

CONFESSION UNDER THE INDIAN EVIDENCE ACT, 1872: A STUDY

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The term "confession" is nowhere defined in Indian Evidence Act, 1872. The word "confession" is appears for the first time in Indian Evidence Act in Section 24 of the Act. All the provisions relating to confessions occur under the heading of "admission." Section 17 defines "admission" as "a statement oral or documentary, which suggests any inference as to any fact in issue or relevant fact." If such a statement is made by a party to civil proceedings it will be called an "admission" and if it is made by a party charged with a crime or to criminal proceedings it will be called a "confession". Confession may be divided into two categories i.e. judicial and extra-judicial confession. Judicial confessions are those confessions which are made before a Court in course of legal proceedings and extra-judicial confessions are those confessions which are made by the accused anywhere else than before a Magistrate or a Court and extra-judicial confession can be made to any particular person or to a group of persons.

Apart from these two types of confession there is also a retracted confession. A retracted confession is a confession voluntary made by the accused at an earlier stage and then it has been subsequently retracted. Sections 24, 25, 26 and part of 27 deals with irrelevant confession. Apart from Section 27, relevant confession has been dealt with under Section 28, 29 & 30 of Indian Evidence Act, 1872. In the Paper I also discuss the Inculpatory and Exculpatory Statements in a confession.

Keywords: Confession, Admission, Judicial and Extra-judicial confession, Retracted confession, Relevant and Irrelevant confession.

INTRODUCTION

The term "confession" is nowhere defined in Indian Evidence Act, 1872. The word "confession" appears for the first time in Section 24 of the Indian Evidence Act, 1872. This section comes under the heading of "admission" so it is clear that the confessions are mere species of admission. All the provisions relating to confessions occur under the heading of "admission." This shows the legislative intent of not distinguishing between an "admission" and a "confession", so far as at

least definition is concerned. The definition of "admission" as given in Section 17 of the Indian Evidence Act, 1872 becomes applicable to confession also. Section 17 of the Act defines "admission" as "a statement oral or documentary, which suggests any inference as to any fact in issue or relevant fact." If such a statement is made by a party to civil proceedings it will be called an "admission" and if it is made by a party charged with a crime or to criminal proceedings it will be called a "confession". Thus, in terms of the Act, a confession is a statement made by a person charged with crime suggesting an inference as to any facts in issue or as to relevant facts.[1]

Mr. Justice Stephen in his Digest of the Law of Evidence defined confession as "confession is an admission made at any time by person charged with a crime stating or suggesting the inference that he committed that crime." According to this definition a statement of an accused will amount to a confession if it fulfills any of the following two conditions:

- 1) If he states that he committed the crime he is charged with, or
- 2) If he makes a statement by which he does not clearly admit the guilt, yet from the statement some inference may be drawn that he might have committed the crime.[2]

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. The definition is not contained in the Indian Evidence Act and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused suggesting the inference that he committed the crime." [3]

FORM OF CONFESSION

Confession may be divided into two categories:-

- 1) Judicial confession, and
- 2) Extra-Judicial confession

Judicial Confession

Judicial confessions are those confessions which are made before a Magistrate or in Court in the due course of legal proceedings. Judicial confession has been defined to mean "plea of guilty on arrangement (before a

tribunal) if made freely by a person in a fit state of mind.” A is accused of having killed B. He may, before the trial begins confess the guilt before some Magistrate who may record it in accordance with the provisions of Section 164 of the Cr.P.C. At the committal proceedings before the Magistrate or at the trial before Sessions Judge, A may confess his guilt. All these are judicial confessions.[4]

Judicial confessions should be distinguished from extra-judicial confessions. It may be doubted whether a conviction can be based solely upon an extra-judicial confession but there is no reason for hesitating to base conviction on a judicial confession.[5] A confessional statement made by the accused before a Magistrate or a Court is a good piece of evidence and the accused can be convicted or punished on the basis of this judicial confession.[6]

Now the settled law is that a conviction can be based on confession only if it is proved to be voluntary and true.[7] 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.[8]

Extra-Judicial Confession

Extra-judicial confessions are those confessions which are made by the accused anywhere else than before a Magistrate or in Court and extra-judicial confession can be made to any particular person or to a group of persons. 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. A confession to a private person is extra-judicial.[9] For extra-judicial confession communication to another is not an essential component to constitute ‘statement’.[10]

The evidence of extra-judicial confession is a weak piece of evidence and so it should be taken with great care and caution. In *State of Punjab v. Bhagwan Singh*,[11] it was held by Supreme Court that extra-judicial confession can be relied on only when it is clear consistent and convincing. In *Balwinder Singh v. State*,[12] the Supreme Court held that in case of extra-judicial confession, the credibility of the person before whom the confession is made, shall be tested and the court has to see whether the person is trustworthy or not.

In *Sahadevan v. State of Tamil Nadu*,[13] the Supreme Court held that extra-judicial confession is admissible and for it the following principles form the basis of conviction:-

- It is weak evidence by itself. It has to be examined by the Court with greater care and caution.
- It should be made voluntarily and should be truthful.
- It should inspire confidence.
- An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- Such statement essentially has to be proved like any other fact and in accordance with law.

RETRACTED CONFESSION AND ITS VALUE

A retracted confession is a confession voluntarily made by a person and subsequently retracted. The credibility of such a confession is a matter to be decided by the court according to the facts and circumstances of each case and if the court is of the opinion that such confession is proved; the court is bound to act upon it so far as the person making the confession is concerned. The retracted confession may also form the basis of conviction and punishment if it is believed to be true and voluntary. Retracted confession can be used against the person making it if it is supported by independent and corroborative evidence.

In the case of *Pyare Lal v. State of Rajasthan*,[14] it was held by the Supreme Court that a retracted confession may form the legal basis of a conviction if the Court is satisfied that it was true and was voluntarily made. But it was also held that a Court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only a rule of prudence.

IRRELEVANT AND RELEVANT CONFESSIONS

Irrelevant Confessions

Sections 24, 25, 26 and part of Section 27 of the Indian Evidence Act, 1872 deals with irrelevant confession.

Section 24 of the Indian Evidence Act, 1872

Section 24 of the Act deals with confession caused by inducement, threat or promise, when irrelevant in criminal proceeding. It provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been accused 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 the proceeding against him. The conditions of irrelevancy under the section are:[15]

- The confession must be the result of inducement, threat or promise;
- Inducement, etc. should proceed from a person in authority;
- It should relate to the charge in question; and
- It should hold out some worldly benefit or disadvantage.

When these conditions are present the confession is irrelevant.

1) Inducement, threat or promise

A confession can only be admitted if it is voluntary, and one obtained by inducement, threat or promise held out by a person in authority is not to be admitted.[16] Inducement, threat or promise need not be express, but may be implied from the conduct of the person in authority, the declarations of the accused, or the circumstances of the case.[17]

The appropriate meaning of the word “appears” is “seems”. It imports a lesser degree of probability than proof. The standard of a prudent man is not completely displaced, but the stringent rule of proof is relaxed. It is not necessary to prove strictly that a confession was brought about by proper inducement. It is quite sufficient to exclude the confession, if circumstances are placed before the Court, which would make it appear that the confession was so induced.[18]

An inducement to confess may be upon a promise of pardon. A promise or threat made to one accused will not render a confession made by another, who was present and heard the inducement, irrelevant.[19]

2) Person in authority

The second requirement is that the inducement, threat or promise should proceed from a person in authority. Who is a person in authority? The expression “person in authority” definitely refers to government officials. Every government official will be person in authority about whom the accused thinks that he is capable of influencing the course of prosecution.[20] Even a Village Mukhiya, Pradhan of village or even a peon can be considered to be person in authority.

In *Reg v. Navroji Dadabhai*,[21]W, a travelling auditor in the services of the G.I.P. Railway Co., having discovered defalcations in the accounts of the accused, who was a booking clerk of the Co., went to him and told him that, “he had better pay the money than go to jail”, and added that “ it would be better for him to tell the truth”, after which the accused was brought before the Traffic Manager in whose presence he signed a receipt for, and admitted having received a certain sum. The accused was subsequently put on his trial for criminal breach of trust. It was held that the words used by W, constituted an inducement to the accused to confess, and that W was a ‘person in authority’ and, therefore, evidence was inadmissible.

Where an army sepoy confessed to his senior and the confession was found to be voluntary and the officer was not inimical to him it was held a valid confession.

3) Inducement, threat or promise should be in reference to charge

Thirdly, the inducement, threat or promise should be in reference to the charge in question. This specifically so stated in the section itself which says that the inducement, threat or promise must have “reference to the charge against the accused person”. Thus, it is necessary for the confession to be exclude from evidence that the accused should labour under influence that in reference to the charge in question his position would be better or worse according as he confesses or not. Inducements in reference to other offences or matters or offences committed by others will not affect the validity of the confession. Thus, where a person charged with murder, was made to confess to a Panchayat which threatened his removal from the caste for life, the confession was held to be relevant, for the threat had nothing to do with the charge.[22]

While this is the principle under Section 24 of the Act, the position of English law is not so clear. After making a thorough investigation of all the prior authorities and opinions of authors in *Commissioners of Customs and Excise v. Hartz and Power*,[23]the House of Lords found that neither the authorities nor opinions of authors were consistent and, therefore, came to the conclusion that it is not necessary for a confession to be excluded from evidence that the inducement should relate only to the charge in question.

Even so it was held that the confession was not admissible. Lord Reid considered authorities. His Lordship noted the following passage from Taylor on Evidence[24] “it may be laid down as a general rule that in order to exclude a confession the inducement whether it be in the shape of a promise, a threat or mere advice

must have reference to the prisoners escape from the criminal charge against him.” A similar opinion is expressed by Stephen. He says that “the inducement must have reference to the charge against the accused person.”[25]

His Lordship then pointed out that the learned author has drawn this inference from cases which do not warrant it. The most striking is *Rex v. Llyod*. [26] There the inducement was that the jailor would let that prisoner see his wife, and Patterson, J., without giving any reason, held that, that did not make the confession inadmissible.” The other cases are *Rex v. Green*, [27] where the man offered to confess if his handcuffs were removed and *Rex v. Gilham*, [28] where the confession was the result of spiritual exhortations. None of these cases were relevant to the point. The only relevant judicial observation, his Lordship pointed out, is that of Atkinson, J., in *Reg. v. Shutter*: [29] in our view inducement will not vitiate a confession when the proffered benefit has no bearing on the course of the prosecution and on this point the text book writers speak with one voice.

4) Benefit of temporal nature

The last condition for Section 24 to come into play is that the inducement, threat or promise must be such as is sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Thus the evil which is threatened to him or the benefit which is promised to him must be of material, worldly or temporal nature. [30]

Section 25 of the Indian Evidence Act, 1872

Section 25 makes all confessions irrelevant which are made to a police officer, the reason behind this is to avoid the police torture by the police, as this Section says that no confession made to a police officer, shall be proved as against a person accused of any offence.

Under this Section a confession made to a police officer is inadmissible in evidence except so far as provided by Section 27 of the Indian Evidence Act, 1872. Generally speaking that the principle upon which the rejection of confession made by an accused to a police officer or while in the custody of such officer is founded is that a confession thus made or obtained is untrustworthy. The broad ground for not admitting confessions made to a police officer is to avoid the danger of admitting a false confession. [31]

The purpose or object of this Section is to prevent the practice of torture by the police for the purpose of extracting confessions from accused persons. If confessions to police are allowed to be proved in evidence, the police would not make the fair investigation and can force a person to confess an offence which he might have not committed. However in English law it may be relevant if the Court is confident that no oppression was used and statement was free.

For the purpose of Section 25 the following points should be noted:-

1) Confession

A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. This Section makes no distinction between a confession made before investigation and a confession made after investigation. It is confession to a police officer made at any time which is not admissible. [32] It must be borne in mind that Section 25 of the Evidence Act excludes only confessions. All the statements made to the police officers are not excluded. No statement that contains self-exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. [33]

2) Police Officers

In order to determine whether a person is the “Police Officer” or not, the material thing to consider would be, not the name given to him nor the colour of the uniform he is required to wear, but his functions, powers and duties. The following persons are “Police Officers” within the meaning of this Section- Police Patel Bombay, Police Sub-Inspector, Police-Constable, Police-Head Constable and Chaukidar. The important quality of a Police Officer is that he must not only have power to make investigation of crime but to file a report against criminal and have the power to prosecute the criminal. Unless and until a person has power to make investigation and frame charge against accused under Section 173 of Code of Criminal Procedure, 1973, he cannot be called a Police Officer within the meaning of Section 25 of Indian Evidence Act, 1872. [34]

Officers under Narcotic Drugs and Psychotropic Substances Act, 1985 are not police officers within the meaning of Section 25 of the Indian Evidence Act, 1872. Custom Officers are not police officers. A member of the Railway Protection Force is not police officer within the meaning of Section 25 of the Indian Evidence Act, 1872.

3) As Against

This Section does not preclude one accused person from proving a confession made to police officer by another accused person tried jointly with him. Such a confession is not to be received or treated as evidence against the person making it, but simply as evidence against the person making it, but simply as evidence on behalf of the other.

4) Accused of any offence

This expression covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. In cases of *State of U.P. v. Deomani Upadhyay*,^[35] *Devi Ram v. State*^[36] and *Padam Pradhan v. State*,^[37] it has been held that the expression 'person accused of any offence' in Section 25 describes the person, against whom evidence is sought to be led in criminal proceeding, whether or not he was so when he made the statement.

In the case of *Bheru Singh v. State of Rajasthan*,^[38] the Supreme Court has been held that the expression 'accused of any offence' in Section 25 would cover the case of an accused who has since been put on trial, whether or not at the time when he made the confessional statement, he was under arrest or under custody as an accused.

Exception to Section 25 of Indian Evidence Act, 1872

The only exception will be in case of Section 15 of the Terrorist and Disruptive Activities (Prevention) Act (TADA). Now Terrorist and Disruptive Activities (Prevention) Act (TADA) has been replaced by Prevention of Terrorism Act (POTA). Since it is a special legislation, it has excluded the relevancy of confession made before the police under this Act. Confessions made under POTA can be used against the accused though adequate safeguards have been provided for taking care of the interest of the accused.^[39]

Section 26 of the Indian Evidence Act, 1872

Section 26 of the Act deals with confession by accused while in custody of police not to be proved against him. It provides that no confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation to Section 26 of the Act provides that in this Section "Magistrate" does not include the head of a village discharging magisterial functions in the presidency of Fort St. George or elsewhere, unless such head-man is Magistrate exercising the powers of a

Magistrate under the Code of Criminal Procedure, 1882 (Presently, Code of Criminal Procedure, 1973).

The object of Section 26 is to prevent the abuse of their powers by the police, and hence confessions made by accused persons while in custody of police cannot be proved against them unless made in presence of a Magistrate. The custody of a police officer provides easy opportunity of coercion for extorting confession obtained from accused persons through any undue influence being received in evidence against them.^[40]

Section 26 comes into play when an accused in police custody makes a confession to any person other than the Magistrate. The principle or reason behind this Section is that an accused might confess to any person under the fear of police torture. Thus, statements made before television or press reporters by the accused person in police custody are inadmissible.

In the case of *Kishore Chand v. State of Himachal Pradesh*,^[41] it was held that Section 26 provides that a confession which is made in the custody of a police officer cannot be proved against him unless it is made before a Magistrate.

Police custody means effective police control is not confined to the walls of a prison only. It may be anywhere in the course of journey, hospital or even in your own house. All circumstances in which the accused remains in the custody of the police while inquiries are made by them have been considered to fall within the purview of the statutory bar. The Courts have declined to recognize in this context any distinction between lawful and unlawful custody.^[42] For the purposes of Section 26 of the Indian Evidence Act, 1872, the custody of a police officer is no mere physical custody. A person may be in custody of a police officer though the other may not be physically in possession of the person of the accused making the confession. There must be two things in order to constitute custody. Firstly, there must be some control imposed upon the movement of the confessor, he may not be at liberty to go any way he likes. Secondly such control must be imposed by some police officer indirectly. The crucial test is whether at the time when a person makes a confession he is a free man or his movements are controlled by the police by themselves or through some other agency employed by them for the purpose of securing such confession. The word 'custody' in this and the following Section does not mean formal custody but includes such state of affairs in which the accused can be said to have come into the hands of a police officer, or can be said to have been some sort of surveillance or restriction.^[43]

Exception to Section 26 of the Indian Evidence Act, 1872

The Section recognizes one exception. If the accused confesses while in police custody but in the immediate presence of a Magistrate, the confession will be valid. The presence of a Magistrate rules out the possibility of torture thereby making the confession free, voluntary and reliable. In the case of *Zwing Lee Ariel v. State of M.P.*[44] it has been held that "immediate presence of the Magistrate" means his presence in the same room where the confession is being recorded. His presence in the adjoining room cannot afford the same degree of protection against torture. In the case of *State of U.P. v. Singhara Singh*,[45] it has been laid down that the confession made in immediate presence of a Magistrate is admissible only when the same is obtained in the manner provided under Section 164 of the Code of Criminal Procedure, 1973.

Confession in Departmental Enquiry

In the case of *Kuldip Singh v. State of Punjab*,[46] the Supreme Court held that, it is true that confession or admission of the guilt made by a person accused of an offence before or while in police custody is not admissible in court of law according to Section 25 or Section 26, but it is equally well settled that rule of evidence does not apply in the departmental enquiry.

Section 27 of the Indian Evidence Act, 1872

Section 27 of the Act deals with how much of information received from accused may be proved. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Section 27 is an exception to the rules laid down in Section 25&26 because this section makes a confession relevant even if it is made to a police officer in police custody. But the condition is that the confession made has led to the discovery of some facts and that too proves that part only which can be proved by the facts discovered. Therefore the part of the Section 27 is included in irrelevant confession. The essentials of the Section 27 are:-

- 1) When any fact is deposed to as discovered in consequence of the information,
- 2) Information must be received from a person accused of any offence,

- 3) The accused must be in police custody, and

- 4) Only such information as distinctly relates to the fact discovered will be relevant and can be proved.

1) When any fact is deposed to as discovered in consequence of the information

The 'fact' must be a 'relevant fact' (Section 5). The fact must be the consequence, and the information the cause of its discovery. If any portion of the information does not satisfy this test, it should be excluded. In case of burglary a statement made by the accused in police custody that he would show the place where he had hidden the ornaments when the statement led to the discovery of the ornaments is admissible.

In order that a "discovery" may come under the provision of section, the place from which the incriminating article was recovered must be a place of concealment which would be difficult or impossible for the police to discover without some assistance from the accused.[47] The discovery of the pistol, the murder weapons at the instance of the accused from a place which was a public thoroughfare was held to be not relevant.[48]

Accused resiling from his statement

Where the disclosure statement led to the discovery of the weapon, it was held that the statement was not to be rejected simply for the reason that the accused subsequently resiled from the statement. The statement remained valid for the used in evidence.

2) Information must be received from a person accused of any offence

The Bombay High Court has held that the word "information received from a person accused of any offence" cannot be read to mean that he must be an accused when he gives the information but would include a person if he became subsequently an accused person, at the time when the statement is ought to be received in evidence against him. Where a person goes to a police-officer and makes a statement which shows that an offence has been committed by him, he accused himself and though he is formally not arrested. The expression "accused of any offence" does not predicate a formal accusation against him at the time of making the statement sought to be proved, as a condition of its applicability.

3) The accused must be in police custody

The submission of a person to the custody of a police officer within the terms of S.46 (1) of the Cr.P.C. 1973 is 'custody' within the meaning of this section. 'custody' connotes some idea of restraint on the movement of a person whether by word or action and does not necessarily mean custody after formal restraint. Even indirect control over the movements of the suspect by the police would amount to 'police custody'. 'Custody' does not necessarily mean detention or confinement. A person who makes a statement to a police officer voluntarily confessing that he had committed an act which the penal law regards as an offence, submits himself to the custody of the said officer within the meaning of this section. Word "custody" in S.27 means actual or physical custody, though not backed by formal Magisterial Order.

4) Only such information as distinctly relates to the fact discovered will be relevant and can be proved

The word "distinctly" means "directly", "indubitably", "strictly" and "unmistakably". When the accused gives information to the police in a form which divides such information into several parts, the part admissible under this section can be easily separated. But, where the accused gives his information in the form of a compound statement, the Judge must divide the sentence into what are really its component parts and only admit that part which has led to the discovery of the particular fact.[49]

Relevant Confessions

Apart from Section 27, relevant confessions have been dealt with under Sections 28, 29 and 30 of the Indian Evidence Act, 1872.

Section 28 of the Indian Evidence Act, 1872

Section 28 of the Act deals with the confession made after removal of impression caused by inducement, threat or promise, relevant. It provides that 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.

The impression caused by inducement, promise, or threat, should have been fully removed before the confession is admissible (being free and voluntary) by lapse of time or by caution given by a person holding an authority superior to that of person holding out the inducement, or by an intervening act. In determining whether an inducement has ceased to operate, the nature of such inducement, the time and circumstances under which it was made, the situation of the person making it, will be taken into consideration by the court. The Madhya Pradesh HC has held that where once the

existence of threat, assault, beating, or improper inducement has been established, there is a presumption of its continuance and the prosecution has to prove that the impression caused by the original inducement, beating, assault, or threat was fully removed, when the prisoner made the confession.[50]

In the case of *Abdul Razak v. State of Maharashtra*,[51] it was held that confession made after removal of impression caused by inducement, threat or promise is relevant under Section 28 of the Indian Evidence Act, 1872.

Section 29 of the Indian Evidence Act, 1872

Section 29 of the Act deals with the confession otherwise relevant not to become irrelevant because of promise of secrecy, etc. Under this Section a confession is relevant even if it is obtained under the following circumstances:-

1) By making a promise to the accused that it will be kept secret or that evidence of it shall not be given against him

It may be recalled that an admission made in a civil case under promise that evidence of it shall not be given is not relevant,(Section 23) the policy being that litigants should be encouraged to compromise their differences. That policy has no relevance to criminal cases because here the public interest lies in prosecuting criminals and not compromising with them. Consequently, therefore, where an accused person is persuaded to confess by assuring him of the secrecy of his statements, the confession is nevertheless relevant.[52]

2) By practicing a deception on the accused for the purpose of obtaining his confession

Where the confession is the outcome of a fraud being played with the accused, it is nevertheless relevant. Thus, where the two accused persons were left in a room where they thought they were all alone, but secret tape recorders were recording their conversation, the confessions thus recorded were held to be relevant. Similarly, where an accused was persuaded to submit for a medical examination for an innocent purpose which was in fact conducted for criminal purpose, his statements to the doctor and the doctor's report were held to be relevant at the discretion of the Court.

A confession secured by intercepting and opening a letter has also been held to be relevant.[53]

3) When the accused was drunk

A confession obtained by intoxicating the accused is equally relevant. The law is concerned to see that the confession is free and voluntary and if this is so it does not matter that the accused confessed under the influence of drink. According to the English practice the judge will have discretion in the matter.[54]

4) In answer to questions which he need not have answered

A confession is relevant even if it is in reply to a question which the accused was not bound to answer. This principle applies in case of extra-judicial confession.

5) Lack of Warning

If such a confession is otherwise relevant, it does not become irrelevant merely because the accused was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

For recording a confession before the Court the provisions of Section 164(3) of the Code of Criminal Procedure, 1973 would have to be observed.[55] Hence, Section 29 is applicable only when the confession is valid under Sections 24, 26 and 28 and satisfies all the formalities of Section 164 (3) of the Code of Criminal Procedure, 1973.

Section 30 of the Indian Evidence Act, 1872

Section 30 of the Act deals with the consideration of proved confession affecting person making it and others jointly under trial for same offence. It provides that When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such person is proved, the court may take into consideration such confession as against such other persons as well as against person who make such confession.

Explanation to this Section says that "Offence", as used in this section, includes the abetment of or attempt to commit, the offence.

The object of this section is that where an accused person unreservedly confesses his own guilt, at the same time implicates another person who is jointly tried with him for the same offence, his confession may be taken into consideration against such other person offence, his confession may be taken into consideration against such other person as well as against himself, because the admission of his own guilt operates as a sort of sanction, which to some extent takes the place of the sanction of the oath & so afford some guarantee that the whole statement is a true one. The policy of law in allowing a

confession by one accused to be considered against another, who is being jointly tried for the same offence, seems to rest on recognition of the palpable fact that such a confession cannot fail to make an impression on Judge's mind which it was therefore better to control within limits to ignore altogether.[56]

Under this section a confession by one person may be taken into consideration against another-

- 1) If both of them are tried jointly;
- 2) If they are both tried for the same offence;
- 3) Confession made by one of the persons affecting himself & some other of such persons; and
- 4) If the confession is legally proved.

1) Tried Jointly

There should be joint trial of the accused. The joint trial should be legal. If from any caused the accused who made the confession cannot be legally tried with the accused against whom the confession is to be used, the court should not attach any value to the confession.

2) For the same offence

This expression an offence coming under the same legal definition, i.e., under the section of law. When two persons are accused of an offence under same definition, arising out of single transaction, the confession of the one may be used as the other, though it inculcates himself through acts separable from those ascribed to his accomplice, and capable, therefore, of constituting a separate offence from that of the accomplice.

3) Confession made by one of the persons affecting himself & some other of such persons

The SC has held that a confession must implicate the makers substantially to same extent as the other accused person against whom it is sought to be taken into consideration. Thus the test is that the confessing accused must tar himself & the person or persons he implicates with one and the same brush. Statements made by an accused which implicates his fellows & exculpate him are not regarded as evidence.

4) Proved

According to the Madras and Allahabad High Court the word 'proved' means proves before the case for the prosecution come to an end, i.e., proved either in the

course of the prosecution case or proved in some proceeding previous to the trial.

The section provides that the court may take the confession into consideration & thereby make it evidence on which the court may act, but it does not say that the confession is to proof. There must be clearly some evidence. The confession is only one element in the consideration of all facts proved in the case; it can be into the scale & weighed with other evidence. The confession of a co-accused can be used only in support of other evidence & cannot be made the foundation of conviction.^[57]

It is best evidence of an accomplice, and the court may presume that accomplice is unworthy of credit unless corroborated in material particulars [S.114 ill (b)]. Such evidence must be dealt by the court as any other evidence. The confession of a co-accused is on a lower footing than the evidence of an accomplice & a conviction based on such a confession is bad in law as it is simply a statement not made upon oath or affirmation. This section only provides that such a confession is to be an element of consideration of all the facts of the case, but it does not do away with the necessity of other evidence.

INCULPATORY AND EXCULPATORY STATEMENTS IN A CONFESSION

Exculpatory statements mean statement suggesting the guilt of person making it whereas exculpatory statements mean suggesting the excuse for the offence committed. It is well accepted rule that a confession or an admission shall be accepted as whole or rejected as whole.

In the case of *Pakala Narayan Swami v. Emperor*,^[58] the Privy Council held that a confession and admission must either be accepted as a whole or rejected as a whole and the Court is not competent to accept only inculpatory part while rejecting the exculpatory part as incredible.

In the case of *Palvinder Kaur v. State of Punjab*,^[59] the Supreme Court accepted the principle that the Court must accept or reject admission or confession as a whole but the Court cannot accept inculpatory part only while rejecting the exculpatory part as inherently incredible. In this case the lady stated that the husband took poison by mistake and died and that she out of fear put his body in a trunk and threw it into a well. The lower court relied upon the latter part of her statement and she was convicted under Section 201 of Indian Penal Code, 1860, for destroying the evidence of an offence by throwing the body into a well. But the first part of her statement that the death of her husband was accidental exonerated her of any offence and if that is taken into consideration no

offence under Section 201 of the Indian Penal Code, 1860 is made out. But the Supreme Court held that admission or confession must be taken as a whole and the judgment of the lower court was set aside. Reference in this connection may be made to the observation of the Full Bench of the Allahabad High Court in *Emperor v. Balmukand*,^[60] in which it was held that when there is no evidence to show that any part of exculpatory statement was false, the Court must accept or reject confession as a whole.

In the case of *Hanumant v. State of M.P.*^[61] it was held that when there is no evidence to show that any part of exculpatory statement was false, the Court must accept or reject confession as a whole.

In the cases of *R. v. McGregor*^[62] and *R. v. Storey*,^[63] a new principle was established under English law by overruling earlier authority according to which whole of confession must be left to the Jury who may attach different weights to different parts of confession. The whole confession including exculpatory part which excuses the accused should be put to evidence. A confessional statement should not be rejected because it contains exculpatory part. It is for the Jury to decide what weight should be given to several parts of the statement. The Court decides whether it contains inculpatory involvement or not. If it does contain, it is confessional.

The Supreme Court of India took notice of the development of English Law in case of *Nishikant Jha v. State of Bihar*.^[64] The Supreme Court drawing support from English authority held that there was nothing wrong in accepting inculpatory part while rejecting the exculpatory part. In this case the accused was charged with the murder of a person in a running train and he was seen washing the human blood in a nearby pond. The accused confessed that it was a human blood and he was trying to clean it. However, the accused made two conflicting statements. According to first statement there was a fight between two passengers in the train as a result of which one passenger killed the other and it was a blood of killed passenger. Immediately, thereafter he gave another contradictory statement that this was the blood of the robber who was trying to commit robbery. In this case the Court rejected the exculpatory part while passing the punishment on the basis of the inculpatory part.

In the case of *Keshoram v. State*,^[65] the accused made the inculpatory statement confessing to have cause the murder, while making the exculpatory statement he committed the murder in self defence. The Supreme Court relying upon the principle that there was nothing wrong in accepting inculpatory part while rejecting the exculpatory part and held that the accused was guilty of

murder as he had attacked the deceased and it was not in self defence.

Recently in the case of *Devka Bhikha v. Gujarat*,^[66] the Supreme Court held that confession must be taken as a whole and exculpatory part should not be thrown or rejected outright but it should be put to other evidence. If there is no sufficient evidence to support the exculpatory part, there is nothing wrong in rejecting the same.

DIFFERENCE BETWEEN ADMISSION AND CONFESSION

It is also important to know about the difference between admission and confession. Following are the differences between admission and confession:-

- 1) An admission is a statement oral or written which suggests the liability or right of the person making the statement whereas a confession is a statement oral or written of a person accused of an offence in which either he has admitted to have committed the offence or he has substantially admitted all the facts which constitute the offence.
- 2) All admissions are not confessions whereas all confessions are admissions.
- 3) An admission may be used in favour of the person making admission under certain circumstances whereas a confession always goes against the person making it and no circumstances in which it can be used in favour of the person making it.
- 4) An admission is made in civil cases whereas a confession is made in criminal cases.
- 5) An admission cannot be used as confession whereas a confession which falls short of admission of an offence can be used as admission.
- 6) An admission is not conclusive proof of the matters admitted but it may operate as an estoppel whereas a confession if made voluntarily may be accepted as conclusive proof of the matters confessed.
- 7) A retracted admission is of no value whereas a retracted confession may form the basis of conviction if it is supported by independent corroborative/ supportive evidence.
- 8) An admission by one of the several defendants is no evidence against rest of the defendants whereas a confession of two or more accused persons jointly tried for the same offence can be taken into consideration

against the other co-accused under Section 30 of the Indian Evidence Act, 1872.

CONCLUSION

A Confession is an admission made by a person charged with a crime at any time stating or suggesting the inference that he was committed that crime. Confession is received in criminal cases upon the principle that a person will not make an untrue statement against his own interest. It is well settled that a confession, if voluntarily and truthfully made, is an efficacious proof of guilt." If the Court is satisfied, after scrutinizing the confession made by the accused in that case, may form the basis of conviction. A confession which is voluntary and free from any pressure can be accepted. All confessions are admissions but all admissions are not confessions. Confession is a statement written or oral which is direct admission of suit. A confession if proved to be voluntary and genuine is sufficient to prove the guilt of the accused without corroboration.

Confession may be divided into two categories; judicial confession and extra-judicial confession. Judicial confessions are those confessions which are made before a Magistrate or in Court in the due course of legal proceedings. Extra-judicial confessions are those confessions which are made by the accused anywhere else than before a Magistrate or in Court and extra-judicial confession can be made to any particular person or to a group of persons. Judicial confession is a good piece of evidence whereas extra-judicial confession is a weak piece of evidence and it should be taken with great care and caution. Apart from judicial and extra-judicial confession there is a retracted confession also. Retracted confession can be used against the person making it if it is supported by independent and corroborative evidence.

Sections 24, 25, 26 and part of Section 27 of the Indian Evidence Act, 1872 deals with irrelevant confession. Apart from Section 27, relevant confessions have been dealt with under Sections 28, 29 and 30 of the Indian Evidence Act, 1872. Inculpatory and exculpatory statements in a confession; the Supreme Court held that confession must be taken as a whole and exculpatory part should not be thrown or rejected outright but it should be put to other evidence. If there is no sufficient evidence to support the exculpatory part, there is nothing wrong in rejecting the same. Confession is different from admission. Confession is made in criminal cases whereas admission is made in civil cases.

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