



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Critical Analysis of the Concept of Retracted Confession

Dimpal Khotele^a Shaunak Sharma^b

^aAmity University, Chhattisgarh, India ^bAssistant Professor, Amity University, Chhattisgarh, India

Received 07 September 2023; Accepted 28 September 2023; Published 02 October 2023

The occurrence of retracted confessions is not a rarity in the Indian legal system. This article examines the dimensions responsible for the complexity of the admissibility of retracted confessions in the Indian legal realm by revisiting the pre-constitutional judgments and exploring the development of the relevance of retracted confessions in contemporary times. It explains retracted confessions and discusses the legal framework governing its admissibility. It also reviews the empirical reliability of the retracted confession. Furthermore, the article analyses the implications of the applicability and non-applicability of the doctrine of estoppel to retracted confessions through cases and statutory provisions and principles. This article discusses the significant impact of the relevance and admissibility of retracted confessions on the right to free trials through its impact on the principles of the right to free and fair trial. It focuses on the duty of the court to adopt a cautious approach to the issue of admissibility and also on the amount of corroboration necessary.

Keywords: *estoppel, free trial.*

INTRODUCTION

Their Lordships of the Privy Council pointed out in the case of *Bhuboni Sahu*¹ that a retracted confession by an accused is a common phenomenon in India which was also

¹ *Bhuboni Sahu v The King* (1949) 51 BOMLR 955

highlighted by J. Ramaswami. In other words, A retracted confession is a statement that an accused person makes before the trial starts in which he confesses to the crime but denies it during the trial.²

Illustration: Following the commission of theft, a police officer investigates the occurrence and examines witnesses and the accused 'X'. Based on them he believes 'X' committed the offense and puts forward a report or a charge sheet to a magistrate with jurisdiction over the case. The court examines 'X' and takes evidence. If, during the investigation, 'X' is willing to plead guilty after being examined by the police officer, the officer takes the accused to the magistrate to record his statement. After determining that 'X' is giving the statement voluntarily, the magistrate records his statement. If he admits to committing the offense in his statement, the magistrate's recorded statement may be used against him at trial. When questioned about whether he committed the crime at the start of the trial, 'X' may claim he did not. He may be asked again whether he confessed to the magistrate during an investigation. He may deny making the statement at all, or he may claim that he made the statement under undue influence from the police. Here, the confession made by 'X' to the magistrate before the trial begins is called a retracted confession.³

The concept of retracted confession could be traced back to the English common law where its earliest known mention is in *Rex v Greenacre*⁴, in which the accused confessed to killing his wife, but later he retracted the confession. It was held that the retracted confession was inadmissible as evidence, as it was not voluntary. This concept is constitutionally safeguarded by Article 20(3)⁵ in the contemporary era. However, due to the probability of a retracted confession being false and unreliable and driven by numerous psychological and other forces, it is at the discretion of the judicial minds to adjudicate the admissibility of retracted confessions.

² Batuk Lal, *The Law of Evidence* (20th edn, Central Law Agency 2013)

³ *Ibid*

⁴ *Rex v Greenacre and Gale* [1837] 8 Car and P 35

⁵ Constitution of India 1950, art 20(3)

RELEVANCE OF RETRACTED CONFESSIONS

Subramaniam was accused of murder. During the investigation, he made a confession in which he detailed how he committed the murder, and a blood-stained drawer and a garment worn by him were seized. A blood-stained bed sheet was discovered on the accused's information. The accused denied during the trial that he had voluntarily made the confession. The confession was ruled voluntary. Based on the aforesaid conclusion, the cause for retraction was found to be false. The evidence of blood on the drawer, clothes, and bed sheet was held to be substantiated in the absence of any further evidence. The confession and conviction were both affirmed.⁶ A Two Judge Bench of Guwahati HC in *State of Assam v Anupam Das* stated that a retracted confession can form the basis of conviction, but such confession is required to be corroborated.⁷

The Indian Evidence Act makes no express or implied mention that when a confession is retracted, it cannot be used against the co-accused or the confessing accused. However, it is a piece of extremely weak evidence.⁸ In a judgment⁹ by Seshagiri Aiyar and Moore, JJ, it was stated that the law concerning the relevance and materiality of a retracted confession has been well established in this Court where Kernen, J., outlined the circumstances under which a retracted confession can be admitted in evidence. Since then, it's clearly been the consistent norm of this Court that a confession shouldn't be the basis for a conviction unless it is supported by material particulars and by independent testimony.

J. Ramaswami highlighted that if the Court believes that a confession was retreated because it was discovered that, it was untrue or because it was realized that the benefits for which it was originally intended, had not materialized, will determine how much weight is to be given to it. Regardless of retraction, the Court has never hesitated to recognize true and voluntary confessions as a base for conviction. The Court has held in *re Kesava Pill*¹⁰ and *Rajagopal v*

⁶ *Subramaniam Gaunda v State of Madras* (1958) SCR 428

⁷ *State of Assam v Anupam Das* (2007) (3) GLT 697

⁸ Rohan Aniraj, 'Judicial Examination of Confession of Co-Accused' (2021) 1(3) Jus Corpus Law Journal <<https://www.juscorpus.com/wp-content/uploads/2021/04/31.-Rohan-Aniraj.pdf>> accessed 01 September 2023

⁹ *Ramasami Boyan v Emperor* (1919) 54 Ind Cas 479

¹⁰ *Kesava Pillai, In re*, (1929) Crim app No 334/1929

Emperor¹¹ that a conviction can rely on a retracted confession without corroboration if the reasons offered by the accused for retracting the confession are palpably false.”¹²

It is well established that a confession if made voluntarily and truthfully, is a strong proof of guilt.¹³ In a case where the appellant retracted a confession after being examined at trial under section 311 of the Criminal Procedure Code, the court found that a confession, if voluntarily and truly given, is efficacious proof of guilt.¹⁴ Therefore, when the prosecution seeks the accused’s conviction in a capital case, principally based on his confession recorded under Section 164 CrPC, the court must apply a double test developed by SC in the case of *Shankaria v State of Rajasthan*¹⁵:

- (i) Was the confession completely voluntary?
- (ii) If so, is it true and trustworthy? A requirement for something to be admissible in evidence is that the first test be passed. If the court believes the confession was induced, threatened, or promised in violation of Section 24 of the Evidence Act, it must be excluded and rejected *brevi manu*.

In such a circumstance, the question of whether to apply the second test further does not arise. If the first condition is met, the court must determine that what is mentioned in the confession is true and reliable before acting on it. There is no fixed standard of universal application for determining the reliability of such confessions or, for that matter, any substantive piece of evidence.

Nonetheless, one general approach that may be effective in most circumstances for analyzing a confession is suggested. The court should carefully evaluate the confession and compare it to the rest of the evidence considering the case's circumstances and probabilities. If, after such analysis and comparison, the confession appears to be a plausible sequence of events that

¹¹ *B.K. Rajagopal and Ors. v Unknown* (1943) 2 MLJ 634

¹² Batuk Lal, *The Law of Evidence* (20th edn, Central Law Agency 2013)

¹³ *Shrishail Nageshi Pare v State of Maharashtra* (1985) SCR (3) 461

¹⁴ Chief Justice M Monir, *Textbook on the Law of Evidence* (12th edn, Universal Lexis Nexis 2021)

¹⁵ *Shankaria v State of Rajasthan* (1978) SCC (3) 435

naturally fits in with the rest of the evidence and the surrounding circumstances may be deemed to have passed the second test.

Where this double test is found to be positive, it is the duty of the court to see if there is any other reasonable ground that stands in the way of acting upon it.¹⁶ Additionally, the court must feel that the reasons given for the retraction are untrue.¹⁷ As stated by the Bombay High Court¹⁸, the use of a retracted confession is a matter of prudence not a matter of law.¹⁹ A confession must be tested to be devoid of inducement, threat, promise, or any other element which might render it inadmissible before it may be used as the basis for a conviction, according to the rule prudence of.

The rule of prudence, however, does not require that every aspect stated in the confession about the accused person's participation in the crime be individually and independently established.²⁰ It is also not required that the corroboration originates from evidence and circumstances found after the confession was made.²¹ Although, the corroboration is needed to confirm both, the general story of the alleged crime and the accused with it.²² The amount of corroboration needed is a circumstantial discretion²³ and the retraction from a pre-trial confession does not amount to a presumption that it was tainted.²⁴

ROLE OF DOCTRINE OF ESTOPPEL IN DETERMINING THE RELEVANCY OF RETRACTED CONFESSIONS

SC in *Kamaljit Singh v Sarabjit Singh*²⁵ stated that the doctrine of estoppel is steeped in the principles of equity and good conscience. Section 115 of the Indian Evidence Act instills the doctrine of estoppel by stating that 'When one person has, by his declaration, act or omission,

¹⁶ *State of T.N. v Kuttly* Crim App No 453/1991

¹⁷ *Subramaniam Gaunda v State of Madras* (1958) SCR 428

¹⁸ *Queen Empress v Gharya* [1894] 19 Bom 728

¹⁹ Ratanlal and Dhirajlal, *The Law of Evidence* (25th edn, Lexis Nexis 2018)

²⁰ *State of UP v Boota Singh* (1979) SCR (1) 298

²¹ Batuk Lal, *The Law of Evidence* (20th edn, Central Law Agency 2013)

²² *Emperor v Bhagwandas Bisesar* (1940) 42 Bom LR 938

²³ *Emperor v Krishna Babaji* (1933) 35 Bom LR 371

²⁴ Batuk Lal, *The Law of Evidence* (20th edn, Central Law Agency 2013)

²⁵ *Kamaljit Singh v Sarabjit Singh* SLP (C) 19532/2011

intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing’.

It was highlighted in an SC judgment²⁶ that ‘An estoppel is not a cause of action - It is a rule of evidence which precludes a person from denying the truth of some statement previously made by himself.’ Per Lindley LJ in *Low v Bouverie*²⁷. In general, there are two ways in which the law of estoppel may be relevant to retracted confessions. Firstly, it can prevent an accused from retracting a confession that they have already given and secondly, it can be used to corroborate a previously retracted confession.

Under Section 31²⁸ of the Indian Evidence Act, because admissions are not conclusive regarding the facts that the person making the statement wholly admits, some facts, may be construed as estoppels. As the legal understanding of differentiation between admissions and confessions is understood, the latter is a species of the former. Henceforth, the same principles cannot be applied to a more specified form of admissions unless it is expressly provided by either the legislative or the judicial actions.

The non-application of the doctrine of estoppel could be impliedly interpreted by Sections 24²⁹, 25³⁰ and 26³¹ of the Indian Evidence Act which provide for specific instances where even if the accused has confessed to the accusation, the confession is not relevant and need not even be proved. Additionally, the doctrine of estoppel is also inapplicable when the person making the retracting confession supports his statements with a reasonable explanation for retracting. Nonetheless, due to the absence of an express provision dealing with the relevancy of a retracted confession, it is solely left to the decision of the judicial mind based on the facts and

²⁶ *B.L. Sreedhar & Ors v K.M. Munireddy (dead) and Ors* Crim App No 2971/1995

²⁷ *Low v Bouverie* [1891] 3 Ch 82

²⁸ Indian Evidence Act 1872, s 31

²⁹ Indian Evidence Act 1872, s 24

³⁰ Indian Evidence Act 1872, s 25

³¹ Indian Evidence Act 1872, s 26

circumstances of the case to accept to deny the application of the doctrine of estoppel in such situations.

The doctrine plays a significant role in the process of determining the relevancy as its applicability might affect the accused in admitting evidence against the accused's confession and prevent the accused from taking advantage of Section 24³². On the other hand, its non-applicability would cast doubt on the confession given before trial significantly reduce its reliability and shift the onus on the prosecution to prove that the confession was voluntary and true.

IMPACT OF RETRACTED CONFESSIONS ON THE RIGHT TO A FAIR TRIAL

Article 14³³ of the Indian Constitution states about *Lex uno ore omnes alloquitur*. Trials are an essential component of all proceedings, and in order to accomplish justice, they must be conducted according to all the rules and procedures to ensure that they are fair and free from unwanted influences. An essential principle for conducting fair trials is the presumption of innocence, which is derived from *Ei incumbit probatio qui dicit, non qui negat* and also based on Blackstone's ratio of prioritizing justice to innocent.³⁴

As held by Hon'ble SC³⁵, a voluntarily and truthfully made confession is strong evidence of guilt, and a retracted confession may form a legal basis for a conviction if the court is satisfied that it was true and was voluntarily made. The conviction though could not be made without corroboration, but a court may convict an accused on his confession alone, although retracted at a later stage.³⁶

Various High Courts and the Supreme Court have often stated that retracted confessions are unreliable and as such are of no value³⁷ as they are generally driven by psychological factors

³² Indian Evidence Act 1872, s 24

³³ Constitution of India 1950, art 14

³⁴ Mohd Sahil, 'The Principles of Fair Trial' (SSRN, 8 September 2021)

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3903240> accessed 01 September 2023

³⁵ *Pyare Lal Bhargava v State of Rajasthan* (1963) SCR Supl (1) 689

³⁶ *Badal Singh v State of West Bengal & Ors* WPA 532/2013

³⁷ *Union of India and Ors v J S Brar* (1993) 1 SCC 176

and mala fide intentions. Moreover, it casts doubt on the person making it which is contrary to the principle of presumption of innocence. However, there is a possibility that they may be a sign of innocence, and their inadmissibility could render it difficult for the accused to prove his innocence. Therefore, the courts must carefully weigh the need to protect the innocent against the need to ensure that those who have committed crimes are brought to justice. The decision of inadmissibility of retracted confession may deprive the former need of the weight that it may have had if it was deemed relevant and admissible.

ANALYSIS & CONCLUSION

A court can convict an accused solely based on a retracted confession if it is completely convinced of the truthfulness of the statement and has no reason to doubt that it was voluntarily made. The prevailing norm, as stated above and backed by the views of the High Courts of India and the Privy Council, had been that it is erroneous to base a conviction solely on the testimony of a retracted confession. Besides the general rule of prudence, which requires that a confession must be corroborated before a conviction can be based upon it, where the facts of the case cast suspicion on the truthfulness of the confession, corroboration is required which need not be individually and independently established.

The applicability of the doctrine of estoppel on retracted confessions is nowhere expressly stated but it may play a significant role in the admissibility of such confessions and in the shift of weight of onus. When there is a negative shift in the discretion of the court on the issue of the admissibility of retracted confession it deprives the accused of the right to free trial by influencing the principles of free trial such as the presumption of innocence. Henceforth, to address the frequent occurrence of retracted confessions during the trial, it is suggested that the courts must along with the rule of prudence, also add the principle of balance of interests while deciding on the issue of relevancy and subsequent admissibility of retracted confessions.