

CONFESSION TO POLICE OFFICER NOT TO BE PROVED

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INTRODUCTION

This article is an attempt to understand how the concept of confession to a police officer not to be proved is applied. It will try and explain how this concept functions, its specifics and certain exceptions that can be applied to the same.

The scope of this article is limited to the sections 25 and 27 of the Indian evidence act and related important case laws. This article will have at its core Section 25, which deals with the said subject-matter directly. It will try and provide apt case laws to re-enforce any principle wherever possible and also refer to some foreign statutes and case laws to understand how this concept is applied in foreign countries.

The article will answer these questions-

- a. Meaning of “confession” and difference between “confession” and “admission”
- b. Application of Section 25 of Indian Evidence Act, its constituents and principles relied upon while using this section.
- c. How this concept is applied in foreign countries especially United Kingdom and United States?
- d. Exceptions to Section 25 under Section 27 of Indian Evidence Act.

CHAPTERS

CHAPTER ONE

This chapter aims to explain the various components that are said to be a part of “confession”. Confession is an important concept. Indian legal system does not accord any legitimate status to those “confessions” that are made to police officials due to several reasons.

The concept of “confession” was discussed in great detail in the case of *Aghnoo Nagesia vs State Of Bihar* 1966 AIR 119, wherein it was categorically pointed out that the evidence act did not define "confession". Courts in India would earlier refer to Article 22 of Stephen's Digest of the Law of Evidence which defined confession as “an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime”. This definition was referred to extensively, till the case of *Pakala Narayanaswami v. The King Emperor* where Lord Atkin stated that no statement containing self- exculpatory content would amount to confession, if the exculpatory statement, if proved to be true had the potential to negate the charges of the offence so alleged to have been committed¹.

These observations were approved in the landmark cases of *State Of U. P vs Deoman Upadhyaya* 1960 AIR 1125 ²and the recent case of *Mukesh vs State IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.APPEAL No.615/2008*³

However, admission and confession are not one and same. It can be reasonably said that Confession is a type of admission, but not vice-versa. The following differences between the two may be noted⁴:

1. The broad distinction between a confession and an admission is that a confession could lead to criminal proceedings against a statement made by an accused person while in an admission unlike a confession can be made either by a

¹ *Aghnoo Nagesia vs State Of Bihar* 1966 AIR 119.

² *State Of U. P vs Deoman Upadhyaya* 1960 AIR 1125.

³ *Mukesh vs State IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.APPEAL No.615/2008*.

⁴ Shodhganga.inflibnet.ac.in, *Confession and its various dimensions*, available at http://shodhganga.inflibnet.ac.in/bitstream/10603/7860/1/11_chapter%204.pdf (Last visited on 1st May, 2016).

person standing for trial or a person having an interest in the trial , usually for civil matters.

2. A confession that is not legally disqualified could be accepted as conclusive in itself of the matters confessed, but an admission acts as an estoppel and not as a conclusive proof of any sort.

3. A confession is meant to be used against the accused, however in case of an admission; it could be proved as factually correct solely on the account of the concerned person who is making it as per section 21 of the evidence act.

4. The confession of one accused can be used against the other co-accused as well if the requirements of section 30 of the Evidence Act are satisfied but an admission of one of several defendants could not be used against the co-defendants.

5. An admission may or may not be voluntary as per section 31 of the evidence act, an admission made to a stranger may also be accused, however, in case of a confession, it has to be thoroughly voluntary and without any sort of inducement, threat , coercion or any other type of wrongful influence.

CHAPTER TWO

This chapter aims to explain section 25 of the evidence act and its different components. Section 25 is the core focus of this article and thus this chapter will try and explain the aforementioned concept of debarring any confession that is made to a police officer person accused of any offence in some detail.

This section works on the logic that if confessions to police were allowed to be used as evidence, the police would torture the accused and thus force him to confess to a crime which he might not have committed. Thus, this section disallows any such confession in any form confession - direct, express, implied or inferred from conduct⁵.

⁵ legalservicesindia.com, *Confession under Indian Evidence Act*, July,2013, Shraddha7, available at <http://www.legalservicesindia.com/article/article/confession-under-indian-evidence-act-1547-1.html> (Last visited on 1st May, 2016).

The various important principles under Section 25 are⁶

1. Effect Of Police Presence-The mere presence of the policeman will not affect the sanctity of any confession so made provided that the policeman was only present casually and not as part of any sinister design. But in instances wherein the policeman was present for some ulterior motive, in those instances the courts will reject any such confession that is so made.

2. Exclusion Of Confessional Statements Only- The section only excludes confessional statements from the police from being proved in a court of law- this would include statements that implicate some person of having taken part in any criminal act and not any other admission related statements.

3. Confessional Fir- Those portions of a confessional First Information Report could be allowed which do not amount to a confession or which came under the ambit of section 27. The non-confessional part of the FIR could be used as evidence against the accused for finding conclusive evidence against his conduct under section 8 of evidence act.

4. Statement Not Amounting To Confession-Those statements that in no way were confessions are not covered under section 25. This would include admission related statements.

5. Use Of Confessional Statement By Accused-Though the statements to police made by the confessing accused cannot be used in evidence against him, he can himself rely on those statements in his defence.

However, a major exception to this rule was under Section 15 of the Terrorist and Disruptive Activities (prevention) Act, 1987 that does not excludes confessional statements from evidence on grounds that the persons making them were in police custody. The courts had stated that since TADA was a different and more stringent provision, thus the statements that were made by an accused could be used against a co-accused as well⁷.

⁶ *Id.*, note 5.

⁷ *Id.*, note 6.

Important case-laws-

1. In *Dagdu v. State of Maharashtra*, A.I.R. 1977 S.C. 1579, Supreme Court came down upon the police and claimed that it will not approve of any steps to coerce a confession out of individuals so that police could conclude their investigation in a haphazard manner⁸.
2. *Faddi V State of Madhya Pradesh* AIR 1964SC 1850- First Information Report was not a confessional statement under section 25 of evidence act. Report/FIR could be termed as partial admission of certain facts but not fully fledged confession/admission⁹.
3. *Makhan Singh V State of Punjab* AIR 1988 SC 1705- Extra judicial confession was termed as “weak” without any other facts and evidences present to back up the claim that was made in the confession under section 27 of the evidence act¹⁰.
4. *Aghnoo Nagesia vs State Of Bihar* 1966 AIR 119 - The court contended that confessional statements had no rule of severability and thus, entire confessions that had been made to police officials could not be admitted as evidence. However, an exception could be accepted, if the statement led to any substantive recovery of evidence under section 27 of the evidence act¹¹.

CHAPTER THREE

This chapter will try and understand rules related to the concept of confession before police officer not to be proved in other foreign countries, with maximum focus on United Kingdom as the Indian legal system borrows liberally from that legal system and judges cite English cases while deciding cases here in India.

⁸ *Dagdu v. State of Maharashtra*, A.I.R. 1977 S.C. 1579.

⁹ *Faddi V State of Madhya Pradesh* AIR 1964SC 1850.

¹⁰ *Makhan Singh V State of Punjab* AIR 1988 SC 1705.

¹¹ *Supra* note 1.

The United Kingdom addresses this issue under the Police and Criminal Evidence Act 1984 (PACE), section 76 clearly states that any disputed confession could not be used in evidence against an accused person unless the prosecution proved beyond all reasonable doubt that it was not obtained¹²:

- By oppressing the person in question ; or
- The confession stated about facts, events or other components that in all likelihood could not have happened at the concerned time frame that was in question.

This section is also explained by the following case laws¹³ -

1-*R v Fulling* [1987] 2 All ER 65- The court stated that - "exercise of authority or power in a burdensome, harsh, or wrongful manner; unjust or cruel treatment of subjects, inferiors, etc, or the imposition of unreasonable or unjust burdens."

2-*R v Paris* (1993) [1994] Crim LR 361, CA- The court took into account the fact that for over 13 hours the suspect in question was interrogated for hours, in spite of repeated denials, thus the confession so brought about was not confessed.

3-*R v Matthias* [1989] TLR, 24 August-A confession could be termed as unreliable if it was made as a result of an inducement, which included any kind of bargaining offers like that of favorable treatment, or anything that sounds like a promise for the future.

Section 78 of the same act states that "having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it."The court will not approve if there was proof that the investigators had acted in bad faith before exclusion of the said evidence and any concurrent act of good faith would not make up for the breaches to PACE

¹² hse.gov.uk, *Admissibility of confessions*, available at <http://www.hse.gov.uk/enforce/enforcementguide/investigation/witness-admissibility.htm> (Last visited on 1st May, 2016).

¹³ *Id.*, note 12.

and other codes of practice.. Where there is bad faith on the part of the investigators, this will usually lead to the exclusion of evidence¹⁴.

Thus, it can be reasonably concluded that like section 25 of the Indian evidence act, sections 76 and 78 of the PACE act have a set of stringent criterions that have to be fulfilled for confession to be accepted as a valid evidence.

In the case of *Brown v. Mississippi*, 297 U.S. 278, (1936), the United States supreme court declared that a defendant's involuntary confession that had been obtained by police violence could not be accepted as legitimate as it violated the concept of “due process” under 14th amendment of the US constitution¹⁵.

The fifth amendment of the US constitution also prohibits suspects from incriminating themselves. A closely associated case with the fifth amendment is that of *Miranda v. Arizona*, 384 U.S. 436 (1966), where in the United States Supreme Court in a 5–4 split judgment declared that both inculpatory and exculpatory statements made in response to interrogation by a defendant in police custody could be admitted only if it was proved that the defendant was allowed the right to avail attorney and of the risk of self-incrimination by the investigating authority which was understood by the said defendant, who had voluntarily waived the said rights¹⁶.

This case led to the creation of Miranda rights. This in essence is the right to counsel and remain silent that is derived from the Fifth Amendment.

In the case of *Berghuis v. Thompkins*, 560 U.S. 370 (2010), the United States Supreme Court expanded the idea as discussed in the *Miranda V Arizona* case and held that unless and until the suspect actually stated that he was relying on that right, his subsequent voluntary statements could be used in court and police could continue to interact with (or question) him. The mere act of remaining silent was, on its own, insufficient to imply the suspect has invoked his or her rights¹⁷. Furthermore, a voluntary reply even after lengthy silence could be construed as implying a waiver.

¹⁴ *Id.*, note 13.

¹⁵ *Brown v. Mississippi*, 297 U.S. 278, (1936).

¹⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¹⁷ *Berghuis v. Thompkins*, 560 U.S. 370 (2010).

However, The Miranda rule is not to be applied absolutely. In cases of “public safety”, the court allows in certain specific and limited circumstances wherein life and property were at some grave risk to allow certain unadvised statements, given without Miranda warnings to be admissible into evidence at trial. This rule was established in the case of *New York v. Quarles*, 467 U.S. 649 (1984), this exception can be termed to be quite akin to the idea of confession leading to recovery of some substantive evidence that has been enunciated under section 27 of the evidence act, explained in the next chapter¹⁸.

CHAPTER FOUR

This chapter aims to explain the exceptions to Section 25 of the Evidence Act under Section 27 of the same statute.

Section 27 tries to specify what specific information received from an accused may be proved. It is a proviso to sections 25 and 26. It can be applied only under the following circumstances¹⁹-

- When certain facts were discovered in consequence of information received from an accused person in police custody
- If the information received was sharply associated with the fact so discovered.

These ingredients must be compulsorily fulfilled for its successful application are²⁰-

1. The fact was discovered directly as a consequence of the information received from the accused.
2. The person giving the requisite information was accused of an offence.
3. The confession/admission was in the custody of a police officer.
4. Part of the admission/information that was directly associated with the discovery

¹⁸ *New York v. Quarles*, 467 U.S. 649 (1984).

¹⁹ *Supra* note 5.

²⁰ *Id.*, note 19.

could be proved; the rest of the admission/admission could not be proved.

5. Before the statement was proved, someone had to depose that articles were discovered in consequence of the information received from the accused.

6. The fact discovered had to directly associate with the crime being investigated.

There have been some very important case laws to this effect, which include-

1-*Pandu Rang Kallu Patil v. State of Maharashtra Appeal (crl.) 194 of 2000*- The court analyzed that provisions of sections of Section 25 imposed a ban on confessions to a police officer, Section 26 disapproved of confessions made while in police custody to any person except the Magistrate, which could be used to indict him of his crime .But the ban would be lifted if the statement is distinctly related to discovery of facts²¹.

2- *Suresh Chandra Bahri v. State of Bihar 1994 AIR 2420*- The court tried to draw a line as to when other infirmities on part of the prosecution did not affect the confession made by the accused. In this case the accused's confession helped in the discovery of articles used in disposing off the dead body. However, the prosecution did not examine any witness with regards to this discovery. The court concluded that in this case the articles were discovered based on the accused's confession and were neither visible nor accessible to the people but were hidden under the ground. Since the evidence discovered by the Investigating Officer was legitimate and the discovered items were duly identified by the witness, failure of Investigating Officer to record the disclosure of statement was not fatal²²

3- *State of Maharashtra v. Bharat Chhagan Lal Raghani Appeal (crl.) 628 of 1998*- Supreme Court stated that displaying seized weapons in a press conference by the police could not be a ground to disbelieve the factum of recovery²³.

4-*Gautam Kundu V State of West Bengal AIR 1947 PC 617*- Any fact discovered cannot be termed to be the same as the object produced. Information under section

²¹ *Pandu Rang Kallu Patil v. State of Maharashtra Appeal (crl.) 194 of 2000*.

²² *Suresh Chandra Bahri v. State of Bihar 1994 AIR 2420*.

²³ *State of Maharashtra v. Bharat Chhagan Lal Raghani Appeal (crl.) 628 of 1998*.

27 of the evidence act helped in discovery of concealed facts and items for seizure²⁴.

CONCLUSION

Thus, in conclusion, I would like to state the following –

1-Section 25 of the act stringently disallows confession to be used as a proof because of the blatant misuse of police powers to extract false confessions.

2- Only confession is disallowed, not admitting other facts and/or behavior related elements.

3- PACE act in United Kingdom and Miranda rights and warning in USA are the equivalent of section 25 in these countries. Thus, the concept of not readily approving confession to police officers is an idea that is also espoused in the west.

4- Confession is not the same as admission. The latter is relatively less severe, may be involuntary and is usually seen as involving milder cases with greater importance on ancillary facts.

5- Section 27 is sort of an exception to section 25 and it does not allow confession per se to be used as evidence but the items and other substantive evidence so recovered to be used.

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²⁴ *Gautam Kundu V State of West Bengal* AIR 1947 PC 617.