

CONFESSION

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CONFESSION: SEC 22 TO 24:

The word “confession” has not been defined in the Act. It appears for the first time in Sec 22 of the Adhiniyam. This section comes under the heading of admission. Thus, it is clear that- Confession is a kind of admission i. e. admission of guilt.

It is also stated that- “all confessions are admissions but all admissions are not confessions.”

Justice Stephen in his digest of the law of evidence defined 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.

Confession is a voluntary admission or declaration by a person of his agency or participation in a crime.

To declare confession, it must amount to a clear acknowledgement of guilt. The law is so strict that a confession, if not voluntary is rejected even if it is true. It means, if they are not voluntary, then they are rigidly excluded.

Confession is a statement in which a person states about his involvement in the commission of offence & admits almost all the facts which constitute an offence. Confession is regarded as a direct piece of evidence.

CONFESSION: SEC 22 TO 24:

Sec 22: Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding:

A confession made by an accused person is irrelevant in a criminal proceeding, if making of the confession appears to the Court to have been caused by any inducement, threat 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.

CONFESSION: SEC 22 TO 24:

Force of the confession depends upon its voluntary character. There is always a danger that the accused may be led to incriminate himself falsely.

Very often, the police, while seeking to obtain a character for activity & zeal, harass & oppress prisoners & compel them to make confessions of guilt although they are innocent. Sometimes, a prisoner is induced, by hope held out to confess.

If a confession comes within the four corners of Sec 22, it is irrelevant & cannot be used against the maker.

To attract the prohibitions enacted in Sec 22, following facts must be established-

- That the statement in question is a confession
- That such confession has been made by the accused
- That it has been made to a person in authority
- That the confession has been obtained by reason of any inducement, threat or promise, proceeding from a person in authority
- Such inducement, threat or promise must have reference to charge against accused &
- The inducement, threat or promise must, in the opinion of court, be sufficient to give the accused ground, 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.

CONFESSION: SEC 22 TO 24:

Difference between Admissions & Confessions:

Admissions

Admission is a genus

Sec 15 to 21 & 25 deals with it

Admission is a general term which suggests an inference as to any fact in issue or relevant fact

Admissions though used in civil cases, yet are also used in criminal cases

It is not a conclusive proof of matters admitted through it may operate as estoppel

An admission may be used on behalf of the person making it but admission of one defendant is no evidence against another defendant

Confessions

Confession is a specie of admission

Sec 22 to 24 deals with it

Confession is a statement made by accused admitting that he has committed an offence or all facts which constitutes an offence

Confessions are used only in criminal proceedings

Confession voluntarily made be accepted as evidence in itself, though as a rule of prudence court may require corroboration

A confession always goes against person making it except u/s 24, under which confession of one accused can be considered against co-accused

CONFESSION: SEC 22 TO 24:

Evidential value of Confession:

Judicial confessions should be distinguished from extra-judicial confessions.

It may be doubted- whether a conviction can be based solely upon an extra-judicial confession, but there is no reason for hesitating to base conviction on a judicial confession.

A confessional statement made by the accused before a Magistrate(Judicial Confession) is a good evidence & accused be convicted on the basis of it. A confession can obviously be used against the maker of it & is in itself sufficient to support his conviction.

If it is found that- when confession was made & was free, voluntary & genuine, there would remain nothing to be done by the prosecution to secure conviction. No question of corroboration of confession arises in such case.

Now, the settled law is that- a conviction can be based on confession only if it is proved to be voluntary & true. If corroboration is needed, it is enough to have general corroboration.

CONFESSION: SEC 22 TO 24:

Difference between Judicial & Extra-Judicial Confession:

Judicial Confession

Judicial confessions are those which are made to a Magistrate u/s 183 of BNSS or before the court during committal proceeding or trial

It can be relied as proof of guilt against the accused, if it appears to the court to be voluntary & true

A conviction may be based on judicial confession

Extra-judicial confession

Extra-judicial confessions are made to those persons other than authorised by law to take confession & may be made to any person or police during investigation

It alone can not be relied & needs support of other corroborative evidence

It is unsafe to base conviction on extra-judicial confession

CONFESSION: SEC 22 TO 24:

Extra-judicial confessions are not usually considered with favour, but it does not mean that such a confession (coming from a person who has no reason to state falsely & to whom it is made in the circumstances which support his statement) should not be believed.

The evidence of extra-judicial confession is a weak piece of evidence. Such confessions must be received with great care & caution. It can be relied upon only when it is clear, consistent & convincing.

The extra-judicial confession is open to two dangers-

1. It is open to the danger of mistake due to misapprehension of the witness before whom the confession was made to misuse of the words & failure of party to express his own meaning.
2. It is very easy for prosecution to catch hold of any witness who may come & depose that the accused admitted his guilt in his presence on some particular time.

It may be relied upon only when it is very clear & convincing & the truthfulness of witness is proved beyond any doubt or when it has been corroborated by other evidences on the record.

CONFESSSION: SEC 22 TO 24:

Now, the settled law is that- law does not require that evidence of an extra-judicial confession must be corroborated in all cases. Where, extra-judicial confession is proved by an independent witness, who bore no animus against accused, it may be basis of conviction without corroboration.

Retracted Confession:

A retracted confession is a statement made by an accused to the magistrate before the trial begins, by which he admits to have committed the offence but which he repudiates at the trial.

After commission of offence, police use to investigate the matter & if in their opinion, the accused is proved to have committed the offence, then, they submits a charge sheet to the concerned magistrate.

During investigation, if accused is willing to admit the guilt , then, the police sends the accused to some magistrate for recording his statement.

Magistrate, after being satisfied that, accused is making the statement voluntarily, takes his statement. This recorded statement by magistrate may be proved at the trial.

CONFESSION: SEC 22 TO 24:

When the trial begins, accused on being asked as to whether he committed the crime, may say that he did not commit the crime.

The question may again be put to him as to whether he made statement before a magistrate during investigation confessing the guilt. He may deny to have made the statement at all or he may say that he made that statement due to undue influence of the police. Such confession by accused to magistrate before trial begins, is called retracted confession.

Value of retracted confession:

It is unsafe to base conviction on a retracted confession unless it is corroborated by trustworthy evidence. There is no definite law that a retracted confession cannot be the basis of conviction; but, it has been laid down that- as a rule of practice & prudence, not to rely on retracted confessions, unless corroborated.

Courts have convicted persons on retracted confessions when they have been of the opinion that- confession, when it was made, was voluntary or consistent & true. But, the real rule of law about retracted confession is that- where retracted confession is the sole evidence, it can be of little value specially when made during competition for a pardon which sometimes occurs where a number of persons are suspected of an offence.

CONFESSION: SEC 22 TO 24:

A judge can convict an accused on the sole testimony of retracted confession, only when he is fully satisfied about the truthfulness of the statement & entertains no doubt about its being voluntary.

Proof of judicial confession:

Under Sec 79 of Bharatiya Sakshya Adhiniyam, a confession recorded by 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 accused has to be proved.

Proof of extra-judicial confession:

Extra-judicial confession may be in writing or oral. In case of a written confession, 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 confession has not been recorded, then, the person before whom accused made the statement, should be produced before the court & they should prove the statement made by the accused.

CONFESSION: SEC 22 TO 24:

Clause 2 - Provided that If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

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 been fully removed, then, the confession will be relevant; because, it becomes free & voluntary.

But, there must be strong & cogent evidence that the influence of inducement has really ceased.

Impression produced by promise or threat may be removed-

- By lapse of time
- By an intervening caution given by some person of superior authority
- By a supervening event. e.g. if person/ authority giving inducement or threat is transferred or died or retired.

CONFESSSION: SEC 22 TO 24:

Clause 3 - Provided 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.

Sec 22 lays down that- if a confession is relevant, that is, if it is not excluded from being proved by any other provision of Act, then, it can not be irrelevant, IF, it was taken from accused by- giving him promise of secrecy OR by deceiving him OR when he was drunk OR 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 & that whatever he will state, will be used against him.

e.g. recording the conversation of two accused secretly OR when accused has been stated that his co-accused has given confession & his silence is of no use.

CONFESSION: SEC 22 TO 24:

Sec 23: Confession to police officer:

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

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:

Provided that when any fact is deposed to as 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.

The reason behind such rejection is that- such confession made or obtained is untrustworthy. Another reason of rejection is to avoid false confession. The logic behind this rejection is that-

- police are interested in conviction of accused which raises hopes in building their carrier.
- If accused are convicted, police are rewarded to encourage their eminency. Naturally, police try to extract confession by hook or crook.

Therefore, section bars admissibility of all confessions before police, even if, it is voluntary.

CONFESSION: SEC 22 TO 24:

A police officer, on receiving information of occurrence of an offence & failing to discover real culprits, often endeavours to secure conviction, very often put an innocent person so arrested to severe torture & makes him to confess a guilt without having committed it. When such steps are taken, there is impunity for real offender & great encouragement to the crime.

A police officer, who is armed with large powers, may willingly excite terrors in their minds & extort false & involuntary confessions.

This section does not make any distinction between a confession made before investigation & a confession made after investigation.

It must be borne in mind that- Sec 23 excludes only confessions. All the statements made to police officers are not excluded. The statements that do not amount to confessions are not excluded by Sec 23 & can be brought on record & proved against any accused.

When a person who lodged FIR regarding an offence is himself, subsequently found an accused, then, the report lodged by him is not a confession, but an admission of certain facts. The FIR is admissible to prove against the accused.

CONFESSION: SEC 22 TO 24:

The confession under this section need not be confession of the crime which the police is at the moment investigating. In course of investigation of one case, a man may confess to have committed another offence. That confession too is excluded u/s 23.

The prohibition of Sec 23 applies only to confessions, which are to be proved as against the accused i.e. in support of prosecution case & does not apply to statement on which the accused himself wishes to rely for his defense.

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

The main object of this section is to prevent the abuse of their powers by the police & hence confessions made by accused persons while in custody of police can not be proved against them unless made in presence of a Magistrate.

The custody of police officer provides easy opportunity of coercion for extorting confession obtained from accused through any undue influence being received in evidence against them.

CONFESSION: SEC 22 TO 24:

(First clause is Confession to police & Second clause is Confession in police custody to any person)

Sec 23 provides that- a confession made in police custody to any one else can not be proved against him, unless it is made before a Magistrate.

If a Second Class Magistrate, not specially authorised by the State Govt. to record a confession has recorded the same, then, such confession is not admissible.

Confession by a person summoned as a witness in a proceeding U/S 107 & 108 of Customs Act is admissible AS the person summoned is not an accused nor the custom officer is a police officer. But, if confession is extracted by using third degree method, then, it would be inadmissible.

There are two exceptions to this rule-

- Confession in police custody to the Magistrate
- Confession under clause 3

If accused is taken out of police custody & ensured that he is not under influence of police, then, Sec 23 is not attracted.

CONFESSSION: SEC 22 TO 24:

Provided that, when any fact is deposed to as 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 thereby discovered, may be proved.

If the confession of accused is supported by the discovery of a fact, then, it may be presumed to be true & not to have been extracted.

It comes into operation only-

- If & when certain facts are deposed to as discovered in consequence of information received from an accused in police custody
- If the information relates distinctly to the fact discovered. e.g. discovery of weapon used in offence on the information by accused.

Discovery on information by the accused must be legal & must be proved beyond reasonable doubt. The discovered fact must be a relevant fact.

this clause is an exception to Sec 22, 23(1) & (2). Thus, information in the form of statement by an accused is admissible, only if, there is discovery in pursuance thereof.

CONFESSION: SEC 22 TO 24:

Sec 24: Consideration of proved confession affecting person making it and others jointly under trial for same offence:

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.

Explanation I: “Offence”, as used in this section, includes the abetment of, or attempt to commit the offence.

Explanation II: A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section

Illustrations

A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—“A and I murdered C”. This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

A and B are jointly tried for murder of C. It is proved that A said—“B and I murdered C”. The Court may consider the effect of this confession as against B.

CONFESSION: SEC 22 TO 24:

A confession may be used as evidence against the person making it & it is strong piece of evidence against him.

Sec 24 lays down that- when two or more persons are tried jointly for the same offence & the confession made by one of them is proved at trial, the court may take into consideration that confession against other accused as well as accused confessing guilt.

The principle underlying this section is that- where a person admits guilt to the fullest extent & expose himself to the pains & penalties provided for his guilt, there is guarantee for his truth & the legislature provides that his statement may be considered against his fellow prisoners charged with the same offence.

Before taking into consideration confession of one accused against others, it has to be shown that- the person confessing & the others are being tried jointly, they are being tried for the same offence, the confession is affecting confessionner & the others.

Sec 24 does not say that confession of one accused will be evidence against the co-accused. It only says that- the court may take into consideration such confession. It can be used only to corroborate other evidences on record. It might assist the court in coming to the conclusion.