

The Relevance of Confessions in Criminal Proceedings

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Abstract

Despite increased evidence that confessions may be unreliable, they remain the gold standard of evidence for police investigations. One reason for the rejection of some confessional statements is that when confessions are not voluntary there is the danger of the accused falsely implicating himself. Different countries have different rules governing the admissibility of confessions. These rules serve to guarantee that wrongful convictions do not occur. They also serve as a deterrent to abusive interrogation by the police. Some interrogative techniques violate the defendant's free-will or procedural rights. In this article, while relying on recent judicial and statutory authorities, the writer takes a look at what confessions are. He goes further to examine the relationship between confessions and admissions, the probative value of confessions, the factors that affect the admissibility of a confessional statement, and other facts related to confessions. The role of the court in relation to confessional statements is also considered. Particular attention is given to the position of the law in Nigeria and India, although references are also made to other jurisdictions. This paper focuses on extra-judicial confessions.

Key Words: confession, accused, evidence, admissible, admission, fact

What Is A Confession?

A confession is a free and voluntary admission of guilt by an accused person.¹

Section 28 of the Nigerian Evidence Act² defines a confession as an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime. Confessions, if voluntary, are deemed to be relevant facts against the person who made them only.³

At common law, an informal admission made by an accused person, prior to his trial, to a person in authority was known as a confession, an expression which included not only a full admission of guilt but also any incriminating statement.⁴ A confession occupies the highest place of authenticity when it comes to proving beyond reasonable doubt.⁵

The substantive law of confession is contained in Sections 28-32 of the Nigerian Evidence Act and Sections 24 – 30 of the Indian Evidence Act.⁶

The Police and Criminal Evidence Act (PACE) of UK in Section 82(1) defines a confession as “*includ [ing] any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise.*” It is hearsay and its admission is by way of exception to the hearsay rule.⁷

¹Oseni V State 2012 Vol 2 MJSC Pt. II 123

² Cap E14, LFN 2004

³ Onyenye v. State 2012 Vol. 5-7 Pt. II MJSC 121; Adesina v. State 2012 Vol. 6-7 Pt. II MJSC 80; Igri v. State 2012 Vol. 6-7 (Pt. III) MJSC 107, Mbang v. State 2012 Vol. 6-7 Pt. IV MJSC 119; Galadima v. State 2012 Vol. 12 MJSC Pt. III 190

⁴ Per Lord Reid in Customs and Excise Commissioners v. Harz and Power (1967) 1 AC 760 @ 817-818.

⁵ Osung v. State 2012 Vol. 6-7 Pt. II MJSC 1; Mustapha Mohammed v. The State (2007) 11 NWLR (Pt 1045) 303

⁶ Indian Evidence (Amendment) Act, 2002 (4 of 2003; applicable in India, Burma, Pakistan, Bangladesh, Ceylon, Malaysia and Singapore. It is based on an English enactment.

⁷ Principles Of Evidence 2nd Edition Alan Taylor Cavendish Publishing Ltd London 2000, page 229

Section 25 of the Kenyan Evidence Act defines confessions as words or conducts, or a combination of words and conducts, from which whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person making it has committed an offence.

A confession can only be in respect of a matter within the knowledge of the person confessing. A confession is worthless if it relates to matters outside of that knowledge or experience. He cannot confess to the acts of other persons which he has not seen and of which he can only have knowledge by hearsay. In *R v Hulbert*⁸ it was held that the accused could confess, on a charge of handling stolen goods, that she received the goods, knowing or believing them to be stolen, but she could not confess that they were stolen, since this was something that she had merely been told. In *Comptroller of Customs v Western Electric Co. Ltd*⁹ it was held that the accused could not confess as to the countries of origin of various goods because the admission was made upon reading the marks and labels on those goods and was of no more evidential value than those marks and labels themselves.¹⁰ The confession must be made by the accused himself and not by any other person¹¹.

A confessional statement must identify the perpetrator of the offence. In the case of a bride burning a confession was made before the village panchayat by a large number of peoples of whom the accused was only one. Who among them had burned the bride was not mentioned. Such confession was held to be not capable of being used against any person. Specifically it was not a confession in any sense of the word.¹²

Under Indian Law, an affirmative nod in response to direct accusation of crime is no less a confession than an oral statement. Acknowledgement of guilt by signs or gestures may strictly come within confessions as they may be regarded as verbal statements.¹³ But the danger of interpreting signs or gestures as confession lies in the fact that the maker may not be able to communicate intelligence to another person and is liable to be misunderstood. The other person may not be able to convey his meaning to the accused by signs or words intelligible to him. There is also the danger of making acknowledgments of guilt in answer to leading questions imperfectly understood. Confessions made while talking in sleep though not legal evidence may furnish indicative evidence.¹⁴

Confessions are of two types. Judicial or formal confession is made in court in the course of the proceedings. Extra judicial or informal confessions are those made outside the court. Telephone calls made to the media owning responsibility of crime (e.g. bomb blast) amounts to extra judicial confession.¹⁵ Extra judicial confessions should be proved by the evidence of the persons to whom they were made or who heard them made or by the document (if any) in which they were recorded. Before a confession is relied upon it must be clear whether it is to be put in the category of judicial or extra judicial confessions. An extra judicial confession may properly be made to any person, or collection of or body of persons. But there must be something to show that the accused had previous association with those people and that he could repose confidence in them and make an extra judicial confession involving him in a crime. It is not necessary that it be addressed to any definite individual. It may take the form of a prayer but majority of confessions are received by persons in authority upon the arrest of the accused or while in custody. Extra judicial confessions may or may not be weak evidence. For example, the accused cannot be convicted on the basis of an extra judicial confession made to a person not shown to be a friend of the accused who would be taken into confidence and was wholly unconnected with the police.¹⁶

Extra judicial confessions may be oral or written though as a practical matter police interrogators normally record confessional statements volunteered by an accused person since these are generally viewed as more reliable. These statements are usually tendered in court during trials. Confessional statements may be made before or during trial but before judgment.

⁸ (1979) 69 Cr App R 243

⁹ [1966] AC 367

¹⁰ Principles Of Evidence 2nd Edition Alan Taylor Cavendish Publishing Ltd London 2000, page 257

¹¹ *R v. Asuquo Etim Inyang* (1931) 10 NLR 33

¹² *Kishan Lal v. State of Rajasthan*, AIR 1999 SC 3062; (2000) 1 SCC 310; 1999 Cr LJ 4070; 1994 (4) Crimes 103.

¹³ *R.v. Abdulla* 7 A 385 FB Chandrsakhar .v. R. 1937 AC 220.

¹⁴ Sarkar, Law of Evidence 16th Edition Reprint 2008, Wadhwa & Nagpur, India. The Criminal Law Revision Committee in England also supports the position that it is sufficient if the accused person nods his head in reply to an accusation.-via its 11th Report, Cmnd. 4991, Annex 2, at 214.

¹⁵ *Farida Dar v. State*, 2005 SC 3616 (3619 – 20); (2006) 2 SCC (Cr L) 121 : 2005 (4) Crimes 77

¹⁶ Sarkar, Law of Evidence 16th Edition Reprint 2008, Wadhwa & Nagpur, India.

In the past, German Federal Court of Appeals held that confessions obtained by the police without issuing required warnings cannot be used as evidence. But where it could be shown that the suspect knew of his or her rights, the lack of warning did not necessarily lead to exclusion.¹⁷

A confession already admitted by the Court can be excluded at a subsequent stage if found involuntary or defective in any way.

Admissions and Confessions Distinguished

According to Black's Law Dictionary, the distinction between admissions in criminal cases and confessions by the accused is the distinction in effect between admissions of fact from which the guilt of the accused may be inferred by the jury and the express admission of guilt itself.¹⁸ In some cases, silence may amount to an admission, especially when both parties are speaking or are simply on the same and even terms i.e. no one occupies a superior position in relation to the other. A person is entitled to refrain from answering a question put to him for the purpose of discovering whether he has committed a criminal offence. There is no obligation to comment when informed that someone else has accused him of an offence. If it is reasonable to expect someone to make some response to an allegation made against him, his subsequent silence can now be used as evidence against him. In some cases, a denial, ipso facto, may not necessarily render the statement made in his presence inadmissible as he may deny the statement in such a manner and under such circumstances as may lead a judge or jury to disbelieve him and constitute evidence from which an acknowledgment may be inferred by them.¹⁹

In English Law, the term admission is usually applied to civil proceedings and to those matters of fact, in criminal cases, which do not involve criminal intent, the term confession being generally restricted to acknowledgments of guilt. The Nigerian Evidence Act proceeds upon the same principle. Confessions are one species of admissions consisting of a direct acknowledgment of guilt by the accused in a criminal case.

Only voluntary and direct acknowledgment of guilt is a confession but when a confession falls short of direct admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an admission under Section 21 of the Indian Evidence (Amendment) Act, 2002 (4 of 2003).²⁰

An oral confession by an accused is an admission by an accused and is a relevant fact and may be proved at his trial. Proof of such confession may be by the evidence of the person before whom it was made.²¹

Probative Value of Confessions

Section 29(1) of the Nigerian Evidence Act provides that *in any proceeding, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.*

A confession is the best evidence in criminal proceedings.²² A confession made in judicial proceedings is of greater force or value than all other proofs. If it is direct and true and satisfactorily proved, it should occupy the highest place of authenticity when it comes to proof beyond reasonable doubt. That is why such a confession by itself alone is sufficient without further corroboration to warrant a conviction. And there cannot be such a conviction unless the trial court is satisfied that the case has been proved beyond reasonable doubt.²³ The denial or retraction of a confession is a matter to be taken into consideration to decide what weight to be attached to the confession.²⁴ A confessional statement that is free, direct, positive and voluntary is enough to ground a conviction. In addition, in this case, the appellant had expressly stated the motive for the killing.²⁵ A court only needs corroboration when there is any doubt as to the voluntariness or the opportunity of making such statement.²⁶

¹⁷ Comparative Criminal Procedure: History, Processes and Case Studies, Raneta Lawson Mack, 2008

¹⁸ Bryan Garner (Editor in Chief), 8th Edition, page 254

¹⁹ Principles Of Evidence 2nd Edition Alan Taylor Cavendish Publishing Ltd London 2000, page 257

²⁰ C.B.I v V.C Shukla, A 1998 SC 1406; 1998 Cri LJ 1905.

²¹ Feroz v. R, 45 IC 843; 11 PR 1918 Cr.

²² Igri v. State 2012 Vol. 6-7 (Pt. III) MJSC 107, Mbang v. State 2012 Vol. 6-7 Pt. IV MJSC 119

²³ Oseni V State 2012 Vol 2 MJSC Pt. II 123; Adio & Ano v. State (1986) 4 SC 194, Solola v. State (2005) 11 NWLR (Pt 937) page 460.

²⁴ Oseni V State 2012 Vol 2 MJSC Pt. II 123; Dibia v. State (2007) 9 NWLR (Pt 1038) page 30; Ukpung v. Queen (No. 1) (1961) 1 SCNLR 23; Igri v. State 2012 Vol. 6-7 (Pt. III) MJSC 107, Mbang v. State 2012 Vol. 6-7 Pt. IV MJSC 119

²⁵ Oseni V State 2012 Vol 2 MJSC Pt. II 123

The burden of proving that a confession was voluntarily made rests on the prosecution in criminal proceedings. The burden involves the same standard as the proof of guilt, i.e. beyond reasonable doubt.

In the view of an author, the truth of the confession is irrelevant, so long as it proceeds voluntarily from the maker and no law or rule laid down is breached.²⁷ But in practice, in Nigeria, a confession will only support a conviction without corroboration so long as the court is satisfied of its truth.²⁸ Where the issue is one of identity, where an accused by his confession has identified himself, there is no need for any further identification parade.²⁹

A confessional statement must be voluntary and consistent with other evidence in court. Where a confession is made voluntarily, it is deemed a relevant fact and admissible against the maker under Section 27(2) of the Evidence Act.³⁰

Where the accused denies making the extra judicial statement, the court should look for some independent evidence, that is to say, evidence outside the confession to make the confession probable.³¹ The fact that the appellant took the earliest opportunity to deny having made the statement may lend weight to his denial³² but it is not in itself a reason for ignoring the statement.³³ The proper time to object to it is at its point of being tendered.³⁴ Under the Lagos State Administration of Criminal Justice Law 2011, confessional statements are required to be video recorded to avoid retraction by the defendant, often leading to a trial-within-a-trial which occasions undue delays in the administration of criminal justice.³⁵

The court can convict an accused person on his uncorroborated confessional statement when the following cumulative conditions are satisfied:

1. There is something outside the confession which shows that it may be true
2. The statements contained therein are likely to be true
3. The accused had the opportunity to have committed the offence
4. The facts stated by the accused are consistent with other facts which have been ascertained and established at the trial.³⁶

Also, there are some questions a judge must ask himself on the weight to be attached to a confessional statement.³⁷

1. Is there anything outside the confession to show that it is true?
2. Is it corroborated?
3. Are the relevant statements made in it of facts true as far as they can be tested?
4. Was the prisoner one who had the opportunity of committing the crime?
5. Is his confession possible?
6. Is it consistent with other facts which have been ascertained and have been proved?

Having satisfied the conditions for its admission and the weight to be attached to it, it is the best and strongest evidence possible, short of eye witness account.

²⁶Osung v. State 2012 Vol. 6-7 Pt. II MJSC 1

²⁷ Principles Of Evidence 2nd Edition Alan Taylor Cavendish Publishing Ltd London 2000, Page 234

²⁸Oseni V State 2012 Vol 2 MJSC Pt. II 123; Galadima v. State 2012 Vol. 12 MJSC Pt. III 190

²⁹Adesina v. State 2012 Vol. 6-7 Pt. II MJSC 80; Archibong v. State (2004) 1 NWLR (Pt 855)

³⁰Bright V The State 2012 Vol 1-2 MJSC 35

³¹Bright V The State 2012 Vol 1-2 MJSC 35; Onochie & Ors v. The Republic (1996) NWLR p 307

³²Oseni V State 2012 Vol 2 MJSC Pt. II 123; R v Sapele & ano. (1952) 2 FSC 74

³³Oseni V State 2012 Vol 2 MJSC Pt. II 123

³⁴Haruna V. AGF 2012 Vol. 3 MJSC Pt II 45; Igri v. State 2012 Vol. 6-7 (Pt. III) MJSC 107, Mbang v. State 2012 Vol. 6-7 Pt. IV MJSC 119

³⁵ Falana, Femi, *How a defective Criminal Justice System freed Al-Mustapha*, The Punch, Monday, August 5th, 2013 at page 82.

³⁶ Bright V The State 2012 Vol 1-2 MJSC 35; R v Itule (1962) All NLR 462, Akpan v. The State (1986) 3 NWLR (Pt 27) 258; Onyenye v. State 2012 Vol. 5-7 Pt. II MJSC 121; Adesina v. State 2012 Vol. 6-7 Pt. II MJSC 80; Galadima v. State 2012 Vol. 12 MJSC Pt. III 190

³⁷ R v. Sykes (1913) 8 CR App. R 233, followed in Kanu v. The King (1952/55) 14 WACA 30; Igri v. State 2012 Vol. 6-7 (Pt. III) MJSC 107, Mbang v. State 2012 Vol. 6-7 Pt. IV MJSC 119; Galadima v. State 2012 Vol. 12 MJSC Pt. III 190

Where the confession is found to have been made voluntarily and it is true but inconsistent with the accused's evidence in court, it is safe to convict.³⁸ Where the accused confesses, does not object to the statement being tendered and admitted in evidence and did not resile in his testimony in court, there is no need to look for evidence outside the confession any more. After all, every accused person is in the best position to say if he committed the offence of which he is accused.³⁹

An accused can be convicted on his confessional statement alone but it is desirable that some other evidence consistent with the confession is produced. Apart from voluntary confessions, a plea of guilty is also an excellent way to secure the conviction of an accused without the need for corroboration.⁴⁰ Corroborative evidence may be discovered before or after the making of the confession.

According to Sarkar, the rule in India may be stated to be that whereas the evidence in proof of a confession having been made is always to be suspected, the confession if once proved to have been made and made voluntarily is one of the most effectual proofs in law.⁴¹

Where the prosecution has successfully established facts which are stated in a confessional statement, it would be a good ground to presume that the confessional statement was voluntary.⁴² Confessions must be accepted as a whole. Some parts of it cannot be accepted while others are rejected⁴³

Where an extra judicial confession was the result of the consumption of liquor by the accused and the witnesses fail to reproduce the confession in the exact words of the accused or in even the words as nearly as possible it should be excluded.⁴⁴

A mere statement of the accused before the court that he is innocent would not amount to a retraction of an extra judicial confession.⁴⁵ The amount of credibility that will be attached to a retracted confession depends on the circumstances of each particular case.

The court has the discretion to admit or exclude a confessional statement even if satisfied of its truth, that is, where the prosecution fails to prove its voluntariness.

Usually, in English cases, corroborative evidence usually exists in addition to confessions, to justify a conviction of the prisoner. In the US, a confession is admissible if the judge deems it to have been made voluntarily. Further, the prisoner's confession, when the corpus delicti is not otherwise proved has been held insufficient to warrant his conviction and this opinion best accords with the humanity of the criminal law, and with the great degree of caution applied in receiving and weighing the evidence of confessions in other cases.⁴⁶ In *Brown v Mississippi*⁴⁷ it was held to the effect that, firstly, exclusion of involuntary confessions will deter police misconduct; secondly, that a confession should be freely made by a rational person, and lastly, that confessions obtained with duress are inherently unreliable.

Confessions and Co-Accused Persons

Under Section 29(4) of the Nigerian Act, a confessional statement by one accused is not admissible against a joint accused except he adopts it by words or conduct.

Under Section 27(3), a confession is held against any other person in whose presence it was made where it is deemed to have been adopted by him either by words or by conduct.

³⁸ *Bassey V State* 2012 Vol. 3-4 MJSC 177; *Mumuni v State* (1975) 6 SC page 79

³⁹ *Bassey V State* 2012 Vol. 3-4 MJSC 177

⁴⁰ *Timothy v. FRN* 2012 Vol. 5-7 Pt. 1 MJSC 98; *Adesina v. State* 2012 Vol. 6-7 Pt. II MJSC 80

⁴¹ Sarkar, *Law of Evidence* 16th Edition Reprint 2008, Wadhwa & Nagpur, India, page 480, quoting Justice M. MONIR

⁴² *State v. Mohd. Afzal* (2003) 107 DLT 385 (DEL)

⁴³ *In re Ramayee*, A 1960 M 187.

⁴⁴ *C.K. Raveendran v. State of Kerala* (2000) 1 SCC 225 (SC)

⁴⁵ *Pakkirisamy v. State of T. N.*, 1998 Cri LJ 89 (SC).

⁴⁶ *R v. Eldrige* 1821 R & R 440

⁴⁷ 297 US 278 (1936)

As against the maker, there can be conviction solely on a retracted confession if the unhesitating conclusion is that it is voluntary and true but as a rule of practice, it is unsafe. As against a co-accused, the value is almost nil and there can ordinarily be no conviction without the fullest corroboration both as to the crime and the criminal.

A retracted confession is always open to great suspicion, but a confession cannot be regarded as involuntary merely because it has been retracted afterwards. Every case must be judged on its particular circumstances. A retracted confession, though can be used to contradict the person making it, it not being substantive evidence cannot be used to contradict a co-accused's confession.⁴⁸

In *Ozaki v. The State*⁴⁹, the court held that it is an error in law to convict the accused on the statement of another accused to the police, a travesty of justice and gross violation of all known rules of evidence.

Factors that affect the Admissibility of a Confessional Statement

Under Section 29(2) of the Nigerian Act, *where it is represented that the confession was or may have been obtained by oppression of the person who made it or likely in the circumstances existing at the time to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section. The court may of its own motion require such proof.*

Section 24 of the Indian law provides as follows: *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.*

It is generally assumed that no reasonable human being will make admissions prejudicial to his interests and safety if the facts confessed are not true. Confessions are generally in writing but can also be made orally.

Sometimes, there are allegations of inducement, threats or duress in the making of a confessional statement under investigation. A confessional statement does not become inadmissible merely because the accused denies having made it. If the voluntariness is in issue, the trial court has a duty to conduct a trial within a trial to determine the voluntariness of the confession. Proof, by the prosecution, of the voluntariness of the confession is beyond reasonable doubt before the confession can be admitted.⁵⁰

According to Obaseki, JSC,⁵¹ *it has long been established as a positive rule of law which has found a healthy place in our statutes ... that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement ...*

Once a confession is admitted as evidence, it becomes part of the case for the prosecution. The voluntariness of a confessional statement is a test of admissibility and not of the truth or veracity of the statement.

i. Duress, Undue influence, Use of Threats and violence

It is not possible to lay down any rule as to what constitutes inducement or threat. Each case is decided on its own peculiar circumstances.

Section 28 of the Nigerian Evidence Act provides that a threat of disadvantage or of an avoidance of evil expressed in bare and plain terms or obliquely by implication renders the statement inadmissible. Under the Indian law, a confessional statement cannot be used against an accused unless the court is satisfied that it is voluntary.⁵² It must be shown to be voluntary and free from police influence.

⁴⁸ *Baliram v. R*, A 1939 N 295

⁴⁹ (1990) 1 NWLR (Pt. 124) 90

⁵⁰ *Bright V The State* 2012 Vol. 1-2 MJSC 35

⁵¹ *In Corporal Jonah Dawa & ano v. The State* (1980) 8-11 SC 236 @ 258

⁵² *Divender Pal Singh v. State of New Delhi* (2002) 97 DLT 57 (SC); AIR 2002 SC 1661.

It should also be in unequivocal term admitting the commission of the crime. Where it is probable that it was not voluntary, the court would be justified in rejecting it.

Oppression includes torture, inhuman or degrading treatment, use of threat and violence.⁵³

ii. Persons in authority

For inducement to make a confessional statement inadmissible, it must have proceeded from a person in authority. It is not clear whether the confession would be admissible when the inducement is made by a person not in authority and the confession is made to him. A person in authority has been defined as someone engaged in the arrest, detention, examination, prosecution or punishment of the accused i.e. anyone capable of influencing the course of prosecution and conclusion of the offence.⁵⁴ The accused must believe that he will gain an advantage or avoid an evil by confessing. A person in authority also includes anyone who has control over the accused. The term includes all persons to whom the accused must surrender if he wants to find a favour of a kind in relation to the whole criminal proceedings (from point of arrest till conclusion of any appeals made against judgment).

In some cases inducements are vague and it is difficult to make it out. In such cases, the benefit is usually resolved in favour of the accused person who raises the objection. *Many of the so-called inducements have been so vague that no reasonable men would have been influenced by them but one must remember that not all accused are reasonable men and women ... It may have been right to err on the safe side.*⁵⁵

Under Section 28 of the Evidence Act, inducement includes any inducement to speak. The inducement must refer to an inducement to make a statement. It need not be an inducement to confess the truth. Any promise/inducement must have a causal link with what was said and done which made the accused confess against his wish. Inducement usually consists of a threat of disadvantage or a promise of advantage. What constitutes inducement depends on the circumstances of each particular case.

For inducement to render a confessional statement inadmissible, the advantage to be gained or the evil to be avoided must be of a temporal nature. Moral exhortation does not amount to inducement. Inducement may be direct or indirect.

The laws do not say the person to whom the inducement is directed. It is enough if it reached the accused no matter how or through what channels. Thus, if the inducement is offered not personally to the accused but to someone on his behalf, the result would be the same.

Any attempts by persons in authority to bully a person into making a confession or any threat or coercion would at once invalidate such a confession if the fear was operating on the mind of the accused at the time he claimed to have made the confession.⁵⁶

The mere fact that a confession is made to a person in authority does not render it involuntary or inadmissible. It must be further shown that it was caused by any inducement, threat or promise. For a confession to be relevant it must be shown that it was made by the accused person, and that its making was voluntary. Again, for it to be the foundation for conviction, it must be further shown that it is true.

According to Sarkar, to make a confession irrelevant, strict proof of the existence of the non – validating causes (i.e. duress, inducement threat torture) is not necessary; it becomes so if it “appears” to the Court from the surrounding circumstances to have been caused by inducement and C (sic).⁵⁷

Where an accused during trial retracts, denies or resiles from the extra judicial statement he had earlier made to the police immediately after the event giving rise to the charge or arraignment against him, he owes it a duty to impeach his said earlier statement.⁵⁸

An accused who desires to impeach his extra judicial statement must satisfy any of the following:

⁵³ Principles Of Evidence 2nd Edition Alan Taylor Cavendish Publishing Ltd London 2000, page 257

⁵⁴ Phipson on Evidence, 12th Edition, page 805

⁵⁵ Per the English court in Customs & Excise Commissioners v. Harz & Power (1967) 1 AC 760

⁵⁶ Director-General Border Security Force v. Vijendar Prakash Gautam 2001 (3) MPLJ 111 (MP)

⁵⁷ Sarkar, Law of Evidence 16th Edition Reprint 2008, Wadhwa& Nagpur, India.

⁵⁸ Nwachukwu v. State (2007) 17 NWLR (Pt. 1052) 31; Osetola v. State 2012 Vol. 6-7 Pt. II MJSC 41

1. That he did not in fact make any such statement as presented.
2. That he was not correctly recorded.
3. That he was unsettled in mind at the time he made the statement.
4. That he was induced to make the statement.⁵⁹

An accused can be convicted on a confession which is voluntary and true even if not consistent with his evidence in court. The court can admit and convict on a retracted confessional statement where satisfied that the accused made the statement and the circumstances surrounding the confessional statement are credible. Extraneous evidence outside a confessional statement is however desirable.⁶⁰

When an interpreter is used in recording the statement of an accused, such statement is inadmissible unless the person who was used in the interpretation is called as a witness in the proceedings as well as the person who recorded same, failing which such a statement should be taken as hearsay evidence and the accused entitled to an acquittal. Such evidence can only be confirmed by the evidence of the interpreter as to the questions put to the accused by the interpreter and the answers given to him by the accused person whose statement was being taken in the language understood by him.⁶¹

The question of the voluntariness of a confessional statement is tested at the time the statement is sought to be tendered in evidence. In *Oseni v. State*⁶², the confessional statements were tendered without any objections from the defence. None of the prosecution witnesses were cross examined as to their involuntariness. It was not until the prosecution had closed its case and the appellants were testifying in their own defence that the issue was belatedly raised. In the opinion of the Supreme Court, the trial judge was right to dismiss this aspect of the defence's case as an afterthought. It was too late to raise the issue on appeal.

Rationale for Excluding Some Confessions

In *Ibrahim v. R*⁶³, Lord Sumer observed that the rule which excludes evidence of statements made by a prisoner when they are induced by hope held out, or fear inspired by a person in authority is a rule of policy.

One reason for the exclusion of such confessions (involuntary) is the danger of encouragement to the police and other persons engaged in the pursuit of evidence to extort confessions by torture, among other unlawful means in the hope of professional advancement. In their anxiety to obtain a commendation for activity and zeal they are likely to oppress and torture prisoners to obtain confessions or to magnify slight grounds of suspicion into sufficient proof.⁶⁴

The incentive to procure a confession by putting the accused to the rack is strong and so many confessions are obtained by torture or unlawful pressure or brain washing methods that in the opinion of Bertrand Russell⁶⁵ the world famous thinker, a confession should in no circumstances be admitted in evidence. Law enforcement officers are generally promoted for action leading to the conviction of criminals. It is common knowledge that the Courts accept confessions as evidence of guilt, and in consequence, it is in the interest of individual officers to torture arrested persons until they confess. This evil exists in all countries, but in varying degrees.

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. 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.

⁵⁹*Osetola v. State* 2012 Vol. 6-7 Pt. II MJSC 41; *Hassan v The State* (2001) 15 NWLR (Pt 335) 184; *Igri v. State* 2012 Vol. 6-7 (Pt. III) MJSC 107, *Mbang v. State* 2012 Vol. 6-7 Pt. IV MJSC 119

⁶⁰*Chibuike V State* 2012 Vol. 1-2 MJSC 74

⁶¹*FRN v. Usman & Ano.* 2012 Vol. 3 MJSC Pt. 1 25; *R v. Ogbuewu* (1949) 12 WACA 483; *JAMB v. Orji* (2008) 2 NWLR (Pt 1072) 552.

⁶² 2012 Vol 2 MJSC Pt. II 123

⁶³ 18 CWN 705,713,1914 AC 599

⁶⁴ This is known in America as 'as sweat box' or '3rd degree' methods.

⁶⁵ Bertrand Russel, *Power: A New Social Analysis*, 1st Impression, London, 1938, Allen & Unwin

The burden of proving the voluntary nature of the confession lies on the prosecution. Section 24 of the Indian Law would apply even if the person who is said to have made the confession was not an accused at the time he made it.⁶⁶

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.

Under the Indian law, confessions are usually made to magistrates and not to police officers under any circumstances, contrary to what obtains in Nigeria. According to Stephen⁶⁷, this is in order to prevent the practice of torture by the police for the purpose of extorting confessions from persons in their custody in the hope of professional advancement. The object is to prevent confessions obtained from accused persons through any undue influence being received as evidence against them. Nevertheless, statements can be made to the Police.

Facts Discovered in Consequence of an Inadmissible Confession

Under Section 30 of the Nigerian law, facts discovered in consequence of information given by an accused defendant may be given in evidence where such information itself would not be admissible in evidence.

Facts discovered as a result of a confession which is inadmissible are admissible.⁶⁸ Where incriminating facts discovered in consequence of an inadmissible confession are admitted in evidence, the question is whether, notwithstanding that the confession itself must be excluded, evidence is admissible to show that the discovery of the facts in question was made as a result of the confessional statement. The law in this area is not settled. It is submitted that the circumstances of each case will be taken into consideration in deciding this issue. In *Musa Sadau & ano v. The State*⁶⁹ the court stated that *the test to be applied in such cases in considering whether evidence is admissible is whether it is relevant to the matter in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained.*

Confessions Made Under a Promise of Secrecy

Under Section 31 of the Nigerian law, a confessional statement otherwise relevant does not become irrelevant because of promise of secrecy or deception practiced on the defendant 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 these questions, or because he was not warned that he was not bound to make that statement and that evidence of it might be given.

A confession obtained from the accused on a promise of secrecy or through the practice of deception is admissible as long as it was voluntarily made.⁷⁰

In *Igbinovia v. The State*⁷¹ the court stated inter alia: *“deception remains a widely accepted method used to fight and flush out criminals who wear the garb of innocence. The appellant was charged with and convicted of murder. To elicit information, the police planted a police officer who disguised as a suspect in the midst of suspects locked up in one of the police cells. The officer lured the suspect by telling him of his own exploits. The appellant in turn confessed that he took part in killing the deceased, and mentioned the date and venue of the crime. It was held that the confession was admissible. It was further held that if a policeman does not present himself as a policeman but as a wild and vicious criminal and other suspected criminals take him as such and in order to boost their ego and establish better understanding with him open their mouths and pour out stories of what to them are brave deeds of courage but which to the civilised human societies are atrocious acts of violence against society and humanity, that information cannot become inadmissible only by reason of the concealment of the status of the disguised policeman who was fed with such valuable information.”*

⁶⁶Sarkar, Law of Evidence 16th Edition Reprint 2008, Wadhwa & Nagpur, India.

⁶⁷ Sir James Fitzjames Stephen, An Introduction to the Indian Evidence Act, page 165

⁶⁸ Principles Of Evidence 2nd Edition Alan Taylor Cavendish Publishing Ltd London 2000, page 257

⁶⁹ (1968) NMLR 208

⁷⁰ R v. Edwards, 1991 Crim LR 44 CA; R. V. Derrington, 1826, 2 C & P 418; R. V. Shaw, 1934 6 C & P 372.

⁷¹ (1981) 2 SC 5

Also, evidence given in other proceedings amounting to a confession is admissible.

The Role of the Court

The trial court has an important role to play in determining the admissibility or otherwise of any confession, especially where an inducement is alleged. Firstly, the court determines whether the inducement, threat or promise is sufficient to constitute any of the vitiating factors. The court also clothes itself with the mentality of the accused to see whether the ground would appear reasonable for a supposition that he would gain any advantage or avoid any evil. The court then judges as a Court if the confession appears to have been caused in consequence of the inducement, threat or promise.

Searching questions should be put by the Court to such witness as had anything to do with the confession. The court should ask questions like: Why is the accused confessing? In whose custody did he confess? How did he express his willingness to confess? What are the circumstances in which the question of the confession first arose? 'Is it relevant' is the question and not 'is it true?'

Recommendations and Conclusion

Section 27(2) provides only for voluntary confession. This might be insufficient because the average accused person is unlikely to speak the truth or reveal facts unless threatened or induced in some way. As a result, rigid adherence to the provisions of Section 27(6) of the Evidence Act would yield no fruitful results except some measure of inducement or threat is employed in the extraction of confessional statement.

The manner in which confessional statements are obtained by the police has always been controversial. In the current circumstances of police brutality in Nigeria, it is not safe to concede the power of recording confessions to the police officers to be used against the accused. It is an undeniable fact that the police in less developed climes, Nigeria and India inclusive, still resort to crude methods of investigation and suffer many handicaps which include lack of personnel, training and independence. The working environment and conditions of the police must necessarily be improved in order to get better results from its members.

All said, one must always bear in mind the fact that the law provides these safeguards to ensure that confessions are made wilfully and with full knowledge that the exercise of the right to remain silent does not amount to an admission of guilt.

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