

SECTION 24: Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding.—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.

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. The term “confession” has not been defined in the

Evidence Act. As stated earlier an admission by the accused is regarded as confession. Sir Stephen in his Digest of the Law of Evidence has defined that “a confession is an admission made at any time by a person charged with crime stating or suggesting the inference that he committed a crime.” Thus, the confession is an acceptance of the guilt of the accused. According to Sir Stephen, any statement made by an accused charged with offence at any time, even before the arrest, may be regarded as confession according to Section 24 the confession made by the accused is irrelevant on the following grounds:

1. The confession is the result of inducement, threat or promise;
2. The inducement, threat or promise has come from a person in authority;
3. The inducement, threat or promise relates to the charge in question;
4. The inducement, threat or promise holds out some worldly benefit or advantage.

Thus the Section 24 lays down the rule of exclusion of confession which is not voluntary.

1. Confession caused by inducement, threat or promise:

If a confession is not free and voluntary and is obtained by force or violence such confession is not admissible. Where there is element of inducement, threat or promise in making confession before person in authority, the confession should not be

admitted. A confession can only be admitted if it appears to the court that confession is voluntary. Any threat or promise used by the person in authority in getting confession it will not be taken into evidence. A gentle threat, slightest inducement or a very little hope of advantage may taint confession.

It is sufficient for excluding a confession that appears to have been result of an inducement, even if it is not proved that the inducement reached the accused. When the accused has not made any complaint that the confessional statement made by him was under pressure or compulsion, such confessional statement must have been made voluntarily.

A confession made by the accused because he thought it best that by doing so he could have hoped to avoid the discovery of his entire scheme of conspiracy to misappropriate the large amounts of assets of Insurance Co., is not voluntary.

2. Person in authority:

A person holding a special legal status has authority to influence the proceeding against the accused. “A person in authority for the purpose of this section must be a person who stands in such relationship to the accused as to imply some power of control or interference in regard to his prosecution.” For example, the magistrate police officers, prosecutor, government officers, doctors departmental heads etc. “A person in authority within the meaning of Section 24 should be one who by virtue of his position wields some kinds of influence over the accused.” The father is not person in authority.

3. Inducement, threat or promise relates to charge:

The inducement, threat, promise etc. must be related to the charge in question. The person against whom charge has been framed must have been forced to give confessional statement by the person in authority. The inducement, threat or promise must have reference to the present case not other cases. An accused was charged with murder and promise was made that if he confesses the truth in the present case, he will get benefit in another case the promise is not related to the present case, so the confession is valid.

4. Benefit or advantage Worldly or temporal nature:

The inducement, threat etc. would be sufficient to convince the mind of the accused that he would get some advantage or avoid evil of temporal nature. Where a person charged with murder was made to make confession to Panchayat which threatened his removal from caste for life.

The confession was held to be valid. But mere inducement, threat or promise is not enough unless it is in the opinion of the court that such inducement, threat or promise is sufficient to cause reasonable belief in the mind of the accused and that by confession he would get advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Voluntary and involuntary confession:

It is very often called that all confessions are not the basis of conviction. If a confession is involuntary it is irrelevant. "Under section 298, Cr. PC it is well settled that the determination of all matters of fact on which admissibility of evidence depends is the

province of the judge. Questions relating to the admissibility of evidence are questions of law and must be determined by the judge. It is, therefore, for the judge to decide whether an alleged confession was made voluntarily.” A confession is, therefore, very important piece of evidence.

In the case of *Nirmal Mohan v State of Assam* The Hon’ble High Court after noticing sequences of recording of confessional statements concluded that it was made duly and voluntarily. Before a conviction can be a basis of conviction the court has to come to conclusion that the confession was made voluntarily.” A confession is involuntary when it is made to a police officer or confession given by the accused when he was in police custody. In both cases the confessions are not relevant and cannot be proved under sections 25 and 26 of the Evidence Act. In certain situation the extra-judicial confession or confession made after seizure of documents from accuser’s premises are valid.

SECTION 25 : Confession to police officer not to be proved.— No confession made to a police be proved as against a person accused of any offence.—No confession made to a police officer, shall be proved as against a person accused of any offence.

The policy behind Section 25 is to exclude all confessional statements made by the accused to the police officer under in circumstances while he is in custody of the police except as is provided in Section 27. Section 25 was enacted to put a stop to the extortion of confession. It was, therefore, enacted to subserve a high purposeA confessional statement made by the

accused to the police officer during and after investigation under section 162, Cr. PC is not admissible. But if the statement is treated as one made by the accused to a police officer in the course of investigation, it is hit by Section 162, Cr. PC. A confessional statement was held to be inadmissible if it was made to the police officer after the start of investigation.

The First Information Report (FIR) is not a confession of the guilt. It is in sense admission by the accused and is relevant. Appellant accused whose name was mentioned only in one out of three dying declarations and motive ascribed against him also did not find place in FIR in entitled to acquittal. Section 25 merely forbids the use of confession in criminal cases, but not in civil suit. Admission made to a police officer may be accepted as an admission in civil proceedings under sections 17, 18, 21 of the Evidence Act.

Confessional statement in TADA not to be used in Non-TADA Case:

Some offences under TADA Act were incorporated initially but later on the same were dropped. The trial was also conducted for offences under I.P.C. and not under TADA Act. It was held that the confessional statement made by the accused under the TADA Act cannot be utilised by the prosecution in instant case as charges were framed only for offences under I.P.C.

SECTION 26: Confession by accused while in custody of police not to be proved against him.—No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882)

The section is based upon the same logic that the police in order to secure confession uses all types of coercive methods, because the accused is put in constant fear and forced to confess. “The reason is that a person in the custody of police is presumed to be under their influence and it provides opportunities for offering inducement or extorting confession, but the presence of a Magistrate is a safe guard and guarantees the confession.”

Police custody:

Police custody simply means police control implying restrictions and restraint imposed by police officer. It commences from the time when one’s right to movement is restricted by the police officer. It includes both physical control or temporary restriction imposed on a person. An accused is under police control means he is to stay under direct or indirect police surveillance. An accused made a confession to the police or while in police custody is not relevant unless it has been made in the immediate presence of a magistrate. An accused made a confession to the police or while in police custody is not relevant unless it has been made in the immediate presence of a magistrate

In case of *Kanda Padayachi v. State of Tamil Nadu* reported in AIR 1972 Supreme Court 66, the question regarding admissibility of the statement made by the accused before the

doctor in view of section 26 of the Indian Evidence Act, 1872, came up for consideration. In his statement, the accused had stated that it was the deceased who had caused injury on his toe on the fatal night. Such statement was made while the accused was in custody of the police. The Supreme Court held that the statement in question did not amount to a confession. It was an admission of fact no doubt incriminating and which established the presence of the accused in the deceased's room, but such statement was not barred under section 26.

In case of *State of Assam v. Anupam Das* reported in 2008 Cri. L.J. 1276, the Gauhati High Court was examining a similar question of admissibility of a statement made by the accused to the doctor who had examined him. It was in this context held and observed as under: It can be seen from the language of Section 26 that the only exception to the Rule contained under Section 26 is that any such confession, which is otherwise hit by Section 26, can be proved against the accused if such a confession is made in the immediate presence of a Magistrate. It is not the case of the prosecution that the alleged confession before P.W. 8 was made in the immediate presence of a Magistrate, therefore, the same is clearly hit by Section 26 and cannot be looked into.

SECTION 27: How much of information received from accused may be proved.—Provided that, when any fact is proved to have been 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.

Section 27 lays down that during the period of investigation or during police custody any information is given by the accused of an offence to the police officer that leads to discover any fact, may be proved whether such information amounts to confession or not, and obtained under inducement, threat or promise. Section 27 is by way of a proviso to Sections 25 and 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused . The following conditions are necessary for the application of the Section 27.

1. The fact must have been discovered in consequence of information received from the accused.
2. The person giving information must be accused of an offence.
3. He must be in custody of a police officer.
4. That portion only of the information which relates distinctly to the fact discovered can be proved.”
5. The discovery of fact must relate to the commission of crime in question.
6. Before the statements proved somebody must depose that some article was discovered in consequence of the information received from the accused.

.Section 27 is in the form of a proviso which lays down how much of information received from accused may be proved.For

application of section 27 of Evidence Act, admissible portion of confessional statement has to be found as to a fact which was the immediate cause of the discovery, only that would be part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the Police before disclosure statement of the accused is recorded, it is admissible in the evidence. Section 27 of Evidence Act refers when any “fact” is deposed. The information furnished by the accused persons vide information memos held to be clearly admissible which had led to the identification and arrest of other accused person “C” from whose possession fake currency notes were recovered. It was on the basis of information ‘A’ and ‘B’ that the fact was discovered by Police as to the involvement of accused ‘C’ which was otherwise not to the knowledge of the Police. Thus the statement of accused ‘A’ and ‘B’ held to be clearly saved by section 27 of the Evidence Act. The expression “fact discovered” in Section 27 is not restricted to a physical or material fact which can be perceived by the senses. It does include a mental fact. The information permitted to be admitted in evidence is confined to that portion of the information which “distinctly relates to the fact thereby discovered. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability.

Constitutional validity of Section 27:

In State of U.P. v Deoman the validity of Section 27 of the Evidence Act was challenged on the ground that it was offending Article 14 of the Constitution of India. In appeal the

High Court declared Section 27 to be unconstitutional as it created unjustifiable discrimination between “persons in custody” and “persons out of custody.” Further appeal was made by the State of U.P. against the judgment of the High Court in the Supreme Court. It was held by the Supreme Court that the distinction between “persons in custody” and “persons out of custody” had little practical significance. By majority decision the Section 27 was declared to be constitutional and the conviction awarded by the Session judge was restored.

In the case of *Shankaria v. State of Rajasthan* [1978 (3) SCC 435] decided by a three-Judge Bench. Sarkaria, J, noted the twin tests to be applied to evaluate a confession: (1) whether the confession was perfectly voluntary and (2) if so, whether it is true and trustworthy. The learned Judge pointed out that if the first test is not satisfied the question of applying the second test does not arise. Then the Court indicated one broad method by which a confession can be evaluated. It was said: "The Court should carefully examine the confession and compare it with the rest of the evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

In *Parmanand Pegu v. State of Assam* [2004 (7) SCC 779] this Court while adverting to the expression "corroboration of material particulars" used in *Pyare Lal Bhargava's* case clarified the position thus: "By the use of the expression 'corroboration of material particulars', the Court has not laid down any

proposition contrary to what has been clarified in Subramania Goundan case as regards the extent of corroboration required. The above expression does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession, as pointed out in Subramania Goundan case."

Section 28: Confession made after removal of impression caused by inducement, threat or promise relevant.—If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Section 28 provides for validity of a confession after removal of impression caused by inducement threat or promise. Under Section 24 when it is in the opinion of the court that a confession of an accused seems to have been caused by inducement, threat, promise or hope of advantage, it is irrelevant and cannot be proved. But if the Court is satisfied that the impression of inducement, threat or promise has been fully removed from the mind of the accused and the accused is totally free from the evil of fear or advantages, the confession will be relevant. "In determining whether an inducement has ceased to operate, the nature of such inducement, the time

and circumstances under which it was made, the situation of the person making it, will be taken into consideration by the court.” Confessional statement made freely and voluntarily by accused while released on bail, held, cannot be rejected merely because the Magistrate used the expression “evidence” instead of confession. It must be borne in mind that there must be strong and cogent evidence that the influence of the inducement has really ceased. A female servant was suspected of stealing money. Her mistress on Monday told her that she would forgive her if she told the truth. On Tuesday she was taken before a Magistrate and as no one gave any evidence against her she was left off. On Wednesday she was again arrested. The superintendent of Police went with her mistress into Bridewell and told her in presence of her of her mistress that “she was not bound to say anything unless she liked and that if she had anything to say, her mistress would hear her.” He did not tell her that if she made a statement it might be given in evidence against her. The prisoner then made a statement it might be given in evidence against her. The prisoner then made a statement confessing the guilt. It was held that this evidence was not admissible in evidence as the promise of the mistress must be considered as still operating on the prisoner’s mind at the time of the statement. Had the mistress not been present on the spot it might have been otherwise.

SECTION 29; Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.—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 practised 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.

Section 29 provides that there is no bar to admissibility of a confession even if it was made under the promise of secrecy. Under this section a confession made by an accused is relevant even if it can be excluded from being proved under the following circumstances:

1. When it was made to the accused under a promise of secrecy;
2. By practicing a deception on the accused;
3. When the accused was drunk;
4. In answer to question which the accused need not have to answered: or
5. When no prior warning was given to accused that he was not bound to make any confession and that might be used against him.

The principles of admission are applied here to encourage accused persons to speak truth. When a confession obtained from an accused by promising him that what he will confess will be kept secret is relevant under the section.

SECTION 30 : Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. [Explanation.—“Offence”, as used in this section, includes the abetment of, or attempt to commit the offence.]

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said—“B and I murdered C”. The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—“A and I murdered C”. This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

When more than one persons are being jointly tried for one and the same offences they are called co-accused. Any one of them

is at liberty to confess his own guilt. And can make statements against others/co accused. . But such confession will be admissible against him and others provided conditions laid in section 30 are fulfilled.

This section is an exception to the general rule that a confession of an accused is inadmissible against other accused persons who are jointly tried. It makes a departure from the common law of England. Section 30 lays down when there are more than one accused who are jointly tried for the same offence and a confession made by one of them at the trial, the court may take into consideration the confession against all accused. a confession by one accused may be taken into consideration against co-accused is founded on: (i) more than one accused are jointly tried, (ii) they are tried for the same offence, (iii) confession should have been made by one of them, and (iv) the confession should be legally proved. In *Prakash Dhawal Khairnar v State of Maharashtra* it was held that confessional statement of one accused recorded under section 164, Cr. PC by a magistrate would be admissible against the other accused as both were jointly tried. If the confession is not recorded by the magistrate under section 164, Cr. PC it may be used under section 30 of the Evidence Act if they are not regulated by Section 24 of this Act.

The Privy Council once observed that “a confession of a co-accused is obviously evidence of a very weak type. It does not come within the definition of ‘evidence’ contained in Section 3. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination.” It again

observed that “the confession is only one element in the consideration of all the facts proved in the case. It can be put into the scale and weighed with the other evidence. Accused's confession cannot be used against co-accused The statement of the accused leading to the discovery, or the informatory statement amounting to confession of the accused, cannot be used against the co-accused with the aid of section 303; Kamal Kishore v. State (Delhi Administration), (1972) 2 Crimes 169 (Del). In the case of Birendra Kumar Yadav vs State Of Bihar on 16 May, 2014 From the details of extra judicial confessional statement of appellant of Birendra followed by recovery of the dead body of the victim boy at the instance of the appellant Birendra its authenticity cannot be questioned and therefore, the citations referred to and relied by both Mr. Rana Pratap Singh, learned Senior counsel and Mr. Dhruva Mukherjee, appearing for both the appellants on the scope of Sections 27 and 30 of the Evidence Act will have little relevance, inasmuch as the Privy Council in the case of Bhuboni Sahu had while explaining Section 30 of the Evidence Act held that the confession of a co-accused is an evidence of weak type and such confession by itself does not amount to proof nor such confession can be made foundation of conviction. This well settled proposition of law which was sought to be also followed by the Apex Court in the case of Hari Charan Kurmi and Jogia Hajam (supra) wherein it was held as follows: consideration by the Court against A, as B is not being jointly tried.” As is **evident** from a perusal of Section 30 extracted above, a confessional statement can be used even against a co-accused. For such admissibility it is imperative, that the person making the confession besides implicating himself, also implicates others who are being jointly

tried with him. In that situation alone, such a confessional statement is relevant even against the others implicated. Insofar as the present controversy is concerned, the substantive provision of Section 30 of the **Evidence Act** has clearly no applicability because Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah have not implicated any of the accused-respondents herein. The importance of Section 30 of the **Evidence Act**, insofar as the present controversy is concerned, emerges from illustration (b) thereunder, which substantiates to the hilt one of the conclusions already drawn. Illustration (b) leaves no room for any doubt, that unless the person who has made a confessional statement is an accused in a case, the confessional statement made by him is not relevant. None of the accused in Special Case no. 4 of 2009 is an accused in Special Case no. 21 of 2006. As such, in terms of illustration (b) under Section 30 of the **Evidence Act**, we are of the view, that the confessional statement made by the accused in Special Case no. 4 of 2009, cannot be proved as a confessional statement, in Special Case no. 21 of 2006. This conclusion has been recorded by us, on the admitted position, that the accused in Special Case no. 4 of 2009 are different from the accused in Special Case no. 21 of 2006. And further because, Special Case no. 4 of 2009 is not being jointly tried with Special Case no. 21 of 2006. Therefore, even though Section 30 is not strictly relevant, insofar as the present controversy is concerned, yet the principle of admissibility, conclusively emerging from illustration (b) under Section 30 of the **Evidence Act**, persuades us to add the same to the underlying common thread, that finds place in the provisions of the Evidence Act, pertaining to admissions/confessions. That, an admission/confession is admissible only as against the person

who has made it. Illustration (b) under Section 30 of the **Evidence Act** contemplates a situation wherein the author of the confessional statement is not a co-accused. Illustration (b) renders such confessional statements inadmissible. There is, it may be noticed, no room for testing the veracity of the said confessional statement, either at the hands of the person who made it, or by the person against whom it is made. For adopting illustration (b) under Section 30 to the reasoning recorded above, the same be read as under:- Having thus regard to the settled law as with regard to scope of Section 27 read with Section 30 of the Evidence Act in respect of extra judicial confession, its effect on both the appellants has to be considered in the light of the law laid down by the Apex Court, such extra judicial confession of appellant Birendra being inculpatory in nature in view of illustration (a) of Section 30 of Evidence Act and law laid down by Apex Court in the case of Kamal Ahmed would also bind the appellant Pankaj as with regard to his alleged association and being part of the plan beginning from the school and culminating into causing death of the victim boy as stated by the appellant Birendra in his extra judicial confession. This aspect of the matter **infact** was also explained way back by the Apex Court in the case of Kashmira Singh v. State of M.P., reported in AIR 1952 SC 159, wherein while approving the observation of Sir Lawrence Jenkins that a confession can only be used to „lend assurance to other **evidence** against a co-accused“ .A confession by an accused may be taken into consideration provided other co-accused are jointly tried for the same offence. To make a joint trial legal, the accusation must be a real one and not merely an excuse for a joinder of charges which otherwise cannot be joined. “Same offence”

means identical offence and not an offence of the same kind. Where an accused who was jointly tried but died before the judgment, it was held that the confession was admissible against his co-accused and could be used only for corroborating the other evidence on the record and not as substantive evidence. The stress in section 30 is pre-requisite of joint trial for the same offence.

SECTION 31: Admissions not conclusive proof, but may estop.— Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

This section gives evidentiary value of admissions containing in Sections 17 to 30 of the Evidence Act. Admissions are not conclusive. “it sometimes happens that persons make statements which serve this purpose or proceed upon ignorance of the true position; and it is not their statements but their relations— with the estate, which should be taken into consideration in determining the issue.” An admission, unless it operates as an estoppel, is not conclusive, but is open to rebuttal. A party is not bound by his own admission unless it acted upon the opposite party. The party against whom it is proved is at liberty to show it was mistaken or untrue. In civil cases the admission must be accepted as a whole or rejected as whole. In criminal cases an admission consists of inculpatory and exculpatory elements. It can be wise to accept inculpatory part of the Statement of the accused, but if the statement is only evidence the exculpatory part cannot be rejected. Although the Section 31 is given place in the chapter of relevancy it does not concern

with relevancy, rather it concerns with the evidentiary value of admissions.