CHAPTER-IV

SCOPE OF CONFESSION: A CRITICAL ANALYSIS UNDER INDIAN AND ENGLISH LAW

4.1. Introduction.

The provisions relating to confessions are contained in Sections 24 to 30 and 80 of the Indian Evidence Act (1872) and Sections 161 to 164 Criminal Procedure Code (1973). The provisions relating to confession in the Evidence Act are, what may be called the substantive law of confessions, and those contained in Criminal Procedure Code, the adjective law or the procedural law. Confession in common acceptation means and implies acknowledgement of guilt. Its evidentiary value and its acceptability however shall have to be assessed by the court having due regard to the credibility of the witness. “In the event however, the court is otherwise in a position having due regard to the attending circumstances believes the witness before whom the confession is made and is otherwise satisfied that the confession is in fact voluntary and without there being any doubt in regard thereto and order of conviction can be founded on such evidence.”

The Indian Evidence Act lays down under what conditions and limitations and to what extent a confession is relevant and admissible in evidence. The importance and difficulty that attaches to the law relating to confession have been emphasized by many a learned judges and gentlemen of the bar. The real importance and implications of some of the provisions has been subject of many decision of the various courts in India, and it is not easy to understand the real meaning of certain sections which undoubtedly stand up with difficulties. So the improve need to scan every word and expression in these provisions, cannot be gainsaid. Hence, it is proposed to deal with these provisions in an exhaustive and

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critical fashion. The various decisions, which stand as landmarks in this branch of law, naturally should receive our close attention

“The confessions of prisoners are received in evidence upon the same principle upon which admission in civil suits is received, viz. the presumption that a person will not make an untrue statement against his own interest.”

The ground of reception of voluntary is usually said to be the presumption that “no person will willfully make a statement against his interest unless it be true”, at all events, such confession may reasonably be taken to be true against the defendant himself. The ground of rejection of confessions which are not voluntary is the danger that “the prisoner may be induced, by hope or fear, to criminate himself falsely.” The ground on which confessions are admitted in evidence is the “presumption that no person will voluntarily make a statement which is against his interest, unless it is true”. The presumption of truth attaching to incriminating statements made by an accused person is based upon the sentiment of making that a person will not, as a general rule, make statements against himself unless they are true. “When a person admits his guilt to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is guarantee for his truth, and legislature provides that his statements may be considered against his fellow–prisoners charged with the same crime”.

Where prisoner had confessed in the most circumstantial manner to having killed the deceased, it was held that the finding of the dead body was not absolutely essential to their conviction. A Judge was held to have exercised a proper discretion in not passing a sentence of death in a case where dead body was not found.

342 Roscoe’s Digest Criminal Evidence, p. 35.
346 Emperor v. Daji Narsu, 6 Bom. 288.
347 Queen v. Petta Gazi Ali Hossein, 4 W.R. (Cr.) 19 at p.20.
A Judge, who has to decide whether a confession is admissible in evidence, or should be rejected, should be guided by the evidence. He should not be influenced by pure conjecture or personal bias.349 “A confession must be in relation to an offence and if, by reason of such a purported admission no offence is made out, the authorities thereby would not get any jurisdiction to make any investigation.”350

4.2. Statements not Amounting to Confession

The prisoner admitting that he had accompanied the dacoits to a short distance but declaring that he turned back almost immediately and had nothing to do with the dacoity that afterword took place and was not aware that such an offence was in contemplation.351 A statement that the prisoner was accidently present at the dacoity, was an unwilling witness to it and in no way admitting that he otherwise took part in it. A statement by the prisoner that, “if certain other persons were sent for, he could see that the stolen properties were traced out or restored.”352 A statement by the prisoner showing that he was spectator of the murder taking no part in it and compelled by force to witness it as he was not allowed to leave the place.353 In Bhag Singh v. Emperor,354 the following statements were not regarded as a confession “I told the other accused that if they wanted to kill my husband, they were at liberty to do so and I would bring no case against them. A statement by the prisoner, Huzur kasur maaf kiya jai, ab aisa nhi hoga. (Your Honour will please pardon the fault, in future no such thing will happen).”355

Where a prisoner was charged with theft and dishonestly receiving stolen property, his statement to the police that a certain part of property had been given

352 Bhisan Dutt v. King Emperor, 2 Cr.L.J. 22.
353 Empress v. Dayanu, 1 Bom, L.R. 428; but See Queen v. Nityogopal, 24 W.R. Cr. 80, where the prisoners stood by without slightest danger or difficulty.
354 10 Cr. L.J. 484.
him by his sister and that he had bought the other, was rightly admitted as an admission not amounting to a confession.\(^{356}\) A statement admitting crime but pleading compulsion by others is not such a confession as will justify the conviction of one person on its basis. The word “confession” cannot be constructed as including a mere inculpatory admission which falls short of being an admission of guilt, in all the sections relating to confession.\(^{357}\) A statement made by a prisoner charged with murder of a boy implicating another accused, was held not to amount confession. A statement made in court by some of the accused inculpating a co-accused, but exculpating themselves, is not a confession.\(^{358}\) A statement, not implicating the deponent, is not a confession and is not admissible in evidence.\(^{359}\) Where a man charged an offence makes a statement admitting and explaining away something telling against him, he makes no confession but a defence. Mere admission of incriminating facts will not amount to a confession unless those facts and the necessary inference from them amount to an offence. Where the confession before Magistrate were taken weeks before any formal charge was regularly preferred before the Magistrate, they were considered, at best, only as admission made in the presence of Magistrate, and admissible in evidence.\(^{360}\)

A plea of guilty not less than a confession must be regarded with caution.\(^{361}\) Where proof in a case is limited to the confession made by an accused person, it is essential that too much stress should not be laid down upon it.

### 4.3. Conflicting Views Regarding Degree of Credit to be Given to Confession

“With regard to the degree of credit which a jury ought to attach to a confession, much difference of opinion has existed. By some it has been

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\(^{356}\) B.L.R. App. 2.

\(^{357}\) Tejram Patil v. State of Maharashtra, 2015(2) SCALE 698.

\(^{358}\) Supra note 12.

\(^{359}\) Sri Ram and Choti v. King Emperor, 2 A.L.J. 100.

\(^{360}\) Queen v. Baboolun Hijrah, (1861) 3 W.R. (Cr.) 6.

\(^{361}\) 47 P.R. 1866 (Cr.).
considered as forming the highest and most satisfactory evidence guilt.\textsuperscript{362} On the other hand, it is said by Foster, J. (Discloser, 243). That “hasty confession made to person of all evidences.” This opinion has also been adopted by Sir W. Blackstone.\textsuperscript{363} It has been said that it is not to be conceived that a man would be induced to make a free and voluntary confession of guilt, if the facts confessed were not true. It cannot be doubted, however, that instance have occasionally occurred, in which innocent persons have confessed themselves guilty of crimes of the gravest nature. Other sources of distrust are “the zeal which generally prevails to detect offenders and the strong disposition which is often displayed by persons engaged in pursuit of evidence to magnify slight grounds of suspicion into sufficient proof together with the character of the witnesses, who are sometimes necessarily called in cases of secret and atrocious crimes.”\textsuperscript{364}

4.4. Third Degree Method

It is undoubted that police use third degree method\textsuperscript{365} for the purpose of securing a confession on the evidence of guilt from the arrested person. The term “third degree” originally and properly signified the use of some form of violence; in that sense, a confession of obtained was and is inadmissible. But journalistic exaggeration has in common usage misapplied the term to any process of simple interrogation of the arrested person, while in seclusion by an official other than the judge.

The question of fact should, therefore. First be cleared up. If physical violence is used, the confession is plainly inadmissible. But if no physical violence, or threat of it, is used, both the moral and the legal question become quite different. What is the actual practice of the police, at a given place and time, as between these two meanings of the term “third degree”, is question of fact.\textsuperscript{366}

But here at the outset, it should be understood that the present question concern

\textsuperscript{362} *Per Grose, J.*, delivering the opinion of the judges in Lambe, (1791) 2 Leach. 554.
\textsuperscript{363} 4 Com 357.
\textsuperscript{364} Roscoe’s *Criminal Evidence*, pp. 35-36.
\textsuperscript{366} Mehboob Ali and Ors. v. State of Rajasthan, MANU/SC/1228/2015.
only the situation where without violence, a continuous interrogation by the police was employed to obtain the confession; and that this meaning of the term probably represents in fact the general usages, to which the instances of actual violence are exceptions.\textsuperscript{367}

*Sweat box*- the place of confinement known as ‘sweat box’. “This was an apartment about five or six feet one way and about eight feet another… the prisoner was allowed no communication whatever with human beings. Occasionally the officer, who had put him there, would appear and interrogate him about the crime charged against him.”\textsuperscript{368}

Though in India there are no sweat boxes latterly for the use of the police, but the practice of handcuffing, and chaining them, making them walk from place to place, confining them in the police lockups, and interrogating them from time to time without either threatening, or inducing, or promising any favour for extraction of confession would amount to imposition of sufficient pressure to impair the mental equilibrium of the prisoner.\textsuperscript{369} Instances are ample that the prisoner, anticipating what was wanted of him, would make a confession in order to escape from torture. The magistrate who has the judicial task of recording the confession should keep this in mind and see that he, by questioning cautioning and otherwise fulfilling the condition pre-requisite to such recording under the law, has assured himself that he has been able to obliterate the effects thereof from the prisoner’s mind so that the statement made by him can deserve the name of a free and voluntary confessional statement.\textsuperscript{370}

4.5. General Rules Regarding Confessions

A confession, if proved satisfactorily to be voluntary and genuine, in legal and sufficient proof of guilt.\textsuperscript{371} The “confession of an accused person is only

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\item \textsuperscript{367} Wigmore’s Evidence, Vol. III, Sec. 851, at p. 321.
\item \textsuperscript{368} ADAMS v. HANSON, MANU/FEST/0124/2011.
\item \textsuperscript{369} See, C.D. Filed’s, Law on Admissions and Confessions, at pg. no. 259 (Delhi Law House, 2nd ed. 2014).
\item \textsuperscript{370} Bala Majhi v. State of Orissa, AIR 1951 168 at p. 175.
\item \textsuperscript{371} Queen v. Jhurree, 7 W.R. (Cr.) 84.
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relevant against himself.”372 A confession made, not to a police officer, and not improperly obtained, as mentioned in Section 24, is always admissible against an accused person. The general rule is that the confession of one person is wholly inadmissible against any other.373 But Section 30 of the Act is an exception to this rule. A confession “duly made and satisfactorily proved is, in general sufficient to warrant a conviction, without corroboration.”374 But this general rule has been not applied to confessions of murder.375 The statement of an accused person “should not be used to fill up the gaps in the prosecution evidence.”376

On other hand before a confession can be relied on, the court has to see whether the same was made voluntarily and whether the fact stated therein can be accepted as true. The mare fact that accused was in the custody of police for about a period of nine days before he was produced before the Magistrate for recording his confession, by itself, is not a sufficient ground for holding that the confession in question cannot be considered as having been made voluntarily. But the “mare fact that the confession in question appears to have been voluntarily made is not sufficient to rely on the same. The court must go further and see whether the facts stated therein can be accepted as true.”377 Without knowing the forms of confession we cannot complete the true nature of the scope. So here we discussed the forms of the confession.

4.6 Forms of Confession

A confession may be judicial or extra judicial. “Judicial confessions are those, which are made before the magistrate or in court in the due course of legal proceedings.”378 “Extra-judicial confessions are those, which are made by party

372 Queen v. Kally Churan Lohar, 6, W.R. (Cr.) 41.
elsewhere than before a magistrate, or in court." An extra-judicial confession is made when the accused makes an admission or confession of his guilt, or of any fact, which may tend to be proof of it to any person other than a judge or magistrate. The courts have considered the evidence of judicial confession as a good piece of evidence whereas the evidence of extra judicial confession as a weak kind of evidence and has to be used with great care. In *Kishan Lal v. State of Rajasthan* the Supreme Court held that “the alleged confession by a large number of persons is more in the nature of general and vague term and before a confession is relied upon it must be clear and unequivocal whether it is a judicial or an extra judicial confession”. A confession may be oral or written. It may even consist of conversation to oneself, which may be produced in evidence if overheard by another. The Orissa High Court has held that “a confession must be addressed to some person. So, if the accused goes around the village shouting that he had killed his wife, this would amount to a confession.” It is submitted that the question seems to be wrong, for it is well known that a confession may take place even when one is talking to oneself.

An interesting question arises as to whether incrementing statements made by a person while “talking in sleep” are to be admitted. As a general rule, such statements are not to be taken as evidence against the person, mainly because the faculty of judgment of a person is almost completely suspended during sleep.

### 4.6.1. Judicial Confession

Judicial confessions are those which are made to or before a magistrate. Judicial confessions again can be sub divided into those which were made during the stage of investigation of an offence by a police officer and those which were made in court during the course of legal proceeding. In the later kind of

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confession the preliminary examination of the accused by a magistrate or judge pursuant to a statutory provision and the plea of guilty of the accused made in open court. Judicial confessions have been authoritatively defined to mean “pleas of guilt on arraignment if made freely by a person in a fit state to plead”. One main essential of the judicial confession is that the accused made the statement with free will and full knowledge of the nature and the consequences of the statement (confession). 384

It is well settled that “a confession, if voluntarily and truthfully made, is an efficacious proof of guilt against the maker of the confession” 385. When the prosecution demands a conviction of the accused, primarily on the basis of his confession recorded under Section 164 of the Criminal Procedure Code, the court must apply a “double test:-

1. Whether the confession was perfectly voluntary?

2. If so, whether it is true and trustworthy?

Satisfaction of the first test is a sine qua non of its admissibility in evidence. If the confession appears to the court to have been caused by an inducement, threat or promise such as is mentioned in Section 24, it must be excluded and rejected brevi manu. In such a case, the question of proceeding further to apply the second test does not arise. If the first test satisfied, the court must, before acting upon the confession, reach the findings that what is stated therein is true and reliable. For judging the reliability of such confession, or for the matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession may be indicated.” “The court should carefully examine the confession and compare it with the rest of evidence, in the light of the surrounding circumstances and probabilities of the case.” 386 “If on such examination and comparison, the

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confession appears to be probable catalogue of event and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test.”^387

“Where an inculpatory confession is true and voluntary and does not suffer any lacuna which would make it inadmissible and is corroborated by the appellant himself in his examination before the trial court, it is admissible to establish the charge, for which the appellant Gouranga is being tried.”^388

### 4.6.1.1 Occasions when Judicial Confession can be made.

Broadly stated the occasion when judicial confession can be made are when the accused persons have to be examined by the courts under a statutory duty during the course of a trial or when the accused persons volunteer to make confessional statements during the course of a trial or an enquiry. The stage at which an accused person has to plead in answer to an accusation against him vary from the nature of the trial that he is required to face.^389

In *Summon Case:* in a summons case the accused has to be told what, in substance, is the accusation against him and then he must be asked to state whether he can show cause why he should not be convicted for the offence which the facts alleged against him constitute. If at that stage, the accused admits his guilt, and does not show any cause why he should not be convicted for the offence alleged against him, the court can convict the accuse straightway upon the plea of guilty.

In *Warrant and Session Trials:* in warrant and session trials the prosecution evidence given by witness called by the prosecution has to be recorded, at the first instance and then the circumstances appearing against him in the evidence of the prosecution had to be explained to the accused. And on the other hand in session trials is preceded by committal proceedings for, no sessions

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court can take cognizance of an offence against unless there is a commitment of the accused to take trial for the said offence. What is the effect of a confessional statement made by an accused during committal proceedings can be considered here? Committal proceedings, it need hardly be said, are necessary in respect of the offences exclusively try able by session court. So the committal court cannot convict the accused on his confession. But “if a confession happens to be made during committal proceedings, at any stage or at the stage when the accused was examined under section 206 of the Criminal Procedure Code.”

4.6.1.2 Difference in recording confessional statements during investigation and during trial.

There are no prescribed methods for recording confessions or confessional statements of accused persons made during the course of trial. Section 164, of Criminal Procedure Code only prescribes a certain method for recording confessional statement of accused persons during the course of investigation and before the commencement of trial. So it would appears that a magistrate recording a confession during the course of a trial, need not tell the accused that he was not required to make a confession and that if he makes one, it will be used as evidence against him. As that it the case, sometimes it may result in leading to undesirable result as far as the accused persons are concerned. Thus for the instance, intelligent policeman may produce an accused person after subjecting to pressure either in the nature of inducements, threats, or promises, and then produced him in a court with a charge sheet and requested the court to take up the case by questioning the accused person. If accused has to be questioned then and there, being under the influence of the pressure exerted on him by the policeman, he may make a confessional statement and also make a plea of guilty. There upon conviction of the person may follow. The risk of conviction on such forced confession or plea of guilty is much more probable in a summons case. But no such risk ensure in warrant case or in a session case. In a warrant case, the

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390 Rameshbhai Chandubhai Rathod v. The State of Gujarat, 2012(2) ALT (Cri) 132.
391 Sadananda Mondal v. State of West Bengal, 2013 (10) SCALE 125.
prosecution evidence has to be taken first before framing a charge against the accused. So the accused may have enough time to reflection and for the effects of inducement, threats or promises exercised by the police or some person in authority to wane.

Therefore, the accused may become a free agent to plead when a charge will be framed against him. But any way the usual presumption is what that is when an accused appears before a court that he will be surrounded by an atmosphere wherein he may feel assured, he will be dealt fairly in every way and that he has nothing to fear or nothing to hope.392

In England the practice appears to be different. Thus in enquires about indictable offences, (grave crimes) after examination of witnesses, the magistrate reads the charge, then he must warn the accused in the following manner: - “having heard the evidence, do you wish to say anything in answer to charge? You are not obliged to say anything unless you desire to do so, but whatever you say, will be taken down in writing and may be given in evidence against you upon your trial, and I give you clearly to understand that you have nothing to fear for any threat which may have been held out to you to induce you to make any confession or any admission of guilt. But whatever you shall now say may be given in evidence against you notwithstanding such promise or threat.”393

In India sometimes, it may happen that conscientious Magistrate tell the accused person that he is under no obligation to make a confession and any statement that he wishes to make he must make voluntarily. It may be, however, mentioned here that the English practice of administering a warning to the accused before he makes the statement is a salutary one.

392 Jakki @ Selvaraj and Anr. V. State rep. by the IP, Coimbatore, 2007CriLJ1671.
4.6.1.3 The mode of recording the confessional statement of the accused.

In every case where the court examines the accused under Section 313, of the Criminal Procedure Code, the method that is to be adopted in recording the statement of the accused is that provided in Section 281 of the Criminal Procedure Code. The later section enjoins that the whole of such examination *i.e.* every question put to the accused and every answer given by him to every question put to him shall be recorded in full. This is necessary because every question put and every answer given by the accused, if recorded, will enable the appellate or decisional court to determine the nature of question put to the accused.\textsuperscript{394}

However, even if the statement made by the accused in response to the examination done by court as per the provisions of Code of Criminal Procedure, amounts the confession, the procedure indicate in Section 164 need not be adopted. That is to say, “when questions put by a court after the close of prosecution evidence or at any other stage, to enable the accused to explain the circumstances appearing against him in evidence, it is not incumbent upon the court to warn the accused that he is not required any statement, and that if he makes any statement it will be used as evidence against him”\textsuperscript{395}. In fact the statement made by an accused person in response to questions put to him by a court at the time of his examination, do not amount to evidence as such, though the statements can be taken into consideration by the court, in the same enquiry or trial. Such statements, however, “can assume the form of evidence for or against the accused in any other enquiry or trial for any other offence which such answers may tend to show that he had committed.”\textsuperscript{396} But there is immunity from criminal liability for making a false statement. It is obvious that the object in granting such immunity is to allow greater latitude for the accused to say what he likes in

\textsuperscript{394} V. Sejappa v. State, MANU/SC/0494/2016.
\textsuperscript{396} Mukut Bihari and Anr. v. State of Rajasthan, AIR 2012 SC 2270.
respect of the evidence produced against him and not to hamper him by any fear of prosecution by making a false statement.\textsuperscript{397}

The provision is indeed aimed at benefiting the accused, for, by this provision, it is made mandatory that an opportunity should be given to him to offer his explanation unfettered by any fear of dire consequences in the case of making a false statement. That is also the reason why, it is provided by this provision that no oath should be administered to the accused when he makes a statement in response to question put to him by the court. This provision has to be strictly followed. Thus, where the accuse was put under oath and cross-examined, the procedure was held to be illegal if it results in his conviction.\textsuperscript{398}

4.6.1.4 Confessional Statement made by a witness in court.

A witness giving evidence either in a civil or a criminal proceeding may make a confessional statement. When there are a case and a counter case relating to offence of rioting, the accused in one case, will figure as a witness in other case. Then from such witnesses, facts may be elicited which may tend to incriminate them in other case. So the question arises whether such confessional statement can be acted upon in a subsequent trial for the offence which such confessional statement may tend to make out. Under the present criminal procedure code, an accused person can also give evidence on his behalf. Then he become a witness for all intents and purposes except that he cannot be compelled to give evidence against himself, on account of fundamental rights contained in Article 20 (3) of the constitution of India. So the position is that an accused person does not change his character of one accused of an offence even if he takes the witness stand of his own freewill and elects to depose on his behalf.

Therefore, he cannot be compelled even during his examination as a witness to make incriminatory statements, but on other hand, if he is disposed to make any damnatory statements against himself, they can be used as evidence.

\textsuperscript{397} Bhagwan Singh \textit{v.} State of Madhya Pradesh, AIR 2002 SC 1621.
\textsuperscript{398} Sri Chand \textit{v.} State of U.P., 2003 (51) ALR 470.
against him because, under such circumstances, it cannot be said that he was compelled to make them. But the fundamental right contained in constitution does not afford protection against testimonial compulsion as far as a witness who is not an accused is concerned. The position and privileges of a witness *simpliciter* are prescribed and delimited by Section 132 of Indian Evidence Act.

4.6.1.5 The Privileges under Section 132, Evidence Act.

“The privilege under Section 132 of Evidence Act with regard to witnesses is not an absolute one in the sense that no witness can be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding upon the ground that the answer to such question will criminate or may tend directly or indirectly to expose such a witness to any penalty or forfeiture of any kind.” Though, however, a witness cannot refuse to give answer of the nature described above, a protection is provided against any arrest or prosecution on the basis of such an answer which he was compelled to make with regard to any relevant matter in issue. Further, “such an answer cannot also be proved against him in any criminal proceeding except in a prosecution for giving false evidence by such an answer.”

4.6.1.6 Effects of Judicial Confession.

A judicial confession is a very strong piece of evidence and may form the sole basis for conviction if the court is satisfied, on a careful scrutiny of the evidences and the surrounding circumstances, that it is not only voluntary but is also true. A confession which is voluntary stems from repentance and is a spontaneous and voluntary act of the accused who, out of remorse, want to make a

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401 Chandran @ Manichan @ Maniyan v. State of Kerala, [2011]8 SCR 273.
clean breast of the crime committed by him to purge his conscience. He does this at the dictates of his conscience, with full knowledge of the consequences.\footnote{403}{Abed Ali Jamadar v. State, 92 C.W.N. 28 at p. 46.}

Such, being the true nature of a voluntary and true confession, the question that possess itself it whether the accused would have been benefited at all if he had been informed before recording his confession of his right to consult and to be defended by a legal practitioner of his choice. The legal practitioner engaged by him or by state might have at best advice him not to make any confession; “he might also have explained to the accused the legal consequences of making the confession and so on and so forth but could do nothing more.”\footnote{404}{State of Punjab V. Harjagdev Singh, AIR 2009 SC 2693.} In other words, he could not prevent him for making the confession, if he was determined to confess his guilt being guided by the qualms of conscience. In the view of the forgoing discussion, even assuming that before recording the confession of the accused the Magistrate should have informed him of his “right to consult and to be defended by legal practitioner of his choice”, the court was unable to hold that any prejudice whatsoever was caused to the accused for non-communication of his right to him.\footnote{405}{Ibid.}

“Extra judicial confessions are not usually considered with favour but that does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in circumstances which tend to support his statement, should not believed.”\footnote{406}{Ram Singh v. State of Uttar Pradesh, AIR 1967 S.C. 152 at p. 155.} The question, whether an extra-judicial confession can be relied upon and what is its evidentiary value was discussed by their Lordship of Supreme Court in \textit{Mulk Raj v. State of U.P.}.\footnote{407}{AIR 1959 S.C. 902.}

With regard to judicial confession it has been said that the properly attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence, and notwithstanding a subsequent
denial before the Session Court. In another case, However, Sharifuddin v. Emperor, in which the prisoner had confessed before the Magistrate but had retracted their confession before Session Court, it was said as it appeared that the police had misconduct themselves and produced evidence with regard to the identification of property which was false, it would not be safe to act upon the confession without any corroboration at all. According to Madras High Court, “a retracted confession must be supported by independent reliable evidence corroborating it in material particulars.” In Queen v. Kristo Mandal, the prisoner during the preliminary investigation stated that “the crime was committed by other persons and that any share they had on it was under compulsion.” Such a confession, it was said, contained an important admission, but it was not an admission of guilt, and upon such a confession alone no person ought to be convicted.

4.6.2. Extra Judicial Confession.

Extra-Judicial confessions include all such confessions which were not made by an accused to a Magistrate as such and which are not duly recorded by the latter. Extra judicial confessions have been defined to mean “a free and voluntary confession of guilt made by a person accused of crime, in the course of conversation with person other than the Judge or Magistrate”. By its very nature, an extra judicial confession can be made to anybody or a collection or body of persons. There is no rule that the statement “should have been addressed straight to any definite individual. It may have taken the form of prayer or it may be a soliloquy overheard by a neighbor.” Human beings after committing grave and sinful crime like, murder, become highly wrought individuals and their high tension mentality manifests itself in ever so many.

408 Queen-Empress v. Bhattan Rajwan, W.R. Cr. 49.
409 2 C.L.R. 132.
411 7 W.R. Cr.8.
peculiar ways. Some people rave, some prattle, some cry and some laugh after perpetration of such crimes. Let it not be understood that any of hardened criminals of the cool and calculated type, betray, such morbidity of conduct. But first offenders, and offenders who commit grave crimes under the grip of dire necessity or insatiable revenge, act in the above strange and fantastic fashion. Thus, a person who has chopped off the head of his wife might run on the street with the blood stain knife, bawling out that he killed his wife. Such words can be heard by persons who were in the area. Though the word of the accused were not addressed to any particular individual, some persons might hear the accused saying that he killed his wife. The words contain a confession and it is an extra judicial confession provable by the evidence of a person who chanced to hear it.414

The above classification is made in Indian law. The distinction between judicial and extra judicial confession is tacitly recognized in India also. Confessions to police are included in extra judicial confessions in England. But in India due to certain reasons, confessions to the police are not at all admissible. Admissions of guilt during a trail are also confessions, but in our criminal procedure code, they are termed “pleas of guilt”415.

4.6.2.1 Credence of Extra Judicial Confession.

Extra-Judicial confession is not per se an inferior kind of confession or admission, and it would all depend upon the facts of the case. But, it is usually subject to the infirmity that the actual words are not reserved, except in a very fallible sense, by recollection. This is not a confession where a person was unburdening himself to another, out of a sense of guilt, soon after the crime.416 “It is not the law that the extra judicial confessions cannot be accepted and acted upon, or that they are to be classed under some inferior category of admission and confessions. Where they were made voluntary by the accused immediately after

416 In re Chinnasami, AIR 1960 Mad. 462 at p. 188: 1960 Cr. L. J. 491.
the crime, to strangers visiting her, with every token of truthfulness and repentance (even if momentary), the court would be definitely justifying in accepting and acting upon such confessional statements. It is needless to say that an extra-judicial confession must be accepted and acted upon as a whole."  

Corroboration to the extra-judicial confession in all cases is *sine qua non* is neither just nor reasonable proposition. If extra-judicial confession is found to be unbiased untainted coming from the evidence of trustworthy and reliable witness who have stood the test of cross examination against whom there is no remote suggestion or allegation of inimical terms can be based for holding the accused guilty. 

In fact, extra-judicial confession is likely any other evidence if proved under Section 3 of the Evidence Act, if it is successfully proved by prosecution that version stated by the witnesses was truthful and voluntary version of the accused referable to incriminating and his complicity, the same wound form basis for conviction. It is not the quantity but quality which matters in evaluating the evidence of prosecution even in case of extra-judicial confession either under Section 24 or 30 of the Evidence Act. 

**4.6.2.2 Comparison of rules regarding Extra Judicial confession in India & England.**

In England extra-judicial confession do not appear to be acted on, even for proving minor offences which are known as misdemeanors in what country without corroboration touching the *corpus delecti*. The same view prevails in America. In our country extra judicial confessions even without corroborative material are not discredited in Toto. The question of its reliability is to be judged as a question of fact on the circumstances of each case because it is not an invariable rule that an extra-judicial confession cannot be relied upon to

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417 In *re Ramayee*, AIR 1960 Mad. 187 at p. 188.
base a conviction.\textsuperscript{421} However, in grave cases of homicide and such like offences, it is not safe to “base a conviction on the strength of an extra judicial confession if it is not corroborated in material particulars.”\textsuperscript{422}

It was held by the Apex Court in \textit{Ratan Gond v. State of Behar},\textsuperscript{423} that “usually and as a matter of caution, courts require some material corroboration of an extra judicial confession in such a manner as to connect the accused person with the crime in question.” However, it was indicated in the Supreme Court case, that circumstances already proved in the case can afford corroboration.\textsuperscript{424} In \textit{Man Singh in re},\textsuperscript{425} case, it was held that “an extra judicial confession is undoubtedly a weak type of evidence but when it is corroborated by surrounding circumstances and other reliable evidence, it can be taken into consideration”.

4.6.2.3 Retraction of Extra-Judicial Confession.

It is well settled that “retracted extra judicial confession, though a piece of evidence on which reliance can be placed, but the same has to be corroborated by independent evidence.”\textsuperscript{426} That apart, the court must be satisfied that “the confession alleged to have been made to PW. 11 were true and voluntary one and judging the same, the conduct of PW. 11 and circumstantial this impelled the accused to make such a statement to PW. 11 should be above suspicion.”\textsuperscript{427}

Extra- Judicial confession does not stand in isolation in the instant case. Evidence that appellant chased the deceased, evidence that the deceased was heard crying aloud \textit{don’t beat me etc.}\textsuperscript{428} Evidence that the appellant returned alone in drenched cloths after half an hour of chasing the deceased and the abrupt disappearance of the appellant from the locality when dead body was recovered

\begin{flushleft}
\textsuperscript{421} Mulak Raj v. State of U.P. AIR 1959 Ori 168.
\textsuperscript{422} Herold White v. The King, AIR 1945 P.C. 181.
\textsuperscript{424} Raghuvan Singh v. State AIR 1955 M.P. 43.
\textsuperscript{425} A.I.R. (1959) M.P. 257.
\textsuperscript{426} Union of India v. Bal Mukand, 2009 CrLJ 2407.
\end{flushleft}
from the river, are inculpative circumstances surrounding the hub of extra judicial confession. The cumulative effect of all such circumstances leads us to the irresistible conclusion that the appellant had pushed the deceased into the river. Lower court was not at all justified inside lining such circumstances.\textsuperscript{429}

As the confession is required to be clear specific and unambiguous, its retraction should also not be ambiguous, vague or imaginary. The person alleging retraction of confession or his earlier inculpatory statements must satisfy the court that he had withdrawn from that statement, at the earliest possible time and such withdrawal from the statement cannot be pleaded to be presumed on imaginary grounds.\textsuperscript{430}

By reason of the inherent weakness of an extra judicial confession, as a probative material, its subsequent retraction intensifies its unreliability\textsuperscript{431}. Then its value may be very exiguous, and it is but prudent and right to insist upon independent corroboration for acting upon it.\textsuperscript{432}

4.6.2.4 Extra Judicial confessions- whether exact words to be proved.

In \textit{Sri Krishna Nandan Prasad v. State},\textsuperscript{433} it was held that exact words of extra judicial confessions need not be proved in every case. It was further held in that case that in most cases, it would be sufficient if the substance of the word used in confession is proved. Ordinarily, laymen before whom extra judicial confessions are made do not note down the words of the accused. They cannot, therefore, accurately prove the exact words used. If the witness gives the substance of the “statement made by the accused, the court can judge whether it amounts to a confession or not.” In such a case, there would, ordinarily be no objection to the court taking the substance of the statement into consideration.

\begin{tabular}{ll}
\textsuperscript{429} & State of Kerala v. Mani, Cr.L.J. (1992), 1682 at p. 1684. \\
\textsuperscript{430} & Taj Mohammad Khan v. State of Karnataka, (1998) Cr. L. J. 2312 at p. 2312. \\
\textsuperscript{431} & Kailash v. State of U.P., AIR 1994 SC 470. \\
\textsuperscript{432} & Ram Singh v. State, AIR 1958 M.P. 380. \\
\textsuperscript{433} & A.I.R. (1958) Pat. 166. \\
\end{tabular}
“Extra judicial confession, if voluntary, can be relied upon by the court along with other evidence.”\textsuperscript{434} In first information report Ex. P.1, it has been clearly mentioned that the accused confessed to have killed his father and to have buried his dead body in his field. The same words have been repeated by five witnesses in their statements recorded during the trial. There is no rule that the extra judicial confession is not to be accepted if the witnesses give the substance of it and not the actual words. It is the substance of the extra judicial confession which really matters.\textsuperscript{435}

4.6.2.5 Voluntariness must be seen in extra-judicial confession.

When extra-judicial confessions are made, in the presence of persons in authority, which circumstances alone may not necessarily rule out the confession? However, under such circumstances, the court should “scrutinize the evidence carefully in order to ascertain whether the confession was voluntarily made.”\textsuperscript{436} For, it is clear, even with regard to extra judicial confessions, the element of voluntariness is a prerequisite for judging its weight.\textsuperscript{437}

In the case at hand, prosecution has pressed into service extra judicial confession allegedly made by accused before P.Ws. 1, 5 and 6. In order to appreciate the submission relating to acceptability of extra judicial confession, it is necessary to refer to the evidence of P.Ws. 1, 5 and 6 before whom accused allegedly made extra judicial confession. While dealing with a stand of extra judicial confession, court has to satisfy that the same was voluntary and without any coercion and undue influence. Extra judicial confession can form the basis of conviction if person before whom it is stated to be made appears to be unbiased and not even remotely inimically to the accused.\textsuperscript{438} Where there is a material to show animosity, courts has to proceed cautiously and find out whether confession just likes any other evidence depends on veracity of witness to whom it is made. It

\textsuperscript{435} Inder Dass v. State of Rajasthan, Cr. L. J. (1985) 1416, at p. 1421 (Raj.).
\textsuperscript{437} Supra note 63.
\textsuperscript{438} Satbir Singh alias Nanha v. State of Haryana, 2012 (2) RCR (Criminal) 595.
is not invariable that the court should not accept such evidence if actual words as claimed to have been spoken are not reproduced and substance is given. It will depend upon the circumstance of the case. If substance is sufficient to prove culpability and there is no ambiguity about import of the statement made by accused, evidence can be acted upon even though substance and not actual words have been stated. Human mind is not a tape recorder which records what has been spoken word by word. The witness should be able to say as nearly as possible actual words spoken by the accused. That would rule out possibility of erroneous interpretation of any ambiguous statement. If word by word repetition of statement of the case is instead upon, more often than not evidentiary value of extra judicial confession has to be thrown out as unreliable and not useful. That cannot be requirement in law. There can be a person who have a good memory and may be able to report exact words and there may be many who are possessed of normal memory and do so. It is for the court to judge credibility of the witness capacity and thereafter to decide whether his or her evidence has to be accepted or not. If court believes witnesses before whom confession is made and is satisfied that confession was voluntary basing on such evidence, conviction can be founded.

The extra judicial confession made by the accused-appellant before P.W. 4 Roopa Ram, P.W.5 Mangla Ram and P.W. 11 Mr. Nairan Singh cannot be said to be made on any inducement, threat or promise but the same appears to have been made by the accused –appellant realizing his guilt and the same is voluntary. As such evidence produced by the prosecution regarding “extra-judicial confession made by the accused before the aforesaid three witnesses is trustworthy and inspire confidence.”

“extra judicial confession is to be judged in the back ground of attending circumstances and to be considered if the same is voluntary and true and free from

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suspicion. There should be cogent evidence on record attending circumstances of
the as well as exact word used by the accused persons to consider whether the
extra judicial confession was not only true but also voluntary\textsuperscript{442}. Even accepting
the extra judicial confession which has been retracted, it is a very weak piece of
evidence and has to be corroborated by other evidence on record. The other
evidence available on record is untrustworthy and there is no corroboration to
such extra judicial confession.”\textsuperscript{443}

“If the court believes the witnesses before whom the confession is made
and it is satisfied that the confession was voluntary, then in such case conviction
can be found on such evidence alone.” It has come in the cross examination of the
witnesses that the accused had made the confession as otherwise the police would
cause harassment. Another witness made an improvement on that fact by
denying that part of the accused statement. The voluntariness of the accused’s
statement before the \textit{Panchyat} thus becomes doubtful and so has to be
excluded.\textsuperscript{444}

Where the learned Session Judge regarded the “extra judicial confession to
be a very weak type of evidence and therefore refused to rely on the same, the
Supreme Court held that the learned Session judge committed a clear error of law.
Law does not require that the evidence of an extra judicial confession should in all
cases be corroborated. In the instant case, the extra judicial confession was proved
by an independent witness who was responsible officer and who bore no animus
against the appellants. There was hardly any justification for the Session Judge to
disbelieve his evidence particularly when the extra judicial confession was
corroborated by the recovery of an empty (cartridge) from the place of
occurrence.”\textsuperscript{445}

\begin{footnotes}
\footnote{\textit{State} v. \textit{Dwari Behra}, (1976) Cr. LJ 262 at p. 268 (Orissa).}
(M.P.)}
\end{footnotes}
When the court finds that the testimony of a witness to whom an extra judicial confession has been made does not inspire confidence it will be proper for the court to seek corroboration and if such corroboration is not available to give the benefit of doubt to the accused.\textsuperscript{446}

4.6.2.6 Value of extra judicial confession when reduced in writing.

There may be instances when an extra judicial confession may be recorded by the person to whom it was made\textsuperscript{447}. The question may arise then, whether such a record can prove the confession. If the recorded confession is signed by the accused, then there will be a great value of such a record but in case the recorded confession is not signed by the accused, there must be extraneous evidence that the confession was made. This evidence may consist of oral testimony given by the person who had the confession then it was made. He can, however, refresh his memory by referring to the record of the confession which he happened to make.\textsuperscript{448} It is so because the document is not a primary evidence of the confession. But evidence has to be given touching the verbal statement made by the accused. But anyway both the record of the confession and the oral evidence of the person who hear the confession made by the accused and also its record will form the best evidence regarding the confession in question\textsuperscript{449}. Regarding this matter \textit{R v. Lawyer}\textsuperscript{450} can be referred there the accused was prosecuted for high pressure. The Under Secretary of State gives evidence touching the Confession of the Prisoner. The Under Secretary of State also took down the confession in writing. In that case the oral testimony of the Under Secretary was held to be necessary for proving the confession.

4.6.2.7 Value of Uncorroborated Extra-Judicial Confession.

Now here we see the effect of uncorroborated extra judicial confessions, are there sufficient for conviction? This subject has been much discussed. Mr.\textsuperscript{446} Vistari Narayan Shebe \textit{v. state of Maharashtra} (1978) Mah. L.J 244 at pp. 251, 252. \textsuperscript{447} Podyami Sukada \textit{v. State of M.P.}, AIR 2014 SC 2977. \textsuperscript{448} Section 159 of the Indian Evidence Act, 1872. \textsuperscript{449} Sunny Kapoor \textit{v. State}, AIR 2006 SC 2242. \textsuperscript{450} 12 Vin Abr 96, quoted in Roscoe’s Evidence, 12th Ed., page 3.
Greaves, in a note to *Russel on crimes*, is of opinion that it never has been expressly decided that the mere confession of a prisoner alone without other evidence is sufficient to warrant a conviction. In all the English reported cases some corroborating circumstances is to be found.451 “In the United States”, says Mr. Taylor, “prisoners confession, when a *Corpus delicti* is not otherwise proved, has been held insufficient to warrant his conviction,452 and this opinion certainly accords with the humanity of the criminal law, with the great degree of caution applied in receiving and weighting the evidence of confession in other cases, and is countenanced by approved writers on this branch of the law.”453

On this point, as on others concerning the weight to be assigned to evidence, the evidence act leaves the discretion of the courts unfettered. In a case decided before the act came into operation the Calcutta High Court made the following observation –“the confession of Bechu is conclusive evidence against him, if it be believed.”454 In *Queen v. Shubhan*,455 Phear, J., observed: “Halal says, ‘she confessed, but it is all important in matter of this kind to know what were the words which the person who is sad to have confessed actually used, nothing short of the actual words given in detail in the first person, so far as it is possible to obtain them, ought to be relied on as a Foundation for the opinion formed by the Court, because it may turn out that the words, taken together with the question and the circumstances under which the question were put, do not in truth amount to a confession of guilt such as the witness used to represent it.”

The “evidence furnished by the extra judicial confession made by the accused to the witnesses cannot be termed to be to be tainted evidence and if corroboration is required it is only by the way abundant caution.”456 “if the Court believes the witnesses before whom the confession is made and it is satisfied that

452 Greenleaf on *Evidence*, 14th Ed., citing various American authorities.
453 See *Guild’s Case*, (1828) 5 Halst. 168. 185 (Am.).
454 *Queen v. Jhari*, 7 W.R. Cr. 41.
455 10 B.L.R. 335.
the confession was voluntary”, and then in such a case conviction can be founded on such evidence alone as was done in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh.*457 “where their Lordship of Supreme Court rested the conviction of the accused on the extra-judicial confession made by him before two independent witnesses.”458

The Law is well settled on the point that an accused person can be convicted on basis of the evidence of a confession before a private personal alone and no corroboration is required provided the evidence of the witness before whom the accused had confessed inspire the confidence of the Court.459

4.6.2.8 Evidence of extra judicial confession and its evidentiary value

The evidence about an extra judicial confession is in the nature of things a weak piece of evidence. If the same is lacking in probability they would be difficult in rejecting the same. So far as the alleged extra judicial confession of the accused is concerned, the prosecution has relied upon the evidence of Ram Singh (P.W. 4). After having been taken through the evidence of that witness, the Court fined the same to be lacking in credence and devoid of any ring of truth. The Court is, therefore, not prepared to place any reliance upon the evidence regarding the extra judicial confession of the accused.460

The Law is that an “extra judicial confession, if found reliable can be made the sole basis of conviction” Nonetheless as a proposition of practice and prudence it is advisable that Court may search for assuring circumstances, so that, there can be no room for doubt regarding the reliability of the extra judicial confession.461

It is difficult to accept the evidence of “extra judicial confession which is a very weak type of evidence and has made to the window of one of the

conspirators who was helping her husband in making spears and other weapons.\textsuperscript{462}

As regards the extra judicial confession made by appellant before SukhLal, the Court is unable to believe this version given by the witness Sukhlal. While being examined as a witness in session court he had clearly stated that no confession was made before him. His attention was, however, drawn to his statement made by him before committing Magistrate where he had admitted that he saw the appellant running and on being questioned the appellant told him that he had committed a mistake and had killed his brother due to a quarrel. In cross examination the witness admitted that he did not narrate this story of the murder to anybody. He made the disclosure for the first time when he was called to the police station. The witness met a number of persons on that day but he did not mention the factum of the confession to any one of them. Secondly, the evidence shows that he was not known to the appellant and therefore the Court finds it difficult to believe that the appellant would make a confession to a person who was not known to him at all. For this reason, therefore, the Court fined it wholly unsafe to accept the evidence of the extra judicial confession of the appellant to P.W. SukhLal.\textsuperscript{463}

Where the high court found that the evidence of extra judicial confession was wholly untrustworthy, the Supreme Court agreed with the high court in holding that the prosecution had failed to bring home the guilt to the accused beyond all reasonable doubt.\textsuperscript{464}

An extra judicial confession is considered to be a weak type of evidence point in the instant case, such extra judicial confession is said to have been made before a witness who stands thoroughly discredited in his cross examination. He has resoled from the version disclosed by him in the course of Investigation and

\textsuperscript{463} Lakhnapal v. State of Madhya Pradesh, AIR 1979 1620.

Coming first to the extra judicial confession, Apex Court is of the view that the evidence of P.W. 6, who only testified about, is improbable and lacking in credence. It does not stand to reasons rather it seems odd that the entire four accused person should be seized at the same time by a mood to approach W.6 to make a joint confession. It is significant to note that they had no particular relationship or connection with P.W. 6, so as to confide in him and take his assistance for surrendering before the police.\footnote{Surinder Kumar v. State of Punjab, AIR 1999 S.C. 215 at p. 216.}

So far as the making of confession by the accused is concerned, there is no Corroborative evidence. The evidence of Vinu P.W. 2 is to the effect that after the accused made the confession to her, she rushed home and found her mother on fire. According to her, she put out this fire by pouring buckets of water on her and thereafter she rushed to her brother present in the liquor shop which is situated in Adamshas Chowk at a distance of about half a kilometer from his house.

On a careful consideration of the above mentioned circumstances, Court is of the opinion that the lend sufficient assurance to the version of Vinu that the accused had made a confession to her and that they also corroborate material particulars of the confession. The evidence of Vino is absolutely reliable. Although she has admitted that she was not in good terms with the accused that does not mean that she has told a lie. Vinu is a girl who was at the relevant time studying in 6\textsuperscript{th} standard. The conduct of the accused to drink liquor and harass her mother must have made Vinu to hate him. However, Court finds that she has narrated the whole story in the most natural manner.\footnote{Thakurdas Kisanchand Daryani v. State of Maharashtra, (1999)(1) Mh. L.J. 370 at pp. 375, 376.}
4.7. Main distinction between judicial and extra judicial confessions

**Judicial Confessions**

Judicial confessions are those which are made to a judicial Magistrate under Section 164, Cr.P.C. or before the court during committal proceeding or during trial.

To prove judicial confession the person to whom judicial confession is made need not be called as witness.

Judicial confessions can be relied as proof of guilt against the accused person if it appears to the court to be voluntary and true.

A conviction may be based on judicial confession.

**Extra Judicial Confessions**

Extra judicial confessions are those which are made to any persons other than those authorized by law to take confession. It may be made to any person or police during investigation of an offence.

Extra judicial confessions are proved by calling the person as witness before whom the extra judicial confession made.

Extra judicial confession alone cannot be relied it needs support of other supporting evidence.

It is unsafe to base conviction on extra judicial confession.

**4.8. Inculpatory and Exculpatory statements.**

Inculpatory statements mean statement by which an accused confess to something wrong and exploratory statement means a statement which tends to justify the accused from alleged guilt. The definition was tempted by Privy Council has found favour with the Supreme Court. In its decision in *Palvinder Kaur v. State of Punjab*\(^{468}\) the Supreme Court approved the Privy Council decision in *Pakal Narayan Swami v. Emperor*\(^{469}\), over two scores, “firstly, that the definition of confession is that it must either admit the guilt in terms of admit substantially all facts which constitutes the offence, and secondly, that a mixed up


\(^{469}\) A.I.R. (1939) P.C. 47.
statement which, even though contain some confessional statement, will still lead to acquittal, is no confession.”

Palvinder was on trial for the murder of her husband along with another whom all the time remained absconding, “the husband’s Body was recovered from a well after it had already suffered for 2 months decomposition. The post mortem could not even reveal whether that was due to poisoning or what, in her statement to the Court the accused said that her husband, a hobbyist photographer, used to keep handy photo developing material which is quick poison, that on the occasion he was ill and she brought him some medicines, that the phial of medicine happened to kept nearby the liquid developer and the husband while going for the medicines by mistake swallowed the developer and died; that she got afraid and with the help of absconding accused pack the body in a trunk and disposed it off into the well.”

The statement thus consisted of partly guilty and partly innocent remarks. it was partly inculpatory in the sense that it confessed to something wrong and partly exculpatory in the sense that is accepted it would totally absolve her of any guilt. The lower courts sorted out the exculpatory part and acting on the inculpatory part announced her to be guilty of the murder of her husband by poisoning him. But the Supreme Court did not countenance this approach. The Court thus “accepted the inculpatory part of the statement and rejected the exculpatory part. In doing so it contravened the well accepted rules regarding the use of confession and admission that they must either be accepted as whole or rejected as whole and that the court is not competent and accept only inculpatary part, while rejecting exculpatory part is inherently incredible.” Reference in this connection may be made to the observation of the full bench of Allahabad High Court in Emperor v. Balmukand with which we fully concur, “the confession they are comprised of 2 elements:

1. An account of how the accused killed the women and

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470 I.L.R. (1930) 52 All. 1011. The decision of Supreme Court in Hanumant v. State of M.P., AIR 1952 S.C. 343. Is to the same effect. The court observed that “an admission made by a person whether amounting to a confession or not cannot be split-up and part of it used against him. An admission must be used either as a whole or not at all.”
2. On account of his reasons for doing so.

The former element being inculpatory and the latter exculpatory”, the question refers to the full bench was: “Can the Court if it is of opinion that the inculpatory part commends itself, and the exculpatory part is inherently incredible”, “act upon the former and refuse to act upon the latter? The answer to the reference was that where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible.471

Similarly, in the case before Rajasthan High Court,472 the accused said that he was in the room when his wife killed their children and then committed suicide, it was held at the Court could not accept a part of the statement by which he confessed to be there and rejected the rest.

4.8.1 Under English law confession not rejected only because of exculpatory statements.

The principal of English law is that “the whole statement must be left to the jury who may attach different weight to different part of it. The same rule applies in the case of confessions”.473

This principle was established overruling earlier authorities.474 In R. v. McGregor,475 and again in R. v. Storey476, in the case of McGregor, LORD PARKER supported the better opinion when he said, “the better opinion seems to be that, as in the case of all other evidence, the whole should be left to the Jury to say whether the fact asserted by the prisoner in his favour are true.”

471 Bhagwan Singh v. State of Haryana, AIR 1976 S.C. 1797, where the insignificant exculpatory part was separated from the rest.
472 Jaswant Singh v. State of Rajasthan, AIR 1966 Raj. 83. See also Champa Rani Mondal v. State of W.B., (2000) S.C.C. 608, confessional statement that she caused death toward off rape, being wholly exculpatory, was held to be not relevant as a confession.
474 The earlier authority was Rex v. Sarah Jones, (1827) 2 C. & P. 629.
In *R. v. Storey*\(^{477}\), a girl was prosecuted along with another for possessing and dangerous drug, which was recovered from her apartment. The other man was also in the apartment and her defense was that the whole Contraband belongs to him. This was in fact no confession, but an explanation that she was not guilty. Even so the court of appeal held that statement should go to the jury. “The fact that that Cannabis was on the applicant’s bed in her flat was in itself some evidence of possessing to go to the Jury. Her unsworn explanation, also, if true, it would have been complete answer to the charge, did not cancel out or nullify the evidence which was provided by the presence of Cannabis. It was ultimately for the Jury to decide whether the explanation was or might be true.” Thus, the principle has crystallized that a confessional statement should not be rejected merely because it also carries with its exculpatory statement. It should be for the Jury to say what weight shall be given to several parts of the statement, for they may well believe that part which charges the Prisoner, and reject that which tends to exculpate him.

### 4.9. Supreme Court takes notice of development in English law.

The Supreme Court of India also appears to have been influenced by this development. Its decision in *Nishi Kant Jha v. State of Bihar*\(^{478}\) marks the turning point. The accused was charged with murdering his friend while travelling with him in a train. He was seen washing his clothes in river flowing near the station where the murder was detected. The news spread to a nearby village and villages arrested the accused. Blood stained clothes, papers and a knife were recovered from him, and the blood on them agreed with the blood of the deceased. He admitted washing blood stain clothes, but explains the presence of blood by two contradictory statements. In one of them he tried to explain away the blood by saying that there was a struggle between two persons in the compartment one of whom killed the other and some blood spill over him in the act of rescue. In the other version, he said that a herd boy robbed and injured him. The high court did not accept these explanations and confirmed the conviction for murder. The

\(^{477}\) (1968) 52 Cr. App. R. 334.  
\(^{478}\) (1959) S.C.R. 1033.
Supreme Court upheld the conviction and pointed out that “there was nothing wrong in relying on a part of statement and rejecting the rest, and for this purpose the Court drew support from English authorities.”\textsuperscript{479} The Court did not mean to overrule \textit{Palvinder}, \textit{Hanumant} or \textit{Balmukund} but distinguished the present case from them. Here there was “enough evidence to reject the exculpatory part of the statement of the appellant. The High Court has acted rightly in accepting the inculpatory part and piecing the same with other evidence to come to conclusion that the appellant was the person responsible for the crime.”\textsuperscript{480} In the prosecution of \textit{Palvinder}\textsuperscript{481} there was no other evidence of the circumstances surrounding her husband’s death accept her own statement, and, therefore, the Court had no choice but to hold that the statement should be accepted or rejected as a whole. In \textit{Hanumant},\textsuperscript{482} also, where an officer was prosecuted for forgery in tampering with a tender document and a letter, there was no choice, the confessional statement being the only evidence on record. The letter in question was typed on the machine which was purchased by the office much later than the date of the letter, which showed that the letter was deliberately antedated. The explanation of the officer was that the machine was with them for trial before ultimate purchase. There being no other evidence to contradict this explanation, the court held that the statement should be accepted or rejected as a whole. So was true of \textit{Balmukand},\textsuperscript{483} the explanation offered by the accused as to why he killed his wife was the only evidence on record of his guilt. But in \textit{Nishi Kant Jha’s}, case the explanation were inconsistent in themselves and also with the other evidence on record, and were, therefore, so obviously felt that there was no chance of justice being miscarriage in discarding them.

\textsuperscript{480} The view expressed by the Patna High Court in \textit{Emperor v. Itwa Munda}, (1938) 39 Cri. L.J. 554 at p. 556 was thus confirmed.
\textsuperscript{482} \textit{Emperor v. Balmukand}, (1930) 52 All. 1011.
This approach has again been adopted by the Supreme Court in *Keshoram v. State*,

484 could not the accused admitted that he had struck the deceased with a sharp weapon, but that he had done so to defend himself and his farm labour that a diseased was going to attack while they were working in his field. The self-defence part of the admission turned out to be false as there was evidence to the effect that the deceased was attacked while he was working in his farm field. The Court accordingly rejected that part of the confession by which the plea of self defence was setup and acting up on the rest of it convicted the accused.485

Statement in the first information report which was furnished by an accused person was not allowed to be used against another accused person. The Court said that such statements could not be used even against the maker unless he offers himself as a witness in which case a limited use could be made to contradicting or corroborating his testimony.486

Statements recorded during an enquiry under section 108 of Customs Act 1962 or during confiscation proceeding are not confessions made by an accused person within the meaning of section 24.487 Such a confessional statement also subsequently retracted, can be the sole basis of conviction if it is otherwise truthful and voluntary.488

In *Veera Ibrahim v. State of Maharashtra*, 489 "a person being prosecuted under the Customs Act told the custom officer that he did not know that the goods loaded in his truck were Contraband nor they were loaded with the instructions. The court held that the statement was not a confession, but it did amount two and

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484 AIR 1978 S.C. 1096 at p. 1098. The rule in England is the same, namely, the whole of a confession, including any part which excuses the offence, should be put in evidence.

485 The Supreme Court again emphasized in *Devka Bhikha v. State of Gujrat*,(1996) 11 S.C.C. 641 that the confession of the accused must be taken as a whole and the exculpatory part should not be thrown out.


487 *K.I. Paunny v. Asst. Collector, Central Excise Collectorate*, (1997) 3 S.C.C. 721 Customs officers, though not police officers, they are within the meaning of Section 24. Statements of persons suspected under the Customs Act are under a statutory compulsion and, therefore, cannot be strictly viewed as confession.


489 AIR 1976 SC1167.
admission of an incriminatory fact (namely, load of contraband goods) and was, therefore, relevant under section 17 read with Section 21.”

In Champa Rani Mondal v. State of West Bengal, confessional statement that she caused the death to ward off rape, being wholly exculpatory, was held to be not relevant as a confession. In a statement recorded by the Magistrate, the accused is not admit his guilt in terms and merely went on stating the fact of assault of the deceased by mistake. Held that's a statement could not be used against the accused as a confession (State of Haryana v. Rajender Singh where the accused confess that he knew about the conspiracy to commit the murder in question but did not confess that he was a party to the crime, the statement was held to be not relevant as confession.

In Lokeman Shah v. State of West Bengal, the statement of the accused which showed that he joined an assembly when it had already decided to chase the victim and finish him was regarded as a confession. The Supreme Court observed: “the statement must be read as whole (instead of dissecting it into different sentences) and then only the court should decide whether it contains admission of his inculpatory involvement in the offence. Is the result of that test is positive then the statement is confessional, otherwise not.”

4.10. True Confession.

A true confession made by a person who takes part in a murder invariably adds something to the knowledge already possessed by the investigating officer and that is greatest test of its truth.

It was held by the apex court “that the trial court was not justified in considering the length of the confession as a suspicious circumstance. The confession was complete record of the steps taken by the Magistrate, the questions put to the accused and the answer given by him. The High Court has also pointed out how other reasons given by the trial court are also improper.

492 AIR 2001 S.C.1760.
493 Kanhaiyalal v. Union of India, AIR 2008 SC 1044.
494 Mata Din v. Emperor, AIR 1931 Oudh 166 at p. 169.
While agreeing with the trial court that the Judicial Magistrate has failed to enquire for from A-4 as to whether he was promised that he would be made and approval if he made the confession, the high court held that this omission was of no significance as P-4 was clearly warned that if she made a confession it was likely to be used against him. The High Court was also right in holding that the trial court in reliance extensively on the case diary had committed and illegality. The omission found by the trial court as a result of that illegal effort for minor and did not justify the conclusion that the confession was not voluntary made. In the absence of any requirement that separate reasons were required to be recorded for believing that the confession was made voluntarily it was not proper for the trial court to doubt it’s genuineness on the ground that the reason were not recorded separately to the satisfaction was recorded in memorandum. The High Court was there for right in placing Reliance upon the confession made by A-4.\textsuperscript{495}

4.11. False Confession.

“A false confession is that when a person admits that he has on the wrong side of the law when in fact they are not responsible for the crime\textsuperscript{496}. False confessions can come up through the use of coercion or force to obtain the statement. They may also outcome from the mental incapacity of the accused person. Even though false confessions may seem not likely, they in fact occur regularly and can present many tribulations during a criminal trial.”

“An example of a false confession is where a person admits to a crime in sort to reroute the court’s attention from the person who in reality committed the crime. For example, a person may confess to a crime in order to accumulate their friend who is being accused. False confessions may also be used in attempts to evade inconsiderate sentences, for example if a person pleads guilty to a less important offense that they did not essentially place.”\textsuperscript{497}


\textsuperscript{496} State of Punjab v. Harjagdev Singh, AIR 2009 SC 2696.

4.11.1 Admissibility of False Confessions in Court.

“False confessions are not acceptable in court. If a confession is found to be forged, the judge will likely hit the statement from the proceedings and it cannot be used as evidence. Also, the person manufacture the false confession may be subjected to additional penalties for false in court.”

“If a false confession was obtained through force or violence “involuntary false confession”, the statement will not be admissible in court. Whether they are true or false, involuntary confessions are inadmissible.”

4.11.2 What happens, if a person is caught making a False Confession?

“The problem with false confessions is that they can be difficult to detect. Courts employ a variety of mechanisms to detect and deal with false confessions, according to a set of rules known as confession rules. If a person is caught offering a false confession, the following consequences may occur:

1. Criminal charges: Depending on when and where the statement was made, and to whom, the person making a false confession may be guilty of the additional crimes of:
   a. Perjury
   b. Lying to a police officer

2. Contempt: if the false confession causes a disruption in court proceedings hinders cooperation with the opposite party, a judge may hold the confessor in contempt.

Thus, false confessions can constitute a serious obstruction of justice. They may result in monetary fines and possible jail or prison time.”

4.11.3 Reasons for Making a False Confession

False confession may be due to a conscious desire or to a mistake. The last mentioned cause may spring out mistake of fact or law. Regarding a mistake

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of fact, an example is, of a man mistaking a corpse to be a robber in hiding and belaboring it pursuant to that impression. After finding the body to be lifeless, his mistaken impression continues and he believes that he killed the man and makes a confession. A false confession of a person under the influence of a hallucination, though not due to mistake as to a fact, proceeds on the belief of a fact which has no existence. For him, his imagination is a fertile source for modeling a story in his confession. A mistake of law give rise to a false confession, under conditions “when a man become conscious of moral guilt but does not become conscious that he is also legally guilty.”

In most cases, false confession made intentionally for avoiding momentary vexation, and under this category come the “false confessions which are extorted from accused by bodily or mental torture.” A second motive is a desire to stiffly enquiry, which may be illustrated by the case of a man falsely confessing to having committed a trifling crime with hope of keeping the authorities on a wrong sent regarding another and a graver offence which he had committed. A third reason having its basis on sexual relations is described by Bentham as follows: - “in the relation between the sexes may be found the most natural example of this as of many others eccentric lights. The female unmarried—punishment as for seduction hazarded, the imputation invited and submitted to, for the purpose of keeping of rivals, and reconciling parents to the alliance. The female married—the like imputation, even though unmarried, invited with a view to marriage through divorce.” A fifth reason is vanity. Best in his evidence, quotes the following passage of Bentham regarding this cause “Vanity, without the aid of any other motive, has been known (the force of moral sanction being in these cases divided against itself) to afford an interest strong enough to engage a man to sign himself in the good opinion of one part of mankind, under the notion of raising himself in that of another.” A sixth reason is the wish to benefit others. A seventh cause is the desire to injure others; this is sought to be brought about by

accusing them as participants in the crime. Instances abound in case where parties in their hatred and revenge, forge evidence against the objects of their passion, even at the expense of their own persons, as for example by self inflicted wounds.\textsuperscript{502}


The confessor has seen many aspect of confession in his mind before he makes a confession before authority. He knew that the statement given by him is to be used against him as evidence. Here we define the psychological conditions of the confessor. Now we divided this heading in various parts like, what are the motive forces for making a true confession and what is the process of making a confession and difficulties arising in assessing a confession and so on\textsuperscript{503}.

4.12.1 ‘Motive’ as an Element for Making a True Confession.

The motive forces for making a true confession of several and it is not possible to exhaustively enumerate them because they are varied and complex. However the following reasons can be mentioned is generally promoting a person who commits an offence to confess:

1. Repentance;
2. Panic created in the mind of the accused when he finds that the game is up against him and that is crime was well-nigh detected and that there would be no reasonable hope of escape.\textsuperscript{504}
3. The accused for the movement was in despair, and called two purchase immediate ease by making a confession or resignation to fate.\textsuperscript{505}
4. Due to simplicity and half Savage nature of the accused; this cause for making a confession in the evidence of the case of the simple and unsophisticated persons living in the hilly regions which are called agency tracts in our country. Their ways are simple but their Savageness of nature manifest itself when they are roused buy anger or feeling of

\textsuperscript{503} C. Muniappan v. State of Tamil Nadu, AIR 2010 SC 3718.
\textsuperscript{504} Empress v. Dada Ana, 15 Bombay 452.
\textsuperscript{505} R. v. Babulal,6, All 509.
jealous or revenge. They are by nature in capable of keeping secrecy regarding the crime which they commit.

5. Expectations of mitigation of punishment. It is a common hope in many criminals that they could minimize the gravity of punishment for their guilty acts by making a clean breast of their crimes. They hope by confessions that they can appeal to the soft qualities of sympathy and mercy of the trial judge.

6. Out of vanity, a person may show that he has taken a great part in the commission of an offence and in the confession which he chances to make the same feeling of vanity may colour his statements. This tendency can be perceived in the magniloquent manner of describing their own part in commission of an offence, on the part of young persons, who are led away by the novelty of the experience, not realizing that it is vinous to confess in such a manner.

7. Political offenders who commit certain offences against state, do so out of firm conviction in an ideal, and, therefore, there would be no inhibition as far as they are concerned and what they do in furtherance of their ideology, they do not attempt to hide from the authorities. So one of the reasons for confessional statement maybe firm conviction in the acts that one does.

8. The aim of confession maybe to put the authorities on the wrong scent, such as one may come across in the case of conspiracy, where confessing person may make a confession to give time for his confederates to escape or for the destruction tell-tale incrementing objects. But later on the confessing person may spring a surprise on the court by setting forth well-founded and successful plea of alibi.

9. Confession of trivial offences may be made to establish alibi for greater offences.

10. Confessions having the origin in religious faith such as Catholics make, which are called death bed confessions. Those confessions do not
manifest any restraining tendency on the part of confessing person. On
the other hand, they do not seem to minimise their guilt but reveals a
conscious desire on their part to do penance for their past misdeeds. Such
confessions may also have the aim of preventing punishment or further
punishment of guiltless man.

11. Most confessions may also be attributed to stricken concise and if the
person is weak minded, it is probable that he would be plagued with
hallucinations wherein, the images of his victim would pass in the
firmament of his imagination, or he may be troubled with the constant
jingle of the money he stole which may appear to ceaselessly sound in his
auditory organs. As an escape from these disturbing factors, a person
makes a confession. But where such a desire to make a voluntary
confession does not exist, pressure from others may extract a confession.
To refuse to admit that there is such possibility may be comfortable, but
wrong, because in the field of criminal law instances of extracted
confession are plentiful.


The above are a few reasons for making a true confession. But the actual
process of making a confession ensues in the following manner. After committing
a crime, and ordinary person but not a habitual criminal, is obsessed with guilty
conscience, on account of committing heinous act and of violating common
morality or social order. His mind would be at that time full of thoughts regarding
the consequences of is guilty act, and the punishment and ruin that may over take
him up on discovery of the crime. Therefore, his conduct at that particular time
would be punctuated by such feelings and a strong desire to hide his guilt from
the authorities. He then passes through a great nervous strain which goes on
increasing hourly and daily. But he would be spared of this mental suffering
sooner than expected; and almost suddenly, it happens, when the authorities lay
hand upon him and tell him that they arrest him for the murder of another person,
and then it may be clear to him that the game is up against him. So all the strength
of his mind and faculties which he had formerly collected to safeguard the secret of his guilt yields place to a desire to reveal, which also helps to relieve his mental oppression. Then his mental equanimity which is slowly corroded by his guilty conscience, succumbs to the realization that his crime was detected by the authorities and that he no longer can hide his guilt from the outside world.


The weight to be given to a confession is fraught with difficulty because in every case it is necessary to see with what motives a person made a confession. Only such a confession which is made purely on account of qualms of conscience is deserving of weight as a piece of evidence. The dominant consideration for a court while dealing with a self accusing statement is whether nothing but guilty conscience is at the root of the confession or anything else\textsuperscript{506}. A confession admits of duel inference, one about the motive force for making it and the other about the actual doing of the guilty act\textsuperscript{507}. If the confession is false, then surely it cannot be said that the person was motivated to make it on account of guilty conscience. But it may be due to some other reasons. Even if the confession is outcome of guilty conscience, the reason for making it may be for a purpose. Thus a person may make a confessional narration just to free a near relative from the importunate interrogation of the police. Then he elects to make a false confession together with the result of saving his near relative, though, it means condemning himself, rather than refraining from making a confession which has the result no doubt of a benefit to him, but positive damage of his relative, under such circumstances, if the confession is true, the confessing person may be moved both by guilty conscience and a desire to save his kinsman\textsuperscript{508}. It may be possible, even without committing the guilty act; a person may make a confession having the motive to save his relatives uppermost in his mind. Sometime it may sound a little improbable that a person confessed on account of such a motive as a above, but it is wrong to judge the motive from the criterion of the observer’s experience and

\textsuperscript{507} State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru, AIR 2005 SC 3820.
\textsuperscript{508} Rajvinder v. State of Haryana, 2015 (11) SCALE 601.
standards. always, the individual traits of the person making the confession such as his temperament, intellectual attainments and environments together with the exigencies of the situation when he made the confession like hunger, exhaustion and dread, have to be taken into account, so far as they are known, to hold weather the man would or would not have made a confession; due to reasons which to outsiders may appear to be far-fetched\(^{509}\). The instance of a chairman who gladly walked to the gallows to save his father, may exemplify his deep love. This may sound incredible to an European or an American. Similarly, it may be unthinkable to an Indian that a person would confess just on a promise of giving a glass of beer. So the safest course will be to Judge each confession on its own merits and on the personal equation of the individual making it.

4.15 Various Divisions of Confessions.

The plenary confession which does not mince matters and which is seldom retracted by the confessor, can afford the greatest proof of the guilt so far as the offence in question is concerned. Again, confessions can be having proof from persons who heard them when made and from those which are recorded by someone\(^{510}\). Confession can be made to a judicial functionary during the course of judicial proceeding; and they may be made to persons other than judicial functionaries; under our law, confessions made to Judges or Magistrates, during the course of judicial proceedings or when they are recorded by Magistrate in accordance with the provision of section 164, Cr. P .C. correspond to judicial confessions\(^{511}\). All other kinds of confessions correspond to extra-judicial confessions in the law of England.

4.15.1. Confessions Made to Magistrate can be Divided into Five Classes.

1. Those recorded with all the formalities prescribed by Sec. 164 of Criminal Procedure Code.


\(^{510}\) State of J. & K. v. Wasim Ahmad, 2015 (7) SCJ 86.

\(^{511}\) Rajesh Ranjan v. State of Bihar, 2013 (4) PLJR 564.
2. Those imperfectly recorded, but the defect is cured by Sec. 463, Criminal Procedure Code.

3. Those confessions which are proved by the testimony of the Magistrates who recorded them.

4. Those which the Magistrate refuses to record but merely hear them.

5. Those which are made orally by accused persons by going to a Magistrate of their own accord.

Confessions falling under classes (1) and (2) will be recorded with great care and after warning the accused persons that they are not bound to make confessions and that if they make them, they will be used as evidence against them. Therefore they carry more weight than those of the other classes. A confession under the third class will be less weighty because some of the precautions prescribed by law are not observed. A confession under class forth cannot have any value unless the magistrate can explain to the satisfaction of a court, as to why he was unable to record the confession as per the provision of Section 164 and 281, of Cr. P. C. The “weight to be attached to a confession under class (5) would depend entirely on the circumstances under which it is made.”


It is well settled that the confession would not be treated as voluntary if there is any scope for police influence. Existence of actual influence is not essential. The likelihood of the accused being influenced is enough. Law is clearly elucidated in Aher Raja Khima v. State of Saurashtra. In order to be admissible “a confession must be free and voluntary, and unless it be shown affirmatively on the part of prosecution that it was made

512 Bakshan v. Emperor, 16 Lah 912.
without the Prisoner being induced to make it by promise of favour, are by
menaces, undue terror, it shall not be received in evidence against him.\textsuperscript{516} “If it
proceeds from remorse or desire to make separation for the crime, it is admissible;
if it flows from hope or fear excited by a person in authority, it is inadmissible.
On this point the authorities are unanimous.”\textsuperscript{517}

In \textit{Abdul Razak Murtaza Dafadar v. State of Maharashtra},\textsuperscript{518} the accused
was produced before the Magistrate on 28\textsuperscript{th} October 1966, when there was
preliminary questioning and warning given to the accused. On the next day the
accused was produced before Magistrate and the confession was made.

\textit{Held}, that the confession was voluntary confession. It is clear that “the
accused had spent four days in judicial custody and he was not under the
influence of the investigating agency for at least 4 days. Again he had 24 hours to
think after he was told by the Magistrate that he was not bound to make any
confession and if he made one, it would be used against him.”

“A confession in order to admissible must be free and voluntary, i.e., must
not be extracted by any sort of threats of violence, nor obtained by any direct or
implied promises, however slight, nor by the exertion of any improper
influence.”\textsuperscript{519}

4.16.1. \textbf{Voluntariness Meaning and Scope.}

The term “Voluntary” is wider in meaning than the term of section 24
Evidence Act.\textsuperscript{520} In such circumstances if fact are proved witch suggest that and
inducement of some kind, although outside of terms of section 24, was in fact
given, the court may well refused to accept the confession as true.\textsuperscript{521}

The confession of the accused should be in unequivocal terms admitting
the confession of the crime\textsuperscript{522}. Such a confession cannot be used against an
accused unless the Court was satisfied that it was voluntary made and while the

\textsuperscript{516} \textit{R. v. Thompson}, (1893) 2 Q.B. 12.
\textsuperscript{517} Archbold, \textit{Criminal Pleadings, Evidence and Practice}, pp. 415-16.
\textsuperscript{518} AIR 1970 S.C. 283.
\textsuperscript{519} Wigmore, \textit{Evidence}, 1905 Ed., Sec. 826, p. 940.
\textsuperscript{520} Surendra Koli v. State of U.P., AIR 2011 SC 970.
\textsuperscript{521} Kalijiban Bhattacharya v. Emperor, AIR 1936 Cal, 316 at p. 321.
\textsuperscript{522} Kuldip Singh v. State of Punjab, AIR 1997 SC 79.
court is considering this question whether it is true or false does not
arise as indicated by Hon’ble Apex Court in its decision in the case of Aher Raja
Khima v. State of Saurashtra.\textsuperscript{523} It is, therefore, obvious that a confession before
it can be acted upon and can be made a basis of conviction must be proved to
have been voluntarily made and true. For the purpose of establishing its truth it is
necessary to examine the confession and compare it with the rest of the
prosecution evidence and probability of the case. A confession made under
pressure is inadmissible. Where the confession is not voluntary and free the fact
that it is true make it admissible. A confession cannot be taken to have been
voluntarily made where it is made under threat, inducement of promise by a
person in authority. In case there are circumstances which afford well grounded
conjecture that the confession under section 24 of Evidence Act. It should not be
lost sights of the provisions contained in section 24 of Evidence Act do not
require a positive proof of the fact that there was any inducement. The “word
appears indicating a lesser degree of probabilities that would be necessary if
proof had been required.”\textsuperscript{524}

Moreover, it may be noticed that the provisions contained in section 24 do
not require that the accused should be able to prove that he made the confession
under any inducement, treat or promises. If there are circumstances from which it
appears that the confession was not made voluntary, the Court would be justified
in rejecting that confession. It is therefore, permissible to reject a confession if
there are grounds to base a sound conjecture that it was not voluntary; although, a
mere possibility that the confession was not voluntary is insufficient to warrant its
rejection. However, a probability would suffice. Any attempt by person in
authority to “bully a person into making a confession or any threat or coercion
would at once invalidate such a confession if the fare was operating on the mind
of the accused at the time when he claimed to have made the confession, and if it
would appear to him to be reasonable for supposing that by making it he would

\textsuperscript{523} AIR 1956 S.C. 217.
gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”525

Where confession is made by the accused after being “trickled” by a police officer, execution of undue pressure cannot be inferred, so as to render the confession involuntary.526

In case of Aher Raja Khima v. State of Saurashtra527 Mr. Justice Vivian Bose (with Mr. Justice Chandra Shekhar Aiyer) delivering the majority judgment observed at page 221 that “Now the Law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary and at that stage the question whether it is true or false does not arise.”528

If the Court finds that any confession given by a person accused of an offence was the resultant position of a possible inducement, threat or promise having reference to the alleged offence, then Court has to presume that confession statement may become irrelevant, to be used against him in criminal proceeding. In a similar way, it can be taken note of, section 25 also, which deals with the confession statement given to a police officer or in his presence.529 the combined effort of section 24 and 25 to postulate the fact that if any person claims to have given any statement to a person in authority or his superiors in the presence of police officer, May in all the limbs, come within the category of inducement, threat or coercion.530

“the only piece of evidence relied upon against the appellant is the confessional statement recorded by PW 17 on 22nd July 1986. A confession, if voluntary and truthfully made is and efficacious proof of guilt. It 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 trustworthy.”531 the

527 AIR 1956 S.C. 217.
528 Bhulakiram Koiri v. State, 73 C.W.N. 467 at p. 479.
statutory provisions dealing with the recording of a confessions and statements by Metropolitan Magistrate and Judicial Magistrate are contained in section 164 Criminal Procedure Code and the rules framed by the High Court containing guideline for recording of confessions. Unless the court is satisfied that the confession is voluntary in nature, it cannot be acted upon and no further enquiry as to whether it is true and trustworthy need to be made.”

In case of Kashmira Singh v. State of Madhya Pradesh, as to extra judicial confession of an accused their Lordship have held at page 160 of the said judgment that “it is evident that it is not evidence in ordinary sense of the term, because as the privy Council says in Bhuboni Sahu v. King, it does not indeed come within the definition of the evidence contained in Section 3, Evidence Act’ it is not required to be given on oath, not in the presence of the accused, and it cannot be tested by cross examination. Their Lordship also pointed out that it is obvious evidence of a very weak type’…. they stated in addition that such a confession cannot be made in foundation of a conviction and can only be used in support of other evidence”, their Lordship ultimately held that “in our opinion the matter was put search succinctly by Sir Lawrence Jenkins in Emperor v. Lalit Mohan Chukerabury, wherein he said that such a confession can only be used to lend assurance to other evidence against a co-accused;” the above mentioned case was considered in a later decision by Supreme Court in the case of Hari Charan Kurmi and Jogia Hajam v. State of Bihar, Chief Justice Gajenndragadkar observed that “this question was considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against the accused person…. as was observed by Sir Lawrence Jenkins in Emperor v. Lalit Mohan

533 AIR 1952 S.C. 159.
534 76 I.A.147 at p. 155.
535 I.L.R. 38 Cal. 558 at p. 558.
536 AIR 1964 S.C. 1184 at p. 1188.
Chukeraburty,\textsuperscript{537} a confession can only be used to lend assurance to other evidences against a co-accused.”

4.16.2 Duty of Court in Judging Voluntariness of Confession.

If a confession is to be acted upon, the Court should see that it has been made voluntarily and that it confirms to sub section 2 of section 164 Criminal Procedure Code.\textsuperscript{538} It is frequently assumed that a person would not make a confession of his guilt which will be prejudicial to his interest unless some pressure is extracted on him. But this proposition is not wholly correct. A man, who has committed a grave crime, unless he is a confirmed offender hardened by his repeated crimes, feels an overwhelming desire to unburden himself and share with some person his terrible secret. in Ibrahim v. Emperor,\textsuperscript{539} the judicial committee observed that it was a positive rule of English criminal law that no statement by an accused would be admissible in evidence against him unless it was shown by prosecution to have been a voluntary statement in the sense that it was not obtained from him either by fear or prejudice or hope of advantages exercise or held out by a person in authority. Section 24, Evidence Act, elaborately deals with this matter. Under section 24, a statement is inadmissible only if the court consider it to have been made in consequences of any inducement, threat or promise.\textsuperscript{540} In Emperor v. Panchkowri,\textsuperscript{541} it is pointed out that legislature has deliberately used the expression “if making of the confession appears to the court” and not “if it is proved to the satisfaction of the court”. Therefore, if the Court has any reason to doubt the free and voluntary nature of the confession, then it is for the prosecution to prove that it was made without threats or promises or inducements.\textsuperscript{542} “One circumstance which goes strongly in favour of the confession being held to be voluntary is that it was not retracted in the court of the committing Magistrate and it was retracted in the session court at

\textsuperscript{537} I.L.R. 38 Cal. 558 at p. 558.
\textsuperscript{538} Ram Singh v. Central Beuro of Narcotics, AIR 2011 SC 2490.
\textsuperscript{539} AIR 1941 P.C. 155.
\textsuperscript{540} 11 B.H.C.R. 137 (138); See 5 M.J.L. Art., p. 25.
\textsuperscript{541} I.L.R. 52 Cal. 67 : AIR 1925 Cal. 587.
\textsuperscript{542} Nathu Ram v. State, AIR 1951 H.P. 1 at p.10.
early stage”. Confession taken down after accused was kept in jail custody for 2 or 3 days and after they were given further time for reflection when produce before the Magistrate are voluntary. The mere fact, that Jai Singh was in the custody of police for about a period of 9 days before he was produced before the magistrate for receiving his confession, by itself, is not sufficient ground for holding that the confession in question cannot be considered as having been made voluntarily.

4.16.3 Confession not to be Only Voluntary but also True.

“Even if the confession is held to be voluntary it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of prosecution evidence and the probabilities in the case.” The question whether a confession is voluntary or not is always a question of fact, and there is no rule of law that is a certain period is not given for reflection that itself would be sufficient to rule out the confession. but at the same time “all the factors of and all the circumstances of case including the important factor of the time given for reflection must be considered before deciding whether the court is satisfied that in its opinion the impression caused by any inducement, threat or promises has been fully removed as provided in section 28.” The question as to the voluntariness of a confession comes in, when it is being evaluated only as a subordinate, though material element, is the main question of credibility of the proof.

The confession appears to have been made voluntarily. There is nothing to show that any stress, undue influence of coercion was brought to be upon the appellants. Truth of the confessional statement is established by the fact of

545 Jai Singh V. State, AIR 1967 Delhi 14 at pp. 15-16.
548 9 Bom. L.R. 789 at p. 801 (F.B.), per Chandavarkar, J.
recovery of the dead body and the ornaments of the deceased in the consequences of the statements made by the appellants. The confessional statement of appellant number 3 finds corroboration from the medical evidences. Moreover the circumstantial evidence lends ample corroboration to the confessional statement of the appellants.550

Extracts 16, 17 and 18 are the three confessional statements of appellants Dusasan, Laxman and Kalia respectively. These have been recorded by P.W. 14 Judicial Magistrate First Class. The appellants were produced before PW 14 on 18th October 1975. P. W. 14 gave them the necessary caution and allowed them time for reflection till 20th. On 20th he recorded extracts 16, 17 and 18 after due observance of the formalities. The statements were recorded out of the site and hearing of any police officer. In cross examination P.W.14 has stated that he has recorded the confessional statements verbatim and had read over and explains the statement to the appellants. The appellants had not complaint before him about any ill-treatment or torture by the police. On scrutinizing extract 16, 17 and 18 the evidence of P.W. 14, court is satisfied that the confession made by 3 appellants were true and voluntary. There is no material on the basis on which it can be held that confession were involuntary or unlawfully induced and such an inference is not to be drawn merely because the side confession had be retracted at the trial.551

It is thus settled principle of law that a confessional statement which is made voluntarily is relevant, and that which is made involuntarily is irrelevant, and that if the confession is voluntary, it may be relied upon.552 If the confession is made under coercion, it is irrelevant and as such it is inadmissible.553

4.16.4 Whether Practice of Extorting Confession still Continues.

“The rule that the confession must be voluntary, is equally applicable to case weather the prisoner has made a statement during the preliminary enquiry before the Magistrate. Though torture was the formally abolished before the middle of 17th century, it was not still after lapse of many years that the common law doctrine, nemo tenetur procure seipsum, was fully recognized, or at least was interpreted to mean, - as it does in the present day, - that all confession should be strictly voluntary, as will be apparent to any careful reader of the state trials. The practice of extorting admissions from prisoners still continues on the continent,\textsuperscript{554} and certainly is no means instrument for the discovery of truth, but has long been regarded in this country, and always in America, as savoring of unfairness and oppression.\textsuperscript{555}

A “free and voluntary statement” was described by Cave; J. as one which was not “preceded by any inducement to make a statement held out by a person in authority.”\textsuperscript{556}

It was held by their Lordship in Supreme Court in \textit{Hem Raj Devial v. State of Ajmer},\textsuperscript{557} that “a mere bald assertion by the accused that he was threatened, tortured, or that inducement was offered to him cannot be accepted as true without more.”\textsuperscript{558}

Himachal Pradesh Judicial commissioner’s Court had occasion to observe in \textit{Roshan Lal v. Union of India}\textsuperscript{559} that:

\textsuperscript{554} See the delgian case of Madame Joniaun at end of 1894 and beginning of 1895 as reported in \textit{The Times}.

\textsuperscript{555} See \textit{Taylor, Evidence}, 10\textsuperscript{th} Ed. Secs. 886, 887, pp. 625-26.

\textsuperscript{556} \textit{R. v. Thompson,} 2 Q.B. 12.

\textsuperscript{557} AIR 1954 S.C. 462.

\textsuperscript{558} \textit{Harbans Lal v. State,} AIR 1967 H.P. 10 at p.12.

\textsuperscript{559} AIR 1965 H.P.1.
“The accused must point out some evidence of circumstances on which a well grounded conjecture, at least that there was beating a pressure with respect to making of confession may reasonably be based.”

4.16.5 Voluntariness of Confession under English Law.

It has long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been awarded statement. If an objection is made to the admission of evidence as to the statement made by an accused it will be for the judge to decide as it is admissibility. He will generally have to hear the testimony of witnesses in regard to influence and evidence and in regard to the relevant surrounding circumstances. He will then decide whether the prosecution has shown that the statement was voluntary statement.

It is not necessary, before statement is held to be in admissible because not shown to have been voluntary, that it should be thought or held that there was impropriety in the conduct of the person to whom the statement was made.560

It is clear know that no statement by an accused person is admissible against him in evidence unless it is shown by the prosecution to have been voluntary statement. The statement which has been obtained from an accused person by a police officer only as the result of that, violence or other oppressive conduct, fear or prejudice, or hope of advantage, cannot be found to have been made voluntary and will not, therefore, be admitted in evidence. Furthermore such a statement obtained breach of judges rules maybe rejected as evidence by the courts.

The effect of judge’s rule was long ago stated by Lord Goddard, C.J. in R. v. May561:

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560 Director of Public Prosecution v. Ping Lin, (1975) 3 All. E.R. 175 at pp. 177-78.
“The test of the admissibility of a statement is whether it is voluntary statement. There are certain rules known as the judges rule which are not rules of law but rules of practice drawn up for the guidance of police officers, and if statement has been made in the circumstances not in accordance with the rules, in law that statement is not made in admissible if it is warranted statement, although in its discretion the court can always refuse to admit it if the Court think there has been a breach of the rules.”

It is appropriate to add that even if a court find that the judges rules have been compiled with and that a statement was made voluntary, it is still open to court to refuse to admit if the view is taken that to do so would be unjust and unfair to the an accused. In reaching a decision of admissibility or otherwise of a so called confession in Court exercise in discretion. Justice, when it is their duty to take such a decision, must, when exercise their discretion, acts judicially. the exercise of discretion by a judge justices should not be interfere with by appellant court, as has often been said, unless it be shown that the judge or the justices have not been guided by the considerations or have taken into account matter which day should not have done, or that there was no basis on the evidence for the decisions arrived at.\textsuperscript{562}

\textbf{4.17. Position of Law in England and India}

Both in England and in India “a voluntary and unsuspected confession is clearly sufficient to warrant conviction, wherever there is independent proof that by some on a criminal act has been committed.”\textsuperscript{563} Formerly it was contented that “confession alone is a sufficient ground for conviction without such evidence, but the cases adduced in support of this doctrine are not decisive, as in all of them there appears to have been, outside the confession, some evidence-though slight

\textsuperscript{563} Corpus delicti is often used as an equivalent to this phrase.
of confirmatory circumstances”\textsuperscript{564} and the contrary view may now be accepted as settled law.

Judicial history present abundant warning of the danger of placing implicit dependence upon confession even where exempt from all suspicion of coercion, physical or moral, or other sister influence. How greatly then must such danger be aggravated where confession constitute the only evidence on the fact that a crime has been committed and how incalculably greater in such cases is the necessity for the most rigorous scrutiny of all collateral circumstances, which may induce a false confession?

Innumerable are the instances on record of confession extracted “by the deceitful and dangerous experiment of the criminal question, as it is emphatically styled”\textsuperscript{565}, of offence which were never committed, or not by the persons making confession.\textsuperscript{566} In re Boyan Chinna Papanna,\textsuperscript{567} “that a person would not make a confession of his guilt which would be prejudicial to his interest unless some pressure was exerted on him. I do not believe this to be the case. A man who has committed a grave crime unless he is a hardened offender has an overwhelming desire to unburden himself and share with somebody his terrible secret. If he thinks of the consequences of his own conviction, fear of them will act in restraint of his natural impulse to confess. At the moment of his arrest, the ordinary accused feels that the game is up and that it is futile to attempt to try to conceal his guilt any longer.”

4.18. Conclusion

Section 24 to Section 31 of Indian Evidence Act, 1872, explains the laws relating to confession. The law relating to confession is more or less same as the English law of confession. The judicial confessions have more weight

\textsuperscript{564} Greenleaf’s Law of Evidence, Sec. 217; Alison’s Principles of Criminal Law of Scotland, p.325.
\textsuperscript{565} Gibbons’s Decline and Fall, Ch. XXII, Ed, 1854, Vol. II, p. 333.
\textsuperscript{566} Wills on Circumstantial Evidence, p. 117-118.
\textsuperscript{567} AIR 1942 Mad. 49 at p. 56.
comparatively extra judicial confession. The retracted extra judicial confession has a little value in criminal proceedings. The judicial confession and extra judicial confession have their own value in criminal proceedings, but as explain under this chapter the judicial confession is more valuable.

On other hand the chapter cover the aspect of true and false confession, and it is assumed that the presiding officer of the court have a duty to check the confession whether it is true or not, another duty of the judge is that he must check that the confession is not only be true but also voluntarily. If the confession is true but not voluntarily the burden of proof is on the prosecution that no inducement or coercion is used for obtained the confession.