

JUDICIAL EXAMINATION OF CONFESSION OF CO-ACCUSED

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ABSTRACT

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. Concerning 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 a 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 oral communication with another person. Socially, however, the term may refer to admissions that are neither legally nor religiously significant

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INTRODUCTION

The term Confession is defined in Section 25 of the Indian Evidence Act. It says that no person has to confess his offence in front of the police. A confession is an important form of evidence and it is used to prove a case in a court of law. Based on documents of things we collect during the evidence is not helpful to prove the case with. It is not always feasible or adequate to base a case only on documentary evidence collected. This is where confession comes as a vital form of evidence.

A confession when proved and declared relevant it is called an evidentiary value of confession. Evident must be proven in court in front of judges during court hearings.

Evident must be proof in written as well as oral. The confession of the victim and accused is the most valuable in court

It is the duty and responsibility of the judge to determine the confession of the accused and victim and even confession of the family members as well as friends and the other persons who are involved in the case. It is easy to determine the evidentiary value of a confession. When confession of the accused is taken forcefully or taken in a wrong, it creates a problem with the exculpatory portions. Statement some exculpatory portions that can be relied upon by the court along with other evidence.

CONFESSION OF CO-ACCUSED

“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 persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession” – Section 30 of Indian Evidence Act, 1872

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

Sec 30 of the Indian Evidence Act provides an exception to the general rule of the confession as a piece of evidence that it can be used against only the person making it not the others. It provides that that where more persons than one are tried jointly for the same offence, the confession made by one of them is admissible against all of them. Sec 30 will apply when

- i. The person confessing and the others are tried jointly
- ii. They are tried for the same offence
- iii. The confession must be affecting all

Illustrations:

- (a) A and B are jointly tried for the murder of C. It is proved that A said - "B and I murdered C". The Court may consider the effect of this confession as against B
- (b) 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. This statement may not be taken into consideration by the Court against A as B is not being jointly tried
- (c) E and F are jointly tried for the murder of C. It is proved that E said – F and I murdered C. the court may consider the effect of this confession as against F. By
- (d) E is on his trial for the murder of C. There is evidence to show that C was murdered by Email and F and that F said, E and I murdered C. The statement may not be taken into consideration by the Court against E and F is not being jointly tried.

Use of confession by one accused against others.-As seen before, a confession may be used as evidence against the person making it, and it is a strong piece of evidence against him. Section 30 lays down that when two or more persons are tried jointly for the same offence, and the confession made by one of them is proved at the trial the Court may take into consideration that confession against the other accused as well as the accused confessing the guilt .

A joint trial can be understood, where A, B and c commit a Murder of D. Only A was arrested, B and C absconded. A makes a confession, tried and convicted. Afterwards, B and C was arrested and tried. At their trial confession is not admissible, because they are not tried jointly. Same Offence means 'identical offence' not the 'offence of the same kind'. It means an offence having the same definition and arising out of the same transaction. For example, where the trial is 11 not for the same offence such as one is charged for the theft and other is for receiving stolen property, the confession is not admissible against other

Confession of the co-accused must implicate himself as well as some others. The confession of the maker implicates him substantially to the same extent as others.¹

TRIED JOINTLY (AN UNDERLYING PRINCIPLE OF CONFESSION)

The following persons may be charged and tried together, namely

1. Persons who are accused of the same offence committed in the course of the same transaction.
2. Persons accused of an offence or accused of abetment, or attempt to commit such offence.
3. When people are accused of more than one offence of the same kind, within the meaning of [Section 219 of tried jointly](#) committed by them within twelve months.
4. Persons accused of different offences committed in the course of the same transaction.
5. Persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence.
6. Persons accused of offences under sections 411 and 414 of the Indian Penal Code IPC 410, 411, 412, 413, 414 Indian Penal Code | Stolen Property.
7. Or either accused in respect of stolen property the possession of which has been transferred by one offence.

Persons accused of any offences under the Indian Penal Code relating to counterfeit coin or persons accused of any other offence relating to the same coin, or of abetment or of attempting to commit any such offence and the provisions contained in the former part. So far as may be, apply to all such charges

¹Balbir Singh v. State of Panjab, AIR 1957 SC 216.

EVIDENTIARY VALUE OF THE CONFESSION

- 1) **Judicial Confession:-** It is a piece of substantive evidence and conviction can be based on that solely. It is well settled that if confession is made voluntarily and truthfully, is an efficacious proof of guilt and further corroboration is not required
- 2) **Extra Judicial Confession:-** It is a very weak piece of evidence and has to be received with care and caution. It can rely upon only when it is clear, consistent and convincing. To use extra-judicial confession as evidence Court requires some material, independent or satisfactory corroboration. It should not suffer from any material discrepancies and inherent improbabilities. When the foundation of conviction based on the extrajudicial confession it is required to prove three things
 - i. Confession was made
 - ii. Evidence has to be given that it was made voluntarily
 - iii. It is true.

An extra-judicial confession is required to prove like any other fact and following law. The value of the confession is based on the veracity of the witness to whom it is made

- 3) **Retracted Confession:-** It is unsafe to base the conviction on the retracted confession unless it is corroborated by trustworthy evidence. The court may take in to account the retracted confession, after examining the reason for making it and also the reasons for the retraction to determine that whether retraction affects the voluntary nature of the confession or not.²
- 4) **Confession by Co-accused:-** According to Section 30, Consideration of proved confession affecting person making it and others jointly under trial for the same offence. When more than one persons are tried jointly for the same offence, and a confession made by one of them affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. Explanation: Offence as used in this Section, includes the abetment of, or attempt to commit, the offence. The Supreme Court in the case of *Pancho v. State of Haryana*³ held that confessions of a co-accused aren't the substantive piece of evidence and that they can

² State of NCT Delhi v. Navjot Sidhu, AIR 2005 SCW4148.

³ Pancho v. State of Haryana, (2011) 10 SCC 165.

only be used to confirm the conclusion drawn from other pieces of evidence in a criminal trial. The court further stated that the trial court cannot begin on the basis of the confession of the co-accused to form its opinion in a case. Rather, the courts must analyze all the evidence which are being adduced, and on being satisfied with the guilt of the accused, might turn to the confession in order to receive assurance to the conclusion of guilt which the court has reached on the said evidence. Referring to previous apex court verdicts, the court said it is not obligatory to take the confession into account and that it is the discretion of the court.

In *Kashmira Singh v. State of Madhya Pradesh*⁴ “the confession of a co-accused is not evidence” within the meaning of that term as defined in sec 3 of Indian Evidence Act. It is not required to be recorded on oath and it cannot be tested by cross 12 examination. It is evidence of a very weak kind and is much weaker even the evidence of an approver or an accomplice. However, the general practice applied in the high courts of India to require corroboration for confession of a co-accused. The Corroboration must be on material particulars, such as point out the indubitably the identification of person charged with the particular act with which the confession of accused connects it. For example: merely pointing out a stolen property some months after the theft is not sufficient corroboration of such a confession on a charge of housebreaking. Secondly, corroboration must be by independent evidence and not by the testimony of an accomplice nor by the confession of another accused, such a confession carries an inferior evidentiary value.

CONFESSONAL STATEMENT AGAINST CO-ACCUSED

A confessional statement can be used even against co-accused if the person making the confessions besides Implicating himself also implicates others who are being jointly tried with him. In *Nathu v. State of Uttar Pradesh*⁵ - Nathu, Bholu and Ram Singh were charged with the murder of Sumer Singh aged about ten or eleven years. The prosecution story was that on the day previous to the occurrence the appellant Nathu told them to bring the deceased, Sumer Singh, and promised to pay Rs. 5 to each of them (Bholu and Ram Singh). Accordingly, on 17th May 1952 Ram Singh and Bholu enticed the boy away to an outlying

⁴ *Kashmira Singh v. State of Madhya Pradesh* AIR 1952 SC 159.

⁵ *Nathu v. State of Uttar Pradesh*, AIR 1956 SC 56, 1956 Cri.L.J. 152.

garden stating that they might eat mangoes there. While they were in the garden, the appellant Nathu came there, tied a mangdechhu round the neck of Sumer Singh and strangled him, while Bhola and Ram Singh were holding the deceased by the hand and feet. After killing the boy they threw him in the well Bhola and Ram Singh made confessional statements before a special Magistrate. These confessions, though subsequently retracted have been found by both the Courts below to have been true and voluntary, and it was on the strength of these confessions which received corroboration in the material particular from the evidence in the case that accused Bhola and Ram Singh were convicted. The confessions of Bhola and Ram Singh were relied on in support of the conviction of the appellant. One of the contentions urged on his behalf in the Supreme Court was that the confessions of Bhola and Ram Singh were inadmissible in evidence against him and the conviction based thereon was illegal. Held-Such statements were not evidenced as defined in Section 3 of Evidence Act, and no conviction could be founded thereon but they could be referred to as lending assurance to that conclusion and fortifying it. Overwhelming evidence against co-accused and confession of accused in a criminal conspiracy-Where in a criminal conspiracy, there is overwhelming evidence against co-accused independent of confession of accused, the confession can be fully applied against co-accused.

CONFESSION OF DIFFERENT OFFENCES COMMITTED IN SAME TRANSACTION

If different offences are committed in course of the same transaction and many persons are tried jointly for different offences, the confession of one of such persons cannot be used against the others. Where two persons are tried jointly, out one is charged with offences under Section 372 and the other under Section IPC a confession made by one of them cannot be admitted against the other under Section 30, Evidence Act. Where two persons are accused of an offence under Section 411, 1P.C. and another of an offence under Section 157, IPC the offences arising out of the same transaction, it was held that the confession of the third accused would not be used under Section 30, Evidence Act against the other two accused. Where three accused persons are tried jointly, two of whom were charged for offences under Section 302 and 457, 1. P. C. and the third offence under Section 411 of IPC, it was held that confession of the third accused would not be taken into consideration to determine the guilt of the first two accused. A number of persons were charged under Section 302, 1 P.C. One of

them was charged with an offence under Section 201 of the same Code, the confession of the latter of the offence under Section 201 cannot be taken into account against the other accused with regard to charge under Section 302.

FOR THE SAME OFFENCE

For using confession of one accused against the other only their joint trial is not necessary. It is also necessary that they should be tried for the same offence. The expression same offence in Section 30 means the identical offence and does not mean offence of the same kind. Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law. If two persons are charged under Section 325 of IPC, they are said to be charged with an offence of the same kind. A is charged under Section 325, LP.C, for having caused grievous injury to B.C is charged for having caused grievous injury to G. Suppose A and G are tried jointly and A makes a confession to the effect that he caused grievous hurt to BE. This confession of A cannot be used against them because they are not tried for the same offence. But if A and C are tried jointly and both of them are charged for having caused grievous injury to B and if A makes a statement that he and caused grievous hurt to B, the statement may be used against both of them. Section 30 does not cover different offences in the same transaction by different persons.

RETRACTED CONFESSION OF CO-ACCUSED

It is clear from the terms of the section that where more persons than one are being tried jointly for the same offence, a confession made by any one of them affecting himself and any one of his co-accused can be taken into consideration by the court not only against the maker of confession but also against his co-accused. The Evidence Act nowhere provides that if the confession is retracted, it cannot be taken into consideration against the co-accused or the confessing accused. The Act does not prevent the court from taking into consideration retracted confession against the confessing accused and his co-accused. But it is a piece of very weak evidence.

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.

A confession is an important form of evidence that is used for proving the case in a court of law. Based on documents of things we collect during the evidence is not helpful to prove the case with. It is not always feasible or adequate to base a case only on documentary evidence collected. This is where confession comes as a vital form of evidence. There are other forms of evidence which are used to prove the case but confession is the most valuable form of evidence which cannot be rejected in the court of law.

Overall, Section 30 has introduced an innovation of a serious nature and is capable of causing a miscarriage of justice, unless it is properly understood and applied. The Apex Court has in various cases held that this provision must be very strictly construed so as to avoid doing injustice. Justice Reilly once said, that the discretion which the courts have been empowered with by this provision must be exercised very cautiously and with the greatest caution and with care, so as to make sure that it's real intent is observed, and the probability of doing injustice can be removed.

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