

Legal Aspects of Confession in Bangladesh: Analysis of its Admissibility and Evidentiary Value

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Abstract: The Constitution of the People's Republic of Bangladesh in Article 35(4) has ensured the protection of an accused person from being compelled to be a witness against himself. Confession is an exception to the general rule embraced in the Constitution as it means the direct, express, and plenary admission of guilt by the accused person. It is the most persuasive evidence against the confessor, and once it is brought into evidence, it frequently results in an accused person's indictment even in the absence of any more proof or corroborating evidence. The fate of such cases must be decided by precedents rather than statutory provisions, as no law directly addresses whether a confession may be the sole legal basis for a conviction. There are ongoing allegations that law enforcement officers routinely and widely use torture and other forms of ill-treatment to coerce confessions. The objective of this qualitative and analytical study is to scrutinize the existing legal provisions on confession and to figure out the stance of the judiciary in admitting various types of confessions as evidence through case laws. Moreover, this study evaluates the confession recording procedure of Bangladesh in light of international standards. This study recommends the implementation of the contemporary practice of recording confessions in Bangladesh in the presence of a lawyer while being questioned. Additionally, to ensure compliance with legal standards, confessions may be recorded using audio-video technology.

Keywords: Confession, judicial and extra-judicial confession, evidentiary value

1. Introduction

Confession comes from the word 'confess', which means to admit, acknowledge, concede, or accept anything. It is a term commonly used in criminal laws and denotes an admission of guilt for committing an offense. In other words, 'confession' means a self-harming statement made by an accused acknowledging his guilt. The presumption of law in such regard is that no person will voluntarily make a statement that is against his interest

unless it is true. Hence, confession is considered the strongest evidence against its maker. The Evidence Act of 1872 prescribes the rules of using confession as evidence before the court of law (ss. 24-30) as well as proclaims the presumption of the genuineness of judicial confession (s.80). In addition, sections 164 and 364 of the Code of Criminal Procedure outline the legal conditions for the Magistrate to record a statement. A confession might be made in court, out of court, or retracted, among other ways. The admissibility and probative value of a confession rely greatly on its character, and the courts must consider whether such confessions are admissible to prevent the potential of smudged evidence being offered in a court of law (Banoo, 2020). This qualitative and analytical study aims to scrutinize the legal provisions on confession incorporated in the statutory laws of Bangladesh and the conditions of admissibility of confession before a court of law. It also evaluates the system of recording confessions followed by authorized officers to figure out the country's consistency with its obligation to protect the detainees from being convicted based on coercive confession.

2. Dissection of the Term “Confession” in the Light of Criminal Jurisprudence

In the pursuit of a criminal trial, confession plays a decisive role in the determination of the trial. Since there is currently no legislation in Bangladesh that defines the term “confession,” definitions provided by legal experts and meanings found in various judgments have been used to determine what confession means.

Sir James Stephen has defined 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 (Stephen, 1904).” However, disapproving the above definition, the Privy Council in 1939 held in the case of *Narayanswami v Emp.*, (1939) PC 47 that the word confession cannot be construed as meaning a statement made by an accused suggesting the inference that he committed a crime. A confession must in terms admit the offence or at any rate substantially all the facts which constitute the offence (Anisuzzaman & Efat, 2015).

Lord Atkin observed that “an admission of a gravely incriminating fact, viz, the accused was the owner of and was in recent possession of the knife or revolver which caused the death is not itself a confession” (*Narayanswami v. Emp*, 1939). The definition of confession given in the *Narayanswami v. Emp* (1939) case has been accepted and applied over the years till now by courts of Bangladesh, India, and Pakistan. In another leading case (*Palvinder Kaur v. State of Punjab*, 1953), following the Privy Council's decision Mahajan, J., has observed – “The confession must either admit in terms the offence or at any rate, substantially all the facts which constitutes the offence. The admission of gravely incriminating fact, even conclusively incriminating fact is not by itself a confession. A statement that contains self-exculpatory or other statement matter cannot amount to a confession, if the exculpatory statement is of the same facts which, if true, would negative the offence alleged to be confessed. The statement which when read as a whole is exculpatory and in which the prisoner denies his guilt is not a confession, and cannot be used in the evidence to prove his guilt.”

A confession cannot be accepted if it consists only of criminal action, words used to prove innocence, or the disclosure of irrelevant information with no bearing on the case.

(Monir, 2020). Moreover, mere conduct like absconding cannot be considered a confession. The act or behavior must amount to an assertion to qualify as a confession. Only circumstantial evidence qualifies as non-assertive evidence. “It is neither a confession nor a statement to provide a sample of one’s writing on a blank piece of paper for handwriting comparison” (*Emperor v. Ramrao Mangesh*, 1932).

Likewise, a “confession” is not an exculpatory remark that a person makes after admitting guilt in a crime; rather, a confession is an acknowledgment that a person did the act. Because of this, it is not a confession when an accused admits to murdering someone but claims that it was necessary out of self-defense (Appleby, Hasel & Kassin, 2013). It’s also not a confession if one chooses to accept a minor truth that doesn’t directly involve guilt. Examining a statement as a whole and determining whether it amounts to an admission of guilt or of almost all the facts that form the offense is the proper standard to use to decide whether a remark is only an admission or if it amounts to a confession. A confession would be made if it did. It is not true if it doesn’t. If the statement of the accused can be read as a plenary admission of guilt in clear terms only then it can be taken as a confession of the crime (*State v. MM Rafiqul Hyder*, 45 DLR (AD) 13). Therefore, in plain language, confession means a direct, express, and plenary admission of guilt by the person accused of a crime.

2.1 Statutory Provisions Regarding Confession

In Bangladesh, the law of confession is codified. The substantive law is contained in the Evidence Act of 1872, whereas the adjunctive law is found in the Code of Criminal Procedure of 1898.

2.1.1 Pertinent Sections of the Evidence Act, 1872

The confession-related requirements of the Evidence Act of 1872 are covered in sections 24 to 30. The Evidence Act of 1872 also includes regulations on presumption as to judicial confession in section 80. Section 24 disallows confessions that were gained using coercion, threats, promises, etc. Any admissions given to police officials, whether voluntarily or forcibly are prohibited by Section 25. Except for confessions made in front of a Magistrate, Section 26 prohibits statements made while under arrest. According to Section 27, even though evidence relating to confessional or other statements made by a person while he is in the custody of a police officer is tainted and therefore inadmissible, it may be presumed that the information given by him is untainted and is therefore declared provable in so far as it expressly relates to the fact thereby discovered. The circumstances under which a confession considered irrelevant by section 24 may be made relevant are outlined in section 28. The section 29 rule states that a confession that has been demonstrated to be significant in other ways does not lose its relevance simply because of a breach of a promise of confidentiality etc., as mentioned in the section. Under section 30, when some required conditions are fulfilled court may take into consideration a confession affecting the person making it and others jointly under trial for the same offence.

2.1.2. Relevant provisions of The Code of Criminal Procedure, 1898

The Code of Criminal Procedure, 1898 deals with the adjunctive provisions of confession. Sections 163, 164, 364, and 533 of the Code prescribe certain requirements for recording confessional statements. The police are forbidden from using any kind of coercion, threat, or enticement to obtain a confession under Section 163 of the Code of Criminal Procedure. Section 164 of the aforementioned Act discusses the authority of specific court personnel to record detainee's confessions when necessary. Contrary to section 364, section 533 of the Act allowed the court to accept a judicial confession even if the magistrate who recorded it did not adhere to all the requirements of sections 164 and 364 of the Code of Criminal Procedure, 1898, so long as the court was satisfied that this non-compliance did not harm the accused in his merits-based defense. Section 364 of the Code of Criminal Procedure, 1898 specifies how confessions by judicial officers should be recorded (Anisuzzaman & Efat, 2015).

3. Conditions for Relevancy of a Confession

No one will deliberately make a statement that is against his interests, unless it is true, resulting in a confession is accepted on this basis. A vitiated confession is not admissible as evidence since the validity of a confession depends on its voluntariness. A confession is deemed irrelevant under Section 24 if it was obtained via coercion, intimidation, or promise. As a result, Section 24 establishes a restriction on the relevance of confession. Section 28 further specifies the circumstances under which a confession considered irrelevant by Section 24 may be made relevant again. After all traces of enticement, etc. have been completely eliminated, a confession is acceptable since it is finally free and voluntary. Therefore, according to Monir (2020), the following are the general requirements for a confession's relevance:

- It cannot be brought about by coercion, intimidation, or promise (section 24).
- It is prohibited to make it to a police officer (section 25), subject to section 27's restrictions.
- When the defendant is being held by a police officer, it must be done in the Magistrate's presence (section 26).
- It must be made once all traces of any enticement, etc., have been completely eliminated (section 28).
- Subject to Section 30, an accused person's confession is only applicable against himself.

4. Classification of Confession

Confessions fall primarily into one of two kinds under criminal law: judicial confessions and extrajudicial confessions.

4.1 Judicial Confession

According to sections 164 and 364 of the Code of Criminal Procedure, 1898 (read in conjunction with section 26 of the Evidence Act), judicial confessions are those that the accused makes in front of and to a magistrate and that are documented. Judicial confessions include confessions that are made in open court before a magistrate or judge, or that are made by pleading “guilty” to a charge that has been put up by the trial court under Section 243 of the Code of Criminal Procedure, 1898. For example, in the case of the brutal killing of an 11 years old boy Rashed for ransom by his uncle and uncle’s cohorts, the dead body of the victim could not be found due to cutting into pieces and throwing in the water body connected to the sea, the accused uncle Monir Ahmed on 23.11.2005 stated before the Magistrate that he with the help of three others on 07.10.2005 took Rashed in an abandoned brick field and there they killed Rashed plunging him into the water. After that, they separated two hands, two legs, and the head from the dead body of the deceased, put the cut pieces in a sack, and dropped it in a canal named Jalkadar having link with the sea. The Magistrate after observing all legal formalities and giving sufficient time (3 hours) for speculation to the accused lawfully recorded his confessional statement under Section 164 of the Code of Criminal Procedure (*Monir Ahmed v. The State*, 16 SCOB [2022] AD 51).

4.1.1 Conditions Set Out by Law for Recording a Statement under Section 164 of the Code of Criminal Procedure, 1898

Section 164 of the Code of Criminal Procedure, when read in conjunction with Section 364 of the same code, specifies the legal criteria for recording a statement (Nazrul, 2018):

- The accused should be given sufficient time to think and contemplate by the Magistrate before recording his confession.
- The accused must be properly acquainted about the identity of the Magistrate and also about the fact that he is not bound to make any confession but if he does so, such confession may be used as evidence against him.
- The Magistrate shall record the confession of the accused only when, in his opinion, the confession appears to be, voluntary.
- Since police personnel could impair the accused’s capacity to think properly or comprehend what is being stated, they should not be present when the magistrate is recording the confession of the accused. Any confession made by the accused must be made after any incentive, threat, or promise, if any, has been removed from the accused’s mind in order for it to be relevant and accepted as a confession under criminal law.
- Deposition of the accused must be recorded in his own words.
- The Magistrate must not administer any oath to the accused before recording his statements.
- After recording of the confession the accused must be sent to judicial custody only.
- Section 164 of the Code of Criminal Procedure, 1898 grants a Judicial Magistrate exclusive authority to record confessional remarks; no other person, not even a police officer who has been conferred magistracy status, is permitted under this provision of law to use the aforementioned power.

4.2 Extra-judicial Confession

An extrajudicial confession occurs when an accused individual makes a statement to a person who is not a court official authorized to record confessions. Therefore, an extrajudicial confession is one that is made outside of a courtroom and not before a magistrate. Unlike extrajudicial confessions, which can be made either orally or in writing, judicial confessions are always put to paper form by the recording magistrate.

4.2.1 Confession Made to a Police Officer

A confession given to a police officer is prohibited from being used as evidence by section 25 of the Evidence Act of 1872, except for the circumstances set out in section 27. However, whether or not the police officer to whom a confession is made is the officer looking into the matter is irrelevant. Regardless of the offense to which the confession may pertain, the fact that he is a police officer alone is sufficient to render it invalid (Monir, 2020). The prohibition outlined in section 25 is a firm prohibition. Except where the confession was made while the subject was in police custody, there is no such prohibition in relation to a confession made to anybody other than the police officer. This exclusion is based on the idea that a confession made in this manner is not reliable. The reason for the rule is to put a stop to the extortion of confessions by the police by malpractices; and to avoid the danger of admitting false confessions. The response to the inquiry, “To whom was the confession made?” serves as the standard for excluding the confession under this provision. If the response is that it was given to a police officer, the confession is inadmissible and cannot be shown by the police officer’s testimony or by any other evidence since the method used to attempt to establish an inadmissible confession does not change the admissibility of the confession itself. Even though it was made in the direct presence of a magistrate, a confession to a police officer must be excluded from evidence since section 26 neither qualifies nor regulates the provisions of section 25, which must be followed (*Bura Yunus v. State*, 59 DLR 549).

4.2.2 Confession in the Form of F.I.R

Any confessions made by the accused in the First Information Report are not admissible. The FIR that the accused made in the form of a confessional statement cannot be utilized against him. In *State v. Ghandal*, the accused killed his wife, went to the police station wearing bloody clothing and a blood-stained knife, and filed a FIR admitting his guilt. His Lordship Abdul Aziz Khan, J. made the following observation while delivering the division bench’s decision of the Peshawar High Court: “The wording of the provision is extremely plain. A confession given to a police officer before the start of any inquiry is covered under Section 25.” In, *Lal Khan v. Emperor* (AIR 1948 Lah. 48), Monir and Marten, JJ. held that “where an accused person himself makes a confessional statement which is taken down as a first information report, the statement is inadmissible against the accused as it amounts to a confession to a police officer” (Nazrul, 2018). The Evidence Act of 1872, distinguishes between statements that amount to confessions and those that are admissions devoid of a confession. Statements of the latter sort are admissible unless they

are prohibited by section 162 of the Code of Criminal Procedure, 1898. Parts of a statement that have no relation to the real narrative pertaining to the crime may be incorporated when a confession is included in the FIR; the entire report need not be eliminated (Monir, 2020).

4.2.3 Bar on Confession whilst the Accused is in Police Custody

The idea outlined in section 25 is expanded upon further by section 26. No confession made by a person in custody to a person other than a police official is allowed under section 26 unless it is made in the Magistrate's immediate presence. The justification for this is that someone who is in the custody of the police is assumed to be under their control, which opens up the possibility of giving incentives or coercing confessions. The condition of inadmissibility proclaimed by section 26 was, however, given an exemption in its provisions. The exception is that even if the accused is being held by the police, a confession made by the accused while in such custody will still be acceptable if it is made in the explicit presence of a Magistrate.

Since the accused wants to make a confessional statement when presented by the police to a magistrate after being arrested, the magistrate may record it in accordance with section 164 of the Code of Criminal Procedure, 1898, in the format and manner specified by section 364 of the same code. Even though the accused is still in police custody during the confessional process, the confession is still admissible in the case against him because it was made to a magistrate, whose presence ensures the confession was made freely and voluntarily and gave the confessor the chance to speak freely without being restrained by police apprehension. However, long detention of the accused in police custody after arrest and prior to his production before the magistrate renders his confession inadmissible in evidence against him.

4.2.4 Confession in Further Discovery or Recovery of Facts

The guidelines for confessional exclusion are set out in Sections 24 to 26. Section 24 bans inducement and other induced admissions. While Section 26 exempts confessions made by the accused whilst under police custody, Section 25 applies to admissions made to a police official. However, despite the fact that these unethically acquired confessions are not admissible under these requirements, certain information in the confession the accused made while in detention may result in the discovery of facts, items, documents, etc. (Monir, 2020).

Section 27 states that any information obtained from an accused person who is in a police officer's custody that pertains specifically to a fact that was deposed to have been found as a result of such information, whether or not it amounts to a confession, may be used to show that fact. In *State v Md Gaush Meah* (10 BLC 74) it was decided that the basic idea embodied in section 27 of the Evidence Act is the doctrine of confirmation by subsequent event. Section 27 would apply despite sections 25 and 26 if the statement made is clearly connected to the discovery of facts. The reason for the exception as provided by section 27 is that, the discovery is a guarantee of the truth of the confession, and the court is entitled to receive such facts on the grounds of necessity and circumstantial trustworthiness. Discovery also supports the accused's account of

events. It is necessary to know exactly what the accused said that led to the finding. The police officer must record the statement as much as feasible in the accused's native tongue (*Farid Karim v. State*, 45 DLR 171).

Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be allowed to be given in evidence. However, the Appellate Division of the Supreme Court of Bangladesh observed that- "since statement under section 27 of the Evidence Act is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act" (*Md Humayun Kabir v. The State*, 15 SCOB [2021] AD 76).

4.2.5 Confession under a False Promise of Secrecy, Deception, etc.

The law has included false promises of secrecy, deceit, trickery, etc. under section 29 as a way to acquire an extrajudicial confession in addition to the vitiating factors of incentive, threat, and promise specified under section 24. The tactics listed in section 29 have been deemed legal, in contrast to the inducement, threat, and promise under section 24 (Nazrul, 2018).

The following five origins of a confession are listed in Section 29 as non-invalidating: 1. A vow of secrecy; 2. A lie; 3. Intoxication; 4. An interrogation; and 5. A lack of notice. Such confessions are only described as a knot governed by or predicted in Sections 24 to 28, i.e., a confession made to a person other than a magistrate, police official, or other person in authority. To ease worries regarding extrajudicial confessions made in circumstances similar to those that make judicial confessions inadmissible (Godsey, 2005), this section explains what constitutes a comparable circumstance. In addition to the above-mentioned two categories, confessions may also be divided into the following types:

4.3. Voluntary Confessions

A voluntary confession is one that was made of the suspect's own free choice and was not coerced, intimidated, or forced. In actuality, there aren't many voluntary confessions among the multitude of confessions made in criminal processes in Bangladesh. Furthermore, even though a confession may be voluntary, it may not be true, or true at all. It is the prosecution's responsibility to demonstrate that the confession was given spontaneously (Nazrul, 2018). A true and willing confession is given by the culprit as a result of his contrition, regret, repentance, etc., which is frequently seized upon him shortly following the conduct of the act. In such a case at times he hopes to get some consideration from the court by way of a mitigated punishment in view of a voluntary confession. However, a host of confessions may very well be voluntary but untrue. If a defendant's confession seems to the court to be dishonest and untrue, the court will not condemn him unless his confession is otherwise supported by other trustworthy evidence. To prove any charge brought against the accused person primarily based on the confessional statement,

the Court must ascertain whether the confession was made voluntarily, and if so whether the same was true and trustworthy. Satisfaction of the Court is a sine qua non for the admissibility in evidence (*Md. HumayunKabir v. The State*, 15 SCOB [2021] AD 76).

4.4. Involuntary Confession

An involuntary confession is one that is not given voluntarily but is instead brought on by pressure, torture, or a promise. The general consensus is that forced confessions cannot be used as evidence. In the case of *State v. Ashraf Ali* (16 BLC 310), the Court opined that the recording of a confessional statement after three days of police detention and multiple injuries on the body of the condemned prisoner cast doubt on the confessional statement and rendered it unsafe for the imposition of the death penalty. Additionally, the recording magistrate failed to complete the form's columns 8, 9, and 10 which indicates that the confessional statement was neither true nor voluntary nor recorded in accordance with the law's mandatory requirements.

4.5. Inculpatory Confession

Inculpatory confessions are those in which the accused expresses a clear admission of guilt. Only incriminating admissions are admissible as substantial evidence. Inculpatory confessional statement giving a true account of the prosecution case, excepting the allegation of attempt to commit rape on a minor girl, admitting removing the salwar of the victim and killing her throttling coupled with the testimony of the doctor that rape was committed on the victim girl before she was strangled and extra-judicial confession made in presence of the witnesses before arrival of the police is relevant and admissible in evidence (*State v. Azad Miah*, 5 BLC 304).

4.6. Exculpatory Confession

A confession that exonerates the accused is called an exculpatory confession. As the accused recounts facts that, if proven, would negate his criminal culpability with regard to the specific offense for which he is being accused, it tends to contradict or cast doubt on a crucial aspect of the crime. As per the observation provided in the case of *Abdul Jalil v. State*, 1985 BLD 137 (a), confession must admit in terms of the offence or substantially all facts constituting the offence, therefore, the exculpatory statement made by the accused cannot be considered as a confession.

4.7. Retracted Confession

A retracted confession is one that the accused retracts after making it, whether it was an extrajudicial or judicial confession made before the trial started. In this confession, the accused acknowledges committing the crime but denies it during the trial by saying what he confessed earlier was all false and he made that statement under threat or torture, etc. Here

the accused does not deny the factum of his making the confession but denies the truth of its contents (Nazrul, 2018). A retracted confession is always open to suspicion, therefore, the rule of prudence suggests that such a confession needs to be corroborated by independent and credible evidence (*State v. Ali Kibria*, 43 DLR 512). Moreover, regarding the acceptability of the last-moment retraction, the view of the Court in *State v. Kamal Ahmed*, 49 DLR 381 was that the confessor must file a petition from prison or directly to the court, or at the very least make some oral pronouncements about withdrawing from the confession, in order for a last-minute retracted confession to be accepted.

4.8 Confession by Co-accused

When more than one person is being tried concurrently for the same offense and a confession made by one of those people affecting himself and another one of those people is proven, the court may consider that confession as against both the person who makes it and the other person (Section 30). Even though a co-accused's judicial confession cannot be used as conclusive evidence against another accused person and cannot serve as the only justification for another accused's conviction, it may be considered and used to supplement other direct or circumstantial evidence (*State v. Ershad Ali Sikder and another*, 8 BLC 107).

5. Admissibility of Confession

Only a voluntary and truthful confession can be accepted. The confession always has to be disregarded if the case's circumstances raise any questions about its voluntariness. For admissibility, a confession must be first shown to be voluntary. In addition to being voluntary, confessions need to be genuine. Examining the confession and contrasting it with the prosecution's remaining evidence and chances of succeeding in the case would be useful in determining its veracity (*State v. Ali Kibria*, 43 DLR 512). A voluntary confession is one that was not coerced, threatened or promised. Both the issue of whether it is true and the question of whether it is voluntary are matters of fact. The issue of whether a confession is truthful or necessary for conviction does not at all need to be taken into consideration after it is determined that it was not voluntary. Some of the motives for making 'false confessions' are (Nazrul, 2018):

- Shielding dear ones from apprehension and creating an opportunity for his escape. Instances in this context are not rare where a father has falsely and voluntarily confessed the guilt of a grave crime like murder committed by his son. It is natural love that works behind such false confessions.
- Shielding the rich employer. A servant has often falsely confessed to protect his rich employer. The reasons for such confessions are often the expectation of benefit to the servant's family flowing from the bounty of his master and also a firm belief that his master will save him at last.
- Purpose or design for implicating an enemy or adversary of the confessor largely and principally in the commission of the crime while showing himself in a state of coerced, exculpatory, or insignificant role therein.
- The purpose of creating an *alibi* for a greater crime by falsely confessing a smaller one.

In cases when an accused's confession seems to the court dishonest and false, the court will not condemn the accused until additional credible evidence supports his confession. The prosecution is responsible for demonstrating whether the confession was made voluntarily or involuntarily. The appellate Court in the case of *Alamgir Hossain (MD) v. State*, 11 BLC 126 held that the conviction of the accused-appellant can be upheld based on his confessional statement which the defence failed to show by any means to be involuntary or false or produced by physical/mental torture. The burden of proving that the detainee's testimony was free and voluntary rests with the prosecution, and it is up to the accused to contest the confession's voluntariness (Thomson, 1893). The court has a responsibility to thoroughly investigate all the circumstances surrounding the confession, including the length of time the accused was detained. The Appellate Division in a case found the appellant's confessional statement to be voluntary and true after reviewing it. It also determined that the circumstantial evidence pointed unmistakably to the appellant's guilt, but after taking into account how long he had been in the condemned cell and other factors, the Court commuted his death sentence to imprisonment for life (*Monir Ahmed v. The State*, 16 SCOB [2022] AD 51). All confessions are subject to the rules of sections 24 to 30 of the Evidence Act to assess their admissibility and value as evidence.

5.1. Admissibility and Evidentiary Value of Judicial Confessions

As per law, a judicial confession must comply with the provisions of sections 164 and 364 of the Code of 1898. Only then, the presumption of its being voluntarily made arises (section 80). Furthermore, the Magistrate recording such confessions has to assert the voluntariness of the confession made by the detainee. Since in all court confessions are deemed voluntary, they are always admissible. Nevertheless, the defense has the legal capacity to refute the trial court's assumption that a judicial confession was made voluntarily. But to disprove the voluntariness of a judicial confession, the defense cannot call the recording magistrate to the witness box as he is not bound to testify as to the circumstances under which he recorded a confession if not specifically ordered by a Superior Court (Section 121).

An accused person may be found guilty purely based on a judicial confession, even in the absence of formal proof. The evidential worth of judicial confessions is the highest of all confessional remarks. According to the Supreme Court of Bangladesh, it is not necessarily essential for the magistrate who documented the confessional statement to be called as a witness in court. This is stated in the case of *Abul Khayer and 3 others v. State* (1994). According to Section 80, such a declaration may be considered and taken into account while being deemed to be authentic even without the magistrate's production. According to the legal ruling cited above, a judicial confession is eligible to be used as evidence without the recording magistrate being questioned. However, the prudential rule says nothing but the contrary (Anisuzzaman & Efat, 2015).

The Supreme Court of Bangladesh ruled in *Bimal Chandra Das alias Vim and 3 Others v. State* (1999) that "It was injudicious to rely upon confession without calling the magistrate as a witness. The Court is required to see not only the forms under sections 164 and 364 were complied with but the substance underneath the law equally adhered to." The Peshawar High Court held a similar opinion in *Fazlur Rahman v. The State* PLD 1960,

where the court stated that- “just because the magistrate found the confession to be voluntary does not mean that it was and that other factors should be taken into consideration while assessing the voluntariness.” Therefore, a court-ordered confession may serve as the only evidence used to condemn its creator. However, unique circumstances present in any given case may call for a judicial confession to be corroborated by the recording magistrate’s evidence in order to secure an accused person’s conviction.

5.2. Admissibility and Evidentiary Value of Extra-Judicial Confession

Extrajudicial confessions should be treated very carefully and cautiously since they are not thought to be reliable sources of evidence. However, the question of whether an extrajudicial confession can serve as the only basis for conviction is not specifically addressed by the law. Therefore, if an extrajudicial confession satisfies the requirements for admission, i.e., made in the presence of the witnesses on the night of occurrence before arrival of the police is relevant and admissible in evidence, in addition to that, when such confessions are voluntary and true supporting the prosecution case it even can form the basis of conviction (*State v. Azad Miah @ Md Azad*, 5 BLC 304). The court may use an extrajudicial confession if it is sincere and voluntary in order to convict the accused of committing the alleged crime. A confession cannot be rejected when it can be shown that it was given in the presence of someone who has no incentive to believe what was said as well as when it was delivered under settings that tend to support the statement.

In *Narayan Singh v. State of M. P.* (1985), the court stated that it is not permissible for any court to begin with the premise that extrajudicial confessions are a poor kind of evidence. Establishing a confession would rely on the specifics of the situation, the moment it was made, and the reliability of the witness. The Supreme Court of Bangladesh in *Nausher Ali v. State*, 39 DLR (AD) 194, remarked that if an extrajudicial confession is proven to be voluntary and truthful, it might serve as a foundation for conviction. Moreover, in the case of *Rafiq Ahmed v. State*, 11 DLR SC 91 court held that when the person being charged is in legal custody and he delivers a confession in secret to another prisoner, a visitor, a doctor who is seeing him, or where he sends a letter from inside the judicial custody to a friend or family member from inside, that carries the confession; these will be admissible in evidence against him, provided these are found voluntary and true, free from any coercion, threats, or assurances coming from a higher entity.

In the case of an extra-judicial confession of over drunken person, even if inculpatory, is viewed with caution if it appears that he was not in a mental state to understand what he was saying under the overwhelming influence of wine, and the probative force of such confession becomes especially weakened by a retraction (Nazrul, 2018). Similarly, compositions made in sleep are not admissible, as dreams are not any part of reality, and a person is completely unconscious of what he is saying in the spell of a dream (Nazrul, 2018). However, an extra-judicial confession, which appears to be untrue, and also remains uncorroborated by reliable pieces of evidence, cannot be acted upon.

An extrajudicial confession is a very flimsy piece of evidence as pointed out by the Supreme Court of Bangladesh (*State v. Mozammel and others*, 2005), under the effect of the rule of prudence. It can never serve as the foundation for an accuser’s conviction

unless the confession is corroborated by trustworthy sources and the accuser's exact words are included in the record. Extrajudicial confessions have long been seen as questionable evidence by courts, who have advised against their use in cases where there isn't other supporting evidence.

Extrajudicial confessions may be taken into account in the right circumstances. An extrajudicial confession must be backed up by further corroborating evidence in order to be utilized similarly to a court confession for determining the guilt of any other co-accused. However, if such extrajudicial confession is supported by irrefutable evidence and determined to be accurate and voluntary, it may serve as the foundation for the maker's conviction (Haque, 2019). Extrajudicial confessions are required by law to be proven by the individuals present when they were made. The witnesses' testimony must also be consistent with the words uttered by the person who made the confessions (*State v. Mozam*, 9 BLC 163). An extrajudicial confession may only be utilized to condemn a co-accused where there is sufficient evidence to back it up (*Mobarak Hossain v. State*, 1981 BLD 286(b)).

5.3. Admissibility and Evidentiary Value of Confession of a Co-accused

The essential thing to keep in mind regarding the requirements of section 30 is that the Legislature did not mandate that the court accept such a confession against a co-accused, but rather gave the court authority to do so. To be effective, this discretion must be used prudently (Nazrul, 2018).

In *Abul Hossain and others v. State*, 46 DLR 77 it was determined that an accused person's confession might be utilized against other co-accused parties in the same trial. But it only serves a specific function. A co-accused's confession in and of itself is not evidence, but it may be used as such if it is determined to be truthful and voluntary as against other co-accused, not as a sole foundation but rather to bolster any further evidence discovered against him. As a result, the confession of a co-accused person may only be used to confirm the veracity of other evidence that has been submitted to prove the guilt of the accused (*Moslemuddin and others v. State*, 48 DLR 588).

5.4. Admissibility and Evidentiary Value of a Retracted Confession

There is no language in the Evidence Act that says a retracted confession cannot be used against co-accused parties or the confessing offender; therefore, the court may use a retracted confession against both its maker and the other accused parties. However, even while a retracted confession may be used against the co-accused, it has a minimal amount of weight and cannot result in a conviction without the strongest and most comprehensive support for the relevant facts (*Ram Prakash v. State of Punjab*, 1959). The retracted confession cannot be used as the sole piece of evidence supporting a conviction; rather, it must be used in conjunction with other pieces of evidence. The other accomplices' evidence cannot be utilized to support it. Upon corroboration, it may provide the foundation

for a conviction. If evidence of a conspiracy between the two defendants is shown, a confession made by one of them may be utilized against the other (Monir, 2020).

6. Evaluation of the Confessional Statement Recording Situation in Bangladesh

Confessions are important pieces of evidence in the criminal justice system of Bangladesh. Numerous people have received death sentences purely because of confessions. Each individual is protected by Article 35(4) of the Bangladesh Constitution from being coerced into making a self-incriminating statement. Under all circumstances, torture and other cruel, inhumane, or degrading punishments or treatments are expressly forbidden under Article 35(5). The basic norm enshrined in the Constitution can be thought of as not applying to confession. The law's goal is to ensure that confession is offered willingly out of regret and as an act of repentance.

Even though Bangladesh's judicial system attempts to prevent the accused from being forced to give false or coerced confessions, incarceration, and torture of the accused are all too often in the country. The UN Committee Against Torture voiced concern over the accusation of widespread and systematic use of torture and ill-treatment by law enforcement forces in Bangladesh in its report of 2019 (Manir, 2021). The Committee requested Bangladesh to submit a follow-up report to its recommendations by August 9, 2020. Bangladesh has not provided the information sought by the Committee even after two urging letters sent by the Committee (Committee against Torture, 2023). Moreover, Bangladesh has not supplied the second periodic report that had fallen due on August 9, 2023.

The nature of confession recording is quite delicate. Between the defense of basic rights and their infringement, there is a fine line. Due to the sensitive nature of the subject, nations like the USA, Australia, the Netherlands, South Korea, and Europe have recognized some effective and contemporary solutions, such as mandating the presence of counsel during the interrogation to ensure the alleged is not mistreated. The legislation governing the recording of confessional statements has already been changed in the neighboring country, India, to permit magistrates to record confessions while the accused's counsel is present and while employing audio-video equipment. Unfortunately, despite the recent amendment to the Evidence Act in 2022 which brought digital and electronic records into the fold and also made forensic evidence admissible under sections 3(3), 45, 45A, 73B, and 89A, confessional recording equipment of this sort has not yet been introduced in the jurisdiction of Bangladesh.

7. Findings and Recommendations

Apart from the case laws, none of the Evidence Act or the Code of Criminal Procedure defined the term "Confession" in its true form and meaning. Methods of recording confessional statements of the accused are not strictly followed by the recording

magistrate but such sort of unlawful activity has been shielded by Section 533 of the Code of Criminal Procedure. Moreover, not allowing a lawyer at the time of recording a confessional statement of the accused in Bangladesh is against the constitutional mandate ensured under Article 33 (1) of the Bangladesh Constitution. In addition to that, the amendments made in the Evidence Act are not appropriate enough for the inclusion of audio-visual technology for recording confessional statements in Bangladesh like that of in India.

In Bangladesh, at least when recording confessions, the widely accepted practice of questioning under the supervision of a lawyer can be implemented. In order to make the accused aware of the seriousness of the confession he is giving. Additionally, to guarantee that the legal criteria are met for future reference, a confession recording using audio-video technology methods may be included. In addition to the aforementioned elements, it is essential to take into account the provision of training on interviewing techniques, facilitating access to materials like fingerprinting kits, and measures to ensure the continuity of the chain-of-custody for physical evidence as a substitute for confessions. A wide-spread inclusive definition may be added to Section 24 of the Evidence Act, 1872 to disqualify all involuntary confessions.

8. Conclusion

A confession may be used as strong evidence against the confessor if it has been accurately documented and is devoid of any legal faults. Although the confession would be enough to condemn the offender who made it, the court will hold off on doing so out of an abundance of caution. However, the Court must exercise sufficient caution before condemning an accused person based only on his confession. None of the Evidence Act or the Code of Criminal Procedure expressly states that a confession may be the only legal basis for a conviction. Case law must be relied upon in this situation. A confession needs to meet certain requirements set forth by the Evidence Act to be relevant. Nevertheless, despite having good enough legal protection, complaints of torture in detention continue to plague our jurisdiction. Therefore, apart from ensuring the presence of the learned advocate of the accused, the introduction of some advanced and digital methods of recording of confessional statements is a current need of time in Bangladesh.

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