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Need to re-examine the scope of extra judicial confessions in India: An Underlying substructure of evidence

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ABSTRACT

Extra judicial confession refer to the ones where the accused makes a confession to any authority other than the Judges or magistrates. This includes the confessions made to the police men too. These confessions are not so reliable in nature. Only if the confession is proved to be voluntary, then it has the same effect of any other confession made by the accused. Landmark judgments on the extra judicial confessions have mentioned that extra judicial confession as a weak piece of evidence. This paper tries to analyze the concept of extra judicial confessions in general and the reasons behind the weak consideration of the same. Also the credibility test that is imposed on this confession is critically evaluated. The reasons behind the poor consideration of the extra judicial confessions as a sufficient tool of evidence is the first issue that has been dealt I this paper. Secondly, the ambit of this extra judicial confession is broader than the judicial confession under Section 164 of the Criminal Procedural Code but the credibility test imposed on the same is failed in most cases. It is the rare of the rarest circumstances when these confessions are considered to be a valid piece of evidence to proceed the case. This issue is being deeply analyzed in this paper. Thirdly the decisions of the court in appreciating these confessions is critically analyzed since there is a huge growth and positive approach by the courts towards these confessions recently.

Keywords: Confessions, Credibility and voluntariness.

I. INTRODUCTION

The Extra judicial confessions are the ones that are made by the accused to anyone other than the judges of the tribunal or any competent authority. In India the extra judicial confessions are covered by the Indian evidence act in the sections 24 – 29 where the act talks about confession, admissibility and applicability of the same. By relying upon the same certain judgments have been passed either in support or against the admissibility of the extra judicial confessions as a sufficient tool of evidence to act in a case. Here, the position of reliance of

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the extra judicial confession is the main focus since in major cases these confessions are considered to be weak and thus ignored. Secondly the paper analyzes the elements put forth by the courts in order to declare these confessions to be credible. All these analysis is done with the support of cases in India and also other countries since there are contradicting opinions of the court regarding the extra judicial confessions.

II. SCOPE OF EXTRA JUDICIAL CONFESSIONS UNDER VARIOUS PROVISIONS OF LAW

While dealing with the scope of the extra judicial confessions, two things must be brought into the discussion. Firstly the authorities to whom the extra judicial confession could be made or the authorities that are considered to be competent enough to make such confession qualify as an extra judicial confession. Secondly the manner in which such confession could be made. That is in what all possible methods or manners or forms these confessions qualify as an extra judicial confession. These two elements determine the scope of the extra judicial confessions.

The extra judicial confession as defined under the US legal dictionary says that *“Extrajudicial Confession is a confession made out of court, and not as a part of a judicial examination or investigation. Such a confession must be corroborated by some other proof of the corpus delicti, or else it is insufficient to warrant a conviction”*.² In Indian scenario the definition is taken from the Section 164 of the Cr.p.c³ explains the same but restricted to the confession being made only to the magistrate. It reads as *“Any statement (other than a confession) made under sub- section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.”* But then section 27 of the Indian Evidence Act indirectly talks about the same by stating 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.”*⁴ By this definition it could be understood that the confession made to the police officer could be considered to be a proof if it relates to the fact by which the accused has been brought into the said situation. It could be also understood that the extra judicial confessions can include the ones made by the

²US legal dictionary.

³ Sub section 5 of section 164 of the Criminal Procedural Code.

⁴Section 27 of the Indian Evidence Act.

accused to the police men too. Also the confessions made to the magistrate when he is not in his judicial capacity will also fall under the ambit of extra judicial confessions. So when an accused meets the magistrate or the judge or any other competent authority of the court appointed by the government and confesses a statement that could be considered as an extra judicial confessions when such a confession is not made in the court or at the time of such authority not executing his judicial capacity.

Secondly the manner in which these confessions could be made. These confessions need not necessarily be the statements given by the accused to any kind of authority mentioned above. It could be anything that relates to the fact for which the accused is being tried. It could be any form of statement or message that has been sent to anyone that confirms or in any way relates to the facts by which the accused could be proved for or against him. For example, a man after murdering his wife writing a letter to his friend explaining the same if found by the police can be considered to be an extra judicial confession. Similarly a confession made to a priest in the church relating a crime committed by the accused could also be considered as an extra judicial confession.

The above mentioned type of confession is also known as the confessions obtained by promise of secrecy⁵ under Indian Evidence Act. Under this provision, the confession made by the accused by receiving a promise of secrecy can also be considered to be a confession if such confession is relevant to the facts of the case. Hence by this provision the above mentioned prayer can be brought under the ambit of extra judicial confessions.

III. ELEMENTS TO QUALIFY THE EXTRA JUDICIAL CONFESSIONS:

There are certain elements that are imposed by the courts as mentioned earlier that would qualify these extra judicial confession to be considerable enough in the cases. These elements were together introduced in the case *Sahadevan & Anr. v. State of Tamil Nadu*.⁶ This includes the following conditions.

- The confession to be a statement made out of guilt
- It must be made voluntarily
- It must be truthful and thus inspire confidence.

These are considered to be the basic three elements that are also covered under the credibility test which is essential for making a conviction based on an extra judicial confession.

⁵Section 29 of Indian evidence act.

⁶2012 AIR (SCW) 3206.

IV. VOLUNTARINESS UNDER POLICE CUSTODY:

Under section 25 and 26 of the Indian evidence act, any confession made to a police officer while in his custody will not be proved against the accused. This means that those confessions made to anyone other than magistrate while being in a police custody will be considered to be a forced one and thus ignored in the eyes of law. But the extra judicial confession is an exception to the same. Here when an accused makes a confession voluntarily to the police or to other individual/ individuals while in the police custody will be considered valid and can be proved against him. But in most cases even if the confession is made voluntarily to the police officer, it is considered to inadmissible. Such as the case of *State of Punjab v. Barkat Ram*⁷ the court held that even if the police officer who received the confession was not exercising his duty, the confession would be still inadmissible. This opinion was supported in other cases like *PakalaNarayana Swami vs Emperor*⁸.

V. DRAWBACKS OF THE CUSTODIAL CONFESSIONS:

The major drawback of the poor consideration of the extra judicial confession or as weak piece of evidence is mainly because of the restrictions imposed under section 25 to 27 of Indian evidence act and section 162 of Cr.P.C. These provisions strictly exclude the confession made under police custody to be admissible even if they are voluntary in nature. The objective of these provisions though is to offer a protection of the accused from being forced, induced or tortured to tell the same does not necessarily act the same way. They on the other hand stops every confession made voluntarily by the accused to be covered by the opinion of inducement by the police officials and thus the courts does not necessarily look into the credibility of the same. By these unnecessary doubts by the judiciary on the police, the concept of extra judicial confessions itself is in danger in most cases⁹. By which the police or any individual receiving the confession is stopped from exposing a truth or anything that might play a vital role in the proceedings of the case. Hence in this aspect, the judiciary bars the police or executive system of the government from contributing to the society's better benefits. For example, in a case where the accused confessed to a street vendor about a crime that he committed was ejected on the mere basis of him being under a police custody at the time of that confession though the police officer left him there and went somewhere. This mindset of the judiciary towards the extra judicial confessions is a major drawback to itself.

⁷ AIR 1962 SC 276

⁸ AIR 1939 PC 47

⁹ *Dindyal v. State of Chhattisgarh*.

VI. RECENT APPROACH OF THE JUDICIARY:

In the case of *Kishore Chand v. State of Himachal Pradesh*¹⁰, the court held that “to take extra-judicial confession under section 164 of Cr.P.C which has got more probable value and it gives an opportunity to make the required warning, that this confession will be used against the accused and after this warning he records the confession. Under section 26, no confession made by an accused to any person while in custody of a police officer shall be proved against him.” But in the case of *Ram Lal vs. State of Himachal Pradesh*¹¹, the Supreme Court held that “If the court is satisfied that if the confession is voluntary, the conviction can be based upon the same. Rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.” Absolutely right! There can be no denying it”. This judgment was passed by relying on the case of *State of Rajasthan v. Raja Ram*¹² where the court held that “An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made”.

VII. CONCLUSION:

Indian judiciary has now reached a point where the extra judicial confession is also given considerable importance and a similar importance must be given to the ones made in police custody too. If such an approach is carried out in the nearest future by the judiciary, the concept of extra judicial confession could be also protected. A relaxation on the sections 25 and 26 of the Indian evidence act will be also appreciated since that is basically an over imposition on the police as well as a major loophole for the accused to escape from the confessions made voluntarily too. After the SC's verdict in the case *Devi Lal v. State of Rajasthan*¹³ where supreme court has affirmed the extra-judicial confession corroborated by other evidences, the scope of extra-judicial confession has been expanded but with the constant insistence of the Judiciary to corroborate with other evidences. The reexamination of the scope of extra judicial confession will have meaningful impacts in the criminal justice system and also pave the way to efficient working mechanism of the executive. This can also be a good move towards supporting the circumstantial evidence to tackle the rise of criminal

¹⁰ [1991] 1 S.C.J. 68, 76

¹¹ CRIMINAL APPEAL NO.576 OF 2010

¹² (2003) 8 SCC 180

¹³ Criminal Appeal Nos. 148 and 149 of 2010, *Devi Lal vs. State of Rajasthan* (08.01.2019 - SC) : MANU/SC/0034/2019

cases in India.
