



Confession: An Analysis

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All offenses which are prohibited by law are punishable to maintain balance in the society the person who committed a crime must be punished under the law. In India, we have various investigation agencies to trace the main culprit of the crime. These agencies work for collecting the evidence. In this context Indian Evidence Act, 1872, provides that evidence is of two types, first is oral evidence and the second is documentary evidence but there are also other types of evidence that are collected by these agencies and appreciated by courts. These types of evidence include circumstantial evidence. The very purposes of these agencies are to facilitate the court to reach the conclusion by proving the guilt of the offender beyond a reasonable doubt. However, there are cases where the person who has committed the crime, himself wants to confess as to the commission of a crime that he has committed. Such confession helps and facilitates the court in disposing of the matters expeditiously and makes the process promptly in delivering justice in the society. But the court shall be very cautious and should take precautions while accepting confession irrespective of the fact that a speedy trial is one of the basic principles under the Code of Criminal Procedure, 1973. Courts are to balance the public interest via expeditiously disposing of the case and the interest of the accused by following the Principles of Natural Justice. Thus the “Code of Criminal Procedure, 1973” and “Indian Evidence Act,1872” make a balance in procedure and appreciate the value of the confession as evidence.

The Latin phrase “Confessio est regina probationum” which in English means “Confession is the Queen of evidence” is indicative of the need for forced confession. This maxim also justifies the reasons for the cautions to be taken by the Court while relying upon the Confession for the decision of a case. This paper, however, will be dealing with the next level of this stage. The paper will be dealing with the Confessions which are not been questioned upon their volition to be given but upon their ingredients, as to what amounts to a confession, how does the definition of confession evolve, what is the basic procedure for recording evidence, and the impact of confession on the plea of guilt.

Objectives

The paper is an attempt to cover all provisions related to the recording of judicial confession and relevant cases on it. And also provide a slight view of the influence of confession on the plea of

guilt and trial. The paper also touches upon the unsettled issue regarding the recording of confessions on which different high courts of the states have a different opinions.

This paper sought to achieve to develop a legal understanding of the following topics.

1. Evolution of the confession definition
2. Scope of confession
3. Procedure for recording confession
4. Influence of the confession on pleading guilty and trial
5. Conflict on the point that up to which stage the accused pleads guilty.
6. Highlighting the Hurdle which is removed through amendment as a society grows.

The paper will address the above topics briefly and crisply and will enunciate the current legal position.

1. Evolution of the Confession Definition

In the context of criminal law, an admission of guilt by the accused person is referred to as a confession. After the accused has been informed of his or her rights under Article 20(3) and given warnings under Article 164 of the Criminal Procedure Code, the confession must be made freely and willingly. A confession is defined as "the admission of all of the elements of an offense, including the mental element," according to the legal definition of the term. The person who is being accused must make a public acknowledgment of guilt for a confession to be considered valid, as stated by the Supreme Court of India. The court issued an explanation in the case of Om Prakash that a confession is a statement made by an accused person that must either admit in words, the crime, or virtually all of the conditions that were present at the time of the offense: *Om Prakash v. State*, AIR 1960 SC 409. A confession is an admission that a person accused of a crime makes at any moment expressing or implying the conclusion that he committed that crime. Confessions are admissible in court.

From this definition, we have the view that any incriminating fact is also a confession. However, this definition was defied in the case of *Pakla Narayan Swami*.

In *Pakla Narayan Swami's Case*: Lord Aktin observed that a self-exculpatory statement cannot qualify as a confession under any circumstances. Please continue to elaborate on the observation of the confession,

“A confession must either admit in terms of the offense or at any rate substantially, all the facts which constitute the offense. An admission of gravely incriminating fact, even a conclusively incriminating fact is not itself a confession.”

This definition of the privy council in the case of *Pakla Naryan Swami* was also approved by the supreme court in the case of *Palvinder Kaur* and held that confession must either be accepted or rejected as a whole.

2. Scope of Confession

The scope of confession is not limited to the judicial proceeding but it can be made to any person outside the court. These confessions are termed judicial confession and extra-judicial confession respectively. The latter does not help much in making the trial speedier as compared to the former provided the former should not be retracted by the person making it. Even if the person confessing does not retract rather reiterated, still the court has to take some precautions. These precautions are in the proceeding of recording confession and the answer to the question up to what stage confession can be recorded and to answer that is it necessary to take the assistance of investigation agency to make a judicial confession

3. Procedure for Making of Confession

Section 164 of Cr.P.C. provides a procedure for making confessions and statements:

- (1) Any Metropolitan Magistrate or Judicial Magistrate has the authority to record any confession or statement made to him during an investigation under this chapter or any other law that was in effect at the time, or at any time before the beginning of the investigation or trial. This includes any time before the commencement of the investigation or trial. Any confession or statement that is made in accordance with the provisions of this section may also be recorded by audio-visual or electronic means in the presence of a witness.
- (2) Before recording any such confession, the Magistrate must inform the person making it that he is under no confession to make one and that, if he does, it may be used against him; and the Magistrate shall not record any such confession unless he has reason to believe that it is being made voluntarily after questioning the person making it.
- (3) The magistrate is not allowed to authorize the detention of a person in police custody if the person who is appearing before the magistrate declares at any time before the confession is recorded that he is not willing to confess. This clause is applicable at any point in time, even when the statement was first made.
- (4) Any such confession must be recorded in the way described in section 281 for recording the examination of an accused person, and it must be signed by the person who is making the confession. This section describes the method in which the examination of an accused person must be recorded. In addition, the Magistrate is required to make a note at the bottom of the record stating the following to the following effect: "I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. " It was taken in my presence and hearing, it was read over to the person making it, and he acknowledged that it was right, and it gives a complete and truthful description of the statement that was made by him. "
- (5) Any statement (other than a confession) made under section (1) shall be recorded in the manner provided herein for the recording of evidence that is, in the opinion of the Magistrate, best suited to the circumstances of the case; and the Magistrate shall have the power to administer oath to the person whose statement is so recorded.

(6) The Magistrate who records a confession or statement in accordance with this section is required to provide the information to the Magistrate who will investigate or trial the case.

In accordance with the provisions of this section, the confession may be recorded by any Metropolitan Magistrate or Judicial Magistrate. It makes no difference whether he has jurisdiction or not as long as the confession is made throughout an investigation prior to the stage of the trial or inquiry. The purpose of recording a confession before the judicial magistrate is to provide more sanctity to the confession as the other authority may play an influential role on the person giving confession and the recorded confession loses its sanctity that is the reason the recorded confession according to sections 25 and 26 of the Indian Evidence Act, 1872, any testimony was given by someone who is in the custody of the police or the police themselves is inadmissible.

It is to be noted that s.164 of the 1973 code does not empower to record the confession by an executive magistrate and the second proviso of the clause(1) makes this point clear that the police officer whom any power of magistrate is conferred by the law is not competent to record the confession. The code provides for distinct definitions of the executive magistrate and judicial magistrate u/s. 20 and u/s11 respectively. And the difference can be solidified by the provision iterated u/s. 3(4) of the Code. From this, it is clear that this section deals with the recording of judicial confession. and the confession made under section 24,25 and 26 of the Indian Evidence Act,1872 is itself made inadmissible as the confession under these sections are taken by threat, inducement or promise or made to police or under the custody of police but the section 26 of Indian evidence act make the confession valid unless given it be made in the immediate presence of a Magistrate.

Clause (2) of s.164 provides for the manner to be followed before the recording of confession. In this, the magistrate is required to explain to the person confessing the effects of confessing and check his volition of him so as to make the confession.

Clause (4) of this section provides that confession shall be recorded in compliance with s.281 of 1973, code. Also, the confession so recorded shall be signed by the person making it, and the magistrate to make a memorandum at the foot of the recorded confession as to the due compliance of all the provisions u/s. 164 and as to his ascertainment of the volition of the confession maker and no element of threat, inducement or promise existed in the making of confession in his discretion. s. 80 of the Indian Evidence Act can be considered in this regard to create a legal presumption that the document is authentic; any statements purporting to be made by the person signing it about the circumstances in which it was taken are true; and such evidence, statement, or confession was taken properly.

When read together, clauses (6) and (1) of this section stipulate that the non-jurisdictional magistrate who recorded the confession must send it to the magistrate who will be in charge of the investigation or trial of the case.

After reading the whole section some issues are still unsettled regarding the procedure of recording the confession

- (a) Is police assistance always necessary in making judicial confession
- (b) Is sanctity not affected if the trial magistrate records the confession.
- (c) Does illegal arrest affect the sanctity of the confession?

Other Issues Related to Confession

- (i) Does confession means repentance
- (ii) Does there is only one chance of making a judicial confession

(a) The Assistance of the Police is Not Compulsory for Making a Confession

The answer to the first issue:-

The scope of the section is not limited to recording of confession through police but also accused himself appearing before the court to confess but in this case, the magistrate is of the opinion that the person making confession has committed the crime(Mahabir Singh Versus State Of Haryana)

(b) The Procedure of Recording the Confession of the Accused

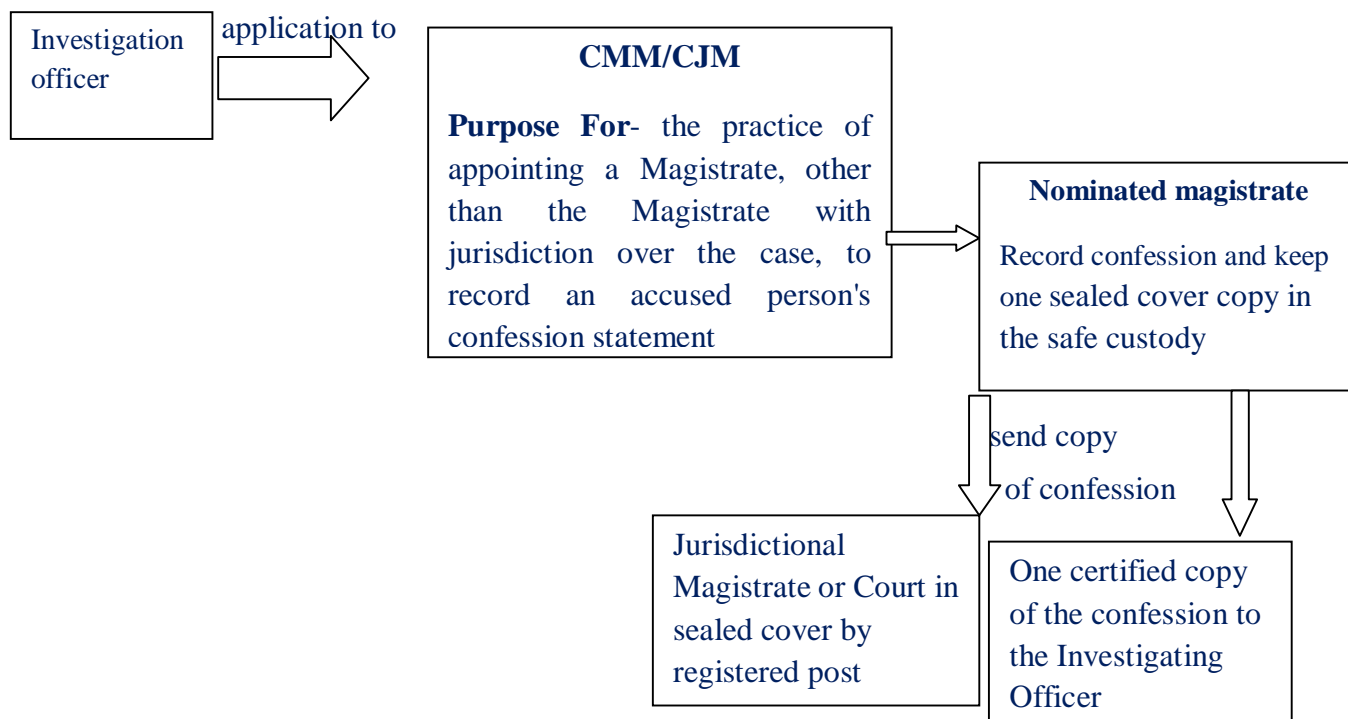
For the answer to the second issue

In accordance with the provisions of Section 164 of the Code of Criminal Procedure, the Madras High Court has laid down guidelines for the recording and production of statements.

- The Investigating Officer is required to record an application to the CMM or CJM in order to nominate a Magistrate for the purpose of recording an accused person's confession statement who is not the jurisdictional Magistrate.
- Once the recording Magistrate has finished taking down an accused person's confession statement, he or she is required to arrange for two duplicates of the statement to be made under his direct supervision and confirm that the copies are accurate.
- The original confession statement must be sent in a sealed envelope to the jurisdictional Magistrate or Court, depending on the circumstances. This may be done via a special messenger or by sending it by registered mail with an acknowledgment case attached.
- An official copy of the confession statement must be handed over to the officer in charge of the investigation as soon as possible. This copy must be provided to the officer at no cost, and he must be given explicit instructions to use it only for the purpose of the investigation and not make its contents public until the investigation is finished and the final report is filed.
- The second certified photocopy of the confession statement is to be preserved in a cover that is hermetically sealed and placed in the safe custody of the recording Magistrate.

For the purpose of the clarity, the guidelines are represented in the chart form

Chart Representation of Guideline



(c) Effect of Illegal Arrest on Confession

The answer to the third issue if a person is arrested illegally and later on makes a confession and the magistrate record the confession after due compliance with section 164 and 281 then the illegal arrest does not invalidate the confession

Other Issues Related to Confession

(i) Confession does not Mean Repentance

The answer to the other issue that confession means repentance is negative.

Confession has nothing to do with repentance. A person confessing doesn't need to repent of the crime committed the court has just to see whether the person confessing is made voluntarily or not. In the **case of Mohd Ajmal Kasab** supreme court said that the “*accused did not make the confessional statement from any position of weakness or resignation or out of remorse. Accused was the hero of his own eyes and the confessional statement made by him was voluntary and truthful.*”

(ii) Is There Only One Chance of Making a Judicial Confession?

The answer to this issue there are two viewpoints of different High courts:

- The first view is of Madras high court and Gujarat high court that there is only one chance of accepting the plea of guilt and such a plea cant be accepted once the accused refused to plead guilty and claimed to be tried.

- The second view is of Patna high court and Allahabad high court that there is no illegality in recording, accepting, and convicting an accused on the subsequent plea of guilt.
- The different views details are discussed in objective number 5.

4. Influence of the Confession on the Plea of Guilt and Trial

As the judicial confession has an influence on the whole proceeding when the confession is not retracted by the person making it. This matter is supported by the various case law which is mentioned below:

- A judicial confession is made in front of a magistrate or front of the court as part of the normal course of legal proceedings. If the confession was made voluntarily when the person was in an appropriate judicial state, then it may be interpreted as a "plea of guilt on arrangement." (Bala Mahaji Versus State of Orissa).
- A confession may only be used as the basis for a conviction if it can be shown that the confession was made voluntarily and truthfully (Darshan Lal Versus State of J&K).
- If corroboration is required, it is sufficient for the general trend of confession to be supported by some evidence that would match the substance of the confession. This would satisfy the requirements for verification. Even the most general of corroborating corroboration is sufficient (Madi Ganga Versus State of Orissa).
- The impact of confessing to a magistrate having jurisdiction will be a commencement of the trial (Case-Sat Narain Tiwari V. The Emperor)

If the court is convinced that the confession was made voluntarily and truthfully, the court will convict the accused on the basis of the confession, and it will save the trial. However, this does not mean that a confession should be accepted simply because it contains a wealth of detail that could not have been invented. It would be unsafe to view the sheer wealth of a large number of uncorroborated details as a guarantee of the story's detail as long as its essential components remain true. (1954 Supreme Court Case Muthuswami v. the State of Madras)

5. Conflict on the Point that up to which Stage Accused Plead Guilty

There are two viewpoints on this issue regarding which stage the accused plead guilty

a. First View

Madras high court and Gujarat high court have the same view that once the stage of the plea of guilt passes or the trial of the accused claim then at a later stage guilt plea can not be accepted by the court. It is said that there is no provision in Crpc to put the clock back.

(Jayanti Luxman Versus State of Gujrat)

(Re, M. Kuppaswamy 1968)

b. Second View

Patna high court and Allahabad high court that there is no illegality in recording, accepting, and convicting an accused on a subsequent guilty plea though he pleaded not guilty at the earlier stage.

(Shyama Charan Bharthaur And Others Versus Emperor) AIR 1934 PATNA HIGH COURT

(Ram Kishan Versus State Of U.P.1996) ALLAHABAD HIGH COURT

The issue is still unsettled and no provision is expressly mentioned regarding the procedure of guilty plea after claiming trial and there is also no decision of the supreme court on this point.

6. Highlighting the Hurdle which is Removed through Amendments in Law.

With the growth in technology and science, various mediums have been evolved and approved by the legislators to assure the volition of the confession maker and to free the confession from all possible taints.

Validity of Electronic Confession

The mean was settled by the amendment of 2009, which substituted the section and stipulates that the court may record any confession using audio-video technological means in the presence of the advocate of the accused person of an offense. This issue has been resolved.

Conclusion

During the journey of the making of the paper, we find that the law related to confession is not much expressive like other provisions neither in the Evidence Act nor in Cr.P.C. it can be seen that various issues have been settled by the supreme court from time to time which makes the legal position volatile and uncertain. The law on confession, however, is growing gradually and strongly. A clear implication as to ascertain the volition of the accused has been embedded in various provisions, judgments, and amendments (like Art.20(3) of the Constitution of India, ss. 24,25 and 26 of Evidence Act, 2009 amendment, e.t.c.). In the era of human rights and being an adversarial system of the judiciary, the right of arrested persons and accused are of paramount importance (D.K.Basu v. State of West Bengal). However, not much has been talked about another stage of confession once made by volition. Also, if an accused desire to plead guilty at a later stage then even there the opinion of High Courts are inconsistency. Confession has a limited scope and that is too time-barred after the stage of the investigation. It can be seen clearly that it is very difficult to avail the advantages of a confession even if found to be voluntary. There is no express provision as to whether a person himself can appear before the court to make a confession or mandatory assistance of Investigating Officer or any other police officer would be required for that. Though as a matter of prudence the guidelines of the Madras High court can be considered by various States. In regard to all this uncertainty provisions to clarify the stand should be introduced by the legislature so that there shall not be unnecessary delay in the justice delivery system.

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