

## **A Critical Analysis on Admissibility of Confessional Statements: Limitations and Realities**

**Md. Al Amin**\*

**Md. Tajul Islam Suhag**\*\*

### **Abstract**

*Confessions are out of court admissions of guilt which conform to certain rigidly defined requirements. A person who confesses to a crime acknowledges his liability and/or responsibility for the commission of crime. The distinction between confessions and other self-incriminating extra-curial statements have been brought out by the fact that confessions and admissions have received different treatment in the field of criminal procedure and evidence. Because of its importance and its potency in criminal evidence confessions are subject to more stringent prerequisites for admissibility than admissions. The only requirement for the admissibility of an admission is that it must be made voluntarily and must be true, however, before a confession will be admitted into evidence the general rule is that the prosecution must establish that the confession was made freely and voluntarily by the accused whilst in sound and sober senses and without having been unduly influenced thereto. It is therefore easier to render a confession inadmissible on the grounds of involuntariness or some other statutory disqualification than an admission.*

**Keywords:** Confession, Admissions, Voluntary and True, Administration of Justice, Informal Admission, Legal Requirements, Admissible.

### **Introduction**

Confessions have played an ambiguous and paradoxical role in the Criminal Law System. In many religious traditions, a confession begins the process of expiation and forgiveness. Yet in the secular, legal sphere, it often lays the foundation for blame and punishment. Moreover, there is a contradiction embedded within this contradiction. Because confessions appear to create unmediated access to the accused's knowledge, thought processes, and beliefs, they seem to provide uniquely powerful evidence of both culpability and contrition. Yet because the access is in fact always mediated, confessions can also be uniquely dangerous and misleading. The upshot has been heavy reliance on confessions coupled with extensive regulations for their use.

Custodial torture has become a common phenomenon and it has become a routine practice by the police in the name of interrogation and obtaining confession from the offenders in these days. From time to time such practice causes momentary public uproar but once the incident fades away from public everything is forgotten. Whatever may be the justification for the institutionalization of custodial torture, the developing human rights jurisprudence demands that

---

\* Assistant Professor, Department of Law, Northern University Bangladesh

\*\* Lecturer, Department of Law, Northern University Bangladesh

this dangerous practice should be eliminated completely. However, in relation to confession, certain rules have been evolved to guide both the court and parties to the cases on matters relating to confession. It is necessary to understand these rules developed to govern confession, for instance, while the common law recognized that a confession might be both reliable and cogent as evidence of guilt, and indeed saw no objection to a conviction in cases where a confession was not only evidence against the accused, the law also recognized that a confession could be regarded as reliable only when given freely and voluntarily. If coerced or forced, the reliability of the confession might be fatally compromised, and the integrity of the system of administration of justice itself made to suffer.

### **Definition and Meaning of Confessional Statement**

Confession is a statement by which an individual acknowledges his or her guilt in the commission of a crime and which is adverse to that person.<sup>i</sup> Confession is a criminal suspect's oral or written acknowledgement of guilt, often including details about the crime.<sup>ii</sup> It has also been defined as an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed the crime.<sup>iii</sup>

The word "suggesting the inference that he committed the crime" created some difficulty and confusion in realizing the true report of the expression. The position was succinctly clarified by Lord Atkin that no statement which 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. However, an admission of a gravely incriminating fact is not of itself a confession, e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver, which caused a death with no explanation of any other man's possession.

### **Legal Formalities and Mode of Recording Confessional Statement**

A statement must be recorded by the magistrate in such of the manners prescribed for recording evidence as is, in his or her opinion best fitted for the circumstances of the case.<sup>iv</sup> A confession must be recorded and signed in the manner provided in section 364 of Cr. PC, which describes the manner of recording of the examination of the accused. Such statements or confessions must then be forwarded to the magistrate by whom the case is inquired into or tried.<sup>v</sup>

Before recording any confession, a Magistrate must explain to the person making it that he or she is not bound to make a confession and that if he or she does so it may be used as evidence against him or her.<sup>vi</sup> A Magistrate must not record any such confession unless, upon questioning the person making it, he or she has reason to believe that it was made voluntarily.<sup>vii</sup> When the Magistrate records any confession, he or she must make a memorandum<sup>viii</sup> at the foot of such record.

It is to be noted that the substantive law in respect of confession is contained in Sections 24 to 30 of the Evidence Act. Section 164 of Cr.PC may be read together with these sections and such reading produces the following result:

- a. A confession must not be made to a police officer: It must be made in the presence of a Magistrate.
- b. A Magistrate must not record it unless he or she is, upon inquiry from the person making it, satisfied that it is voluntary.
- c. The Magistrate must record the confession in manner laid down in section 164 of Cr.PC and only when so recorded it becomes relevant and admissible in evidence.

However, a Magistrate has the discretion to record or not to record a confession. If he or she elects to record it, section 164 of Cr.PC requires him or her to comply with four provisions as follows:

- a. The confession should be recorded and signed in the manner provided in section 364 of Cr. PC and then forwarded to the magistrate concerned;
- b. The Magistrate should give a statutory warning that the accused is not bound to make;
- c. The Magistrate should first be satisfied that it is being made voluntarily; and
- d. The Magistrate should make a memorandum at the foot of the confession relating to his or her action.<sup>ix</sup>

### **Evidentiary Value of Confessional Statement**

In a criminal case, a confessional statement is considered to be an important piece of evidence and if it has been duly recorded and suffers from no legal infirmity, it would suffice to convict the accused who made the confession, though as a matter of prudence, the Court expects some corroboration before acting upon it.

### **Probative Value of Confessional Statement**

Though the presumption that a person will not make an untrue statement against his own interest is the basis of receiving confessions as evidence, yet it must be noted that the evidentiary value of a confession is not very great. A confession may be false due to mental aberration, mistake of law, to escape physical or moral torture, to escape ignominy of a stifling enquiry, due to vanity, peculiar relationship between sexes, to escape military duty by getting as conviction, to save the life, fortune or reputation or suffering of a party whose interests are dear to the prisoner, to endanger others by naming them as co-offenders, and so on. <sup>x</sup>Therefore, confessions may not always be true. They must be checked in the light of the whole of the evidence on the record, in order to see if they carry conviction. It would be very dangerous to act on a confession put into the mouth of the accused by a witness and uncorroborated from any other source.<sup>xi</sup>

### **Evidentiary Value of Inculpatory Confessional Statement**

In a criminal case, a confessional statement is considered to be an important piece of evidence. Even such a statement may be the sole basis for convicting the maker if such statement is found to be true and voluntary.<sup>xii</sup> If a confession is proved inculpatory in nature, true and voluntary, it can be sole basis for conviction of the maker of the confession, no matter whether it is retracted or not.<sup>xiii</sup>

Previously the view was that if a confessional statement is partly true and partly false, the statement should not be taken into consideration. But the recent view is that a confessional statement partly true and inculpatory and also partly false and exculpatory may be taken into consideration and conviction may also be given on the basis of such a statement.<sup>xiv</sup>

#### **Period for Retracting Confession and Evidentiary Value of Retracted Confession**

Confessions are made only to be retracted in the vast majority of cases. After commission of crime, the culprit may feel guilty and from feeling guiltiness he may confess his crime for repentance and expect to be punished for that crime. But situation changes at the time when his lawyer makes him understand that if you confess, you will be punished. However, as regards admissibility there is no difference between retracted and unretracted confession. Both are equally admissible in law.<sup>xv</sup> To retract from a confession is the right of the confessor and all the accused against whom confessions were produced by the prosecution have invariably adopted that right.<sup>xvi</sup> The retraction by itself is not a ground to discard the confession by holding that it was not voluntarily made. Merely because the confession was retracted, it need not be taken as a confession made under pressure. The state of mind of the accused at the time of making the confession is the relevant factor.<sup>xvii</sup> It is true that when an extra judicial confession is retracted by the accused, there is no inflexible rule that the court must accept the retraction. But if the court wants to reject the retraction, the court must give cogent reasons before such rejection.<sup>xviii</sup>

#### **Essentiality of Corroboration of Confessional Statement with Other Evidence**

The rule of prudence demands that conviction on the basis of confession should be corroborated. But it is not necessary to follow this principle in each and every case. Confession can be acted upon and even without corroboration for the purpose of conviction.<sup>xix</sup> Confessional statement of an accused can be relied upon for the purpose of conviction of the confessing accused and no further corroboration is necessary if it relates to the confessing accused himself provided it is voluntary and also true.<sup>xx</sup>

A confession judicial or extra-judicial whether retracted or not in law validly form the sole basis of conviction, if the court is satisfied and believes that is true and voluntary and was not obtained by inducement etc. and if the retracted confessional statements are corroborated by other evidence the conviction can be safely based upon such retracted confessional statement.<sup>xxi</sup>

#### **Admissibility of Confessional Statement: Legal Perspective**

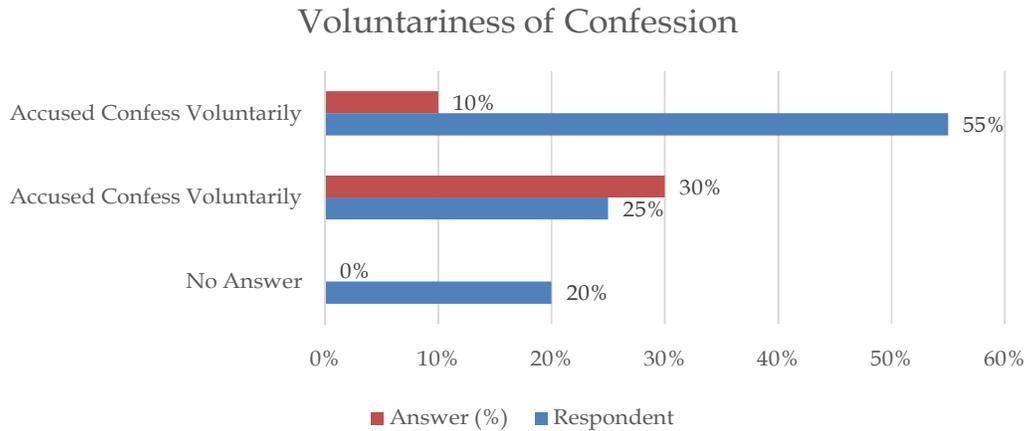
The confessional statement, not being a mere statement of the occurrence, is the direct and specific admission of the guilt or admission, in substance, of all the facts constituting the offence, made by the confessing accused voluntarily giving a true statement of the occurrence implicating himself, sometimes other co-accused, as being involved in commission of the offence. A self-exculpatory statement or, a statement in which the maker denies his guilt is no confession. Confessional statement alone can form the basis of conviction against its maker and, in appropriate cases; it lends assurance to the other substantive evidence as against other co-accused tried jointly for the same offence.

### **Constitutional Validity of Confessional Statement**

It is a fundamental principle of common law criminal jurisprudence that the prosecution has to prove its case and the accused cannot be compelled to make any statement against his will.<sup>xxii</sup> The principles emanate from the apprehension without protection against self-incrimination, an accused would be exposed to coercion and torture.<sup>xxiii</sup> According to UDHR, ICCPR and CAT Convention, everyone charged with a criminal offence shall not to be compelled to testify against him or to confess guilt and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment for such purposes as obtaining from him or a third person information or a confession.<sup>xxiv</sup> In the American jurisdiction the Fifth Amendment includes a prohibition against self-incrimination by an accused.<sup>xxv</sup> The American Supreme Court extended this privilege to witnesses<sup>xxvi</sup> and also in civil cases.<sup>xxvii</sup> In American jurisdiction the privilege is not confined to the courtroom and is available in all governmental proceedings.<sup>xxviii</sup> Article 35(4) of the Constitution of Bangladesh States, “No person accused of any offence shall be compelled to be witness against himself”. Article 20 (3) of the Indian Constitution is in the same language. The rule against self-incrimination has been stated in section 132, Evidence Act.<sup>xxix</sup> An accused person is not a competent witness and he cannot be administered an oath.

In some cases all accused persons are competent witnesses.<sup>xxx</sup> The guarantee is against compulsion ‘to be a witness’ who includes making of oral or written statements in or out of court by an accused. Such statements are not confined to confessions but also to cover statements which have a reasonable tendency to point to the guilt of the accused.<sup>xxxi</sup> The protection being against any compulsion, Art. 35(4) of the Constitution of Bangladesh is not attracted in the case of a confession which is voluntary and without any inducement. An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody without anything more to show that he had been compelled to make the statement.<sup>xxxii</sup>

The number of confessions has increased manifold in criminal prosecutions creating doubt as to whether those confessions are at all voluntary. The researcher has asked twelve Magistrates ten questions in a questionnaire regarding admissibility of confessional statement. In answer to first question, “How many of the accused confess their guilt voluntarily?”, 55% of Magistrates have answered that only 10% of the accused confess their guilt voluntarily and 25% of Magistrates said the figure is 30%. If the accused do not want to confess, 83.33% of the respondents answered that they are not sent back to police remand but 16.67% answered Yes.



The right to remain silent is available the moment a person is considered as accused and this right is not only in court proceedings but also during investigation of a crime.<sup>xxxiii</sup> Therefore in order to claim the protection under Article 35(4) of Constitution of Bangladesh against testimonial compulsion, it must be shown, firstly, that the person who made the statement was accused of an offence, secondly, that he made his statement under compulsion; else the benefits of the guarantee under Article 35(4) of Constitution of Bangladesh will not be available.<sup>xxxiv</sup>

#### **Principles and Conditions for Appreciation of Confessional Statement**

Sections 164 and 364 of the Code of Criminal Procedure<sup>xxxv</sup> provide how the confession should be recorded and signed. Sections 24 to 30 of the Evidence Act<sup>xxxvi</sup> and Rules 78 and 79 of CrRO(Criminal Rules and Order)<sup>xxxvii</sup> deal with admissibility and inadmissibility of confessional statement. Also in a plethora of judicial pronouncements the principles have been laid down for governing the recording of confessional statement, its admissibility and use as evidence and the norms of appreciation as to its reliability and forming the basis of conviction.<sup>xxxviii</sup>

#### **Legal Requirements for Recording Confessional Statement**

Recording of confessional statement is a matter not only of form but also of substance. The recording Magistrate should make his real endeavor for ascertaining that the accused is making the statement voluntarily and should record the confessional statement by strictly following the provisions of sections 164 and 364 of the Code.<sup>xxxix</sup>

When the accused is produced from the police custody, it is the duty of the Magistrate to remove fear of police torture from the mind of the accused. When the accused was produced from police custody and again he was sent back to the police custody after recording the confessional statement, conviction based upon such confession was held to have suffered from legal infirmity.<sup>xl</sup> There is no legal requirement to inform the accused that he would not be remanded to police custody even if he does not make any confession. But of course, if the Magistrate has any

reason to believe that the accused is under apprehension of police, he may assure him so. Therefore, for mere omission in informing the accused that he would not be remanded to police, the confessional statement will not take away the voluntary character of the statement.<sup>xli</sup>

Confession should be recorded in the words of the accused, but it is not always correct to say that confession not recorded exactly in the words of the accused is inadmissible.<sup>xlii</sup> The Form (M-45) used for recording the confessional statement by the Magistrate itself is a small guiding booklet. The left margin of the form contains certain instructions. The Form states, inter alia:

Magistrates should clearly understand the great importance of giving their closest attention to the procedure to be followed, from first to last, in the recording of confessions. This procedure should be followed without haste, with care and deliberation, it being understood that this duty is not a distasteful and minor, appendage or addition to their normal functions, but one which is of consequence to the confessing accused, his co-accused and court responsible for the administration of criminal justice.<sup>xliii</sup> A confession which is recorded perfunctorily and hastily is a source of embarrassment to the trial court, the prosecution and the defense.<sup>xliv</sup>

### **Considerations for Ascertaining Voluntary Character of Confessional Statement**

Upon putting questions to and obtaining answers from the accused the Magistrates should form a view and impression about whether the accused person is willing to make his statement voluntarily. The provisions of section 24 of the Evidence Act should be kept in consideration with great importance.<sup>xlv</sup> For example, when an accused is under threat of being sent back to the police remand, he is likely to make a confession out of fear of police torture.<sup>xlvi</sup>

For ascertaining whether the confessional statement is voluntary and true, it is the duty of the Magistrate and trial court to look into how long the accused was under police custody and whether the accused once refused to make confessional statement and after being taken on remand he has again been produced for recording his confessional statement. In the circumstances, along with other materials, that the accused was in police custody for unexplained two days before producing him for making confessional statement, the confessional statement was not considered to be true and voluntary.<sup>xlvii</sup>

Section 29 of the Evidence Act, 1872 sometimes gives rise to grave confusions. When section 24 of the Evidence Act makes it clear that confessions are inadmissible if they are made under threat, inducement or promise by a person in authority with reference to the charge, Section 29 of the same Act is an exception to that circumstance.<sup>xlviii</sup> This section also gives rise to the question whether confessions made under such circumstances can be treated to be voluntary. However, admissibility of a statement made by any of the means or under any circumstances mentioned in section 29 depends on the careful consideration of the entire gamut of the facts and circumstances of a particular case. It must be borne in mind that admitting into evidence does not necessarily mean that the confession should be based upon for recording conviction. The whole circumstances under which the confession was made and recorded must be put under strictest scrutiny along with other evidence on record. Mere reading of section 29 of the Evidence Act without keeping in view the provisions of section 24 of the same Act may result in dangerous consequence.<sup>xlix</sup>

## **Standard and Test to Determine Admissibility of Confessional Statement**

### **Test to Be Applied to a Confession for the Purpose of Determining its Voluntariness**

In case of a confessional statement duly recorded in accordance with law, the presumption is that the confession was freely made. No court can blindly accept the readymade opinions of the recording magistrate.<sup>1</sup> Whether a confessional statement was voluntarily made or not is essentially a question of fact. In ascertaining the voluntary nature of the statement, different tests will have to be applied to different sets of facts. The tests are evolved by constant process of judicial thinking. In the very nature of things, there can be no rigidity about them. What test is best applicable to a given set of facts is for the judge to decide.<sup>li</sup>

If the accused did not complain of any torture, threat or inducement while making the confession and evidence on record also corroborates the statement, the confession, held, is voluntary and true.<sup>liii</sup> Before a confessional statement is relied upon it must be found that it was not only voluntary but also true. Voluntariness and truth together make it worthy of acceptance.<sup>liiii</sup> Once a confession is found to be true and voluntary; a belated retraction will be of no help to the confessing accused. The necessity even of some sort of corroboration in such cases is not a requirement of law but it is usually desired as rule of prudence.<sup>liv</sup>

### **Test to Be Applied to a Confession for the Purpose of Judging Its Truthfulness**

For the purpose of deciding whether a confession could be relied upon as being true, the court must carefully examine its contents, and must then compare them with the other prosecution evidence and apply to them the test of probability.<sup>lv</sup> In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing that without the aid of the confession he would not be prepared to accept, only if on such consideration on the evidence available, other than the confession a conviction can safely be based, then the confession could be used to support that belief or conclusion.<sup>lvi</sup>

When the manner of causing death or the circumstances in which the death was caused as described in a confession is improbable or unnatural, such probability or unnaturalness is a factor which the court must bear in mind when considering the question whether the confession can be accepted as true and reliable.<sup>lvii</sup> If the corroborative evidence on record clearly supports the description given in the confession, the unusual or unnatural character of the circumstances described in the confession loses its significance, and the confession has to be accepted as true, in the absence of anything else, which shows to be false.<sup>lviii</sup>

### **Rationale for Excluding Confessional Statement**

A confession, being a species of admission, is admissible under the general rule governing the admissibility of admissions, unless the confession is shown to have been made in the circumstances mentioned in sections 24 to 26 of the Evidence Act.<sup>lix</sup> Sections 24 to 26 of the Evidence Act are exceptions to the general rule that a confession is admissible as an admission against its maker and it is for the accused who relies upon any of the exceptions mentioned in those sections to show that his case falls within one of those exceptions.<sup>lx</sup>

Now, sections 24 to 26 exclude from evidence only such statement as amount to confessions: and, therefore, if a statement does not amount to a confession none of these three sections will be applicable and the statement will be admissible under section 21 of the Evidence act<sup>lxi</sup> provided that it satisfies the other requirements of an admission and was not made to police officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure.<sup>lxii</sup>

However, a confession proceeding from the wrong state of mind or from hope that it would be better to confess in order to obtain pardon or lenient treatment affects the voluntary nature of a confession.<sup>lxiii</sup> The court is charged with the delicate task of probing the facts which were passing in the mind of the accused at the time of making the confession. Positive proofs of improper inducement, threat / promise are not necessary.<sup>lxiv</sup> In moments of distress a person may wrongly make some utterances without understanding the implication of it and the person to whom those statements are made may deduce any meaning which he may wish to give. Paid informers, treacherous associates, angry victims and over-zealous officers of the law are the persons through whom an alleged confession is presented and whose evidence is needed for corroboration.<sup>lxv</sup>

### **Burden of Proving Admissibility of Confessional Statement**

The rule of prudence is that burden of proving the voluntary or involuntary character of a confession lies upon the prosecution and it is the prosecution to establish, and not upon the accused to negative, the voluntariness of a confession.<sup>lxvi</sup> In the case of judicial confession properly recorded under section 164 and section 364 of the Code, there is, under section 80 of the Evidence Act, a presumption of its having been made voluntarily,<sup>lxvii</sup> but the correctness of this view is open to question.<sup>lxviii</sup> When a magistrate records a confession under section 164 of the Code, he has to certify that he believes the confession to have been made voluntarily, but when the admissibility of a confession is attacked in the court, the court has to be satisfied that the confession was voluntary.

On general principles, however, whether the confession is judicial or extra-judicial confession, the onus is on the accused to show that the confession is inadmissible under sections 24 to 26 of the Evidence Act.<sup>lxix</sup> On the other hand, a confession must be presumed to be made voluntarily unless the contrary is proved.<sup>lxx</sup> Where there is doubt as to the voluntariness of a confession, the onus will on the prosecution to dispel the doubt;<sup>lxxi</sup> and, if the doubt is not removed by the prosecution, the benefit of it will be given to the accused and the confession rejected.<sup>lxxii</sup> The initial burden of throwing some sort of doubt on the voluntariness of a confession is, however, on the accused person, whether the confession is judicial or extra-judicial and he must discharge this burden, if he wishes to question the admissibility of the confession.<sup>lxxiii</sup>

### **Proposal for Reforms and Recommendations**

It is commonly and generally alleged by the confessing accused persons and their lawyers that the confession has been extracted by police torture. Also in many of the retraction petitions and during examination under section 342 of the Code the allegation of mental and physical torture is raised. There is no guideline, nor is there any practice to separately dispose of the retraction petition upon any inquiry into the allegation of torture for compelling an accused to make the confessional statement. However, some proposal for reforms and suggestions have been given below:

- Article 35(4), The Constitution of the People’s Republic of Bangladesh provides “No person accused of any offence shall be compelled to be witness against himself”. If, in fact, confessions are obtained by compelling the accused in any manner, it is clearly violative of the constitutional right guaranteed to the accused. Therefore, the recording Magistrate must be careful in ascertaining whether the accused placed before him for making confessional statement was compelled by torture or by any other manner to make a statement against him. On the other hand, the trial court as well as the appellate court should make a careful scrutiny of the confessional statement, the entries in the Form for recording such statements, comments of the Recording Magistrate and his evidence given in the court.
- Recording of confessional statement is a matter not only of form but also of substance and since the confessional statements alone can form the basis of conviction, the Magistrate should not act mechanically in recording the confessional statements; it is the solemn duty of a Magistrate to strictly follow the provisions of sections 164 and 364 of the Code of Criminal Procedure for avoiding the possibilities of causing injustice.
- There should be a complete guideline or practice to separately dispose of the retraction petition upon any inquiry into the allegation of torture for compelling an accused to make the confessional statement.
- Confessional statement should not be recorded in the jail and should ordinarily be recorded in the court during court hours. Even it may be recorded in the chamber of the Magistrate without the presence of any person. But the real scenario is that confession is being recorded in jail or in a room not a chamber in the presence of the police officer.
- In case of Extra-judicial confession, that confession should be recorded again by the competent magistrate in order to spell out any doubt or involuntariness in the court room or in his chamber.
- The trial court must bring to the notice of the confessing accused the confessional statement while examining him under section 342 of the Code of Criminal Procedure for enabling him to explain the circumstances appearing against him. Therefore, for basing upon the confessional statement it is mandatory that the accused person should be given an opportunity to explain about his confessional statement.
- Handcuff should be removed and Police must be sent out of Court room and the accused must be given time to ponder and explain that he is not bound to make a confession, if he

- makes it, it will be used against him, whether he makes a confession or not he will not be sent back to police custody.
- Delay in recording of confessional statement may or may not be fatal to the retracted confession depending on facts but the cause of delay must be explained by the competent authority recording it and any other concerned authority.
  - An accused's right to remain silent when person in authority interrogate him is very important. It must be clear on the evidence before a confession is admitted into evidence that an accused's right to remain silent is observed and that it is exercised until a decision is given whether the confession is admissible or not.
  - A petition for remand should not be granted where accused does not want to give confessional statement voluntarily, and there shall be a clear certification to the effect that there is no possibility of communication between accused and the police officer.
  - There should be a trial within trial in order to bring out its importance in relation to confession. It is imperative to state in fact that ,not in all cases, where the confessional statement of accused person is brought to be tendered and objected to that a trial court must conduct a mini-trial to determine its voluntariness and consequent admissibility or otherwise in evidence. Trial within trial becomes necessary where an accused by him or through his pleader objects to the admissibility of a confession on the ground that it was not made voluntarily.

### **Conclusion**

Confession is a very sensitive area in our criminal law system. This is due to the fact that it goes a long way to determine the fate of an accused. One of the most important rules in the law of evidence is that a confession cannot be admitted in a criminal trial unless the prosecution has proved beyond reasonable doubt that it is true and has been obtained voluntarily, that is, it was not obtained from the accused by fear of prejudice or hope of advantage exercised or held out by a person in authority, or by oppression. A single confessional statement, if considered to be true and to have been obtained voluntarily is sufficient to ground a conviction. This implies that, peradventure an oversight had been made in obtaining a confessional statement, and the court goes ahead to admit such, gross injustice would have been occasioned by convicting an innocent person wrongly. In avoiding this possibility, it is important that some rules and practices that relate to confessions be reviewed in a way of ensuring that justice is enthroned. This is because, as much as the doctrines of confessions can go a long way in promoting justice, if they are not correctly exercised, they can be a medium for the perpetration of injustice.

## Endnote

---

- i Farlex, 'Confession', the Free Dictionary <http://legal-dictionary.thefreedictionary.com/confession> accessed on 11.7. 2015 at 1.45 am.
- ii Black's Law Dictionary, p.338 (9<sup>th</sup> ed.2011)
- iii Monir M., 'Law of Evidence', p.426 (2<sup>nd</sup> ed. 2013)
- iv The Code of Criminal Procedure, 1898 (Act NO. V of 1898), CrPC§ Section 164(2) (1898).
- v The Code of Criminal Procedure, 1898 (Act NO. V of 1898), CrPC§ Section 164(2) (1898).
- vi The Code of Criminal Procedure, 1898 (Act NO. V of 1898), CrPC§ Section 164(3) (1898).
- vii The Code of Criminal Procedure, 1898 (Act NO. V of 1898), CrPC § Section 164(3) (1898).
- viii I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.
- ix *The State v. Arman Ali & Another*, 17 BLT (HC) 485; *Dhaneshwar Malik v. Orissa*, CrLj p. 1711
- x RoyAsamanya, 'Evidentiary Value of Confession under Indian Evidence Act 1872', Share Your Essay, <<http://www.shareyouressay.com/119212/evidentiary-value-of-confession-under-indian-evidence-act,1872>> accessed on 15.7. 2015 at 10.38 am
- xi *White v. R.*, PC. p. 18.
- xii Avtar Dr., Singh, 'Principles of The Law of Evidence', p. 365(9<sup>th</sup> ed.2011).
- xiii Ali S,Akkas, 'Law of Criminal Procedure', p. 87(2<sup>nd</sup> Revised ed. 2009).
- xiv Hamidul M,Haque, 'Trial of Civil Suits and Criminal Cases', p. 364(2<sup>nd</sup> ed.2011).
- xv Huq Zahirul, 'Law and Practice of Criminal Procedure',p. 304 (11<sup>th</sup>ed. 2010).
- xvi Monir M., 'Law of Evidence', p. 509(16<sup>th</sup> ed.2013).
- xvii *Id.* p. 439
- xviii *Hazrat Ali &Abdur Rahman v. The State*, 42 DLR 397; *State v. Manik Bala*, 41 DLR 435; *Ramesh bhai Chandu bhai Rathod v. State of Gujrat*, 5 SCC 740, 6 SCALE 469, AIR SCW3391.
- xix Monir M., 'Law of Evidence', p. 443 (16<sup>th</sup> ed. 2013).
- xx *Saiful (Md). Islam & another v. The State*, 25 BCR (HC) 52
- xxi *The State v. Md. Zahurul*, 16 BLT (HCD) 235; 13 BLT136.
- xxii Islam Mahmudul, 'Constitutional Law of Bangladesh', p. 300 (3<sup>rd</sup> ed. 2012).

- 
- xxiii *Selvi vs. Karnataka*, 7 SCC p. 263 (Right against self-incrimination is a vital safeguard against torture and other third degree methods that could be used to elicit information).
- xxiv According to Articles 5, 14 and 1 of Universal Declaration of Human Rights, 1948 (UDHR), International Covenant on Civil and Political Rights, 1966 (ICCPR), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT) respectively.
- xxv Fifth Amendment provides, “No person...shall be compelled in any criminal cases to be a witness against himself.”
- xxvi *Counselman v. Hitchcock*, 142 US p. 547.
- xxvii *Malloy v. Hogan*, 378 US p.1; *Lefkowitz v. Cunningham*, 431 US p. 801.
- xxviii Schwartz, '*Constitutional Law: A textbook*', p. 276 (2<sup>nd</sup> ed. 1979).
- xxix The Evidence Act, 1872 (Act No I of 1872), Evidence Act§ Section 132 (1872). A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind...
- xxx The Code of Criminal Procedure, 1898 (Act No. V of 1898), CrPC § Section 340 (1898). Any person against whom proceeding are instituted in any such court under section 107, or under Chapter X, Chapter XI, Chapter XII, or Chapter XXXVI, or under section 552, may offer himself as a witness in such proceedings.
- xxxi Islam Mahmudul, '*Constitutional Law of Bangladesh*', p. 303 (3<sup>rd</sup> ed. 2012).
- xxxii Shamsul A.K.M., Huda, '*The Constitution of Bangladesh*' p. 480 (1<sup>st</sup> ed.1997).
- xxxiii Islam 'Mahmudul, '*Constitutional Law of Bangladesh*',p. 304 (3<sup>rd</sup> ed. 2012).
- xxxiv Shamsul A.K.M., Huda, '*The Constitution of Bangladesh*' p. 481 (1<sup>st</sup> ed. 1997).
- xxxv The Code of Criminal Procedure, 1898 (Act No. V of 1898), (1898).
- xxxvi The Evidence Act, 1872 (Act No I of 1872), (1872).
- xxxvii The Criminal Rules and Orders( Practice and Procedure of Subordinate Courts), Vol- 1,CrRO § Rules 78,79 (2009)
- xxxviii Sarfaraj S., Hamid, '*Police System of Bangladesh: A Study*', South Asian Journal of Multidisciplinary Studies (SAJMS), Volume II Issue II, 2015, p5
- xxxix The Code of Criminal Procedure, 1898 (Act No. V of 1898), (1898).

- 
- x<sup>i</sup> *State v. Abul Hashem*, 3 MLR (HCD) 30.
- x<sup>ii</sup> *Dipok Kumar Sarkar v. State*, 8 BLD (AD) 109.
- x<sup>iii</sup> *Nausher Ali Sarder and Others v. State*, 39 DLR (AD)194.
- x<sup>iiii</sup> Tarek Mahmud, '*Multiplicity of Problems Hinder Criminal Justice*', the Daily Star, February 11, 2014, Editorial p.15.
- x<sup>iv</sup> The Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), Vol- 1,CrRO §Rules 78,79 (2009)
- x<sup>v</sup> The Evidence Act, 1872 (Act No I of 1872), Evidence Act § Section 24 (1872).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 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.
- x<sup>vi</sup> Humayun Kabir, '*Abusive Police Remand to Extract Confessional Statement*', the Daily Star, November 18, 2014, OP-ED p. 15.
- x<sup>vii</sup> *State v. Farid Karim*, 8 BLT (AD) 87.
- x<sup>viii</sup> The Evidence Act, 1872 (Act No I of 1872), Evidence Act § Section 29 (1872). 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 practiced 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.
- x<sup>ix</sup> Shaila Hasan, '*About Confessional Statement, Legal Requirements for Recording, Its Use and Evidentiary Value*', BlogSpot<<http://shailal1b.blogspot.com/2009/02/about-confessional-statement.html>> accessed on 8.8.2015 at2.03 am.
- <sup>1</sup> Huq Zahirul, '*Law and Practice of Criminal Procedure*', p. 310(11<sup>th</sup> ed. 2011).
- ii *Id.*p.311
- iii *The State v. Lutfar Fakir*, 24 DLR 217; *Faqira v. The State*, 18 DLR (SC) 283.
- liii *Moslemuddin and another v. The State*, 48 DLR 517.
- liv *The State v.Tajul Islam*, 48 DLR 305.

- 
- lv *Sadequr Rahman v. The State*, 61 DLR (HC) 498; *Sarwan Singh v. State of Punjab*, AIR (SCJ) 637, SO 699, Cr LJ 1014, SCR 953.
- lvi *Chandrakant Chimanlal Desai v. State of Gujrat*, 1 SCC 473; Cr LJ2757
- lvii Monir M., '*Law of Evidence*', p. 442 (16th ed. 2013).
- lviii *State v. Md. Fazlur Rahman*, 60 DLR (HC) 169; *Ram Chandra v. State of Uttar Pradesh*, AIR (SC) 381; Cr LJ559.
- lix Monir M., '*Law of Evidence*', p. 455 (16<sup>th</sup> ed. 2013).
- lx *Asgar v. State*, 9 DLR 511; *Nazir khan v. State of Delhi*, AIR (SC) 4427; 8 SCC 461.
- lxi The Evidence Act, 1872 (Act No I of 1872), Evidence Act § Section 21 (1872). Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest.
- lxii *Siddiqur Rahman v. State*, 1987 (BLD) 93; *Rasul Haque v. State*, 14 BLC (HC) 865; *Narayana Swami v. E.*, AIR, PC p.47; 40 Cr LJ p.364, 180 IC p.1; 41 Bom LR p.828.
- lxiii Zakir Md., Hossain, '*Investigation and Trail of Criminal Cases*', Jati (Judicial Administrative Training Institute) Journal, Volume XIII, January 2014, at 59.
- lxiv Ibraheem, Ojo Tajudeen, '*The Relevance of Confessions in Criminal Proceedings, International Journal of Humanities and Social Science*', Vol. 3, No. 21, 2013, <<https://www.search?q=admissibility+of+confessional+statement+in+bangladesh&ie=utf8&oe=utf-8>> accessed on 11.08.2015 at 12.26 pm
- lxv *Id.* p. 298, 299
- lxvi Monir M., '*Law of Evidence*', p. 449 (16<sup>th</sup> ed. 2013).
- lxvii *The State v. Arman Ali & Another*, 17 BLT (HC) 485; *The State v. Lutfar Fakir*, 24 DLR 217
- lxviii *Alamgir Hossain (Md) v. State* 10 MLR (2005) (HC) 357
- lxix Monir M., '*Law of Evidence*', p. 450 (16<sup>th</sup> ed. 2013).
- lxx The Evidence Act, 1872 (Act No I of 1872), Evidence Act § Section 80 (1872).
- lxxi *Alauddin Khan Pathan and ors v. The State*, 19 BLD (HC) 74
- lxxii *Md. Akbar Ali & others. The State*, 7BLT (HC) 317
- lxxiii *Khalil Miah v. The State*, 7 BLT (AD) 24