

## ADMISSIBILITY OF EXTRA JUDICIAL CONFESSIONS

**\*Debarati Mukherjee**

### ABSTRACT

*We all have heard of the terms admissions and confessions coming under the same chapter of the Indian Evidence Act, 1872 under chapter II but there is a thin difference between the above two terminologies, they don't mean the same thing. Admissions and confessions play an important role during criminal trials as it can turn the case in a different manner and make the case of party seeking to prove the guilt of the accused easier. There are kinds of confessions. In this paper a specific category of confessions will be dealt with that is extra judicial confession, the informal confession. The highest court of India that is the Supreme Court of India has ruled that a person can be convicted on the basis of an extra judicial confession on certain occasions like the person to whom it has been made has to be fair and unbiased. Therefore the trial courts need to proceed cautiously dealing with matters regarding the veracity of witnesses who appeared to have heard an extra judicial confession. In this paper extra judicial confessions shall be dealt with proper examples. Following this their admissibility and the principles forming the basis of conviction shall also be discussed.*

**KEYWORDS: Confessions, extra judicial confessions, admissibility, basis of conviction**

### INTRODUCTION

The Indian Evidence Act, 1872 does not provide any exact definition of confession. The word confession comes up for the first time under chapter II under section 24 under the heading of Admission. Therefore we can imply that confession is also a species of admission. But the question is what sort of admission amounts to confession. renowned Mr. Justice Stephen in his book "Digest of the Law of Evidence" coined confession as "confession is an admission made at anytime by a person charged with a crime stating or suggesting the inference that he committed that crime". So according to this definition any statement of the accused person tantamounts to confession if it fulfills any of the two conditions-

1. If he states that he has committed the crime with which he is charged, or

2. If he makes any statement whereby he doesn't clearly implicate himself but from his statement an inference can be drawn that he has committed the said crime.

In the landmark case of *Pakala Narayana Swamy v Emperor* it was Lord Atkin's observation that - "a confession must either admit in terms the offence or at any rate substantially the facts which constitute the offence". Any statement which falls short of this category won't amount to a confession. Confession is divided by English text writers into two categories- formal (judicial) or informal (extra judicial). Judicial confessions are those which are made before a magistrate competent to record such statements following the procedures laid down in CrPC and Evidence Act. An extra judicial confession is made at any place to any person other than a magistrate or in court. In this article I will discuss about the extra judicial confessions, their admissibility. Following these their probative value will also be discussed and what position it holds in the Indian judicial system.

## **EXTRAJUDICIAL CONFESSION: DEFINITION**

An extra judicial confession is defined to mean "*a free and voluntary confession of guilt by a person accused of a crime in the course of conversation with persons other than judge or Magistrate seized of the charge against himself*". They are generally made before private individuals.

Extra judicial confessions can be made to any individual or body of individuals and it is not necessary that it should be directed to a particular individual. It can also be made in the form of prayer. It can also be made to a judicial magistrate in his personal capacity or any magistrate who is not so empowered to record confessions under section 164 CrPC or a magistrate who is so empowered but he received the confession at a stage when section 164 doesn't apply.

For example, an accused person told his mother that he killed his daughter who left her husband and lived in an adulterous relation with her uncle, the son of maternal aunt of the accused. This was held to be an extra judicial confession and it has held by the court that it could be relied upon.<sup>1</sup>

---

\*KIIT UNIVERSITY

<sup>1</sup> Bhagwan Das v State (NCT) Delhi, AIR 201 SC 1863

Let us take one more example, an accused person went to an Ex Sarpanch and confessed that he has committed the murder of the deceased and he be taken to the police. The Ex Sarpanch was cross examined at length but nothing was able to be discovered by the defence counsel and his statement was relied upon by the court.<sup>2</sup>

In *Kishan Lal v State of Rajasthan*,<sup>3</sup> the Supreme Court observed that before an extra judicial confession is relied upon it must be clear and unequivocal.

In *Surinder Kumar v State of Punjab*,<sup>4</sup> the accused persons were alleged to have made confession to person not related or connected to them, it held that such confession was improbable that all the accused have confessed at one and the same time. The person to whom it was made didn't disclose it to the wife of the deceased even though he was close to the family. The Supreme Court disregarded this piece of extra judicial confession and held that it was not trustworthy.

## ADMISSIBILITY OF EXTRAJUDICIAL CONFESSIONS

A conviction can be based on extra judicial confession if the witness to whom it was made is subjected to rigorous test on the touchstone of credibility. An extrajudicial confession which is voluntary and made in a free state of mind can be relied upon. The value of such confession depends like any other evidences on the veracity of the witness to whom it was made.

## PRINCIPLES FORMING THE BASIS OF CONVICTION

In *Sahadevan v State of Tamil Nadu*,<sup>5</sup> the Supreme Court held that extra judicial confession is admissible and can form basis of conviction on the following grounds-

- An extrajudicial confession is a weak piece of evidence and so it has to be received with proper care and caution,
- It should be made voluntarily and it should be truthful,
- It should inspire confidence,

---

<sup>2</sup> *Kulvinder Singh v State of Haryana*, AIR 2011 SC 1777

<sup>3</sup> AIR 1999 SC 3062

<sup>4</sup> AIR 1999 SC 215

<sup>5</sup> AIR 2012 SC 2435

- An extra judicial confession will attain greater evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence,
- It should not suffer from any material discrepancies and inherent improbabilities,
- The statements are to be proved like any other fact and in accordance with law.

## CONCLUSION

Extra judicial confessions are not usually considered with favour but it doesn't mean that when it comes from a person who has no reason to state them falsely and the circumstances when they were made support his statements they cannot be trusted. The extra judicial evidence is a weak piece of evidence and must be received with great care and caution and can be relied when it is consistent, unambiguous, clear and cogent. It should be seen that whether it is made under unfair or collateral notions. The value depends on the veracity of the witness to whom it was made. But very often extrajudicial confessions are open to danger of mistake due to the misapprehension of the witness before whom it was made, to the misuse of words and the failure of the party to express the meaning. This is again open to another sort of danger that there being no record and no sanction behind, it is very easy for the prosecution to get hold of any witness who would depose. So extrajudicial confessions should be considered with great care.