

Evidentiary Value of Confession in Trial Evidentiary Value of Confession in Trial

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ABSTRACT

The principle objective of the Indian Evidence Act is to specify the method and documents which the concerned parties in the proceeding to bring and prove before the court. And if any of party fails to prove a particular fact then the court pronounce the verdict against the party, whose onus is to prove it. The Evidence Act clearly mentioned that the hearsay evidence must not be admitted in suit or proceeding generally. But there are certain exceptions to this principle, for example; res gestae, admission, dying declaration, confession etc. Confession is the sub species of admission and mainly includes those statements which suggest or inference the criminal act by the accused. The term confession is nowhere defined in the Evidence Act but the judiciary evolved the idea through the landmark judgements and through the definition of admission. Confession is a statement in which a person or accused pleads guilty. However there are some cases in which the question was raised on the evidentiary value of confession. For instance can the court convict the accused solely on the basis of confession? What confession would be free and involuntary in respect of conviction or acquittal? And if the confession is given the police in custody, whether it would be relevant or not. In this paper, I will discuss the types of confession; to whom the confession made? And what would be the consequences of it?

Keywords: Confession, Admission, Accused, Police Custody, Intoxication, Judgements, Declaration, Magistrate, Promise, Secrecy.

Introduction:

There is general rule of the Evidence Act that the evidence must be given in fact in issue, it should be direct and hearsay evidence must not be admitted. If a party wants to adjudicate the case in his favour then he must give the direct evidence, though the Act also specifies some exceptions in which the party can produce hearsay evidence. Confession is one of the exceptions defined in section from 24 to 31 of Indian Evidence Act. However, there is no particular definition of confession in the act, that's why confession is always read with admission (section 17). The word confession was defined by Lord Atkin in the case of Pakla Naryayan Swamy v. Emperor, (AIR 1949 PC 47) for the first time, and after that the privy council approved the same in Palvinder Kaur v. State of Punjab (1953 SCR 64). The Act divided the confession into two parts; one is judicial and other is extra-judicial. Judicial confession has much credibility than extra-judicial. And that's why the judicial confession can be the sole basis of conviction. On the other hand in extra-judicial, the court can ask for the corroborative evidence. Confession is a statement made by a person or group of persons charged with the crime which suggests an inference to any fact is issue or relevant facts. The basic difference between admission and confession is, confession is the part of admission, or we can say that every confession is admission but not vice-versa. The accused can be convicted solely on the basis of confession but in admission, it is not the same (Ram Singh v. State on 13th May 1958 AIR 1959 All 518). The landmark judgement given on the confession has also defined the confession as well its inclusiveness (Pakala Naryana Swami v. Emperor, AIR 1939 PC 47). Further, the court decided that it had to acknowledge either full guilt or a major portion of the facts that made up the offense. A mixed-up statement is not a confession even if it contains some

confessional information, and will still result in an acquittal. Therefore, the statement won't be considered as a confession if the maker doesn't implicate himself/herself.

But in *Nishi Kant Jha v. State of Bihar*, the Supreme Court emphasized that there was nothing improper about accepting some of the confessional statement and discrediting the remainder; the Court sought the aid from English judgement in order to make this point. The Court may rely on the inculpatory portion of the statement of accused when there is sufficient evidence to reject the exculpatory part (AIR 1959 SCR 1033). Moreover, the reasonable time shall be given to accused before making the confessional statement to understand the consequence of the act (*Kehar Singh v. State* 1988 SC 1883). There are certain principles of confession which must be followed by the investigation officer and magistrate while recording the confession. The confession must be free and voluntary which means that the accused should come forward to admit the guilt. There should not be any inducement, promise or threat given to accused regarding the charge. The officer having stated to the accused that "now that the case been registered he should state the truth" held that the statement would generate in the mind of accused some hope or assurance that if he told the truth he would receive his support. In a case, the accused, a post-officer clerk, under suspicion, fell at his departmental inspector's feet begging to be saved if he disclosed everything, and the inspector replied that he would try his utmost to save him if he told the truth. The confession was held to be inadmissible, as there was an inducement by the inspector (*Satbir Singh v. State of Punjab* 1977 2 SCC 263). It has been discussed in a number of instances how the legal system should proceed when making decisions based on a retracted confession.

In the case of *Bharat v. State of U.P* (1971 (3) SCC 950.), Hidayatullah, C. J., speaking for a three-judge bench, said that it is safe to rely on a confession as long as the voluntary nature of the statement and its veracity are acknowledged. Its truth can be ascertained by looking at the prosecution's whole case, and its voluntary character relies on whether there was any threat, inducement, or promise. In *Rajasthan State v. Shankaria* (1986WLN(UC)452), the confession must first be determined by the court to be entirely voluntary, and then its veracity and credibility must be determined. The second test is automatically discarded when the first test is not passed. Furthermore, the court delineated a comprehensive approach to assessing a confession. If the confession fits organically with the rest of the evidence after considering the surrounding circumstances, the case's probabilities, and other relevant factors, it can be considered to have passed the second test.

Judicial and Extra-Judicial Confession:

There are mainly two form of confession recognised in English and Indian law. In *Kishan Lal v. State of Rajasthan* (2000,1 SCC 310), the Supreme Court held that "the alleged confession by a large number of persons is more in the nature of general and vague term and before a confession is relied upon it must be clear and unequivocal whether it is a judicial or an extra judicial confession". Confession to police is generally bar in Indian Evidence Act but with the certain exceptions, Section 25 and 26, both clearly state that in any case the confession recorded by police officer not to be proved against accused. The principle behind it is to save the accused from torture and as well as to protect the fundamental rights of accused. This is the common practice in India, that if accused does not plead guilty then police often use the third degree (*Queen Empress v. Abdullah* (1884) ILR 6 ALL 50). In England a confession to police officer is also admissible and can be proved if the judge feels that it is freely given. Section 25 absolutely excludes from evidence against the accused a confession made by him to police custody under any circumstances. Whether such person in police custody or not, whether the statement made during investigation or before investigation is irrelevant. Police custody has to be understood in context of police control. As long as the accused is under the

control of police officer he will be considered being in police custody. Actual physical presence of police officer is not needed as long as the accused is in effective police control. The word custody under section 26 is to be understood in pragmatic sense. If the accused is within the general surveillance of the police, then it can be regarded as custodial surveillance (State of A.P. v. Gangula Satya Murthy, (1997) 1 SCC 272).

In the case of *Aghnoo Nagesia v. State of Bihar* (AIR 1966 SC 119), The Court mentioned that if the person registering the FIR against own and confess the crime before the police that would also be included in the police custody. This was the landmark judgement on confession given by court. The accused stated that the police should find the letter he left, which contained his confession, next to the victim's dead body. Ruled that the confession is significant because the police officer was not present when the letter was written or knew that it was being made, despite the fact that it was addressed to police (*Sita Ram v. State*, AIR 1966 SC 19060). Section 26 is the exception of confession to police, if the accused admits his guilt or confesses the crime in the immediate presence of magistrate, and then it could be proved against the accused. The word "custody" in section 26 refers to police control, which can be used in a home, public setting, or while traveling and need not be restricted to the prison's walls. It is not necessary for police officers to be there right away as long as the accused know that the location where they are being held is actually accessible to the police.

It was settled in the case of *State of U.P. v. Deoman Upadhyay* (AIR 1960 SC 1125), where the court clarifies the meaning of actual and constructive custody. On the other hand, a confession that was made while the accused was not in the vicinity of a police station or while under police observation is not considered to be covered by section 26. The defendant confessed to two residents of the area. Eventually, his confession was limited to writing on the accused person's arrival at the police station (*State of A.P. v. Gangula Satya Murthy* (1997) 1 SCC). In *Selvi v. State of Karnataka*, It was decided that unless statements are examined through legal scrutiny or cross-examination, they are not regarded as trustworthy while in custody. Confessions made in front of police personnel are typically not admissible as evidence; rather it is only statements made in front of a judicial magistrate can be given weight, according to the system established by the Code of Criminal Procedure and the Evidence Act. The Supreme Court observed in *Raja Ram Jaiswal v. State of Bihar*, that police officer should not be construed in a narrow sense and it also include who is clothed with the powers of police officer (AIR 1964 SC 828).

In *Sahoo v. State of U.P.* On the day of the murder, the accused, who was charged with killing his daughter-in-law, with whom he had frequent arguments, as spotted leaving the house and saying words along the lines of, "I have finished her and with her the daily quarrels." The declaration was deemed to be a confession that was relevant to the evidence because confessions do not always need to be shared with other people in order to be relevant. The court also held that there is a clear distinction between the admissibility of evidence and the weight to be attached to it. The court must apply a double test: (1) whether the confession was perfectly voluntary, (2) if so, whether it is true and trustworthy. If the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it must be relied on. In the famous *Nanavati case* (*M.A. Antony v. State of Kerala*, AIR 2009 SC 2549), a statement by the accused to chowkidar of the building immediately after the shooting, was held to be an extra-judicial confession and treated as A direct piece of evidence of the guilt of the accused. An extra-Judicial has to be inculpatory and must give substantial details of the manner of the commission of offence. Macaulay has observed that "words may easily be misunderstood by an honest man. They may easily be misconstrued by knave. What was spoken ludiculously may be apprehended seriously. A

particle, a tense mood or an emphasis may make the whole difference between guilt and innocence.” (Hinstory of England, Vol. 1, Ch.5, P.583).

But section 27 of the Evidence Act is the exception of sections from 24 to 26, which open the door of confession to police. However, it includes only that part of the statement which disclosed the fact after the inspection. So in general term it is a statement given by the accused in the custody of police wherein he discloses the place of hiding of a particular fact and subsequently on the basis of the statement an object is discovered. The supreme court in Deoman Upadhyaya case mentioned that the section 27 is founded on the principle that even though the evidence relating to the confessional statement made to a police officer or in a police custody is tainted, if the truth of the information given by him is assured by the discovery of a fact then it may be presume to be untainted and therefore, declared probable in so far as it distinctly relates to the facts thereby discovered. But there are some essentials of discovery statement which should be remembered;

1. The statement must be given by accused himself.
2. It should be given to police officer.
3. The fact must have been discovered in the consequence of the information received from the accused.
4. Only that part of statement would be admissible which relates distinctly to the fact discovered.
5. The object must have been discovered.

Judicial confession means the statement given to magistrate or the confession is recorded by the judicial magistrate under section 164 Cr.PC. However, the accused is not bound to give confessional statement also the magistrate cannot force the accused to confess the crime. It depends on the accused whether he plead guilty or not, and if he does not then the court can start the proceeding against him. Moreover, the criminal procedure code laid down certain guidelines for the magistrates in recording the confession:

1. The magistrates shall warn the accused that he is not bound to give the confessional statement.
2. If the accused does not plead guilty and he is in police custody, then no further police custody shall be given.
3. The magistrate who has recorded the confession can't try the case. Because he could be bias in the proceeding.
4. There should be a proper form in which the magistrates shall mention that he has complied all the essentials for confession.

On the other hand, if the magistrate decides to take a break because it is lunchtime or to postpone the confession until another day, then the fresh warning must be given on the day that the confession is recorded. However, the magistrate is not need to repeat the entire question in order to fulfill their duties (*Punia Mallah v. Emperor*, AIR 1946 PAT 169).

Conclusion:

From the above discussion, it can be concluded that confession is the important part of oral evidence, which helps the court to decide a particular case. But in certain circumstances, the court looks for the corroboration. However, in the judicial confession the court presumes that the confession is voluntary and free. But in extra-judicial confession the court can examine the other facts which are related to facts in issue. Moreover the confession given to police should not to be proved against the accused. But Section 27 is the exception to this rule and clearly mentions that if the discovery of the object found, the court can rely on that particular evidence. But the confession given under the threat, inducement and promise is not to admissible in the court.

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