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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

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“CONFESSIONS” UNDER THE INDIAN EVIDENCE ACT, 1872: AN ANALYSIS OF PRECEDENT

AUTHORERD BY: MR. AMRIT PAL SINGH,

Advocate, Delhi High Court

Email: Amritpal515@gmail.com

CO-AUTOR - MR. KARAN DEEP SINGH,

5th Year Law Student, Symbiosis Law School, NOIDA

Email: Karan.simak29@gmail.com

Abstract:

The admissibility of confessions in the Indian legal landscape is a matter of paramount significance, profoundly influencing the outcomes of criminal trials. This research paper, titled "Confessions" under the Indian Evidence Act, 1872: An Analysis of Precedent, undertakes an extensive examination of the legal provisions and precedents governing confessions in India. Delving into the historical and legal framework provided by the Indian Evidence Act, 1872, this study scrutinises the conditions under which confessions are deemed admissible as evidence in criminal proceedings. It seeks to unravel the delicate equilibrium between the constitutional principles of fairness and the imperative to establish truth and justice within the criminal justice system.

In summary, by synthesising the legislative provisions and case laws, this research paper offers a comprehensive understanding of the intricate legal landscape surrounding confessions in India. It aims to contribute to the ongoing discourse on safeguarding the rights of the accused persons while upholding the principles of justice and accountability. This analysis serves as a valuable resource for legal practitioners, scholars, students and academicians working towards the preservation of a fair, equitable, and constitutionally aligned criminal justice system in India.

Introduction:

The term 'confessions' denoted from the Latin term "*Confiteri*"¹. During the course of a criminal trial, the confessions play a significant role as it is constructed on basic foundation of accuracy and truth. In common parlance, the accused by confessing is performing an act of making an incriminating statement to the police or magistrate implicating themselves to the alleged crime. When the accused persons make confessions voluntarily, then they are considered a substantial evidence during the court of trial, whereas some can be involuntary in nature.

According to Sir James Stephen "*A confession is an admission made by a person charged with a crime at any time, stating or implying that he committed the crime*"². Nevertheless, the Privy Council did not accept the abovementioned statement and Lord Atkin held that no statements indicating any self-incriminating material could be a confession and a person must either admit the commission of an offence or at the minimum, admit the substantial facts leading to commission of alleged offence³, in order to be considered a statement as a confession. This same jurisprudence has been reiterated by the Hon'ble Supreme Court of India in the case of *Ajay Singh vs State of Maharashtra*⁴, wherein the Apex Court held that the confessions shall be construed as statements made by accused persons which admits the commission of an offence by such accused or the commission of substantial facts which constitutes the offence.

In legal practice, the confessions is ordinarily an admissible evidence and relevant fact which can be acted upon the by the court. Confessions varying from case to case and circumstances and the law laid by constitutional court shall determine the evidentiary value of confessions for the conviction of the accused persons. The Trial court during the course of trial, shall satisfy itself regarding the confession of the accused in terms of the voluntariness and truthfulness of the confessions, and corroboration of the same.⁵

Generally, confessions can be classified into two part as judicial and extra-judicial confessions. Judicial confessions are regarded as confessions made by the accused persons before the Magistrate or in court during the course of judicial proceedings. Whereas, the extra-judicial

¹ <https://www.etymonline.com/word/confess>.

² Stephen's Digest Law of Evidence.

³ *Pakala Narayan Swami v. Emperor*, (1939) PC 47 (52).

⁴ AIR 2007 SC 2188.

⁵ *Alok Nath Dutta vs State of West Bengal*, (2007) 12 SCC 230 (para 87).

confessions are regarded as the confessions made by the accused persons anywhere else other than the Magistrate or any court.⁶

Confessions under the Indian Evidence Act, 1872

The term confessions has nowhere been expressly defined under the Indian legislation, namely the Indian Evidence Act, 1872 (hereinafter referred to as “*The Act*”) but confessions can be construed as any statements made by the accused person/s himself or herself which prove his or her own guilt. The legal practice in criminal law denotes the admissions to be presumed as confessions made by the accused person/s. The Section 17 read with Sections 19 and 20 of the Act defines admissions as any statements made by any person in the form of written, oral or electronic mode in order to derive or consider any relevant facts.

The substantive law is provided from Sections 24 to 30 of the Evidence Act while the procedural aspect of law is present in Sections 163, 164, 333 and 364 Cr.P.C., 1973.

Analysis:

The definitions of both confessions and admissions ought to be similar but there exists a distinction between the two, such as the confession is the admission made by accused persons of their own guilt whereas, the admissions can be of various kinds provided by any person or the accused persons. In order for statements to be considered as confession, the accused person making such statements must either admit the commission of those acts which terms an offence or substantially the facts constituting the offence.⁷

The confession is not a conclusive proof of guilt of the accused persons. As per Section 31 of the Act, the admission is not a conclusive proof, thus, the confession is also not a conclusive proof, therefore confession can be rebutted. The confessions are considered as a strong piece of evidence which have high evidentiary value but their evidentiary value is not as high as dying declaration.

In the matter of *Nageen Dad Ram Das vs Dalpatram Icharam*⁸, the Hon’ble Supreme Court of

⁶ *State of Punjab vs Harjagdev Singh*, AIR 2009 SC 2693 (para 7).

⁷ *Jarnail Singh vs State of Punjab*, (2011) 3 SCC 521.

⁸ 1974 AIR 471.

India provided the effects of an admission made by the accused person as to be normally true and the best proof to prove any relevant fact or fact-in-issue by admission to establish facts.

The Hon'ble Supreme Court of India observed that if an unambiguous confession is admitted into evidence which is free of suspicion, then it will be crucial piece of evidence which has high probative force.⁹

As per Section 24, confessions being a kind of admissions under special circumstances be treated as irrelevant confessions which are made by the accused person under some kind of threat, influence, inducement or any kind of promise to the accused person. The statements made or communicated by the accused person which admits the guilt of an offence shall be deemed to be confession of guilt. The probative value of confession is depended upon the confession to another, the same can be admitted in evidence only if proved by the prosecution. The proof in situation of admission and confession shall be provided by the witnesses who heard the admission or confession.¹⁰

It is pertinent to mention that Section 28 provides for when the confessions made under Section 24 become relevant, when such threats or inducements or promise has been completely removed and the accused person is free to make the confession.

The Hon'ble Supreme Court of India held that the Chapter III of the Constitution of India provides for the Fundamental Rights which ensures no accused persons will be forced to give confessions which are self-incriminating against the maker. As per Article 20(3), no accused persons shall be compelled to be a witness against their own self.¹¹

It was observed that confessions by accused person may not necessarily be true and voluntary in nature, a confession which could be true but involuntary¹². Once the confessions are involuntary and rejected by the Court, their truth and value for conviction need not to be considered.¹³

⁹ *Thimma vs State of Mysore*, AIR 1971 SC 1871.

¹⁰ *Sahoo vs State of Uttar Pradesh*, AIR 1966 SC 40.

¹¹ *Ayub vs State of Uttar Pradesh*, AIR 2002 SC 1192.

¹² *Fateh Chand vs Emperor*, 26 CrL LJ 937.

¹³ *Kassimmuddin vs Emperor*, 61 Cal 312.

Section 25 provides that the confessions made by the accused person to any police officer or investigating officer shall be inadmissible and not proved during trial before the court. The scope is limited to those confessions which are made before the police officer and not in its custody. Any incriminating statement is admissible against the accused person only if it does not amount to confessions made by the accused¹⁴. In the matter of *Raj Kumar Karwall vs Union of India*¹⁵, the Hon'ble Supreme Court held that for the purposes of Section 25, the police officer is an authority who has the power to investigate the case and file police report. Section 25 is applicable to the confessions made before investigations have begun before the Police but nor during the course of the investigation.

The Section 25 acts as a bar against the admissibility of confessions made to the police officer even those officers who have the power investigate, arrest, and file police report under Section 173 Cr.P.C. Thereby, the officers under Section 53 of NDPS Act are police officers and fall within the meaning of Section 25, Indian Evidence Act for the purposes of recording confessions of the accused persons.¹⁶

The Hon'ble Supreme Court of India observed the admissibility of confessions made by the accused persons to the police officers as the general rule under Section 25 is that any confession made to police officer shall be inadmissible and not proved against the maker. Such a confession may still be used as an admission under Section 21 of The Act subject to the limitation prescribed under Section 162 Cr.P.C and if it fulfils the test laid down by the *Pakala Narayana Swami*¹⁷. Despite that a statement containing only admission and not confession regarding an offence shall be relevant only if made before the investigation commences by the police officer.¹⁸

Section 26 bars any confessions made by an accused person in police custody even if made in presence of police officer or doctor. If a confession is made in police custody before the Magistrate in the same room, only then such a confession becomes admissible. In the matter of *State of Andhra Pradesh vs Gangula Satya Murthy*¹⁹, the Hon'ble Supreme Court of India observed that the bar of Section 26 does not applies to extra-judicial confessions.

¹⁴ *Barinder K. Ghose vs Babulal*, ILR (1910) 37 Cal 467.

¹⁵ (1990) SCR (2) 63.

¹⁶ *Toofan Singh vs State of Tamil Nadu*, (2021) 4 SCC 1.

¹⁷ (1939) PC 47 (52).

¹⁸ *Dipakbhai Jagdishchandra Patel vs State of Gujarat*, (2019) 16 SCC 547.

¹⁹ (1997) 1 SCC 272.

Section 27 of the Evidence Act provides for the types of statement needs to be proved which are provided by the accused persons. It is based upon the theory of confirmation by the subsequent finding of fact. In the matter of *State of Uttar Pradesh vs Deoman Upadhyay*²⁰, the Constitutional Bench of the Hon'ble Supreme Court of India observed that the Section 27 is a proviso to Section 24, 25 and 26. Since Section 27 is a proviso, the rule of interpretations provides that it should be given strict interpretation and only has to be read with the provision as it has been expressly provided. The essential elements are that the information provided by the accused persons shall lead to discovery of fact which is directly reached by the said information; the relevant portion which is directly connected with above discovery shall be against the accused; and the discovery of fact must provide for the commission of an offence.²¹

Types of Confession:

First, **Judicial confessions** are those confessions which are made before a judicial magistrate during investigation under Section 164 Cr.P.C. These confessions needs to be properly written and recorded by the Magistrate. Judicial confessions are admissible as evidence, relevant fact and used to convict the accused, if only provided that he or she made it with the utmost truthfulness and voluntary nature without any threat or inducement, and the truth is considered with respect to the case of prosecution.²²

In the landmark judgement of *State of NCT of Delhi vs Navjot Sandhu*²³, the Hon'ble Supreme Court observed that confessions are highly reliable as it could convict the accused person and a rational person would not make statements which wherein he self-incriminates himself or herself, prior to convicting the accused, the trial court must verify that the confession was voluntarily and truthfully before the Magistrate.

The Hon'ble Supreme Court of India affirmed that in cases of judicial confessions, the prosecution merely needs to prove that the confession is recorded by a magistrate and court shall raise the presumption of genuineness and record of confessions can be rebutted by the defence; unless the confession is not rebutted, then it shall be deemed to be proved. In the case of extra-judicial confession, the prosecution will be produce the confession and has the burden of proof

²⁰ 1960 AIR 1125.

²¹ *Jaffar Hussain Dastgir vs State of Maharashtra*, (1969) 2 SCC 872.

²² *Babubhai Udesinh Parmar vs State of Gujarat*, AIR 2009 SC 2693.

²³ (2005) 11 SCC 600.

to prove. Therefore, the presumption of genuineness is present in the case of judicial confessions only but not in extra-confessions.²⁴

Second, the **Extra-Judicial confessions** could be oral or written statements as documentary evidence made as confessions to any private persons, executive magistrate, etc. and not to a Judicial Magistrate. Such confessions can be made either before or after the stage of investigation or trial. The person to whom the confession was made, must be able to prove it.

Earlier, the Hon'ble Supreme Court of India observed that the extra-judicial confessions appeared to have been treated as a weaker piece of evidence during the course of trial, but there has been neither the rule of law nor rule of prudence which expressly provides that the extra-judicial confession cannot be relied upon unless corroborated.²⁵

The trial court or any court shall not have to begin with a presumption that the extra-judicial confession is a weak evidence. The credibility of extra-judicial evidence will depend upon the nature, circumstances and time in which such confessions are made along with the credibility of the witnesses who are deposing about such extra-judicial confession²⁶. In the matter of *State of Rajasthan vs Raja Rama*²⁷, the Hon'ble Supreme Court opined that the trial courts have the discretion to rely upon the extra-judicial confession, if the accused person made such confession in a voluntarily manner and his/her fit mental state of mind. Though, the evidentiary value of such evidence primarily relies upon the person who makes such confessions. The trial courts are not appropriate to try the cases with the presumption that extra-judicial evidence has weak evidentiary value during the course of trial.

The Hon'ble Supreme Court of India opined that the evidentiary value of extra-judicial confessions shall be adjudicated considering the facts and circumstances of the case. The facts of the matter at hand would not be the only determining factor as the court shall look into the time and circumstances of the accused during making such confession along with the credibility and veracity of the witness testifying to the confessions.²⁸

²⁴ *State of Madhya Pradesh vs Pattan Mallah & Ors.* (2005) 3 SCC 169.

²⁵ *State of Uttar Pradesh vs M. K. Anthony*, (1985) 1 SCC 505

²⁶ *Narayan Singh vs State of Madhya Pradesh*, (1985) 4 SCC 26.

²⁷ (2003) 8 SCC 180.

²⁸ *Kulwinder Singh vs State of Punjab*, (2006) 12 SCC 538.

Recently, in the matter of *Pawan Kumar Chourasia vs State of Bihar*²⁹, the Hon'ble Supreme Court of India observed that at the beginning, the extra-judicial confessions are considered to be weak piece of evidence, though must be sustained only if provided that the extra-confession was made voluntarily. The evidentiary value of the extra-judicial confessions shall also depend upon the accused persons who made such confession. Once the Court is satisfied with the reliability of the confessions made by the accused while the circumstances in which he/she made it, then no further corroboration of the same is required with other evidences, but if corroborated, then it shall acquire more credibility and evidentiary value.

Confessions made by the Co-accused Persons

Section 30 of the Act provides for confessions made by co-accused persons which includes both judicial and extra-judicial confessions. Section 30 envisages that if more than one persons are being tried for the same offence and any one of accused persons made a confession, then the maker of such confession gets affected by same and it substantially stands to be proved. Then the court can consider that such a confession affecting against other accused persons as well as the maker. The same was upheld in the case of *Government of NCT of Delhi vs Jaspal Singh*³⁰.

The Hon'ble Supreme Court in the landmark case of *Kashmira Singh vs State Of Madhya Pradesh*³¹, reaffirmed that the confessions against co-accused persons in ordinary proceedings shall not have strong evidentiary value and trial courts ought not to consider such confessions as substantial piece of evidence but such confessions as evidence can be used for corroboration of other pieces of evidence in the course of trial.

The statement which is confessional in nature shall be only relevant when the author making such confession is one of the accused persons or the accused person himself/herself in the matter wherein the accused person is being tried before the trial court. If a person is not a party in the case, then such a confessional statement by the person will be inadmissible in evidence as confession.³²

²⁹ Criminal Appeal No. 2230 Of 2010.

³⁰ (2003) 10 SCC 586.

³¹ 1952 AIR 159.

³² *State of Maharashtra vs Kamal Ahmed Mohm. Vakil Ansari*, (2013) 12 SCC 17.

Conclusion:

In the present research, the authors make an attempt to highlight the analytical approach and development of the jurisprudence with respect to the confessions under the Indian Evidence Act, 1872 along with evidentiary value of confessions in various circumstances in the Judiciary of India. The research paper also highlights the judicial interpretation of court of law with respect to confessions as evidence as well as discusses the types of confessions.

The journey through the historical development of the law pertaining to confessions has revealed the delicate balance that the judiciary strives to maintain between protecting the rights of the accused persons as well as ensuring the fair and fair trial. The nuanced considerations of voluntariness, reliability, and the circumstances under which confessions are obtained have emerged as pivotal factors influencing judicial decisions.

The legal practice is a dynamic and ever-growing study of law, yet there are various aspects of law which are intertwined while discussing the topic of confessions from the perspective of procedural and substantive law. As the legal community grapples with the ever-changing dynamics of criminal law, the insights gleaned from this analysis can serve as a compass, guiding practitioners and students in navigating the intricate terrain of confessions within the Indian legal framework.

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