based on confession only if it is proved to be voluntary and true. If corroboration is needed it is enough that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is enough.

Value of extra-judicial confession- extra-judicial confessions are not usually considered with favour but that does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in the circumstances which support his statement should not be believed.⁷

In State of Karnataka v. A.B.Nag Raj there was allegation that the deceased girl was killed by her father and step-mother in the National park. The alleged extra-judicial confession was made by accused during detention in forest office. No mention of said confession in report given to police nor any witness present there mentioning about the same confession. This extra-judicial confession cannot be relied on.⁸

CHAPTER-II TO STUDY ABOUT THE CONFESSION TO POLICE UNDER INDIAN EVIDENCE ACT 1872

CONFESSION TO POLICE

Section 25 – 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.

Reasons for exclusion of confession to police- another variety of confessions that are under the evidence act regarded as involuntary are those made to a personnel. Section 25 expressly declares that such confessions shall not be proved.

If confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime which he might not have committed. A

⁷ "Evidentiary Value of Extra-Judicial Confession - AUJ LAWYERS." 25 Jan. 2016, <http://aujlawyers.com/evidentiary-value-extra-judicial-confession/>. Accessed 3 Jun. 2018.

⁸ "[PDF] Case Summaries - Free Download PDF." <https://socidoc.us/download/case-summaries-ebook-pdf>. Accessed 3 Jun. 2018.

confession so obtained would naturally be unreliable. It would not would be voluntary. Such a confession will be irrelevant whatever may be its form, direct, express, implied or inferred from conduct. The reasons for which this policy was adopted when the act was passed in 1872 are probably still valid.

In *Dagdu v. State of Maharashtra*, A.I.R. 1977 S.C. 1579, supreme court noted:

The archaic attempt to secure confessions by hook or by crook seems to be the be-all and end-all of the police investigation. The police should remember that confession may not always be a short-cut to solution. Instead of trying to “start” from a confession they should strive to “arrive” at it. Else, when they are busy on their short-route to success, good evidence may disappear due to inattention to real clues. Once a confession is obtained, there is often flagging of zeal for a full and thorough investigation with a view to establish the case de hors the confession, later, being inadmissible for one reason or other, the case fundles in the court.⁹

EXCLUSION OF CONFSSIONAL STATEMENTS ONLY

This principle of exclusion applies only to statement which amount to a confession. If a statement falls short of a confession, that is, it doesn't admit the guilt in terms or sustainability all the facts which constitute the offence, it will be admissible even if made to a policeman, for example, the statement of an accused to the police that he witnessed the murderer in question. The statement being not a confession was received in evidence against him, as showing his presence on the spot.¹⁰

STATEMENTS DURING INVESTIGATION AND BEFORE ACCUSATION

A confessional statement made by a person to the police even before he is accused of any offence is equally irrelevant. The section clearly says that such a statement cannot be proved against any person accused of any offence. This means that even if the accusation is subsequent to the statement, the statement cannot be proved.

⁹ "*Dagadu v. State Of Maharashtra* | Supreme Court Of India | Law"
<https://www.casemine.com/judgement/in/5609abf8e4b014971140dc5c>. Accessed 3 Jun. 2018.

¹⁰ "Criminal procedure code by Ratnlal and Dhirjalal" Accessed 3 Jun. 2018.

CONFESSIONAL FIR

Only that part of a confessional First Information Report is admissible which does not amount to a confession or which comes under the scope of section 27. The non confessional part of the FIR can be used as evidence against the accused as showing his conduct under section 8.

STATEMENT NOT AMOUNTING TO CONFESSION

A statement which does not amount to confession is not hit by the bar of section. A statement in the course of investigation was that the design was carried out according to the plan. The statement did not refer to the persons who were involved in the murder, nor did the maker of the statement refer to himself. This was held to be not a confessional statement. Hence, not hit by section 25 . The statement of inspector(crimes) that the accused accepted before him that he got the counterfeit currency notes from a stranger but the accused denying to have so stated, was not admissible in evidence.¹¹

USE OF CONFESSIONAL STATEMENT BY ACCUSED

Though the statements to police made by the confessing accused cannot be used in evidence against him, he can himself rely on those statements in his defence. The statement of the accused in FIR that he killed his wife giving her a fatal blow when some tangible proof of her indiscretion was available was not usable against him to establish his guilt. But once his guilt was established through other evidence, he was permitted to rely upon his statement so as to show that he was acting under grave and sudden provocation. There is nothing in Evidence Act which precludes an accused person from relying upon his own confessional statements for his own purposes.¹²

IMPRESSION PRODUCED BY PROMISE OR THREAT MAY BE REMOVED

- By lapse of time, or
- By an intervening caution giving by some person of superior authority to the person holding out the inducement, where a prisoner confessed some months after the promise and after the warning his confession was received.

¹¹ "Evidence. Extra-Judicial Confessions - Jstor." <https://www.jstor.org/stable/1117328>. Accessed 3 Jun. 2018.

¹² " Article on statement before accusation by elliot.b.oppenheim" <https://www.nytimes.com/2017/08/16/sports/football/nfl-ezekiel-elliott-suspension.html>. Accessed 3 Jun. 2018.

Section 29-Confession Otherwise Relevant Not To Become Irrelevant Because Of Promise Of Secrecy, Etc.:

In 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 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 question which he need not have answered, whatever may have been the form of those questions, because he was not warned that he was not bound to make such confession, and that evidence if it might be given against him.

RECOMMENDATION

A general criminal law principle known as the corpus delicti rule provides that a confession, standing alone, isn't enough for a conviction. With its design of preventing wrongful convictions, the rule implicitly acknowledges the phenomenon of false confessions. Some jurisdictions don't follow the corpus delicti rule exactly. Instead, their courts tend to focus not on whether corroborating evidence shows that the crime occurred, but on whether the confession was trustworthy or reliable.

CONCLUSION

This change in the Evidence Act is necessary so as to invigorate the trust and faith of the people of India in the Judiciary that they will be provided imparted speedy justice to the wrongs done to them by any person. The draft Criminal Law (Amendment) Bill, 2003 in its statement of objects and reasons mentions that the disposal of criminal trials in the courts takes considerable time and that in many cases trial do not commence for as long as 3 to 5 years after the accused was remitted to judicial custody. In lieu of this, it is pertinent that provisions of Criminal Law be changed so as to reduce the time needed for a common person to get justice. After all "Justice should not only be done, but also be seen to be done.

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