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CONFESSION A CRUCIAL ASPECT OF CRIMINAL SYSTEM

¹ Rahul Gaur

ABSTRACT

Under any legal system in order to find out the guilt of the accused, it is relevant to find out his intention. But because of confession such a intention is itself accepted by the accused and now the courts don't have to conduct a full trial and just decide upon the confession of the accused based on corroboration. Confession is very important as it is not only a piece of evidence but a conclusive piece of evidence and conviction can be based upon it. In order to consider confession certain provisions and aspects need to be kept in mind along with legal provisions and guidelines and based on the cases decided by the Supreme Court, these all are tried to keep in front in this paper.

INTRODUCTION

The term confession is not a new concept in the criminal law system, but if we talk about it in Indian perspective, it is nowhere defined in any Act only there are few cases decided by the Supreme Court which constitute the definition of the Confession. The whole concept related to confession is given in Section 24 to Section 30 of the Indian Evidence Act, 1872; the procedure to record it is given in Criminal Procedure Code, 1973 and its validity is also given in Section 80 of the Indian Evidence Act, 1872. Confession comes under the heading of admission, it is also considered as the part of admission but both are different concepts and needed to be understood and used separately. It is said that all confessions are admissions but not all admissions are confessions. There present certain rules, procedure and irregularities present while recording confession. Confession can be used for a conviction also as it a conclusive evidence if recorded by the magistrate or a judge. Confession is also considered as one of the most important piece of evidence and a very important essential in understanding the guilt of the accused person.

MEANING

¹B.B.A LLB, FOURTH YEAR, B.V.D.U, NEW LAW COLLEGE, PUNE.

The word confession has first time appeared in section 24 of the Indian Evidence Act but is nowhere defined in the Act. All the provisions of the Confession come within the heading of “Admission.” As per section 164 of Cr.P.C. the confession has to be recorded by a magistrate and any confession given to a police officer has no evidentiary value in the court of law.

As per **Justice Stephons** in his digest, “confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.”

In **Shivappa v. State of Karnataka**², the court observed that, “confession is an important piece of evidence and therefore it would be necessary to examine whether or not the confession made by the appellant was voluntary, true and trust worthy.

In **Francis Stanly v. Intelligence officer, Narcotic Control Bureau, Thiruvananthapuram**³, the apex court held that any confession made by an accused needed to be voluntary and free from any pressure while recording a confession.

Difference between Confession and Admission

1. A Confession is a statement made by an accused against him in criminal case to establish the commission of an offence by him and an Admission mostly relates to civil cases and comprises all statements amounting to Admission as per Section 17 of the Evidence Act.
2. Confession is dealt with in section 24 to section 30 of the Indian Evidence Act and it is recorded as per Section 164 of the C.R.P.C and Admission is dealt with section 17 to section 21 of the Indian Evidence Act.
3. Confession is made voluntarily and free from any pressure and are considered as conclusive evidence, whereas Admission are not conclusive evidence as matters admitted may operate as an estoppel.

² AIR 1995 SC 980

³ AIR 2007 SC 794 at pg. 796

4. Confession always goes against the person making it, whereas Admission may be used on behalf of the person making it under exceptions provided in section 21 of the Evidence Act.
5. Confession made by one or more accused can be taken as jointly into consideration against the co-accused⁴ and in Admission by one of the several defendants no evidence can be used against other defendants.
6. Confession is a statement written or oral which is direct admission of guilt, whereas Admission is statement oral or written or in electronic form which gives inference about the guilt of person making admission.

In criminal cases a statement by accused, not amounting to confession but giving rise to inference that the accused might have committed the crime is his admission.⁵

TYPES OF CONFESSION

A confession is also of the various sort in line with the matter of the cases. Generally confession is differentiated into 2 differing types as:-

a) Judicial Confession

Judicial confession is those which are made before a magistrate or in a court in a legal proceeding. It is a “plea of guilt on arrangement if made freely by a person in a fit state of mind.” Section of the Evidence Act provides for the evidentiary value of a confession as it provides for Presumption as to documents produced as record of evidence, as it is recorded by a magistrate as per section 164 of C.R.P.C it is presumed to be a conclusive piece of evidence against the accused.

b) Extra Judicial Confession

Confessions which are made by the accused other than before a magistrate or in a court. It can be made to any person or to a body of persons. It is not considered as a conclusive piece of evidence but is a substantive piece of evidence and a conviction can be based on it only after corroboration with other evidence supporting the same. Though it is not made in front of

⁴ Section 30 of the Indian Evidence Act, 1872

⁵ K. Padyachi V. State of Tamil Nadu, AIR 1972 SC 66

a magistrate or a judge still it is needed to be made voluntarily and free from any pressure. The person in front of whom such a confession is made has to inspire confidence in the mind of judge and it has to be matched with the story of prosecution.

INGREDIENTS OF CONFESSION

- a. The statement in question needs to be a confession as per the meaning of it in the Evidence Act.
- b. Such confession has made by the accused himself.
- c. It is made to a person in authority.
- d. Such confession not to be obtained by inducement, threat or promise, by any person I authority.
- e. Such a confession is made voluntarily and free from any pressure.
- f. No confession made to a police officer is valid in the court of law.

PROCEDURE FOR RECORDING “CONFESSION” BY THE MAGISTRATE

As per Section 164 C.R.P.C, following is the procedure of recording the confession by the magistrate called upon by the police to record such a confession:-

1. The magistrate has to be called upon by the police for recording the confession of the person charged with any offence.
2. Magistrate has to free the premises in which he is recording the confession from the presence of any police officer or any other person in authority and then only he has to record the confession, in order to remove any pressure if made upon him by any person.
3. Any metropolitan magistrate or judicial magistrate may record confession, whether he may have jurisdiction or not.
4. Any confession made to a metropolitan or judicial magistrate needed to be recorded by audio- video electronic means in the presence of the advocate of the person making the confession.
5. Magistrate before recording the confession has to explain to the person making it that it is not compulsion on him to make evidence and the same will be used against him as evidence.

6. Magistrate has to make sure that the person making the confession is making it voluntarily by questioning him about the same.
7. If any time during the recording of the confession making it states to the magistrate his not willing to make the confession, the magistrate shall not make an order to authorize the detention of such a person in police custody.
8. Any such confession shall be recorded in the manner as given in section 281 of the CRPC for examination of the accused and the same has to be signed by the accused and magistrate has to make an memorandum on the foot of the confession which is to be signed by the magistrate.
9. Any statement other than a confession other than one in section 164 sub section 1 as provided for recording the evidence, in opinion of the magistrate, est fitted for the circumstances of the case and such a magistrate is needed to administer oath on such an evidence recorded by him.
10. Magistrate recording a confession or a statement it has no jurisdiction over that area, he recorded the confession, and he is entitled to forward such a confession or statement recorded by him to the magistrate having jurisdiction over the matter.

Conditions for Irrelevancy

- 1) As per Section 24 of the Evidence Act if any confession is caused by inducement, threat or promise in reference to the offence against the accused and such a threat, inducement or promise is made by a person in authority and the same appears to court and in the opinion of court accused would gain any advantage or avoid certain evils of a temporary nature, the court can refuse to accept such a confession.
- 2) As per Section 25 of the Evidence Act, no confession made to a police officer, shall be proved against the accused related to any offence on the basis of confession made to the police or any police officer related to the investigation of the case of the accused.
- 3) As per Section 26 any confession made by the accused in the police custody to a police officer is not valid, unless it is made in presence of a magistrate where such a magistrate has to make it ensure that the accused in making such

a confession voluntarily and free from any type of threat, inducement or promise by a person in authority.

RULES TO BE KEEP IN MIND WHILE RECORDING A CONFESSION

- i. It should be ensuring that in the premises in which the confession is sought to be made is vacate and only magistrate and the person making the confession is present in that premises.
- ii. If the confession is made in the court, then it should be make sure the judge that he is not under any pressure or influence by asking him certain questions related to it, in order to check his intention behind making the confession.
- iii. It should be checked that the person making the confession is in fit state of mind.
- iv. The admission needed to be recorded in audio-video form if made in front of the magistrate under section 164 C.R.P.C.
- v. The confession so made needed to be kept in writing by the magistrate and in end of such confession, there should be a foot note describing the views of the magistrate and the same should be signed by the magistrate.
- vi. Any confession made by the accused needed to be signed by him.
- vii. In case any extra judicial confession is made, it on be ensure in the mind of the judge that the person so claiming of the confession made to him has confidence and same confidence has to born in the mind of the judge.
- viii. In case of any extra judicial confession it should be collaborated by other evidence, it should match the prosecutions story and then only a conviction can be based on it.

OTHER PROVISIONS RELATED TO CONFESSION

1. As per Section 27 of evidence Act, that where any information as to any fact is deposed to as discovered in consequence of the information received from a person accused of any offence, in the custody of a police officer. Such facts as so discovered by the police based on the information y the accused, needed to be proved in the court for its genuineness.
2. As per Section 28 of Evidence Act, if in the opinion of the court their exists any inducement, threat or promise is removed and later on after removal of it such a confession is made, it is valid as per meaning of section 24 of the Act as well.

3. As per Section 29 of the Act, is any confession which is otherwise relevant, will not become irrelevant because it was made under a promise of secrecy or in consequence of a deception practiced on the accused person for the purpose of obtaining it. The same shall be removed by asking the question from the accused that he is not bound to make such a confession and that later on such an evidence might be used against him.
4. Section 30 of the Act provides where a confession is made by persons than one being tried jointly for same offence and the court may take into consideration such confession as against such other person as well as against the person who makes the confession.
5. Section 80 of the Act states where any document is recorded by a magistrate of any judge, that document is presumed to be genuine. This Section makes the confession recorded by the magistrate genuine.

CASE LAWS

R.M. Malkhani v. State of Maharashtra⁶

In this case the Supreme Court held that tape recording is admissible as a confession if it relates to the subject matter, voice of the accused is matched with the recording and it is proved that it is accurate, and then such a tape recording is valid as evidence.

Kisan Lal v. State of Rajasthan⁷

The Supreme Court held that an extra judicial confession can be relied on it must be proved that it is clear and unequivocal. In this case, the alleged confession made by large number of persons before panchayat was more in general and vague from therefore no reliance could be placed on such confession.

CONCLUSION

In criminal legal system intention is considered as most important in competition of the guilt of the accused, in order to find out the guilt of the accused the court has to take a full-fledged trial. In case of confession such a trial is shortened as accused himself accepts his guilt, but it should be make sure that it is free from any type of pressure and made voluntarily by such

⁶ AIR 1973 SC 157

⁷ AIR 1999 SC 3062

person. There presents a full-fledged procedure for recording the confession as given in C.R.P.C. Confession is not only limited to only Indian Evidence Act, 1872 but it also comes under Section 164 of C.R.P.C. The combination of these two Acts makes the confession valid in the court of law and the provisions of these two Acts needed to be kept in mind while recording and using confession as a piece of evidence.

