

# Confession of CO Accused and its Evidentiary Significance

V. Kushie Jain<sup>1</sup> and V. Mahalingam<sup>2</sup>

B.COM.LL.B(HONS), SRM School of Law, SRM Institute of Science and Technology, Kattankulathur<sup>1</sup>  
Assistant Professor, SRM School of Law, SRM Institute of Science and Technology, Kattankulathur<sup>2</sup>

**Abstract:** *A Confession is an important piece of evidence in criminal jurisprudence and is often considered reliable. However, when such a confession is made by a co-accused, its evidentiary value becomes limited and complex. The law permits courts to take such confessions into consideration, but only with caution and in conjunction with independent evidence section 30 in Indian Evidence Act 1872 that such a confession may be taken into consideration even against the other person as a co accused.*

**Keywords:** *Confession*

## I. INTRODUCTION

The term confession is defined in section 23(1),23(2) of the Bharatiya Sakshya Adhinyam 2023. It states that a person who makes a confession of an offence in the presence of a police is not to be proved<sup>1</sup>. This foundational maxim NEMO TENETUR SEIPSUM ACCUSARE means "no person can be forced to give evidence against himself"<sup>2</sup>. The confession of a co-accused stands at the intersection of evidentiary utility and procedural fairness. While it may provide insight into the commission of a crime, it also raises concerns about coercion, reliability, and prejudice. Courts must therefore strike a balance between the need for effective prosecution and the protection of individual rights.

This paper aims to examine the concept of co-accused confession in depth, its admissibility, evidentiary value, and limitations under Indian law, along with relevant judicial precedents.

This paper seeks to interrogate whether the continued reliance on Section 30 Indian Evidence Act 1872 even in a restricted manner, is doctrinally justified. It explores the extent to which judicial interpretation has mitigated the risks associated with such confessions and evaluates whether legislative reform is warranted.

## CONFESSION OF A CO-ACCUSED

section 30 of Indian Evidence Act, 1872 states consideration of proved confession affecting person making it and others jointly under trial for same offence<sup>3</sup>. when more persons than one are being tried jointly for the same offence, and a confession made by one of such person is proved, the court may take into consideration such other person as well as against the person who makes such confession

EXPLANATION I: "OFFENCE" as used in this section includes the abetment of, or attempt to commit, the offence

EXPLANATION II: A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued.

ILLUSTRATIONS:

(a) X and Y are jointly tried for the murder of Z. It is proved that X said Y and I murdered Z. The court may consider the effect of this confession as against Y

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

<sup>1</sup> Bharatiya Sakshya Adhinyam, 2023, ss 23(1), 23(2).

<sup>2</sup> Constitution of India, art 20(3)



### **CORE SIGNIFICANCE OF EVIDENTIARY VALUE**

The evidentiary value of a co-accused's confession is limited due to several inherent weaknesses:

a) Absence of Oath

The confession is not made under oath, which reduces its formal reliability compared to testimony given in court.

b) No Cross-Examination

The accused against whom the confession is used does not get an opportunity to question or challenge the person making the statement. This goes against the basic principles of fair trial.

c) Possibility of Self-Interest

A co-accused may attempt to shift blame or reduce personal liability by implicating others.

This creates a risk of false implication.

d) Lack of Direct Evidence Value

The statement does not directly prove the guilt of another person. It only suggests involvement, which must be independently verified.

### **ROLE OF CORROBORATION**

One of the most significant aspects of the evidentiary value of a co-accused's confession is the requirement of corroboration<sup>4</sup>.

Courts rely on the following principle:

A confession of a co-accused can only be used to support other evidence, not to replace it.

This means:

a) There must be independent evidence connecting the accused to the crime

b) The confession can only strengthen or confirm that evidence

Without such corroboration, the confession has little to no value in proving guilt.

### **LIMITED USE BY COURTS**

Courts follow a structured approach while dealing with such confessions:

a) First, they examine independent evidence

b) If the evidence points towards guilt,

c) Then they may use the confession of a co-accused to lend assurance

Importantly, courts do not begin their reasoning with the confession. Instead, they treat it as a secondary factor.

### **DIGITAL EVIDENCE: A NEW DIMENSION**

Digital evidence refers to any information stored or transmitted in electronic form that may be used in a court of law. This includes emails, text messages, social media chats, audio recordings, video clips, and data extracted from electronic devices.

Under the Bharatiya Sakshya Adhiniyam 2023, digital evidence has been given formal recognition and clarity. Unlike earlier frameworks where electronic records required extensive procedural compliance, the new law simplifies admissibility while maintaining safeguards against misuse.

This shift has a direct impact on confessions. A confession may not always be a formal statement made before a magistrate; it can also emerge from a series of digital communications such as a WhatsApp message admitting involvement in a crime or a recorded voice note explaining the act.

<sup>3</sup> Indian Evidence Act, 1872, s 30

<sup>4</sup> Haricharan kurmi v. state of bihar, AIR 1964 SC 1184



### **ADMISSIBILITY OF DIGITAL CONFESSION**

The admissibility of digital confessions depends on the same foundational principles that govern traditional confessions. The most important requirement is that the statement must be voluntary. Any indication of coercion, inducement, or threat undermines its evidentiary value.

digital confessions must satisfy certain technical requirements:

- a) Authenticity: The record must be genuine and free from tampering.
- b) Integrity: The content should be complete and unaltered.
- c) Identification: The person making the statement must be clearly identified.

Digital confessions differ from traditional confessions in several important respects. Firstly, they are often informal and conversational. A person may admit involvement in a crime through a casual message or voice note without intending it to serve as legal evidence. Secondly, such confessions are frequently fragmented, appearing as part of a larger conversation rather than a complete and coherent statement.

Another distinguishing feature is the permanence of digital records. Unlike oral statements, which may rely on memory or testimony, digital confessions are often preserved in electronic form, making them retrievable and reproducible. At the same time, this apparent reliability is complicated by the possibility of manipulation, editing, or selective presentation.

Digital confessions can take various forms depending on the medium of communication. These include:

- a) Text Messages and Chats: Admissions made through messaging platforms are among the most common forms. These may include direct acknowledgments of wrongdoing or indirect statements implying involvement.
- b) Emails: Formal or semi-formal communications may contain detailed admissions, particularly in cases involving financial or corporate offences.
- c) Audio and Video Recordings: Voice notes or recorded conversations can serve as powerful evidence if they clearly demonstrate voluntariness and authenticity.
- d) Social Media Content: Posts, comments, or private messages on social media platforms may reveal incriminating information.

### **LEGAL FRAMEWORK**

#### **a) Statutory Architecture**

The Bharatiya Sakshya Adhinyam 2023, provides a detailed framework governing confessional evidence. Sections 22 to 23 establish exclusionary rules designed to prevent coercion and ensure voluntariness. Section 27 of the Indian Evidence Act 1872 introduces a limited exception, while Section 30 addresses confessions implicating co-accused. The language of Section 30 is notably cautious. By permitting courts to merely “take into consideration” such confessions, the provision avoids categorizing them as definitive proof. This linguistic choice reflects an underlying concern about reliability.

#### **b) Preconditions for Applicability**

For Section 30 Indian Evidence Act 1872 to operate, certain conditions must be satisfied:

- The accused persons must be tried jointly
- The confession must implicate both the maker and others
- The confession must itself be admissible Failure to meet these criteria renders the provision inapplicable.

#### **c) Constitutional Overlay**

The constitutional framework significantly influences the interpretation of evidentiary rules:

- Article 20(3) prohibits compelled self-incrimination
- Article 21 guarantees a fair and just trial



These provisions necessitate a cautious approach toward evidence that cannot be tested through cross-examination.

### **IMPORTANT CASE LAW**

#### **a) Kashmira Singh v. State of Madhya Pradesh**

The Supreme Court held that the confession of a co-accused cannot be treated as substantive evidence. This case clearly establishes that co-accused confessions are weak evidence and require corroboration. The Court emphasized that the confession of a co-accused can only be taken into consideration to lend assurance to other independent evidence already available on record.

#### **b) Haricharan Kurmi v. State of Bihar**

The Supreme Court held that the confession of a co-accused is not substantive evidence and cannot be the foundation of conviction. The Court emphasized that such a confession can only be taken into consideration in a limited manner. It clarified that before using the confession of a co-accused, the court must first examine other independent evidence. This case clearly establishes that co-accused confessions are weak evidence and require corroboration. Only when such evidence points towards the guilt of the accused can the confession be used to lend assurance to that conclusion.

### **COMPARATIVE ANALYSIS**

#### **a) United States Perspective**

American jurisprudence adopts a stricter stance. *Bruton v. United States*, 391 U.S. 123 (1968), the Supreme Court held that admitting a co-defendant's confession against another accused violates the constitutional right to confrontation. This reflects a strong commitment to procedural fairness.

#### **b) United Kingdom Approach**

The UK framework, governed by the Police and Criminal Evidence Act, 1984, imposes stringent conditions on the admissibility of confessions. The emphasis is on voluntariness and reliability, with limited scope for using such statements against co-accused.

#### **c) Analytical Insight**

The comparative analysis reveals that Indian law occupies an intermediate position allowing limited admissibility while attempting to mitigate risks through judicial safeguards.

### **CRITICAL EVALUATION**

#### **a) Conceptual Uncertainty**

Section 30 Indian Evidence Act 1872 does not clearly articulate whether a co-accused's confession constitutes evidence or merely a supplementary consideration. This ambiguity complicates its application.

#### **b) Reliability Concerns**

Such confessions are inherently suspect because:

- They may be motivated by self-preservation
- They are not subject to cross-examination
- They may result from coercive interrogation practices

#### **c) Judicial Dilution**

Courts have effectively neutralized the provision by:

- Requiring corroboration
- Refusing to treat it as substantive evidence



## REFORMS

The law relating to confession of a co-accused, though well-established, still requires certain reforms to ensure fairness and reliability in criminal trials. One important reform is the need for clear statutory guidelines on the admissibility of such confessions, as their current use largely depends on judicial discretion. There should also be a mandatory requirement of corroboration, making it explicit that no conviction can be based solely on the confession of a co-accused without independent supporting evidence. Further, confessions should ideally be recorded under judicial supervision, preferably before a magistrate, to ensure voluntariness and prevent coercion during investigation.

In the present digital world, the use of audio-video recording during the process of confession can enhance transparency and credibility. Additionally, investigating agencies should be encouraged to rely more on scientific and independent evidence rather than confessional statements, thereby reducing the risk of false implication.

## II. CONCLUSION

The current legal position regarding co-accused confessions reflects a cautious but incomplete attempt to reconcile evidentiary utility with constitutional safeguards. While judicial interpretation has significantly limited the risks associated with such confessions, the absence of clear statutory guidance continues to create uncertainty. A re-examination of Section 30 Indian Evidence Act 1872 is therefore necessary to align it with contemporary standards of fairness and reliability. Strengthening the doctrinal foundation of this provision will enhance both the integrity of criminal trials and the protection of individual rights. “No person should be convicted solely on the basis of another accused’s statement.”

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