



FACULTY OF JURIDICAL SCIENCES

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COURSE: B.B.A.LL.B. VI Semester

SUBJECT: Law of Evidence

SUBJECT CODE: BBL 604

Lecture-16



EVIDENTIARY VALUE OF CONFESSION

WHO CAN RECORD CONFESSION

Section 164 of Code of Criminal Procedure empowers the Magistrate to record a confession. A confession recorded by any person other than the Magistrate is not admissible. However, before recording confession, the Magistrate needs to comply with certain requirements provided under Section 164, CrPC.

1. Any Metropolitan Magistrate or Judicial Magistrate irrespective of his jurisdiction in the case can record any statement or confession made to him either at the time of investigation or at any time afterwards before the trial initiates. Further, the police officer who has been conferred the power of Magistrate by law cannot record any confession made to him.
2. It is the duty of the Magistrate to inform the person making a confession that he is not under any obligation to make the confession, and if he does so, then any statement made by him can be used as evidence against him in a court of law.
3. The Magistrate must also ensure that the person must make confession voluntarily and must not be under any threat or influence. An involuntary confession is not admissible before a court of law.
4. However, if a person making a confession at any time before a confession is recorded shows his unwillingness to make a confession, then he cannot be compelled to do so neither he can be arrested in police custody.
5. The confession made must be signed by the person making it and shall be recorded as per provisions of Section 281, of CrPC which provides for the manner of recording the examination, and the Magistrate shall make a memorandum at the foot of such record to the following effect:-

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make be used as evidence against him, and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.”

Magistrate (Sign)

6. The Magistrate, who recorded the confession or statement, must forward the same to the magistrate who is authorised by whom the case is to be inquired into or tried.

Probative Value of Confession

Though it is presumed that a person will not make a false statement which can be used against him as evidence, yet confession is considered as a weak type of evidence. Its evidential value is very less since there are chances that it can be untrue due to the state of mind of accused or may be influenced by force or under threat etc. Hence, they must be considered in collaboration with other evidence on the record. A court must as a matter of prudence resist from convicting a person solely on the basis of a confession. They must be taken into account in light of the facts and circumstances of the case.

Bose J. has observed, in *Muthuswamy v. State of Madras*[\[4\]](#), it was observed by J. Bose that confession is a weak type of evidence. It cannot be accepted merely because it is made by the accused himself and contains a wealth of details. The Supreme Court also held that as a matter of prudence, a court must not base a conviction for murder solely on a confession.

A confession may contain several parts, and it is not permissible in law to admit one part of confession as evidence and reject the remaining part. The court is bound to accept the whole confession as evidence. Hence, it is important that the confessions must either be accepted as a whole or rejected as a whole, and the Court is not competent to accept only the inculpatory part while rejecting the exculpatory part as incredible.

Thus, the *Pakla Narayan Swami* case made clear that confession refers to the direct acknowledgment of guilt. Also, a confession which has been duly recorded and suffers from no legal infirmity can be used as a substantive piece of evidence against its maker though as a matter of prudence it must be corroborated by some other evidence. Also, only a confession which is voluntary and true can be acted upon that a confession which is free from any threat, inducement or promise.

