RELEVANCY AND ADMISSIBILITY OF EXTRA JUDICIAL CONFESSION: A STUDY

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Abstract

Extra-judicial confessions are those which are made to a person in authority or to police by an accused in custody. The major problem with such confessions is that its relevancy and admissibility. The said confessions are regarded as weak evidence due to simple reason of its genuineness. Sections 24 and 27 of Indian Evidence Act deal with admissibility of extra-judicial confessions. This law has been developed through precedents, in the case of PulukuriKotiya Supreme Court laid down essentials of section 27 of the Indian Evidence Act. Furthermore, in the cases of Narayan Singh, Mulk Raj and Sahadevan v. State of Tamil Nadu, the Supreme Court has laid down conditions for admissibility of such confessions some mutual of them are that it must be voluntary, need to be verified and proved like an alleged fact. The paper aims to discuss this concept in detail and tries to resolve the issue admissibility of extra judicial confessions by suggesting certain guidelines.

Key words: extra judicial confession, Indian Evidence Act, admissibility, relevance

1. The relevancy and admissibility of extra-judicial confession and discovery of facts are governed by section 24 and section 27 of the Indian Evidence Act. 1 Section 24 deals with the admissibility of confession made to a person in authority other than a judicial authority and the conditions stipulated for their admissibility. Section 27 of the Indian Evidence Act relates to the admissibility of fact discovered as a consequence of information given, while the accused is in Police custody.

1 Sec 24 of the Indian Evidence Act states thus:
“A confession made by an accused person is irrelevant in a criminal proceedings, if the 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”.

Sec 27 of the Indian Evidence Act provides:
“Provided that when 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”.
2. In an earliest case, the Privy Council dealt with the essentials of section 27 of the Indian Evidence Act and pointed out thus:

   i) The fact of which evidence is sought to be given must be relevant to the issue. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the facts discovered admissible.

   ii) The fact must have been discovered.

   iii) The discovery must have been in consequence of some information received from the accused and not by accused’s own act.

   iv) The person giving the information must be accused of any offence.

   v) He must be in the custody of a Police Officer.

   vi) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

   vii) Therefore, only portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

3. Dealing with the issue of extra-judicial confession, the Supreme Court held in *Narayan Singh’s Case* as follows:

   i) It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence.

   ii) It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession.

4. In *MulkRaj’s Case*, the Supreme Court further laid down as follows:

   i) An extra-judicial confession, if voluntary can be relied upon by the court along with other evidence in convicting the accused.

   ii) The confession will have to be proved just like any other fact.

   iii) The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witnesses to whom it is made.

   iv) It is true that the court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the court should

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3 AIR 1985 SC P.1678.
4 AIR 1959 SC P.902.
not accept the evidence, if not the actual words used by the accused as nearly as possible, but it is an invariable rule that the court should accept the evidence, if not the actual words but substance were given. If the rule is inflexible that the court should insist only on the exact words, more often as not, this kind of evidence, sometimes more reliable and useful, will have to be excluded for, except perhaps in the case of a person of good memory, many witnesses cannot repeat the exact words of the accused.

v) It is for the court having regard to the credibility of the witnesses, his capacity to understand the language in which the accused made the confession, to accept the evidence or not.

vi) In the circumstances, if the evidence of the witnesses is acceptable, there is no reason why the extra-judicial confession made by the accused could not be acted upon.

5. In Sahadevan v. State of Tamil Nadu, the Supreme Court further observed as follows:
   
i) It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence.
   
ii) Wherever the court, upon the appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence.
   
iii) If however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

6. In a series of decisions, the Supreme Court of India laid down as follows:
   
i) Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and loses its importance.
   
ii) It is a rule of caution, where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.
   
iii) An extra-judicial confession, if voluntary and true and made in a fit state of mind can be relied upon by the court.

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5 AIR 2012 SC P.2435.
Such a confession can be relied upon and conviction can be founded thereon, if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out, which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused.\(^8\)

iv) In the case of extra-judicial confession, the court has to satisfy\(^9\) in regard to

a) Voluntariness of the confession
b) Truthfulness of the confession
c) Corroboration

v) Main features of a confession are required to be verified.\(^10\)

vi) There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated.\(^11\)

vii) In the case of retracted confession, there is no inflexible rule that the court must invariably accept the retraction. But at the same time, it is unsafe for the court to rely on the retracted confession, unless the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.\(^12\)

viii) The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it.\(^13\)

7. In conclusion, it may be suggested that the above guidelines may be issued in the form of guidelines for the guidance of all courts in dealing with cases of extra-judicial confession. The Gujarat High Court has taken considerable pain in minutely examining and applying all the above guidelines in deciding an important case.\(^14\)

\(^8\) State of Rajasthan v. Raja Ram, AIR 2003 SC P.360.
\(^10\) Id.
\(^14\) Ranjeethdas Munidas Talwa and another v. State of Gujarat, 2016 Cr LJ P.278 (Gujarat HC).