

Irrelevancy of Confession Caused By Inducement, Threat or Promise

Nandita Krishnan¹

Introduction

A confession is an admission by an accused in a criminal case and if he does not incriminate himself, the statement cannot be said to be a confession, because he does not acknowledge his own guilt.² The term “confession” is applied to an admission made by a party against his own interest on a criminal charge. Where the origin of the confession is untainted with suspicion, and it can be safely relied on it is not possible to obtain more satisfactory testimony. It is the best when accused by himself confesses his own guilt. But this maxim suffers from fallacy. The fallacy being, despite the accused persons’ voluntary confessions, there exists a probability that those confessions are wrung by the instrumentality of threat, fear or inducement.

On these grounds, the law protects the accused persons’ against becoming the victims of their own delusions, or machinations of others.

Provision

Section 24 of Indian Evidence Act, 1972: Confession Caused By Inducement, Threat or Promise, When Irrelevant In Criminal Proceedings

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Meaning

Section 24-30 of the Evidence Act deals with the admissibility of confessions by accused persons in criminal cases. As such the act does not define the term “confession”. For a long time, the Courts in India adopted confession, as an admission made at any time by a person charged with crime, stating or suggesting an inference that he had committed the crime.

¹Student, School of Law, Sastra University.

²Sohar Singh v. State of Bihar, AIR 1966 Pat. 448.

Precedent : A Publication of Jus Dicere Center of Research In Law

It is not denied that confession is a statement made by a person stating or suggesting an inference that he had committed a crime.³

However, the Supreme Court pointed out that there was nothing wrong or relying on a part of the confessional statement and rejecting the rest, and for this purpose, Court drew support from English authorities. When there is enough evidencetoreject the exculpatory part of the accused person's statements, the Court may rely on the inculpatory part.⁴

Scope of the Section

Section 24 declares that confessions caused by inducement, threat or promise are irrelevant. Unless, as Section 28 provides that those confessions are made after the impression caused by threat, inducement or promise is fully removed.⁵ The rule laid down is speaking strictly, a rule of relevancy, called forth by abstract principles of evidence, and not a positiveprohibition necessitated exigencies.⁶ In every case in which a confession is admitted in evidence in a criminal proceeding, the fact that evidence of the confession as admitted is sufficient to make the confession, evidence. It is open no doubt to the defence to object to the evidence of confession going on in the ground that it is excluded by Sec.24, Evidence Act. But till such objection is raised, there is no necessity for the Court to pronounce any formal decision on the question of relevancy of the confession. The actual admission of that confession during the trial is sufficient for the purpose.⁷The general provision applies to a confession made by a person whether in police custody or to other police officers. It is not possible to laydown as to what language is sufficient constitute an inducement. It would depend on the circumstances of each case.

In India a confession duly recorded and certified under Sec.164 Cr.P.C., is admissible evidence against the person making it unless shut out by the provisions of Sec 24 of the Evidence Act, "to which alone," as pointed out in *Pitamber's case*⁸ by Chief Justice Westropp, "we are at liberty to look for the law of evidence in this country."

Two Kinds of Confessions

Judicial Confession

³State of U.P v. DeomanUpadhyaya, A.I.R 1960 SC 1125.

⁴Nishi Kant Jha v State of Bihar, 1959 SCR 1033.

⁵Queen Empress v. BabuLal, I.L.R 3 Bom12 : 3 Ind. Jur.466.

⁶*Ibid.*

⁷In re.Navanithammal, 40 Cr. L.J 3 at p.4 : A.I.R 1939 Mad.32.

⁸I.L.R 2 Bom. 61.

Judicial confessions are those which are made before the Magistrate, or in Court, in due course of legal proceedings; and it is essential that they be made of the free will of the party, and with full knowledge of the nature and consequences of the confession.

Extra- Judicial Confession

Extra- Judicial confessions are those made by the party elsewhere than before a Magistrate, or in Court; this term embracing not only express confessions of crime, but all those admissions and acts of the accused from which guilt may be implied.

An extra – judicial confession made in presence of a gramrakhi, who was a police officer, is not admissible in evidence.⁹

Confessions, When Voluntary

Extra – Judicial confessions embrace those made as well to private individuals, to the officers of justice, such as constables, police officers, etc. If voluntarily made, they are receivable in evidence after being proved like other facts. An extra- judicial confession, if satisfactorily proved to have been voluntarily made, may be the basis for a conviction even in the absence of corroboration.¹⁰

When Section Becomes Fully Operative

To make Section 24 of the Indian Evidence Act fully operative, it must be shown that not only there was inducement proceeding from a person in authority, but that said inducement was sufficient to give the accused person a chance which would appear to the Court reasonable for supposing that by making such confession the accused gained any advantage or did avoid any evil of temporal nature in relation to the criminal proceeding.¹¹

A confession of a crime by person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the Court has to take into consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. In a case where the Court has to decide whether the confession made by the accused in a criminal case has been proved, the law requires that the Court must be satisfied that the confession made was free and voluntary and

⁹RatnaMunda v. State, 1986 Cr. L.J. 1363 at p.1365 (Orissa).

¹⁰KesharDhani Ram v. State, (1963) I.L.J 6 All at p. 647.

¹¹RajkishoreBhuyan v. State, A.I.R. 1969 Orissa 190 at pp. 193-94.

that it was not brought about by the influence of hope or fear. If the prosecution satisfies the Court on these points and it is held that the confession was a free and voluntary act of the accused and that it was not induced by any hope or fear or coercion, then it must be regarded as a genuine confession which may be used against the accused at the trial.¹²

Conditions under the Section 24

The requirements of irrelevancy under the section are:

1. The confession must be the result of inducement, threat or promise.
2. Inducement, etc should proceed from a person in authority.
3. It should relate to the charge in question; and
4. It should hold out some worldly benefit or disadvantage.

When these conditions are present, the confession is said to be not free and not admissible as evidence.

Detailed explanation has been given below:

1. The confession must be the result of inducement, threat or promise.

The first condition being the confession should be free and voluntary. If it flows from hope or fear, excited by a person in authority it is inadmissible.

“The ground for not receiving such evidence is that it would not be safe to receive a statement made under any influence. In a case, the body of a woman was found in a parcel with a piece of paper carrying the words “BladieBelgiam”. The accused, being charged, was asked to write the words “Bloody Belgiam”. He expressed his willingness and wrote “BladieBelgiam”. This amounted to some sort of confession that the writing on the piece of paper found with the body was that of the accused. The writing was held to be free and voluntary and, therefore, relevant. The mere fact that the accused was in the custody of an intelligence officer at the time of statement would not be sufficient to create the presumption of inducement, threat or promise.¹³ It is for the prosecution to prove affirmatively that the confession was free and voluntary.¹⁴

2. Person in authority.

The second condition is that the inducement, threat or promise should proceed from a person in authority. The expression definitely refers to Government officials: “Magistrates, even those not acting as such in the case, their clerks, coroners, police constables, warders and others having custody of prisoners, searchers, prosecutors, and their wives and attorneys.

¹²SubramaniaGoundan v. State of Madras, A.I.R. 1958 S.C. 66 at p.71.

¹³PonAdhithan v. Deputy Director, Narcotic Control Bureau, A.I.R 1999 S.C 2355.

¹⁴Reathu v. State of U.P., A.I.R. 1956 S.C. 56.

Precedent : A Publication of Jus Dicere Center of Research In Law

Every Government official will be a person in authority on whom the accused thinks that he is capable of influencing the course of prosecution.¹⁵ Officers of the Customs Department were held to be person in authority in reference to a person from whom they had extorted a confession.¹⁶

Even a private person can, in circumstances, be a person in authority over the employee if the charge relates to the contract of employment. A confession to a private employer on the threat of dismissal would be equally irrelevant. But “it is only when the offence concerns that master or mistress that holding out the threat or promise renders the confession inadmissible.¹⁷

3. Inducement, threat or promise associating with the charge in question.

It is necessary for the confession to be excluded from evidence that the accused should labour under influence that in reference to the charge in question his position would be better or worse according as he confesses or not.

Thus, where a person charged with murder, was made to confess to a Panchayat which threatened his removal from the caste for life, the confession was held to be relevant, for the threat had nothing to do with the charge.¹⁸

4. Benediction of temporal nature.

The last condition for Section 24 to come into play is that the inducement, threat or promise must be such as is sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making the confession he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Thus the evil which is threatened to him or the benefit which is promised to him must be of material, worldly or temporal nature.

Value of Confession

The Court should take into consideration all the circumstances in which a confession was made, including allegations of force, if it thinks they may be true, in assessing the probative value of a confession.¹⁹ With regard to confessions which are such an important factor in criminal trials in this country, no hard and fast rule can be laid down. The circumstances of each case must be weighed. Where there is no apparent reason for doubting the truth of

¹⁵R v. Middleton, (1974) Q.B. 191 (C.A).

¹⁶S.K.Modi v. State of Maharashtra, (1979) 2 S.C.C. 58.

¹⁷ PARKE, B in Rv. Moore, (1852) 2 Den 522 : 5 Cox. C.C. 555.

¹⁸Emperor v. Mohan Lal, (1881) ILR 4 All 46.

¹⁹Prasad v. Queen, (1981) 1 All.E.R.319 at p.322 (P.C).

confession, the presumption is in favour of the truth of the confession and the Courts are bound to act upon it.²⁰

Where the accused's own confession is the only evidence against him accounting for the commission of the crime with which he is charged it must be accepted in so far as it is not inconsistent with reason and other surrounding circumstances.

In considering if the confession of an accused person is true or not, the Court should consider if the statement is probable or improbable, if it is consistent or inconsistent with the other circumstances of the case. If what the prisoner says in his own favour is not contradicted by prosecution, if it is not improbable in itself, if it is not inconsistent with the other ascertained facts, then the reasonable course for the Court to take is to accept the history as true.

When there is other evidence, a Court may test the truth of a confession with its aid and ignore the exculpatory part.

Reliability of Judicial Confession

The accused admitted in his confession the full length role played by him in association with the other two assailants for murdering the two ladies. He did not own in his confession that he also stabbed at least one of the two deceased. It was held that the very fact that he did not say in so many words that he also inflicted one stab injury was of no consequence. In a way this aspect was a further assurance that his confession was not what the police wanted him to say to the magistrate. There was no reason to think that the accused had been prevailed upon by any extraneous influence to make the confession.²¹

Protection against self-incrimination is available even at the stage of investigation. It ensures that the statements have been made by the person accused voluntarily and therefore are reliable.²²

Evidentiary Value of Confession Under Common Law

It is very known that even if there is any valuable evidence in the confession given by accused which is not voluntary and is made by threat or inducement, such evidence out of that confession will not be made reliable or admissible before the court of law. It is for that reason that from the earliest days the common law has recognised that evidence of certain confession is not admissible as a matter of law.²³

FORM OF CONFESSION

²⁰Queen – Empress v. Dada Ana, I.L.R. 15 Bom 452 at p.480; Reg v. BalwantPendhakar, 11 B.H.C.R. 137.

²¹State of Tamil Nadu v. Kutty, A.I.R. 2001 S.C. 2778 at p.2782; Devi Singh v. State of Rajasthan, (2005) 10 S.C.C. 453.

²²Selvi v. State of Karnataka, A.I.R 2010 S.C. 1974.

²³R v. Isequilla, (1975) 1 Al-l E.R 77 at p. 80 Ch.D.

Generally, the confession might be either in oral or written. There is no mandatory rule as to in what form the confession should be. A prisoner out of his/her own will, who is in custody writes a letter giving a confession to the prosecutor is made receivable.²⁴ Words addressed to others and in writing are in no doubt in usual forms but words uttered in soliloquy are equally receivable.²⁵ A deaf or dumb person may be called onto plead, or or to advocate his cause through the medium of an interpreter who will have to explain his signs to the Courts and jury.²⁶

Burden Of Proof

The general rule in criminal case is that the burden of proof lies always on the prosecution mostly. However, the onus of proof shifts on the accused to prove his case at times. In this circumstance, the burden of proof lies on the accused to prove that his confessional statement is irrelevant because it attracts the bar of Section 24 but such burden is not as high as on the prosecution. Once the accused is able to establish facts which create a reasonable doubt that the confession is not made out of free-will, the burden would be shifted to the prosecution to show that the confession was voluntary and also satisfied all the requirements of relevancy. The confession of an accused person made outside the court (extra-judicial) implicating him and his co-accused cannot be used against co-accused.²⁷

Conclusion

There is an escape to section 24 which is directly given in section 28. Section 28 provides that when at the time of confession, the impression created in the mind of the accused by threat or inducement etc., was no longer there, the confession would be relevant. In the context of Bombay Terror Attack, confession made in custody was nevertheless held to be voluntary as it was made months after the confessing accused had remained in custody and after many sessions of interrogation. Voluntariness of the confession was further becoming clear from the fact that the confession that the confession was made to set an example to others to follow him.²⁸

²⁴R v. Heal, L.P 224.

²⁵ R v. Simons , 6 C. & P.540.

²⁶R v Jones, 1 Leach.C.L 102; R v. Steel, Id. 451.

²⁷Basanti v. State of H.P., (1987) 3 SCC227 : A.I.R 1987 S.C 1572.

²⁸Md.AjmalMd.AmirKhashib v. State of Maharastra, A.I.R 2012 S.C. 3565.