

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Confessions made in Police Custody along with Landmark Case Analysis

RIYA RAGINI¹

ABSTRACT

Confession to police not to be confirmed in regard to Section 25 of the Indian Evidence Act, 1872. Due to this, any confession made to the police by the perpetrator should not be regarded as confirming any offence against him. Similarly, Section 26 of the Indian Evidence Act, deals with the accused's confession, but it is not sufficient to prove that he is in police custody. It says that unless made before and against the judge, no confession made by any person in the custody of a police officer must be proved against that person. However it is possible to accept facts discovered subsequent to said confession in the road. In order to prevent undue police violence during the investigation of the perpetrator, all forms of confessions are deliberately and expressly omitted. The confession issued is extremely likely to be subject to influence and not voluntary. Whatever the type may be, actual, articulated, suggested or derived by actions, such a confession would be meaningless.

Keywords: *Police Custody, Confessions, Evidentiary Value, Case Analysis, Afzal Guru, Kasab*

I. CONFESSIONS MADE IN POLICE CUSTODY THEN RETRACTED

Confession to police not to be confirmed in regard to Section 25 of the Indian Evidence Act, 1872. Due to this, any confession made to the police by the perpetrator should not be regarded as confirming any offence against him. Similarly, Section 26 of the Indian Evidence Act, deals with the accused's confession, but it is not sufficient to prove that he is in police custody. It says that unless made before and against the judge, no confession made by any person in the custody of a police officer must be proved against that person. However it is possible to accept facts discovered subsequent to said confession in the road. In order to prevent undue police violence during the investigation of the perpetrator, all forms of confessions are deliberately and expressly omitted. The confession issued is extremely likely to be subject to influence and not voluntary. Whatever the type may be, actual, articulated, suggested or derived by actions, such a confession would be meaningless. The reasons for which this policy was adopted when

¹ Author is a student at Symbiosis Law School, Pune, India.

the act was passed in 1872 are probably still valid.²

This influence of the police on the accused was acknowledged by the English judiciary well before Indian independence. The court claimed in the case of *R v. Ramasamy*³ that, moreover the police power itself, carefully managed, brings a threat to those immediately placed under its shadow, and the statute considers and tackles the possibility of such individuals making incriminating confessions with the intention of placating authority and without regard to the facts of what they say.⁴

In extracting confessions, the Supreme Court noted the general police mindset towards inquiries and police procedures. In the *Dagdu V. State of Maharashtra*⁵ case the court observed, "The archaic attempt to secure confessions by hook or crook seems to be the whole and the end of the police investigation." The police should note that the solution to confession may not always be a short-cut. They should aspire to "arrive" at it rather than attempting to start" from a confession. Else, strong evidence can vanish while they are busy on their short-route to success because of inattention to real clues. If a confession is acquired, there is always flagging of zeal for a full and through inquiry in order to assess the case de hors the confession, then, for one excuse or another the case fondles in the court, being inadmissible.⁶

In *Reg v. Navroji Dadabhai*⁷, in this case defalcations were found in the accounts of the defendant, who was a booking officer of the firm, a travelling inspector within the services of G.I.P Railway Co., went to him and told him that he needs pay the money otherwise he would be imprisoned, adding to it that it would be beneficial for him to state the truth, after which the accused was brought before the traffic manager in whose presence, he admitted his fault and signed the receipt. The trial had begun for the accused for the criminal breach of trust. It was held finally that it admitted under the pressure and there was certain inducement on accused to agree with all the charges and because of this his statement was inadmissible.

The court may opt to consider part of the argument that is not guilty when retracted. In the case of a confessional FIR, only a fraction of the non-confessional FIR is admissible and the remainder will be used as evidence. In the case of confessions after the investigation and before the accused, any such assertion is therefore similarly meaningless before the allegation of any offence. This does not have an impact on the mere appearance of a police officer. Where the

² Confessions and Statements of Accused Persons, 1-8 (2020).

³ *The Queen v. Ramasamy*, 64 C.N.L.R. 265 (P.C.) at 268 (1964).

⁴ *The Queen v Murugan Ramasamy alias babun Ramasamy (Ceylon)* | [1964] UKPC 35 | Privy Council | Judgment | Law | CaseMine, Casemine.com (2020).

⁵ *Dagdu V State of Maharashtra*, SCR (3) 636 (1977).

⁶ *Dagdu & Others Etc vs State Of Maharashtra* on 19 April, 1977, Indiankanoon.org (2020).

⁷ *Reg vs. Navroji Dadabhai*, (1872) 9 BHC 358.

confession is offered to someone else and the policeman is just casually present and overhears it the voluntary essence of the confession will not be destroyed. But if that person is a police secret agent deputised for the very purpose of receiving a confession, the defect of being a police confession would suffer.

II. CONFESSION MADE WITH POLICE THEN RECORDED BY MAGISTRATE RETRACTED

This method is provided under Section 164 of Criminal Procedure Code, is to establish a secure mode of recording reliable record of statements or confessions in course of police investigations. These can be used in a trial. A Court is obliged to assume, according to Section 80 of the Indian Evidence Act, that a declaration or confession of a convicted person, obtained in conformity with the law and purporting to be signed by any judge or magistrate, is authentic and that the certificate or note as to the conditions under which the person who signed it was presumed to have been made is valid and that such a statement or confession is true.

Evidence of extra-judicial confession may be in writing or oral extra-judicial confession. In the case of a written confession, the writing itself would be the strongest testimony, but if the person before which the confession was made is not present or is missing, it will be created to depose that the perpetrator made the declaration before him. If the confession has not been registered, the individual or people before which the defendant made the admission should be brought before the court and the statement made by the defendant should be proved.

In the case of *Pyare Lal Bhargava vs. State of Rajasthan*⁸, the supreme court made certain things clear with respect to the retracted confession. If the court is satisfied with the statement given by the person and it falls within all the favorable circumstances and makes a strong connection in line with the case and if found that it was voluntarily made than even if the statement has been retracted it becomes a legal basis of conviction. But it was decided that it can be admitted just like that without the corroboration of the evidence. It was held that it is not recommended to rely on a retracted confession.

A confession's evidential worth depends on its voluntary existence and the consistency with which it is replicated, and therefore the section offers provisions to protect this end. Since admissions are frequently revoked at a later date, these protections are of considerable value and it becomes important for the Court to determine if the supposed confession was genuinely and willingly made. The very fact that a confession is withheld does not make it admissible as

⁸ AIR 1963 SC (1994).

testimony, but the Court must scrutinise and consider any such confession with the utmost caution.

In the case of *Puran S/O Sri Ram v. The State of Punjab*⁹, the Supreme Court ruled that it is not wise to base a conviction on its own power in a criminal case unless a retracted confession is corroborated in material information. The Court also referred to the exceptional circumstances of the previous declaration in the case of *Muthuswami vs. State of Madras*¹⁰ that, although there is a high degree of confidence that the confession is true given the unusual circumstances under which it was made or judged on the suspected or obvious grounds of removal, it remains high.

III. ANALYSIS ON AFSAL GURU CASE

State v. Mohd. Afzal and Ors.¹¹: Most commonly referred as the *parliament attack case*. It is one of the historic cases in independent India where the State's sovereignty is at stake. It was also one of the cases where the court's decision was demanded by the public and so many critics questioned the judgment delivered by the apex court and also raised questions such as whether the decision of the court was a stain on India's democracy. This case also involves the apex court's take on the admissibility of electronic records and the Supreme Court's discussion on the right of the accused. The three general grounds of analysis in this case are, regarding legal assistance provided to the accused, Judgment on circumstantial evidences, sentencing capital punishment based on collective consciousness. The party accused were charged of various acts like Indian Pena Code, Prevention of Terrorist Act (POTA) and Explosive Substance Act for section 302 with section 120 – B of the IPC and section 3(2) of POTA. The accused Navjot Sandhu was acquitted of all he charges except for the concealing with the intent to facilitate design to wage war under section 123 of IPC.

In examining the confession of the co-accused, the Court may have taken the following recommendations into account, as set out in *Ahmed Anr. V. State of Rajasthan*¹², 'With regard to the use of a confession against a co-accused party, it must be held that even in cases where the court is convinced that the probative value of such a confession is such that it does not require corroboration, general corroboration should be pursued as a matter of caution. It can also base a verdict without corroboration on the grounds of such a confession by the co-accused. However this is an exception to the general rule that corroboration is necessary where

⁹ Puran, S/O Sri Ram vs The State of Punjab, 1953 SC 459 (1952).

¹⁰ Muthuswami vs State Of Madras, AIR 4 SC (1954).

¹¹ State vs Mohd. Afzal and Ors. (Parliament attack case), 71 DRJ 178 (DB) (2003).

¹² Ahmed anr. V. State of Rajasthan, (9) SCC 673 (2003).

such a confession is to be used against a co-accused person.

When used against both the producer and the co-accused, the substance of the evidence is of a general sort, until the court determines that such corroboration should be based on the material facts of the case and that in any case, a common principle or proposition should not be introduced and extended because the facts of each case differ. In the present situation, the confession against the manufacturer and the co-accused is of an utterly general kind and in the specific case, there are no reasonable reasons for the Judge, even without general corroborative evidence, to base the prosecution on the testimony of the co-accused. One of the main concerns on the part of the appellant was the inadmissibility of the electronic documents (cellphone call records) given by the defence for use in the appeal. On behalf of the complainant, the prosecutor raised the problem of authenticity and dependency on the telephone records generated by the prosecution.

Records are losing their credibility and there was no certificate given by the prosecutor under Section 65 B (4) of the Evidence Act that is required to acknowledge any electronic document. In the absence of a certificate provided pursuant to subsection (2) of Section 65B of the Indian Evidence Act, it is not possible to use the material generated by the electronic document as evidence, and in the absence of a 'competent' witness accustomed to machine activity, the secondary evidence referred to in Section 63 is also inadmissible during the printing process.

The apex court concluded that the cross-examination of the competent witness who had been familiar with the working of the system during the period in question and the manner in which the printouts of the call records had been taken was sufficient to show that the call records had been registered.

Therefore in order to reform the Indian justice system, it is important that new laws be enforced and that judicial pronouncements be minimised so that the accused can in any event, take advantage of any technical complaints that might help his acquittal even after the crime has been committed.

IV. DIFFERENCE BETWEEN AFSAL GURU AND KASB CASES JUDICIAL INTERPRETATION

*Ajmal Amir Kasab v. State of Maharashtra*¹³ As the brutal events of 26/11 unravelled before our eyes, the entire country of India knows the truth of this situation. The justification for four long years of delay in the judgement was India's adherence to the rule of law and the need to

¹³ *Ajmal Amir Kasab v State of Maharashtra*, AIR SC 3565 (2012).

obey the due process of law. The court named Kasab's counsel, S.G. Abbas Kazmi first applied for an inquiry into Kasab's age under section 7(A) of the Juvenile Justice Act, 2001, on the grounds that he may be a juvenile.

The superiority of democratic values is demonstrated by providing a decent road to the kasab or any activist. In its Judgment of Afsal guru case the Supreme Court ruled that afzal deserves to hand over to satisfy the country's collective consciousness," the court did not take into consideration the fact that he did not have a suitable defence counsel. This hasty decision was the cause for a huge uproar in Kashmir and also in the EU against the Indian judiciary, where questions about denial of fair trial are posed.

The court has set a message that the police are free to do what they please in the case of criminals of these kinds by refusing equal trail. For their personal motives of 'Jihad,' both kasab and Afsal guru have fought war, but under internal law they should not be treated as alien enemies and the constitution of India does not deny anybody of their freedom, be it an alien as well. Under Article 22(1), any person detained should be told of the reasons for his or her detention and have the right to meet with a legal practitioner and to protect him or her. And the detained person should be taken before a magistrate within 24hrs, according to 22(4). As learnt from failures in the Afsal case, these rights are guaranteed to Kasab.

But certain procedural rights which have been evolved by the Supreme Court have not been followed in this case. In the case of *Nandini Satpati v. P.L. Dani*¹⁴ legal representation was allowed during custodial interrogation and in the case of *A.K. Roy v. Union of India*¹⁵ the Supreme Court held that even if an accused is denied legal representation statutorily he or she is entitled to a common right of representation through a friend. In *M.H. Hoskot v. State of Maharashtra*,¹⁶ the right to free legal aid has been given a constitutional status by including it in Article 21 of the Indian Constitution. Ajmal Kasab and Afsal Guru may have been indefensible in court of law with the view of the brutal acts committed by him and his accomplices but every person in India, even an alien is entitled for a free and fair trial. So, while putting this issue to rest we can conclude that they did get a free and fair trial.

Both of them Ajmal Kasab deserved the death sentence for the offences under Section 120-B, read with Section 302, of the Indian Penal Code, Section 121 of the Indian Penal Code, and Section 16 of the Unlawful Activities (Prevention) Act, 1967. Both these men portrayed exceptional cruelty, the manner in which he committed the murders was inhuman. The

¹⁴ *Nandini Satpati v. P.L. Dani*, SCR 3 608 (1978).

¹⁵ *A.K. Roy v. Union of India*, SCR (2) 272 (1982).

¹⁶ *M.H. Hoskot v. State of Maharashtra*, SCR (1) 192 (1979).

confessional statement confirms the extreme brutality in which Kasab killed the navigator Solanki. Both of them joined their militant groups voluntarily and conspired. In the landmark judgment of *Bachan Singh v. State of Punjab*¹⁷ the court laid down laid down guideline when death penalty should be awarded and this case fits right in.

For a person who murdered children, women, elderly people and police officers, there is simply no space for recovery, and they have never displayed any expression of regret or remorse. They knew the repercussions of their acts well in advance and preferred to be part of the conspiracy. They indulged themselves in the mindless assassination of innocent persons. Ajmal Kasab and Afsal Guru are persons who have attacked India's government and Indian sovereignty and are absolutely fair for actions such as the most extreme penalty.

V. EVIDENTIARY VALUE OF RETRACTED CONFESSION AND WHETHER THE APEX COURT SHOULD ACCEPT THEM

A retracted confession is a declaration made during the trial by a convicted party who acknowledges he has committed the crime but who retracts it at the trial. Any police officers continue investigating the matter after the commission of a crime, interviewing witnesses and the accused. When the accused is satisfied that the crime has been committed, he submits a complaint to a judge with authority over the matter. The facts and the convicted are investigated by the judge. If the accused is willing to accept the guilt during the investigation, the police officer refers the accused to any magistrate to record his testimony. After the magistrate is convinced that the accused agrees in his testimony that this documented declaration by the magistrate perpetrated the felony, it can be proven at the tribunal.

In order to take account of this fundamental privilege, section 24 to 30 of the Evidence Act have been enforced by removing from evidence all self-incriminating claims that have not been rendered voluntarily.¹⁸ A right to withdraw is important because a withdrawal places the court on investigation as to the voluntary essence of the confession.¹⁹ In addition to withdraw from what was previously said has to be taken as extension of the civil liberty.

When the trial starts, the complainant would say that he did not commit the crime when asked if he had committed the crime. The query could again be raised to him as to why he made a declaration confessing guilt before the magistrate during the inquiry. He may deny that he made the comment at all, or he may say that he made the statement because of the police's excessive

¹⁷ *Bachan Singh v. State of Punjab*, AIR SC 898 (1980).

¹⁸ *Ram Lalwani vs. The State* 1981 CriLJ 97 (Del)

¹⁹ *Emperor v. Krishna Babaji* (1933) 35 BomLR 728

influence. In this situation, the accused's confession to the judge before the trial starts is considered retracted evidence.²⁰

It is dangerous to base the conviction on a revoked confession until it is corroborated with trustworthy evidence. There is no definitive statute that a retracted confession can not be the basis of the conviction, but it has been established as a rule of practise and prudence not to rely on a retracted confession unless proven. Courts have accused people of retracted confession because they conclude that when it was made the confession was voluntary or consistent and valid, but the actual rule of law regarding the retracted confession is where the retracted confession is the only proof that it may be of no validity, particularly when it is made during the pardon competition, which frequently happens when there are several accusations.

A number of persons are most commonly guilty of murder or impunity or some other offence. Some of the defendants decided to admit guilt over the assurance that the person in charge of the trial will make him a witness in the case, which is based on valid and independent facts. It is not uncommon to see situations where a young man is coerced to admit any blame due to pressure or terror. While the remarks made to the authorities by the confessing convict should not be used as testimony against him in his defence he can rely on those claims himself. The accused's allegation in FIR that he killed his partner, delivering her a deadly blow while there was some definitive proof of her indiscretion, was not helpful against him to determine his guilt.

In the case of a retracted confession, no clear and fast law can be established on the importance of corroboration in order to base a verdict on it. But it may be necessary to require corroboration of the revoked confession, aside from the general law of prudence in which the circumstances of a particular case pose a doubt of the genuineness of the confession. It is genuinely left to the discretion of the court to accept those confessions on a case-by-case basis, having specified the complexities of a retracted confession.

²⁰ Legal India, Confession under Indian Evidence Act Legalservicesindia.com (2020).