

## RELEVANCY OF FACTS IN CRIMINAL CASES

- i) Admissions and confessions- Relevancy in criminal cases
- ii) Confession of Co-Accused
- iii) Extra judicial Confession
- iv) Retracted confessions

*by*

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Chapter II of Indian Evidence Act deals with the relevancy of facts and the present topic is covered under Chapter–II. Admissions in Evidence Act usually refer to relevant statements made in Civil Cases, while confessions specifically pertain to the acknowledgment of guilt or substantial admissions of facts in Criminal Cases. Confession is nothing but admission of guilt by the accused in layman terms.

### ***Admission***

**Sec 17** of the Indian Evidence provided ***“an admission is a statement oral or documentary or contained in electronic form, which suggest an inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, herein after mentioned.”***

Admission in plain sense means a voluntary acknowledgment as to truth of a particular fact, but Sec 17 defining ‘admission’ in a wider sense says that an admission is a statement, oral, documentary or electronic record suggesting an inference as to fact in issue or relevant fact made by persons and under the circumstances in Sec 18 to 20.

### ***Essentials of an Admission***

1. It must be a ***statement oral, written or electronic documents***
2. It must suggest ***an inference about fact in issue or relevant fact.***
3. It must be made by the following persons

**a) Party to the proceeding (sec 18)**

Party here means not only those who appear as party in the proceedings but also those who did not appear on record as party but are interested in the subject matter of the suit.

**b) Agent authorized by such party(sec 18)**

Statement made by an agent (expressly or impliedly authorized by the principle as his representative) is admissible against their principles if made during the existence of the agency

Admission made by pleaders, attorneys and counsels on the matter of fact, not on the matter on law is binding to the client.

**c) Party's representatives i.e. party suing or sued in a representative character making an admission (sec 18)**

Statement made by the trustee, executor, administrator or the like are admissible in this clause as admissions of the representatives in the particular capacities.

**d) Persons who have proprietary or pecuniary interest in the subject matter of the proceedings(sec 18)**

Where a joint interest is existing, admission of the one is the admission of the other, if it is made during the continuance of such interest.

**e) Persons from whom parties to the suit has derived any interest in the subject matter of the suit(sec 18)**

**f) Persons whose position and liability it is necessary to prove as against any party to the suit(sec 19)**

The statement of the third party is admissible as admission when such statement is relevant as against such person making a statement related to such position or liability in a suit brought by or against them, when such person occupies such position or is subject to such liability.

- g) **Person to whom a party to the suit has expressly referred for information in reference to the matter in dispute (sec.20).**

***When admission is relevant:-***

***1) Against the person who makes it***

Sec 21 provides that an admission may be used against the person who makes them or his representatives in interest but generally cannot be used by a person who makes it for his own use.

***2) In case of oral evidence as specified in sec 22***

Sec 22 provides that oral evidence as to contents of documents is inadmissible (because the contents of the documents has to be proved by the production of the documents only) unless

- (i) Party proposing to give such evidence can make out a case for admission of secondary admission under sec 65(2)
- (ii) Genuineness of a document produced is in question

***3) Admission in Civil Cases***

Sec 23 provides that in civil cases if a person admits the liability upon an express condition that evidence of such admission should not be given or if it is made in such circumstances that the Court can infer that there was some sort of agreement that the admission will not be proved.

***Evidentiary value of the admission***

*Sec 31 provides "Admissions are not conclusive proof of the matters admitted but they operate as estopples under the provisions herein contained".*

Admissions under Indian Evidence Act 1872 (sec 17-23) are only piece of evidence. They are not conclusive proof of the fact admitted but they operate as estoppels under sec 115-117 of the Indian Evidence Act. Admission is only the prima facie evidence against the party making the statement and shifts the burden of proof.

## **CONFESSIONS:- (SEC. 24 TO 30)**

### **Definition**

**Confession** is not defined in the Indian Evidence Act, but the term 'confession' mentioned in the sec 24 of the Act. Sec 24 is under the category of the admission. Hence, Confession is a one of the species of the admission.

A definition given by the Stephon is *"Confession is an admission made anytime by a person charged with a crime stating or suggesting the inference that he committed that crime."*

In *Pulvinder Kaur v State of Panjab AIR 1952 SC 354* it was held that *"a confession must either admit in terms the offence or at any rate substantially the facts which constitute offence."*

**For example** in case where **A** makes a statement that **he has killed B**. such statement is **confession**.

In case where **A** makes a statement that **B abused** him, and he hold the **neck of B and drowned him** in the tank. Such **statement is confession**.

In case where **A makes a statement that he was with B. C came there. B and C were quarrelled. He tried to stop C but he stabbed B**.

By such statement an inference can be drawn about the **implication of A** in the **murder of B**. The statement at least shown that **'A' was present at the time of the murder of the 'B'**. But such statement is **not confession** because he **neither admits the guilt, nor substantially admits facts which constitute the offence**.

Further **mere conduct is not confession**. An act or conduct to be a confession, must amount to assertion. **For example**, absconding is not a

confession and mere giving specimen of handwriting for comparison of the hand writing is neither a confession nor a statement.

**Exculpatory statements** are not confession, *for example*, if an accused makes such statement which excludes him from the liability of committing an offence is not confession. (read the facts of Pakala Narayan Swamy and Pulvinder Singh Case.) In ***Aghnoo Nagesia v State of Bihar (1966) 1SCR 134*** it was held that a statement which contains self exculpatory matter cannot amount to a confession if the exculpatory statement is of the some fact which if true would negative the offence alleged to be confessed.

Where the statement made by the accused regarding any fact which is partly inculpatory and partly exculpatory, the Court is bound to consider the confession as a whole.

**Guilty Conduct is not confession:-**

Guilty conduct cannot amount to confession. Suppose a person is seen running from the scene of murder soon after the murder. No doubt, his guilty conduct cannot be regarded as confession.

**Evidentiary value of confession:**

A confession can be divided into numerous pieces and it is forbidden to accept one element of confession as evidence while rejecting the rest. The entire confession must be accepted as evidence by the court. So the confessions be accepted or rejected as a whole and the court is not competent to accept merely inculpatory confessions (**Palvinder Kaur vs State of Punjab case of Hon'ble Apex Court (1952 SCR 94)** & **Nishikant Jhavs State of Punjab case (AIR 1969 SC 422)**).

**Palvinder Kaur vs State of Punjab of Hon'ble Apex Court** wherein the decision of **Pakala Narayana Swami vs Emperor** is referred. The Supreme Court has uplifted the Privy Council decision case in Pakala Narayana Swami's case by putting forth arguments over 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. 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. Statement was made by Smt.Palvinder to the Magistrate in this case.

The court cannot selectively remove the exculpatory part from a statement and base its decision solely on inculpatory part.

But, in **Nishi Kant Jha vs State of Bihar (AIR 1969 SC 422)** of the **Hon'ble Supreme Court**, it is highlighted that there is no wrong in relying on some part of statements confessed by the accused and neglecting the other part. The court has traced out this concept from English Law and when court in its capacity understood that it has enough evidence to neglect the exculpatory part of the confession, then it may rely on the inculpatory part of such confession.

It is explained and the circumstances are analyzed which are enough to reject the exculpatory part in Ex.6 and in accepting the inculpatory part & piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.

The court must be satisfied that the confession is voluntary and true before acting upon it. Its truth must be assessed.

**In Balwinder Singh vs State of Punjab of Hon'ble Supreme Court (AIR 1996 SC 607) (Relating to extra judicial confession. Accused/Father killed his two daughters and made extra judicial confession before PW3):** Guidelines are given by Apex Court that the court must assess the integrity of the person making the confession and all of his claims must be examined by the court in order to determine if the person making the confession is trustworthy or not; otherwise, if the person making the confession is not trustworthy, his statements cannot be used to prove the guilt of the accused. In this case, father killed his 2 daughters & prosecution claims extra judicial confession was made to Pw3.

*"It is held that an extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. The courts generally look for independent reliable corroboration before placing any reliance upon an extra judicial confession. In the above case, extra-judicial confession was made by the accused to the effect that he has killed two daughters and cremated them. Only after 3 days, Pw3 lodged report. The witness PW3 to whom extra judicial confession was made did not disclose this fact to the police even though she had been with the police for about three days in connection with some other case. In those circumstances, the court held that the prosecution has failed to establish the circumstance of extra-judicial confession."*

**Confession need not be addressed to any particular Person:-**

**Sahoo vs State of U.P. (AIR 1966 SC 40) of Hon'ble Supreme Court (relating to confession to own self).**

In this case, the accused murdered his son's newly married wife because he usually had serious arguments with her, and when the accused murdered daughter-in-law, it was seen and 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 quarrel. The court held in this case that the accused's declaration or self-conversation should be considered a confession to prove his guilt and that such confession should be recognized as an important proof of administering justice and **that the fact that the statements were not conveyed to anyone else does not negate the relevancy of a confession**. As a result, a confession made to oneself is good evidence that can be used in a court of law. Whether a confession is voluntary or not is essentially a question of fact.

***How to analyze the material of confession:***

The proper way as suggested by higher courts is first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether if it is believed, a conviction could safely be based on it. If it is capable of belief, definitely, it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on other evidence and in such an event, Judge may call aid in confession and use it to lend assurance to other evidence and thus fortify himself in believing what without the aid of confession, he would not be prepared to accept. The courts making the confession statement the basis and then finding out if the facts stated in confession were corroborating in material particulars by other evidence instead of analyzing the evidence first was found fault with by higher courts on many occasions. ***Shrishail Nageshi Pare vs State of Maharashtra of Hon'ble (AIR 1985 SC 866).***

**Types of Confession:****1. Judicial Confession:**

When a confession is made by the offender before a magistrate or in a Court in the due course of legal proceeding, it is called judicial confession. When an accused before trial confess the guilt before magistrate, and magistrate records it under sec 164 of the Cr.PC, or he confess guilt at committal of trial before the magistrate, or at the trial, all such confession are judicial confessions. Thus a judicial confession can be understood as voluntary 'plea of guilty' by the accused before the Court, in fit state of mind.

Judicial confession is a substantive evidence and conviction can be based on that solely. It is well settled that if confession is made voluntarily and truthfully, is a efficacious proof of guilt and further corroboration is not required.

**Q) How to record judicial confessions?**

**A) The same is dealt with in State of Madhya Pradesh vs Dayaram Hemraj (AIR 1981 SC 2007).**



**Q) Whether judicial confession be recorded by Magistrate U/Sec. 164 Cr.P.C on the request of confessor/accused?**

**A) In Jogendra Nahak & Others vs State of Orissa and Others of Apex Court:** In the context of application by witnesses to record their Sec. 164 Cr.P.C. statements which initially was allowed by Hon'ble High Court, subsequently the High Court has disallowed the plea of witnesses on the application of informant, by even imposing costs. There is discussion regarding request being made by accused to record his confession. It was held that magistrate is not obliged to record the statements of all persons who approach him not through the investigating agency.

It is held "There can be no doubt that a confession of the accused can be recorded by a magistrate. An accused is a definite person against whom there would be an accusation and the magistrate can ascertain whether he is in fact an accused person. Such a confession can be used against the maker thereof. If it is a confessional statement, the prosecution has to rely on it against the accused. But that cannot be said of a person who is not an accused. No such person can straightway go to a magistrate and require him to record a statement which he proposes to make".

**Q) What is the procedure to be adopted after recording the confession statement?**

**A) In Murugasamy vs State of Hon'ble Madras High Court,** it is directed as follows:

- The 164 Cr.P.C. confession statement of the accused: The Investigating Officer shall make an application before the CMM/CJM for nominating a Magistrate, other than the jurisdictional Magistrate, to record the confession statement of an accused.
- After recording the confession statement of an accused, the recording Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies.
- The confession statement, in original, shall be sent in a sealed cover to the jurisdictional Magistrate or Court, as the case may be, through a special messenger or by registered post with acknowledgement due.

- One certified copy of the confession statement shall be immediately furnished to the Investigating Officer free of cost, with a specific direction to him, to use it only for the purpose of investigation and not to make its contents public, until the investigation is completed and final report filed.
- The other certified photocopy of the confession statement shall be kept in a sealed cover in the safe custody of the recording Magistrate.

**Q) Whether examining the Magistrate who recorded the confession statement is necessary?**

**A) No, the same is unnecessary as per the Hon'ble Apex Court decision in *Madi Ganga vs State of Orissa (1981) 2 SCC 224*.**

*In this case, Sec.80 of Indian Evidence Act is relied upon for opining so.*

**2. Extra-judicial Confession:**

Extra-judicial confessions are those which are made by the accused before magistrate outside the court. An extra-judicial confession can be made to any person or any definite person. Such type of confession coming from person who has no reason to state falsely. It has always been the fundamental principle of the court that a prisoner's confession outside the court is only admissible if it is voluntary.

Though, extra judicial confessions have less evidentiary value than judicial confessions, the writings of the accused is one greatest piece of evidence the court may possess to convict the accused.

The value of extra judicial confession evidence depends upon the veracity of the witnesses to whom it was made. It is true that the court required the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the court should not accept the evidence, if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the evidence or not. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be founded on such evidence.

**Sahadevan & Another vs State of Tamil Nadu of Hon'ble Apex Court (Relating to extra judicial confessions):** The Hon'ble Supreme Court in deciding the case, established a few principles in form of rules, which the court must follow before admitting the accused's extra judicial confession. Also in this case at Para 20, there is discussion regarding retracted confession.

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) 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.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.

In **Moorthy vs State of Tamil Nadu of Hon'ble Apex Court**, *the extra Judicial confession was giving to a stranger and it was unusual for a suspect to confide in a total stranger, especially when it is after two months of the crime.*

The above aspect was also observed by Hon'ble Apex Court on 14.03.2023 in between **Pavan Kumar Chowrasia Vs State of Bihar 2023 Live Law (SC) 197** that normally a person would not make a confession to someone who is totally a stranger to him. Moreover, the court has to be satisfied with the reliability of the confession keeping in view the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra judicial confession is corroborated by other evidence on record, it acquires more credibility.

**Pallapu Raju @ Pedda Raju vs State of A.P. of Hon'ble A.P. High Court:** In this case, extra judicial confession made before Panchayat secretary

and clerk was accepted and there is detailed discussion with case law on extra judicial confession.

No doubt, the extra judicial confessions still serve as grounds for conviction if proven to be voluntary, truthful and free of inducement and the court has to evaluate the same taking into account the surrounding circumstances.

**Differences between judicial confession and extra-judicial confession:**

<b>Judicial confession</b>	<b>Extra-judicial confession</b>
1. Judicial confessions are those which are made to a judicial magistrate under section 164 of Cr.P.C. or before the court during the course of investigation or afterwards before the commencement of inquiry or trial.	1. Extra-judicial confessions are those which are made to any person other than those authorized by law to take confession. It may be made to any person during investigation of an offence.
2. To prove judicial confession, the person to whom judicial confession is made need not be called as witness.	2. Extra-judicial confessions are proved by calling the person as witness before whom the extra-judicial confession is made.
3. Judicial confession can be relied as proof of guilt against the accused person if it appears to the court to be voluntary and true.	3. Extra-judicial confession alone may be insufficient & it needs support of other supporting evidence.
4. A conviction may be based on judicial confession.	4. It is unsafe to base conviction solely on extra-judicial confession.

### **3. Retracted confession:**

A retracted confession is a statement made by an accused before the trial by which he admits to have committed an offence, but he repudiates at the trial. During investigation by the police officer the accused is willing to admit his guilt, and the accused may be sent to a Magistrate for recording his statement. If the Magistrate is satisfied with that the accused has admitted his guilt to have committed the offence, he is to record the accused's statement which may be proved at the time of trial. During trial the accused on being asked may deny to have made such statement to the Magistrate. If this happens the confession made by the accused to the Magistrate before trial is called retracted confession. Retracted Confession made before the Magistrate, even if voluntarily, requires corroboration.

In ***Pyare Lal v. State of Rajasthan(AIR 1963 SC 1094)*** the Supreme Court, In this case, the Court determined that a withdrawn confession has sufficient validity to provide all other legal basis for conviction only if the Court is satisfied that it was valid and made of someone's own volition. However, the Court must testify that convictions cannot be based solely on confessions unless and unless they are corroborated.

*As per the available case laws on the retracted confessions, guidelines regarding retracted confessions can be summarized as follows: -*

1. Merely because the confession was retracted later, it does not mean that the confession was not voluntary in nature. The issue as to whether the accused was willing to give confession voluntarily or not is to be determined from his mental state at the time when he gave the confession.
2. If confession statement has been amply corroborated by circumstantial evidence, its subsequent retraction by the maker/confessor would not make it unreliable.
3. It is not the law that once a confession is retracted, the court should presume that the confession is tainted. To retract from a confession is the right of confessor and all the accused against whom confessions are produced by prosecution invariably may adopt that right. It would be

injurious to get this on a judicial confession on a mere premise that its maker has retracted from it. The court has a duty to evaluate the evidence concerning the confession by looking at all aspects.

4. Though conviction based on uncorroborated confession of an accused person is not illegal, but as a rule of prudence which has become a rule of law, courts look for corroboration before accepting a retracted confession.
5. A court may take into account the retracted confession, but it must look for the reasons for making the confession as well as retraction and must weigh the two to determine whether the retraction affects the voluntarily nature of confession or not. If the court is satisfied that it was retracted on account of an after taught or advice, the retraction may not weigh with the court.
6. A conviction based on retracted confession without corroboration is not illegal.

#### **4. Confession by co-accused:-**

It is settled principle of law that confession of Co accused person cannot be treated as substantive piece of evidence and can be pressed into a service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible there from (***Mohtesham Mohd. Ismail v. Spl. Directorate, (2007) 8SCC 254 para 190***).

Sec.30 of Evidence Act, Sec.133 of Evidence Act, Sec.114 (b) of Evidence Act are important to understand the concept of confession by co-accused.

**Sec.30** of Evidence Act reads as follows: Consideration of proved confession affecting person making it and others jointly under trial for same offence.—***“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.”***

**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.

**Sec.133** of Evidence Act reads as follows:

**Accomplice** — An accomplice shall be a competent witness against an accused person; and a conviction **is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.** (It is unsafe to act on evidence of accomplice unless corroborated even though evidence of accomplice is admissible).

**Sec.114(b)** of Evidence Act reads as follows: Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars.

The plain reading of Sec.30 of evidence Act discloses that when the following conditions are fulfilled, the court may take into consideration such confession against the maker thereof as well as against other accused who are being jointly tried for the same offence i.e,

- a) *More persons than one are being tried jointly*
- b) *The joint trial of the persons is for the same offence*
- c) *A confession is made by one of such persons (who are being tried jointly for the same offence)*
- d) *Such a confession affects the maker as well as such persons (who are being tried jointly for the same offence) and*
- e) *Such a confession is proved in court, the court may take into consideration such confession against the maker there of as well as against such persons (who are being jointly tried for the same offence).*

### When is confession irrelevant?

- a) **Sec. 24** describes different instances as to when confession becomes irrelevant i.e.
- b) If the confession is out of inducement, threat or promise, etc having reference to charge against accused person, such inducement should have proceeded from a person in authority.
- c) It should relate to the charge in question, otherwise it is irrelevant.
- d) It should appear to accused that it would give any advantage or avoid any evil in reference to the proceedings against him.
- e) **Sec. 25** says that confession to police officer not to be proved against a person accused of any offence.
- f) **Sec.26** says that confession by accused while in custody of police not to be proved against him, unless made in the immediate presence of Magistrate (Judicial Confession).

**Sec.162 Cr.P.C** says about the statements to police not to be signed and use of statements in evidence. But, 162(2) says that nothing in this section shall be deemed to apply to any statement falling within the provisions of Sec.32 (1) or 27 of Indian Evidence Act.

**Sec.27** says that when any fact is deposed to, only so much of information leading to discovery in consequence of information received from accused may be proved as relates distinctly to the fact thereby proved.

Sec.27 of the Indian Evidence Act was enacted to lift and remove the ban provided in Secs.25 and 26 of Evidence Act which bans the admission of confession made to police or in police custody. **(Pandurang Kalu Patil vs State of Maharashtra of Hon'ble Supreme Court)**.

- a) **Sec.27** is an exception to Secs.25 & 26 of Evidence Act. The conditions necessary for invoking the aid of Sec.27 are:
- b) There must be a discovery of fact, as much as relevant fact in pursuance of an information received from person in police custody.
- c) He should have been accused of an offence.
- d) The discovery of such fact must be deposed to.
- e) At the time of giving of information the accused must be in police custody.



- f) If these conditions are satisfied, that part of information given by accused which led to such discovery gets denuded of the wrapper of prohibition and it becomes admissible in evidence. It is immaterial whether the information was supplied in connection with the same crime or a different crime.
- g) Sec.25 & 26 were manifestly intended to hit an evil i.e, to guard against the danger of receiving in evidence testimony from tainted sources about statements made by accused.
- h) In order to attract Sec.27, the discovery must be some fact which the police had not previously learnt from other sources and the knowledge of the fact was first derived from the information given by the accused.
- i) It is now well settled that the discovery of fact referred in Sec.27 of Evidence Act **is not the object recovered, but the fact embraces the place from which the object is recovered and the knowledge of accused as to it (Pulukuri Kotaiah's case).**
- j) There is no requirement either U/Sec.27 of Evidence Act or Sec.161 Cr.P.C to obtain the signature of independent witness on the record in which the statement of the accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by police is cast on the police when searches are made. Sec.100 (5) Cr.P.C requires that such search shall be made in their presence and list of things seized and places in which they are found shall be prepared and signed by such officer and witnesses.
- k) Of course, if any such statement leads to the recovery of any article, it is open to the I.O to take signature of any person present on the document prepared for such recovery.
- l) This section 27 is founded on the **English Doctrine of confirmation by subsequent events** (Statements made while under arrest are admissible to the extent that they can be supported by the facts later discovered).
- m) The sweep and amplitude of Sec.27 of Evidence Act can be understood with these two illustrations: -

Illustration A

The accused, while in the custody of a police officer says **“I have hidden the dagger beneath the tiles of the cowshed of my neighbour A. I can show you the dagger which is so hidden.”**

Thereafter, the police officer, on the strength of the above information given by the accused goes to the cowshed of A, the neighbour of the accused and takes out the dagger hidden beneath the tiles of the cowshed.

Illustration B

*The accused, while in the custody of a police officer says “I have hidden the dagger in a secret place. If I am taken there, I shall show you the place and the dagger hidden there.” Thereafter, the accused leads the police party to the cowshed of his neighbour A and takes out the dagger hidden beneath the tiles of the cowshed.*

The distinction between Illustration A and Illustration B is this:

In Illustration A, the accused person, in his disclosure statement given while in the custody of the police officer, has revealed the place of concealment of the weapon. The police officer who was in the dark about the place of concealment of the weapon until the accused revealed the same, was able to find out the weapon from the information supplied by the accused and the officer could himself recover the weapon without any further help, cooperation or assistance by the accused. In other words, in Illustration A, the “information” given by the accused while in the custody of the police officer, revealed a “fact discovered” within the meaning of Section 27.

In Illustration B, the accused in his statement given while in the custody of the police officer, has not revealed the place of concealment of the weapon. Until the accused led the police party to the place of concealment of the weapon and took out the weapon, that place continued to be a secret for the police officer. In other words, in Illustration B, the accused did not, while he was in the custody of the police officer, give any information regarding the “fact discovered” within the meaning of Section 27.

Illustration B does not fall U/Sec.27 of Evidence Act as the information given by accused does not reveal the place where the incriminating object is

concealed. Hence there is no **information** given about the fact discovered and the accused has reserved to himself the fact discovered till he leads the police party to the place of concealment of weapon which he would take out from its hiding place. At the best the action of the accused in illustration B may amount to **conduct provable U/Sec.8 of Evidence Act (Sec.8 deals with relevancy of motive, preparation and previous or subsequent conduct)**).

The word **fact discovered** used in Sec.27: The fact discovered embraces the place from which the object is produced and the knowledge of accused as to this and the information given must relate distinctly to this fact. If accused in police custody says **"I will produce knife concealed in the roof of my house"**. **This does not lead to discovery of knife and knife was discovered many years ago**. It leads to discovery of facts that the knife is concealed in the house of informant to his knowledge and if knife is proved to have been used in the commission of offence, the fact discovered is relevant. But if to the statement the words be added **"with which I stabbed A"**, these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

The meaning of the words **whether it amounts to confession or not** occurring in Sec. 27: Except in cases in which the possession or **concealment of an object constitutes the gist of the offence charged**, it can seldom happen that information relating to discovery of fact forms the foundation of prosecution case (as held in Pulukuru Kotaiah's case).

#### **MARKING OF CONFESSIONAL STATEMENTS:**

The presiding Officers shall ensure that only admissible portion of Section 8 or Section 27 Indian Evidence Act, 1872 is marked and such portion alone is extracted on a separate sheet and marked and given an exhibit number.

The tendency on the part of prosecuting agencies in getting recorded the entire statement including the inadmissible portion is deprecated and it is directed that such a practice must immediately be stopped. **Venkatesh @ Chandra vs State of Karnataka (2022 KHC 6440 SC) of Hon'ble Apex Court.**

**Conclusion:-**

On a final note, it is appropriate to state that the importance of confession cannot be overstated for the purposes of a criminal trial. Admission under the Criminal Procedure Code of 1973 has a number of distinct characteristics. It has a significant incentive in the Criminal Justice System, and in this way, the sacredness of the validity of confessional explanations can be maintained, and the consistent process of developing new mechanisms and components for recalling confessional evidence can be modified in the standard arrangements of current procedural laws and the entire evidential law in the country. Since the law enforcing office and the investigating office are both vested in the police in India, the importance and sacredness of admission is all the more important. So every now and then, the police agency's excessive energy and tension is reflected in their course of extreme measures and reverting to the use of third-degree violence for the purposes of withdrawing and drawing out the admission of the accused people in authority or those who have gone up against police remand.

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