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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

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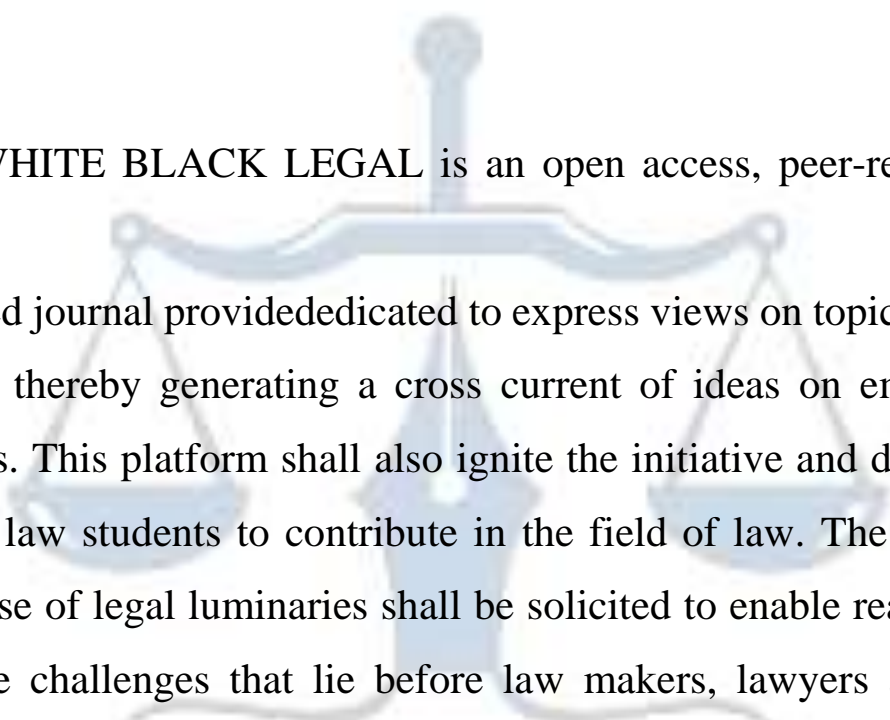


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE TRUTH ON TRIAL: UNPACKING THE ADMISSIBILITY OF CONFESSIONS.

AUTHORED BY - RUUHANI THUKRAL*

I. INTRODUCTION

No innocent shall be punished, is the principle that lays the bedrock for the concept of Justice in India. The court in criminal cases ensures proof beyond the reasonable doubt and then proceeds further to punish the accused. It becomes easy for the court when the accused himself accepts the guilt. However, if the acceptance is tainted by the Inducement, threat promise, fraud, or any such deceptive means then the whole purpose of Justice gets defeated. It is like any innocent being punished for no wrong. The acceptance of the guilt by the accused is said to be a confession, it in a general sense infers the guilt of the person and is a self-harming admission done by the accused.

Confession is a voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein he acknowledges himself to be guilty of the offense charged, and discloses the circumstances of the act or the share and participation in which he had in it.¹

Confession must either admit in terms of the offense or at any rate all the facts that constitute the offense. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession.²

Stephen's "Digest of the Law of Evidence" defines a confession as an admission made at any

*5th year law student at Christ Academy Institute of Law, Bengaluru.

¹ Black Law Dictionary, Brian A. Garner, editor in chief. (2014). Black's law dictionary. St. Paul, MN: Thomson Reuters, <https://thelawdictionary.org/confession/#:~:text=A%20voluntary%20statement%20made%20by,which%20he%20had%20in%20it.>

² Pakala Narayana Swami v. Emperor (1939) 41BOMLR428, Lord Atkin, states no statement that contains self exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. A statement of an accused will amount to a confession if it fulfils any of the following two conditions:

- (1) If he states that he committed the crime he is charged with, or
- (2) If he makes a statement by which he does not clearly admit the guilt, yet from the statement some inference may be drawn that he might have committed the crime.

time by a person charged with a crime stating or suggesting the inference that he committed that crime.³

II. REQUIREMENT FOR STATEMENT TO BE CONFESSION

Every statement shall not be considered as a Confession. Certain requirements are to be met to fit an admission into the purview of the Confession.

1. The confession should be given by the accused and be voluntary.

It is important to note accused voluntariness is considered while giving the confession. In case the confession is made under the impression of threat, promise, or any such means that will not amount to a relevant confession.

2. The confession must reflect that the Accused is guilty⁴

A statement is said to be a confession when it lays down the guilt of the accused. The confession needs to be self-harming in nature failing which it would amount to an admission.⁵ An admission is the species and confession is the sub-species⁶. If any statement is given by the accused but lacks the very acceptance of the guilt it will not be considered as a confession. He must accept that he has committed the offenses for it to be called a confession, failing which it would amount to a mere statement or

³. Stephen, J. F. (1876). A Digest of the Law of Evidence. United Kingdom: Macmillan., Evidence Act deals with the admissibility of confessions, but the expression 'confession' is not defined. Shortly stated a confession is a statement made by an accused admitting his guilt. *See, Sahoo v. State Of U.P on 1966 AIR 40, 1965 SCR (3) 86*

⁴ Supra Note 2 pakala's Case, Lord Atkin J., observed that,

"It is improper to construe confession as a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms of the offence, or at any rate all the facts which constituted the offence. An admission of a gravely incriminating fact even an inclusively incriminating fact, is not in itself a confession, for example, an admission that the accused is the owner of and was in recent possession of the knife/revolver which caused death with no explanation of any other man's possession."

⁵ Bharatiya Sakshya Adhiniyam, 2023, § 15 No.47, Acts of Parliament,1949(India)

An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

In, *Rakesh Waddhawan v. Jagadamba Industrial Corporation AIR 2002 SUPREME COURT 2004*, the court held. "Admission is only a piece of evidence and can be explained; it does not conclusively bind a party unless it amounts to an estoppel. Value of an admission must be determined by keeping in view the circumstances in which it was made and to whom."

⁶ *Sahoo v State of UP 1966 AIR 40, 1965 SCR (3) 86, Chandubhai Abeysinghe Chauhan v. State of Gujarat criminal appeal no. 2238 of 2008*

"Confession of an accused is also like admission. In that sense, every confession is an admission, but every admission is not a confession. In other words, admission is a genus, a confession is a species."

In, *Ram Singh v. State AIR1959ALL518, 1959 CRILJ1134*

"The acid test which distinguishes a confession from an admission is that where a 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. It is, therefore, obvious that the trial court went astray when it treated the statement of the appellant."

admission in some cases.

Hence for a confession to be valid it must be given voluntarily and be guilt-incorporated.

III. CONFESSION'S ADMISSIBILITY UNDER BHARTIYA SAKSHYA ADHINIYAM

Not every Confession under the Act is admissible. Because confession has the power to punish the accused and retains the high probative value, thereby it is taken with caution by the courts. The Bharatiya Sakshya Adhiniyam⁷ Provides for the Admissibility of the confession.

A) CONFESSION WHICH ARE NOT ADMISSIBLE IN COURT OF LAW

- 1) WHEN THE ACCUSED GIVES THE CONFESSION OUT OF ANY INDUCEMENT, TREATMENT, OR PROMISE IT SHALL BE NOT ADMISSIBLE.

Confession when given should be free from any threat, undue influence, or promise. It must be given freely. To prove any confession as inadmissible, there shall be on the evidence and the circumstances in a particular case, it should appear to the Court that there was a threat, inducement, or promise.⁸

Further, in deciding whether a particular confession attracts section 22⁹, the question must be considered from the point of view of the confessing accused as to how the inducement, etc. proceeding from a person in authority would operate on his mind. The criteria are the reasonable belief of the accused that, by confessing, he would get an advantage or avoid any evil of a temporal nature about the proceeding against him.¹⁰

⁷ (Hereinafter referred to as B.S.A)

⁸ Admissions and Confessions, Manupatra Available At- <http://student.manupatra.com/Academic/Abk/Law-of-Evidence/Chapter3.htm> (Last Visited- 6th Nov 2024)

⁹ Bharatiya Sakshya Adhiniyam, 2023, § 22 No.47, Acts of Parliament,1949(India)

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him: Provided that if the confession is made after the impression caused by any such inducement, threat, coercion, or promise has, in the opinion of the Court, been fully removed, it is relevant:

Provided further that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

¹⁰ Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094: 1963 All LJ 459

But, in case the confession is given after the inducement, threat, or promise then it would be made admissible.¹¹

2) WHEN CONFESSION IS GIVEN TO THE POLICE OFFICER.

The confession given to the police officer is not admissible and not considered relevant because there is a strong presumption that the confession acquired by the police officer shall be not voluntary. The torture, fear, and intimidation that is involved while taking the confession undermines the very credibility of the confession.¹² Courts always consider the fact that the confession obtained by a police officer is tainted, false, and not worth being trusted.

Section 23(1)¹³ Of the B.S.A lays down that no confession given to the police officer shall be admissible. Wherein it has been said that the object of the rule is to prevent the extortion of confessions by police officers who to gain credit by securing conviction go to the length of positive torture.¹⁴

If confession to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime that 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.

In, *Murli Alias Denny v. State of Rajasthan*¹⁵ “*Accused lodged the FIR which was confessional in nature and as such the confession part is not admissible in evidence and the learned Sessions Judge rightly refused to read it in evidence against the accused.*”

B) CONFESSION THAT ARE ADMISSIBLE IN COURT OF LAW.

1) WHEN CONFESSION IS GIVEN IN THE IMMEDIATE PRESENCE OF THE MAGISTRATE.

Section 23(2)¹⁶ Gives admissibility to any confession made in the *immediate*

¹¹ Bharatiya Sakshya Adhinyam, 2023, § 22 No.47, Acts of Parliament,1949(India)

¹² Sengupta, Arghya (2006) "Confessions in the Custody of a Police Officer: Is it the Opportune Time for Change," National Law School of India Review: Vol. 18: Is. 1, Article 5. Available at: <https://repository.nls.ac.in/nlsir/vol18/iss1/5>

¹³ Bharatiya Sakshya Adhinyam, 2023, § 23(1) No.47, Acts of Parliament,1949(India)

No confession made to a police officer shall be proved as against a person accused of any offence.

¹⁴ *Queen Empress v. Babu Lal*, (1884) ILR 6 All 509; Also See, Admissions and Confessions, Manupatara Available At- <http://student.manupatra.com/Academic/Abk/Law-of-Evidence/Chapter3.htm> (Last Visited- 6th Nov, 2024)

¹⁵ 1989WLN(UC)247

¹⁶ Bharatiya Sakshya Adhinyam, 2023, § 23(2) No.47, Acts of Parliament,1949(India)

presence of the magistrate. Allows the confession to be admissible if it's made to any person, provided the magistrate is present, while the confession is made.¹⁷. The reason the confession herein is made admissible is because the presence of the Magistrate excludes the possibility of any torture, threat, or coercion induced upon the accused.

As a rule, a confession that has been made by an accused during police custody, will not be admissible. But one of the exceptions to this general rule is that, when a confession is made to or in the immediate presence of a Magistrate, is a valid confession. It is immaterial that, while making such a confession the accused was in custody.¹⁸

The expression "immediate presence" means presence in the same room before the maker where the confession is being recorded. No police officer should be present in the room. Where the Magistrate was taking tea in the adjoining room, the confession shall not be valid as it was not recorded in the immediate presence of the Magistrate.¹⁹;

Police Custody: Custody in the general sense means "control." An accused is under custody when he is denied any free movement. In, *State of Uttar Pradesh v. Deoman Upadhyaya*²⁰

"Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be, said to be taken in custody: submission to the custody by word of mouth or action by a person is sufficient. A person directly giving a police officer by word-of-mouth information which may be used as evidence against him may be deemed to have submitted himself to the custody of the police officer within the meaning of Section 27 of the Indian Evidence Act."

2) CONFESSION WHICH LEADS TO THE DISCOVERY

Section 23²¹ Lays down the rule that if a statement given by the accused leads to any discovery, then so much of that shall be relevant. The statements given whether

No confession made by any person while he is in the custody of a police officer unless it is made in the immediate presence of a Magistrate shall be proved against him

¹⁷ Ibid

¹⁸ Manupatara, Supra Note 14

¹⁹ Ibid

²⁰ AIR 1960 SC 1125.

²¹ Bharatiya Sakshya Adhinyam, 2023, § 23 No.47, Acts of Parliament, 1949(India)

Provided that when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.

amounting to the confession or not must relate separately to the fact discovered.

If a fact is discovered in consequence of information given by the accused, it affords some guarantee of the truth of that part, and that part only, of the information which was the clear, immediate, and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.²² Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section and enables certain statements made by a person in police custody to be proved.²³

3) CONFESSION BY CO-ACCUSED.

If there are two or more people jointly being tried for the same offense and one of the accused states the other accused and is proved, then as per section 24²⁴, it shall be relevant and admissible against the other accused.²⁵

IV. CONCLUSION

Confession is a statement that infers the guilt of the person and is of high probative value, the court can convict the person based on the confession provided it is free, voluntary, and is not tainted. No confession given to a police officer shall be admissible as per the provisions and it is supported with the strong reasoning that if the admissibility of such confessions is allowed then the police will ensure to adopt all the methods which may or may not be lawful to extract the confession from the accused and would force him to confess the crime. Therefore, the courts must ensure that the confession they ensure is free from any inducement, threat, or torture and is trustworthy. If there is more than one, offense then the court can take a confession admissible against the other as well in case it gets proven. The whole chapter relating to the confession in a way protects the accused and ensures that the accused accepts the guilt without any force or threat and is free from any taint.

²² Mohmed Inayat Ullah v. The State of Maharashtra 1976 AIR 483, 1976 SCR (1) 715

²³ Pulukuri Kottaya v. King-Emperor, 1946, The court states, that the condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposited to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved.

²⁴ Bharatiya Sakshya Adhinyam, 2023, § 24 No.47, Acts of Parliament, 1949(India)

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

²⁵ Ibid

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