

**PAPER PRESENTATION**

**ON ADMISSIONS AND CONFESSIONS – RELEVANCY IN CRIMINAL LAW**

**BY**

**TEAM – II**

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**INTRODUCTION:**

Section 17 to 30 of the Indian Evidence Act, 1872 deals with admissions and confessions. Admissions and confessions are voluntary or involuntary statements made by individuals involved in a criminal case. These statements play a crucial role in determining a suspect's guilt or innocence, and they are integral in shaping the legal landscape of criminal proceedings. It may be inferred for a better understanding that admissions are the genus and confessions are species. In other words, all admissions are not confessions but all confessions are admissions. However, Courts shall be cautious that a confession when falls short of actual admission of guilt and is not obtained in accordance with law, may nevertheless be used against the person who made it.

The concept of admissions and confessions plays key role in criminal cases, for the reason that they can tilt the case from an acquittal to conviction. Hence the Courts shall be

utmost cautious while scrutinizing their evidentiary value and truthfulness. As a rule of law, neither of them is conclusive proof but a confession if deals with the admission of guilt can be conclusive proof provided it was voluntarily made by the accused without any kind of threat, inducement or promise.

### **ADMISSIONS:**

Admissions are not conclusive proof unless they operate as estoppel. However, they are substantive piece of evidence but are weak kind of evidence and the Court may reject them if it is satisfied from other circumstances that they are not true. However, admissions which are adverse to the interest of the party making it can be the evidence of truth.

Section 17 of the Indian Evidence Act, 1872 defines 'Admission' as follows:

*An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.*

### **Essential components:**

The definition of admission contains four essential components:

- i. It should be a statement, made by any person specified in the Act
- ii. Such person should make it in the circumstances mentioned in the Act.
- iii. Such statement should infer any fact in issue or relevant fact
- iv. Such Statement may be oral or documentary or in electronic form.

### **Types of Admissions:**

Admissions can be broadly classified under two heads:

- 1) Admissions by statements
- 2) Admissions by conduct

**1) Admissions by statements:**

Admissions by statements is the expressed form of admission. As the definition itself explains, admission can be oral or documentary or in electronic form, it should be expressed by the party. Such admission attains legal validity when it is made voluntarily by the party.

**2) Admissions by conduct:**

Admissions by conduct is the implied form of admission. This kind of admission is generally inferred from the behaviour of the party. Demeanour of the witness is the kind of admission by conduct and it plays a very key role in weighing the trust worthiness of the witness.

**Who can make admissions?**

Section 18 of the Indian Evidence Act specifies that party to the proceeding or agent to the party whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Provided such party or agent should have proprietary or pecuniary interest of subject-matter and have made admission during the continuance of interest.

Hon'ble Apex Court in **Chikkam Koteswara Rao vs Chikkam Subbarao And Ors.**<sup>1</sup> held that-

1. *Before the right of a party can be considered to have been defeated on the basis of an alleged admission by him, the implication of the statement made by him must be clear and conclusive.*

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<sup>1</sup>AIR 1971 SC 1542, (1970) 1 SCC 558

2. *There should be no doubt or ambiguity about the alleged admission.*
3. *Admission must be read along with the evidence.*

### **CONFESSIONS:**

The term '*confession*' is nowhere defined in the Indian Evidence Act, but the inference can be taken from the definition of admission in section 17 of Indian Evidence Act. The essence of confession can be found in different statutes but Section 24 to 30 of Evidence Act and section 162 to 164 of CrPC specifically deals with a confession. Confessions are more specific and comprehensive than admissions, as they involve an admission of guilt for a particular crime.

The Privy Council in **Pakala Narayan Swamy Vs. Emperor**<sup>2</sup>, held that-

*“A confession must either be admitted in the context of any offence or in relation with any substantial facts which inaugurate the offence with criminal proceedings. And an admission of serious wrongdoing, even conclusively incriminating fact is not itself a confession.*

*No statement that contains self exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms of 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 of itself a confession”.*

In **Palvinder Singh V. State of Punjab**<sup>3</sup> the Supreme Court upheld the Privy Council decision in *Pakala Narayan Swamy* case and substantiated their arguments with two reasons-

*“Firstly, the definition of confession only comes to exist when the statements conferring the admission that he is either guilty of any offence or the admission is probating all the facts which constitute the offence.*

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<sup>2</sup>AIR 1939 P. C. 47

<sup>3</sup>1953 SCJ 545

*Secondly, when the statement has different qualities and contains such a mixture of confessional statements which conclude to the acquittal of the person making the confession, then such statements cannot be considered as a confession.*

**Confession to be voluntary:**

Section 24 of the Indian Evidence Act lays down that confession caused by inducement, threat or promise, is irrelevant in criminal proceeding. This provision safeguards the accused when they are forced to confess more particularly in the cases where confessions are obtained by the police officers. However, section 24 is the general law where as section 25 is specific law dealing exclusively with the confessions made in the presence of police officer.

**Confessions made to police officers:**

Section 25 of the Indian Evidence Act states that- “No statements made to a Police Officer shall be considered as a confession for the purpose of proving that confession against that person who is accused to the case”.

The terms explained under Section 25 of this Act has vital importance which makes sure that any confession made by the accused to the police officer under any circumstances until provided, is totally not admissible as evidence in a court of law against the accused to prove his guilt.

The primary rationale behind this rule is to safeguard against the potential for coercion, duress, or abuse that an accused person might face when dealing with law enforcement. It serves a critical purpose in the Indian criminal justice system. It helps to protect the rights of accused by ensuring that they are not compelled to confess a crime under undue pressure or intimidation from the police.

In the case of **Nandini Satpathy v. P.L. Dani**<sup>4</sup>, the Supreme Court of India addressed the issue of the voluntariness of a confession. The court emphasized the importance of a free and voluntary confession. It ruled that if a confession is found to be involuntary, it cannot be admitted as evidence.

In **State of Bombay v. Kathi Kalu Oghad**<sup>5</sup>, the Supreme Court of India examined the admissibility of a confession obtained by the police. It was held that a confession made to the police is inadmissible and explained that confessions made to the police are more likely to be tainted by fear or intimidation.

It is worth noting that Section 25 applies not only to confessions made during police custody but also to any statements given to a police officer during the course of an investigation, irrespective of where they are made. However, an exception to this general rule is provided under section 27 of the Act.

Exception under Section 27 is provided to help in further discovery of facts of the cases that whenever a fact is forcefully discovered in the course of receiving information from accused during a police investigation or in the police custody and whenever such information leads to the discovery of other relevant facts that may be distinctly proved.

In **Pandu Rang Kalu Patil v. State of Maharashtra**<sup>6</sup>, it was held that-

*“While deciding the case stated that Section 27 of the Indian Evidence Act was enacted as to lift and to remove the ban provided in section 25 and 26 of the Act in such a way that- Section 25 and 26, absolutely bans the admission of any confession made to the police or in police custody but the objects of Section 27 provides the admission of statements made by an accused even to the Police Officer and the objective explained by the Supreme Court was that such*

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<sup>4</sup>1978 AIR 1025, 1978 SCC(2) 424

<sup>5</sup> 1961 AIR 1808, 1962 SCR (3) 10

<sup>6</sup> 2002 (1) SCR 338, 2002 (1) JT SC 229

*confession may help in further discovery of facts which may help the court to prove other facts related to the case.”*

In **Tofan Singh vs The State Of Tamil Nadu**<sup>7</sup>, Hon’ble Supreme Court of India held that-

*“There is a clear embargo in making use of this statement of an accused given to a police officer under Section 25 of the Evidence Act, according to which, no confession made to a police officer shall be proved as against a person accused of any offence and under Section 26 according to which no confession made by any person whilst he is in custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. The only exception is given under Section 27 which serves as a proviso to Section 25. Section 27 contemplates that only so much of information whether amounts to confession or not, as relates distinctly to the fact thereby discovered, in consequence of that information received from a person.”*

In **State vs Mohd. Afzal And Ors**<sup>8</sup> held that Section 27 may be brought in aid, if the prosecution establish:-

1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.
2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.
3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.

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<sup>7</sup>(2021) 4 SCC 1

<sup>8</sup>2003 SCC OnLine Del 935

4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.
5. Only such portion of the information as is distinctly connected with the said discovery is admissible.
6. The discovery of the fact must relate to the commission of some offence.



In **Prabhatbhai Aatabhai Dabhi Vs. State of Gujarat**<sup>9</sup> wherein it was held that-

*Admittedly, PW-2 is the brother of the deceased. PW-3 is a close acquaintance of PW-2 and the deceased. It is not brought on record by the prosecution that the appellant had any relationship with both of them. Normally, accused would make a confessional statement to a person in whom he has implicit faith. Accused would not in the normal course make a confessional statement before the real brothers of the deceased.*

*When prosecution relies upon the evidence of extra judicial confession, normally, the Court will expect that the evidence of the persons before whom extra judicial confession is allegedly made, must be of sterling quality.<sup>10</sup> In this case, it is very difficult to believe that the appellant-accused would make confession before the real brother and a close acquaintance of the deceased.*

### **Types of confessions:**

Evidentiary value of the confessions vary by the circumstance that how, what and where these confessions are made. Confessions can be broadly classified under two heads as per law as follows:

1. Self Confessions
2. Confessions to others

### **Self Confessions:**

The exceptional feature of confession is that a conversation to self also leads toward a confession and this feature was lighted in the case of **Sahoo v. the State of U.P**<sup>11</sup>. –

*Where the accused has murdered his son's newly wedded wife as he usually has serious arguments with her, and when the accused killed daughter-in-law it was seen and*

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<sup>9</sup>LAWS GJH- 2008-7-486

<sup>10</sup><https://www.livelaw.in/top-stories/supreme-court-acquits-murder-convict-sterling-quality-evidence-extra-judicial-confession-242298?infinitescroll=1>

<sup>11</sup>1966 AIR 40, 1965 SCR (3) 86

*heard by many people living there that he was uttering words while stating that “I finished her and now I am free from any daily quarrels.*

The Court observed in this case that the statement or the self-conversation made by the accused shall be considered as a confession to prove his guilt and such confession should be recognised as relevant in evidence in administering justice, and just being in the case that the statements are not communicated to any other person, other than him does not dilute the relevancy of a confession. Therefore, confession made to himself is also considered as valid and relevant evidence in a Court of law.

### **Confessions to others:**

Confessions to others also can be broadly classified under two heads as per law as follows:

- a) Judicial confessions
- b) Extra- Judicial confessions

### **a) Judicial confessions:**

The name is self-explanatory statements which are made before an office of magistrate or in the court of law during any criminal proceedings is known as *formal or judicial confession*. A judicial confession other than a “plea of guilty” will have no evidentiary value and accused cannot be found guilty of any offence basing on such confession.

A confession made by the accused where his statements are leading himself to the bar is probative evidence to prove his guilt but all such confession shall be made in the presence of a magistrate or in a Court of law. On the other side, the Court must take care of all the

necessary steps to check if the confession made by the accused which may prove his guilt must be voluntary and true, so that no innocent can be charged for wrongful act of others.

It was open to the Magistrate who was recording the statement of the appellant to warn the appellant at the stage when he found that he was making a confessional statement. If he had administered necessary caution to him and fulfilled the requirements of **section 164 Cr. P. C.** at that stage, the statement of the appellant could have been used against him.

A confessional statement does not automatically result in the conviction of an accused offender. Such statements have to be tendered and proved in accordance with the law. The evidentiary value of the statement which is confessional in nature has to be weighed and assessed by the Court at the trial.

Section 26 of the Indian Evidence Act allows confessions made to a magistrate to be admissible in Court. However, Magistrate also shall exercise caution and advisement i.e., making the accused aware of his legal rights and the consequences of making a confession and to ensure the voluntariness of the confession. Further, accused person should be fully aware of the implications of his confession.

**Navjot Sandhu a.k.a. Afsan Guru v. State (NCT of Delhi)<sup>12</sup>:**

*This case highlighted the importance of adherence to Miranda rights and safeguards while recording confessions and admissions. It underscored the requirement for a confession to be made voluntarily and without inducement or threat.*

In India, this feature is available to the citizens by way of Article 20(3) of our Constitution.

Section 80 of the Indian Evidence Act give the evidentiary value to the judicial confession and expresses that a confession made in the presence of magistrate or in the court

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<sup>12</sup> 2005 11 SCC 600

which is recorded by the magistrate as prescribed by the law, such confession shall be presumed to be true and genuine confession and the accused can be tried with the offence.

b) **Extra- Judicial confessions:**

When the confession is made at any place other than Court, such confession is called as extrajudicial confession. A person expressing the guilt of the offence he committed to any private person like any friend or his related persons than such commission of a crime will cover the aspects of extrajudicial confession. Though both judicial and extrajudicial confession can be accepted in the Court but both have different evidentiary value or different probative value so as to establish any fact.

What makes the extra-judicial confession different from judicial confession is that extrajudicial confession can be made to any private person which also includes a judicial officer in his private capacity.

In **Pulukuri Kottaya v. Emperor**<sup>13</sup>, Privy Council held that extra-judicial confessions are admissible if they are voluntary, true, and reliable.

In **Balwinder Singh v. State**<sup>14</sup> Supreme Court has mentioned some guidelines in the form of deciding the case that in the case of extrajudicial confession, Court must check for the credibility of the person making the confession and all of his statements shall be tested by the Court to conclude whether the person who made the confession is trustworthy or not, otherwise a person who is not so trustworthy, then his statements cannot be used for making any inference to prove the guilt of accused.

In **Sahadevan v. State of Tamil Nadu**<sup>15</sup> Supreme Court held that-

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<sup>13</sup>AIR (1947) Privy Council 67

<sup>14</sup> **1996 AIR 607, 1995 SCC Supl. (4) 259**

<sup>15</sup> (2012) 6 SCC 403

- Extrajudicial confessions are generally a very weak kind of evidence by itself and the court must examine such statements efficiently.
- Extrajudicial confession should be made by the person's own will and such statements must be true.
- The evidentiary value of extra-judicial confession instantly increases when it is supported by other such evidence.
- The statements of the confessor must prove his guilt like any other fact in issue is proven in the judicial proceedings.

In **State of Punjab v. Bhagwan Singh**<sup>16</sup> Supreme Court held that an extra-judicial confession's value only increases when it is clearly consistent and convincing to the conclusion of the case otherwise the accused cannot be held liable for the conviction solely on the basis of the confession made by him.

**Confessions by co-accused:**

In general, confession is a statement which is self incriminating. However, there can be cases where confessions can inculcate the co-accused. When there are more than one accused in a case and they are jointly prosecuted for the same offence, and when any of them confesses any statements against himself in such a way that he may be proved guilty of that offence then the court on such belief may prosecute other accused also who are jointly persecuted in the same offence.

Confessions that incriminate only the co-accused is not valid. In such case, it cannot be treated as confession at all as it failed the basic test of admission of guilt. Co-accused may

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<sup>16</sup> AIR 1975 SC 258

collude to implicate each other falsely, leading to concerns about the credibility of such confessions.

Confession which includes the proof of guilt of accused. In such cases, Court should be highly cautious as there is every chance that an accused may be falsely implicated. However, if the other evidence corroborated with the confession is satisfactorily proved, it can be considered without any hesitation by the Court.

Section 30 provides the legal framework for the admissibility of co-accused confessions. It allows the confession of one co-accused to be used against another co-accused if-

1. Confession is made while the co-accused is jointly tried.
2. Confession must implicate both the co-accused, not just the maker of the confession.
3. Confession must be voluntary and truthful.

In **Bhuboni Sahu v. King**<sup>17</sup> the Privy Council held 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 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.*”

The Supreme Court in the case of **Pancho v. State of Haryana**<sup>18</sup>, held that the confessions made by the co-accused do not have much evidentiary value and they cannot be considered as a substantive piece of evidence. Therefore, the confession made by the co-accused can only be used to corroborate the conclusion drawn out by other probative evidence.

**Retracted confession:**

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<sup>17</sup> (1949) 51 BOMLR 955

<sup>18</sup> (2011) 10 SCC 165

The English meaning of retraction is 'the action of drawing back something' retraction confession is a type of confession which is previously voluntarily made by the confessor but afterwards it is revoked or retracted by the same confessor. Retracted confession can be utilised against the person who is confessing some retracted statements if it is substantiated by another independent and corroborative evidence.

A situation in which the person has given his confession to a magistrate, and later in a proceeding he says that he never said such things. He turns hostile. Then what will be the nature of that confession? What will you call it? Such confession in the parlance of law are known as retracted confession. The word 'retracted' simply means that to say that something you have said is not true.

In India, retracted confessions are common for the reason that our witness protection schemes are very weak or the use of power and influence by the high profile people, if the accused belonged to them. It also happens because of the pressure created upon the witnesses by these high class people and the other cause is that the party himself might change the mind later due to fear of punishment.

Over a period of time, confessions are not flowing out of guilt or remorse but are flowing out of threat, inducement and promise.

In many criminal cases, the accused may initially make a confession but later retract it during the course of the trial. This presents a complex legal issue regarding the use of retracted confessions as evidence. The key question that arises in such situations is whether a retracted confession is admissible in court. The general principle is that a retracted confession is admissible if it is found to be voluntary at the time it was made. This is consistent with the principle that the admissibility of a confession depends on its voluntariness, irrespective of subsequent disavowals by the accused.

However, courts must carefully consider the circumstances under which the confession was retracted. It is not uncommon for accused to retract confessions due to external pressures, fear, or coercion. In such cases, the court should critically evaluate the retraction and assess whether the initial confession was indeed voluntary.

In *Mohammed Ajmal Mohammed Amir Kasab @ Abu Mujahid Vs. State of Maharashtra*<sup>19</sup> Hon'ble Apex Court has elaborately discussed the entire proceedings before magistrate while recording confession. I would like to reiterate the gist of the same.

Measures taken by Magistrate while recording confession:

- i) Accused was completely insulated from the police.
- ii) Explained to accused that from that point he is in her custody and not in the custody of police.
- iii) Enquired whether he was ill-treated or abused by the police in any manner
- iv) Questioned as to why accused wanted to make the confessional statement.
- v) Confirmed that the accused was willing to make the confessional statement voluntarily and not under any pressure, coercion or allurement by the police or anyone else.
- vi) Gave 24 hrs time to reflect further on the matter and then remanded him to judicial custody where he was not accessible to the police or any other agency.
- vii) Made sure that the police had no contact with the appellant in the past 24 hours,
- viii) Informed that she had no concern with the offences for which he was arrested or any connection with the police that had arrested him.

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<sup>19</sup> (2012) 9 SCC 1



- ix) Explained to him that he was under no compulsion to make the confessional statement
- x) Confirmed once again that the appellant wished to make the statement of his own volition and not under any influence.
- xi) Cautioned him by saying that he should make the statement only if he wished to do so.
- xii) Cautioned that any confessional statement made by him would be taken down in writing and it would be used as evidence against him and that might lead to his conviction.
- xiii) Questioned whether the police had given any inducement to him to make the confessional statement, such as by offering to make him an approver.
- xiv) Enquired the accused whether he needed an advocate while making the confession.

Even after this lengthy and detailed interaction, the learned magistrate did not take his confession on that day but gave him a period of 48 hours for further reflection, telling him that during that period he would not be in police custody but would be kept in jail in her custody. She advised him to reconsider the matter with a composed mind. She then remanded him to judicial custody.

While considering the evidentiary value of the confession, it was held that he was not making a confessional statement from any position of weakness or resignation, or out of remorse. He was a hero in his own eyes, and in those circumstances it is not possible to hold that the confession was not voluntary.

His confession was broadly divided into two parts, one relating to the conspiracy, planning and preparation for the attack, and the other relating to the actual attack on Mumbai, in execution of the conspiracy of which the appellant along with his “buddia”, the accomplice Abu Ismail, was a part.

So far as the attack on Mumbai is concerned, every statement made by the appellant is corroborated over and over again by objective findings and evidences gathered by the prosecution. But the conspiracy and the preparation for the attack took place in Pakistan and, therefore, it was impossible for any agency of this country to make investigations in regard to that part of the case. Nevertheless, the investigators have been able to gather extensive material to corroborate even that part of the appellant’s confession.

At a later stage, accused artfully and very subtly changed his earlier statement, recorded under Section 164 CrPC, thus cleverly offering himself for conviction but trying to escape the extreme penalty.

**CONCLUSION:**

There is distinction between making a statement giving rise to an inference of guilt and a statement which directly admits guilt. Where the admission extends only to the acceptance of a circumstance from which an inference of guilt can be drawn, but which is not conclusive to prove the guilt, it can be treated as an admission. In short, where conviction can be based on the statement alone, it is a confession and where some supplementary evidence is needed to authorize a conviction, then it is an admission.

The criminal law in India has provided various safeguards at all levels so that the real accused get the punishment and not the one who is innocent or has been framed. When a person is arrested, confession plays a major role in imposing punishment. This not only helps the prosecution in fetching punishment for the accused but also helps in discovery of new

facts and evidences. According to the law, confessions are given to the magistrate and that becomes an essential piece of evidence.

Confessions are highly relevant in criminal cases because they can provide direct evidence of an accused person's guilt. When a confession is considered voluntary and admissible, it can be a compelling piece of evidence that supports the prosecution's case. However, it's crucial to recognize that confessions are not infallible, and they should not be the sole basis for a conviction. Courts often require corroborative evidence to strengthen the case. Corroboration provides a layer of protection against wrongful convictions and helps to ensure that the legal system adheres to the principles of fairness and justice.