

SUMMARY OF CRIMINAL SUBJECT-MATTER
ON
CONFESSION AND ADMISSION IN TRIAL

INTRODUCTION :

Admissions and confessions are exceptions to the hearsay rule. The evidence Act places them in the category of relevant evidence in Part I " Relevancy of Facts ", presumably on the ground that as they are declarations against the interest of the person making them, they are probably true. Sections 17 to 23 and 31 deal with admissions and Sections 24 to 30 of the Evidence Act with confessions .

MEANING OF ADMISSION

An admission is a statement, [oral or documentary or contained in electronic form], by party to the proceeding or his agent or person claiming under party which suggests any inference as to any fact in issue or relevant fact. Sections 18 to 23 lay down the circumstances which render admissions valid.

An admission has following characteristics :

- (1) An admission is a 'statement' which suggests any 'inference' as to any fact in issue or relevant fact;
- (2) It must be made by any of the 'persons' prescribed by the Act'
- (3) It must also be made under the 'circumstances' prescribed by the Act;
- (4) An admission may be oral or documentary.

PERSONS WHO CAN MAKE ADMISSIONS.

Section 18 postulates that statements made by a party to the

proceedings, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. Similarly, statement made by a person who has any proprietary or pecuniary interest in the subject-matter of the proceedings or persons having derivative interest make statements during the continuance of the interest are also admissions.

As per Section 19 persons whose position or liability is necessary to prove as against any party to the suit, if statements are made during the continuance of such position or liability, and such as would be relevant as against such persons in relation or liability in a suit brought by against them. As per Section 20, person to whom a party to the suit has expressly referred for information in reference to a matter in dispute.

Section 21 does not say that admissions may not be used against persons other than the maker, and is evidently not intended to be exhaustive. Statements which are admissions within Sections 19 and 20 are relevant and may clearly be proved against persons other than the makers of them, and similarly it appears that admissions by persons who have a proprietary interest in a certain property may be used against other persons interested in the same property although the latter are not representatives in interest of the persons by whom the admissions were made.

SEC 22 & 22A :- The contents of a document which is capable of being produced must be proved by the instrument itself and not by oral evidence. Oral evidence has to contain of documents are excluded under this section. However, they are admissible when the party is entitled to give secondary evidence of the contents of the document under section 65 and 66. This section also disallows the evidence of oral admission as to the contents of an electronic record.

SEC 23 :-This section lays down that in civil cases an admission is not relevant when it is made 1) upon an express condition that evidence of it is not to be given, or 2) under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

SEC 31 :-Admissions are not conclusive proof of the matters admitted but they may operate as estoppel under the provisions herein after contained.

Section- 58: Provided court may invite evidence to prove even admitted fact. A thing admitted need not be proved. **Shreedhar Govind Kamerkar v. Yesahwant Govind Kamerkar and Anr. 2006 (14) SCALE174**

Section- 70: Admission of execution by party to attested document shall be sufficient proof even without examination of attesting witness although document is such which requires attestation by law. (**Bharpur Singh Vs. Shamser Singh (2009) 3 SCC 687**) The examination of an attesting witness will not be necessary for the purpose of proving the execution of the document required by law to be attested if the executor admits the execution.

ADMISSION IN CIVIL CASES

In a case of **Ram Kajaria..vs.. Sheopakash Kajaria, Mh.L.J. 2016(3) 172,** it is held by Hon'ble Supreme Court that "Admission in pleading can not be withdrawn by way of Amendment." Though the admission is the best piece of evidence, it is equally well-settled that the admissions are not conclusive as contemplated under Section 31 of the Act as the maker of it is at liberty to prove that the admissions were mistaken or untrue. If admissions made in written statement were found incorrect or were made due to mistake either in law or fact, or as a result of any fraud or manipulations, the defendant can be permitted to amend his written statement as the admissions are not conclusive proof of matters admitted but they may operate as estoppel and the maker of admissions is at liberty to prove that the admissions are mistaken

or untrue. Where the admission made by the plaintiff in his pleadings as well as in his statement on oath was that the suit premises was let out to the defendant for the commercial purposes, hence he (defendant) would be estopped to take a different stand as the admission may operate as an estoppel against him.

EVIDENTIARY VALUE OF ADMISSION

1) An admission constitutes a substantive piece of evidence in the case and for that reason can be relied upon for proving the truth of the facts incorporated therein.

2) An admission has the effect of shifting the onus of proving to the contrary on the party, against whom it is produced with the result that it casts an imperative duty on such party to explain it. In the absence of satisfactory explanation, it is presumed to be true.

3) An admission, in order to be competent and to have the value and effect referred to above should be clear, certain and definite and not ambiguous, vague or confused. It is true that admissions are not conclusive proof of the facts admitted and be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof to the person making them or his representative -in-interest. Unless shown or explained to be wrong, they are efficacious proof of the facts admitted. The evidentiary value of admissions, therefore, depends upon the circumstances under which they are made.

“CONFESSION”

The word “confession” appears for the first time in Section 24 of the Indian Evidence Act. This section comes under the heading of Admission so it is clear that the confessions are merely one species of admission. Confession is not defined in the Act. Mr. Justice Stephen in his Digest of the law of Evidence

defines confession as “confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.” The acid test which distinguishes a confession from an admission is that when conviction can be based on a statement alone, it is a “Confession and where some supplementary evidence is required to authorize a conviction, then it is admission”. (Ram Singh v. State, All. L.J. 660 1958. All. C.R. 462.)

In Pakala Narayan Swami v Emperor AIR 1939 P.C. 47 Lord Atkin observed “ A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not in itself a confession”.

In the case of Palvinder Kaur v State of Punjab AIR 1952 SC 354 the Supreme Court approved the Privy Council decision in Pakala Narayan Swami case over two scores. Firstly, that the definition of confession is that it must either admit the guilt in terms or admit substantially all the facts which constitute the offence. Secondly, that a mixed up statement which even though contains some confessional statement will still lead to acquittal, is no confession. Thus, a statement that contains self-exculpatory matter which if true would negate the matter or offence, cannot amount to confession. However, in the case Nishi Kant Jha v State of Bihar 1959 SCR 1033 the Supreme Court pointed out that there was nothing wrong or relying on a part of the confessional statement and rejecting the rest, and for this purpose, the Court drew support from English authorities. When there is enough evidence to reject the exculpatory part of the accused person’s statements, the Court may rely on the inculpatory part.

“Confession” is species of “Admission”, it is dealt within sections 24 to 30. These sections suggest the circumstances when a confession made by a person can be used against him or against some other person or just can not be used

at all.

TYPES OF CONFESSION : –

Confessions are of two types. Judicial and Extra Judicial. Judicial confession is a confession made in the immediate presence of a magistrate. All other confessions are extra judicial confessions. An Extra-judicial confession may be a confession made to a police officer/investigation officer or to any other person. An extra-judicial confession made to anybody except investigation officer or a police officer needs corroboration. Such a confession is looked with doubt as the one made to police officer.

DIFFERENCE BETWEEN JUDICIAL AND EXTRA-JUDICIAL CONFESSION – JUDICIAL CONFESSION

<u>Judicial Confession</u>	<u>Extra-judicial</u>
1. Judicial confessions are those which are made to a judicial magistrate under section 164 of Cr.P or before the court during committal proceeding or during trial.	1. Extra-judicial confession are those which are made to any person other than those authorized by law to take confession. It may be made to any person or to police during investigation of an offence.
2. To prove judicial confession the person to whom judicial confession is made need not be called as witness.	2. Extra-judicial confession are proved by calling the person as witness before whom the extra-judicial confession is made.
3. Judicial confession can be relied as Proof of guilt against the accused person if it appears to the court to be voluntary and true.	3. Extra-judicial confession alone cannot be relied it needs support of other supporting evidence.
4. A conviction may be based on judicial confession.	4. It is unsafe to base conviction on extra- judicial confession.

WHEN CONFESSION NOT RELEVANT AND IN ADMISSIBLE IN LAW

Section 24 enacts the general rule of inadmissibility of involuntary confessions, recognized all over the world and guaranteed under Article 20(3) of the Constitution of India. A confession made under circumstances which would make it appear to the Court that such confession was caused by any inducement, threat or promise from a person in authority is irrelevant in a criminal proceeding. Offering such inducement, threat or promise by police officers is prohibited under the S. 163 Code of Criminal Procedure. Section 25 and 26 go far beyond the constitutional protection and debar confession made by an accused person to a police officer or whilst in police custody to anyone except in the immediate presence of a Magistrate from being given in evidence.

Section 24 - Confession caused by inducement, threat, or promise from a person in authority -

To attract the provisions of Sec 24, the following facts must be established:

(a) The confession must have been made by an accused person in authority.

(b) It must appear to the court that the confession has been caused by any reason of inducement, threat or promise proceeding from a person in authority

(c) The inducement, threat or promise must have reference to the charge against the accused person

(d) The inducement, etc. must be such that it would appear to the Court that the accused, in making the confession, believed that he would by making it, gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

It is necessary that all the conditions must exist cumulatively. Further, this section merely requires that if it "appears to the court" that the confession was improperly obtained, it becomes inadmissible i.e. if the

circumstances create a probability in the mind of the court that the confession is improperly obtained, it may hold it inadmissible.

CUSTODIAL CONFESSION

The rule of total exclusion of custodial confession from evidence, as enacted under Section 25 and 26 of the Evidence Act on the face of it, shows a serious concern of legislature for protection against police brutality, of the right of an accused person not to be compelled incriminate himself. The rule carries the privilege against compelled self-incrimination quite far adding to it the concept of deemed voluntariness due to the custody of the police. In the process, however, an important agency of the state entrusted inter-Alia with the job of maintaining law and order and of prevention and detection of crimes the jobs essentially requiring public confidence and faith, gets stigmatized as 'untrustworthy'. A confession made by an accused to any third person before he is apprehended by police is admissible in evidence and can be used to convict the accused even if it is share link between him and the circumstantial evidence, but not if it is made to a police officer or to anybody, whilst he is in custody of the police except to the extent provided for in section 27 the prohibition is absolute.

Any confessional statement given by accused before police is inadmissible in evidence and cannot be brought on record by the prosecution and is insufficient to convict the accused; **Ram Singh v.State of Maharashtra, 1999 Cr LJ 3763 (Bom).** If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by section 25;

Aghnu Nagesia v. State of Bihar, AIR 1966 SC 119. Reasons for exclusion of confession to police- another variety of confessions that are under the evidence act regarded as involuntary are those made to a personnel. Section 25 expressly declares that such confessions shall not be proved. If confessions to police were allowed to be proved in evidence, the police would torture the

accused and thus force him to confess to a crime which he might not have committed. A confession so obtained would naturally be unreliable. It would not be voluntary. Such a confession will be irrelevant whatever may be its form, direct, express, implied or inferred from conduct. The reasons for which this policy was adopted when the act was passed in 1872 are probably still valid.

In Dagdu v. State of Maharashtra, A.I.R. 1977 S.C. 1579, Hon'ble Supreme Court noted: The archaic attempt to secure confessions by hook or by crook seems to be the be-all and end-all of the police investigation. The police should remember that confession may not always be a short-cut to solution. Instead of trying to "start" from a confession they should strive to "arrive" at it. Else, when they are busy on their short-route to success, good evidence may disappear due to inattention to real clues. Once a confession is obtained, there is often flagging of zeal for a full and through investigation with a view to establish the case de hors the confession, later, being inadmissible for one reason or other, the case fundles in the court.

EFFECT OF POLICE PRESENCE

The mere presence of the policeman should not have this effect. Where the confession is being given to someone else and the policeman is only casually present and overhears it that will not destroy the voluntary nature of the confession. But where that person is a secret agent of the police deputed for the very purpose of receiving a confession, it will suffer from blemish of being a confession to police. In a rather unusual case, the accused left a letter recording his confession near the dead body of his victim with the avowed object that it should be discovered by the police, the supreme court held the confession to be relevant. There was not even the shadow of a policeman when the letter was being written, and planted.

The object of section 26 of the Evidence Act is to prevent the abuse of their powers by the police, and hence confessions made by accused persons while

in custody of police cannot be proved against them unless made in presence of a magistrate. The custody of a police officer provides easy opportunity of coercion for extorting confession obtained from accused persons through any undue influence being received in evidence against him.

CONFESSIONS WHEN RELEVANT -

The following three types of confession are relevant and admissible -

Following conditions are necessary for the application of section 27 :-

1. The fact must have been discovered in the consequence of the information received from the accused.
2. The person giving the information must be accused of an offence.
3. He must be in custody of a police officer.
4. That portion only of the information which relates distinctly to the fact discovered can be proved. The rest is inadmissible.
5. Before the statement is proved, somebody must depose that articles were discovered in consequence of the information received from the accused. Before the statement of the accused could be proved, somebody, such a sub-inspector, must depose that in consequence of the given information given by the accused, some facts were discovered.
6. The fact discovered must be a relevant fact, that is, to say it must relate to the commission of the crime in question.

In **Pandu Rang Kallu Patil v. State of Maharashtra, S.C.** it was held by Supreme Court that section 27 of evidence act was enacted as proviso to. The provisions of sections of Section 25 and 26, which imposed a complete ban on admissibility of any confession made by accused either to police or at any one while in police custody. Nonetheless, the ban would be lifted if the statement is distinctly related to discovery of facts. The object of making provision in section 27 was to permit a certain portion of statement made by an

accused to Police Officer admissible in evidence whether or not such statement is confessional or non confessional.

Section 28 provides that if there is inducement, threat or promise given to the accused in order to obtain confession of guilt from him but the confession is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court been fully removed, the confession will be relevant becomes free and voluntary.

Section 29 lays down that if a confession is relevant, that is, if it is not excluded from being proved by any other provision on Indian Evidence Act, it cannot be relevant if it was taken from the accused by:

1. Giving him promise of secrecy, or
2. By deceiving him, or
3. When he was drunk, or
4. Because it was made clear in answer to question which he need not have answered, or because no warning was given that he was not bound to say anything and that whatever he will state will be used against him.

Section 30- consideration of proved confession affecting person making it and others jointly under trial for the Same offence-

Section 30 of the Act is an unusual provision by which something which is not in the nature of evidence may be used against the accused person at the trial. The scope of its application is very limited. The confession by a co-accused is not to be treated as evidence against another accused in the sense that conviction of the co-accused may not be supported. It can only be taken into consideration and used as corroboration if other materials brought in support of the charge exist. It has to be seen whether confession of the co-accused is of such nature that the person making such confession would be

convicted on the confession for the offence with which he and his co-accused are charged. Where evidence against a co-accused is sufficient to base a conviction, confessional statement of the accused may be treated as a corroboration for believing that evidence.

In **Kashmira Singh v. State of MP**, accused Kashmira who was an Assistant Food Procurement Inspector, his services along with the another food inspector were terminated on a report of the food officer when they were getting the rice polished in a rice mill. Kashmira was heard twice saying that he would teach a lesson to the food officer. After a few months the son of the food officer was found missing and his body was found in a well. Kashmira, Gurudayal brother of Kashmira, Prithipal son of Gurudayal and one Gurubachan, a rickshaw puller in this case were tried of conspiracy and killing the child. The prosecution story was that Prirthipal led the child, when he was playing near the Gurudwara, for some distance and then the child was taken on the cycle by Kashmira to a house where he was murdered. According to the judgment of the SC Guruibachan was not a rickshaw puller by profession and the rickshaw was hired only for that night for the disposal of the body of the deceased.

Hence, before the confession of one accused may be taken into consideration against others, it has to be shown that:

- 1) The person confessing and the others are being tried jointly.
- 2) They are being tried for the same offence.
- 3) The confession is affecting the concessioner and the others.

PROOF OF JUDICIAL CONFESSION -

Under section 80 of Evidence Act a confession recorded by the magistrate according to law shall be presumed to be genuine. It is enough if the recorded judicial confession is filed before the court. It is not necessary to examine the magistrate who recorded it to prove the confession. But the identity of the accused has to be proved.

PROOF OF

EXTRA-JUDICIAL CONFESSION-

Extra-judicial confession may be in writing or oral. In the case of a written confession the writing itself will be the best evidence but if it is not available or is lost the person before whom the confession was made be produced to depose that the accused made the statement before him. When the confession has not been recorded, person or persons before whom the accused made the statement should be produced before the court and they should prove the statement made by the accused.

EVIDENTIARY VALUE OF CONFESSION

A confession is substantive evidence against its maker, so that it has been duly recorded and suffers from no legal infirmity, it would suffice to convict the accused who made the confession, though as a matter of prudence, the Court expects some corroboration before acting upon it. Even then slight corroboration would suffice. But before acting upon a confession, the Court must be satisfied that it is voluntary and true.

In *Aghnoo Nagesia Vs. State of Bihar*, AIR 1966 SC 119, it has been held that, “A statement contained in the FIR furnished by one of the accused in the case cannot, in any manner, be used against another accused. Even as against the accused who made it, the statement cannot be used if it is inculpatory in nature nor can it be used for the purpose of corroboration or contradiction unless its maker offers himself as a witness in the trial. The very limited use of it is as an admission under Sec.21 of the Evidence Act against its maker alone unless the admission does not amount to confession.”

In the case of *Jagta Vs. State*, AIR 1974 SC 1545, it has been held that evidence of Extra-judicial confession in the very nature of things is a weak piece of evidence. However, it is not open to any court to start with a presumption that extra-judicial confession is weak type of evidence.

Admissibility of the confession is a question for the Judge. Upon a consideration of the evidence and circumstances, the Judge preliminary decides on the voluntariness or otherwise of the confession. If his answer is in

negative, the confession is excluded as a matter of law. If his answer is affirmative, the confession is admissible. The Judge to determine admissibility of the confession whether confession is true and of how much weight and value. If he is satisfied from the evidence that it is true then to act upon it. Confession made before the police leading to discovery of the facts is admissible, as per Sec.27 of the Evidence Act. When accused retract from confession it is called retracted confession. Such confession can be legal base of the conviction, if the court is satisfied that it was true and so voluntarily made. But ordinarily corroboration is required.

The law in regard to extra-judicial confessions may be stated thus: An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. In examining the value of an extra-judicial confession one factor is whether the accused was a free man while making his confession. The second factor is that the value of the confession as an evidence on veracity of the witness to whom it was made. A conviction can be founded on a extra-judicial confession. It should be clear, specific and unambiguous. But it should not be expected that the witness, in order to establish his credibility, should be able to reproduce the statement in its word for word original version.

As a matter of law corroboration is not necessary at all as a general rule a retracted confession requires corroboration of some kind; but the amount of corroboration which the Court will look for depends on the circumstances of each case. It has been held about a judicial confession that though it is retracted by the maker, it was not a ground to presume that it was tainted.

The rules regarding a confession, which is subsequently retracted, are; (1) that a confession is not to be regarded as involuntary merely because it is retracted, (2) as against the maker of the confession, the retracted confession may form the basis of a conviction if it is believed to be true and voluntarily made, (3) as against the co-accused, both prudence and caution require the

Court not to rely on a retracted confession without independent corroborative evidence and (4) retraction should not be ambiguous, vague or imaginary.

DIFFERENCE BETWEEN ADMISSION AND CONFESSION

The distinction between a confession, and an admission, as applied in criminal law, is not a technical refinement but based upon substantive differences of the character of the evidence deduced from each. A confession is a direct acknowledgement of guilt, on the part of the accused and by the very force of the definition excludes an admission which of itself as applied in criminal law, is a statement by the accused direct or implied of facts pertinent to the issue and tending in connection with proof of other facts or prove his guilt but of itself is insufficient to authorize a conviction.

The acid test which distinguishes a confession from an admission is that where conviction can be based on the statement alone, it is a confession and where some supplementary evidence is needed to authorize a conviction, then it is an admission. Another test is that if the prosecution relies on the statement as being true it is confession and if the statement is relied on because of its falsity it is admission.

	<u>Confession</u>	<u>Admission</u>
1.	Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him.	Admission usually relates to civil transaction and comprises all statements amounting to admission defined under section 17 and made by person mentioned under section 18, 19 and 20.
2.	Confession if deliberately and voluntarily made and may be accepted as conclusive of the matters confessed.	Admissions are not conclusive as to the matters admitted and it may operate as an estoppel.
3.	Confessions always go against the person making it.	Admissions may be used on behalf of the person making it under the exception of section 21 of Evidence Act.

4. Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused (section 30)	4. Admission by one of the several defendants in a suit is no evidence against other defendants.
5. Confession is statement written or oral which is direct admission of guilt.	5. Admission is a statement oral or written which gives inference about the liability of person making admission.

CONCLUSION

To sum up A confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding establish the commission of offence by him. Whereas, an admission usually relates to civil transaction and comprises all statements amounting to admission defined under Section 17 and made by person mentioned under Sections 18,19 and 20. Confessions, if deliberately and voluntarily made, may be accepted as conclusive of the matters confessed whereas; admissions are never conclusive to the matters admitted, though it may act as an estoppel.

Confessions always go against the person making it whereas, admissions may be used on behalf of the person making it under the exceptions provided in Section 21 of Evidence Act. Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused also as mentioned in Section 30. On the other hand, admission by one of several defendants in a suit is no evidence against others. Confession is statement written or oral which is a direct admission of suit and Admission is a statement, oral or written, which gives inference about the liability of person making admission.