

# The Retracted Confession and its Evidentiary Value: Legal Standards, Judicial Discretion, and The Pursuit of Truth

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**Abstract:** *The confession stands as one of the most potent instruments of proof in the criminal justice arsenal, yet its retraction introduces profound jurisprudential complications. This paper critically examines the evidentiary value of retracted confessions across common law and civil law jurisdictions, interrogating the doctrinal frameworks that govern their admissibility, weight, and ultimate probative force. Drawing on comparative analysis of English, American, Indian, and Nigerian jurisprudence, the paper argues that a retracted confession does not lose its evidentiary character ipso facto; rather, it becomes a contested piece of evidence whose weight is subject to rigorous judicial scrutiny. The paper further explores the voluntariness doctrine, the corroboration requirement, and the constitutional safeguards against self-incrimination as they intersect with retraction, proposing a structured multi-factor test for trial courts to apply when evaluating the credibility of a retraction. The paper concludes that doctrinal coherence, consistent procedural safeguards, and a calibrated approach to judicial discretion are essential to preventing both wrongful convictions premised on unreliable confessions and wrongful acquittals premised on opportunistic retractions.*

**Keywords:** *retracted confession; evidentiary value; voluntariness; corroboration; admissibility; judicial discretion; false confession; self-incrimination; criminal evidence*

## I. INTRODUCTION

Among the varied forms of evidence that courts encounter, few carry the psychological weight—and the attendant risk—of the confession. When an accused person declares, in express and unambiguous terms, that they committed the act charged, such a declaration strikes at the heart of the adversarial process. Courts across jurisdictions have long regarded confessions as among the most compelling forms of self-implicating evidence. Yet the criminal justice system is equally alert to the dangers posed by confessions extracted through improper means, made under duress, or later repudiated by the very person who made them.

A retracted confession presents the legal system with a unique and complex evidentiary dilemma. On one hand, the retraction raises serious questions about the reliability and voluntariness of the original statement. On the other hand, courts have consistently held that a mere denial or recantation does not automatically nullify the probative force of a prior confession. The central tension, therefore, lies between the accused person's liberty interest in having unreliable statements disregarded and the prosecution's interest in relying on evidence that may genuinely reflect the truth.

This article is premised on the view that the evidentiary value of a retracted confession is not a binary question—it is not simply "admissible" or "inadmissible," "reliable" or "unreliable." Rather, it exists on a continuum, shaped by the circumstances of the original confession, the manner and timing of the retraction, corroborating or contradicting evidence, and the broader procedural context. Understanding this continuum is essential for trial judges, appellate courts, and defence counsel alike.



The analysis proceeds in five parts. Part II traces the historical and doctrinal foundations of confession law, establishing the framework within which retraction must be understood. Part III examines the specific legal treatment of retracted confessions across selected jurisdictions. Part IV interrogates the contested theoretical questions that arise from retraction, including the role of voluntariness, the adequacy of corroboration, and the limits of judicial discretion. Part V proposes a structured analytical framework for courts to apply. Part VI concludes with reflections on reform.

## **II. DOCTRINAL FOUNDATIONS OF CONFESSION LAW**

### ***A. The Nature and Definition of a Confession***

A confession, in its strictest legal sense, is an acknowledgment by an accused person of guilt in relation to the crime charged. This definition distinguishes confessions from admissions—statements that acknowledge facts that may be incriminating but fall short of a direct acknowledgment of guilt. In *R v. Harz* and *R v. Power*,<sup>1</sup> the House of Lords drew a distinction between confessions that go to the whole of the charge and admissions that go only to a part. While the distinction may seem academic, it has practical consequences for the standard of scrutiny that courts apply.

The Evidence Act of 2011 (Nigeria), s. 28, defines a confession broadly as "a statement made by an accused person stating or suggesting that he committed the offence." This formulation, derived from the Indian Evidence Act of 1872, s. 17, embraces both express and implied confessions and does not require that the statement be made with full appreciation of its legal consequences. Courts have interpreted this definition liberally, treating as confessions statements that, read as a whole and in context, amount to an acknowledgment of the conduct constituting the offence.

English law, operating under the Police and Criminal Evidence Act 1984 (PACE), s. 82(1), defines a confession as including "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." The breadth of this definition reflects the legislative intent to capture the full range of self-implicating statements, while the voluntariness and fairness requirements of ss. 76 and 78 of PACE serve as the principal safeguards against unreliable confessions.

### ***B. The Presumption of Voluntariness and Its Erosion***

At common law, a confession was admissible only if it was made voluntarily—that is, without the influence of hope or fear induced by a person in authority. The locus classicus is *Ibrahim v. R*,<sup>2</sup> where the Privy Council articulated the exclusionary rule: a confession must be excluded unless the prosecution proves beyond reasonable doubt that it was voluntary. This formulation, while elegant in theory, proved difficult to apply in practice, particularly as custodial interrogation practices became more sophisticated and coercive.

The voluntariness doctrine was substantially recast in England by PACE 1984. Section 76(2) provides that a court shall not allow a confession to be given in evidence if it was obtained by oppression (s. 76(2)(a)) or in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession (s. 76(2)(b)). The shift from a purely subjective test ("was it voluntary?") to an objective-functional test ("was it likely to render the confession unreliable?") marked a significant evolution in the doctrine.

The United States took a different path. In *Miranda v. Arizona*,<sup>3</sup> the Supreme Court imposed procedural safeguards—including the right to silence and the right to counsel—as preconditions for the admissibility of custodial statements. The *Miranda* framework rests on a prophylactic logic: by requiring warnings, the law deters coercive interrogation and thereby reduces the risk of involuntary confessions. The failure to administer *Miranda* warnings triggers a per se exclusionary rule, irrespective of whether the resulting confession was, in fact, voluntary.

These divergent approaches—the English "reliability" model and the American "procedural" model—have direct implications for how retracted confessions are treated. Under the reliability model, the question of retraction feeds naturally into the broader inquiry about the trustworthiness of the statement. Under the procedural model, a properly warned confession that is subsequently retracted is presumptively admissible, with the retraction going only to weight rather than admissibility.



***C. The Act of Retraction: Taxonomy and Significance***

A retraction may take various forms. The accused may, at the voir dire or at trial, testify that the confession was false. They may allege that it was induced by threats, promises, or physical coercion. They may claim that the recording or transcription of the confession is inaccurate. They may assert a defect in capacity—that they were under the influence of substances, mentally unwell, or simply did not understand the import of what they were saying. Each of these forms of retraction has distinct legal consequences and calls for a different analytical response.

Courts have developed a taxonomy that distinguishes between retractions going to admissibility and those going only to weight. Allegations of oppression, inducement, or procedural impropriety generally trigger a voir dire in which the court must determine, as a threshold matter, whether the confession meets the conditions for admissibility. By contrast, a bare denial that the confession is true—absent any allegation of impropriety—typically does not affect admissibility; it simply becomes a factor for the fact-finder to consider when assessing the weight of the evidence.

**III. COMPARATIVE JURISDICTIONAL ANALYSIS**

***A. England and Wales***

In English law, the retraction of a confession does not, of itself, render it inadmissible. The courts have consistently held that where a confession passes the voluntariness threshold under s. 76 of PACE and is not excluded under s. 78 on grounds of unfairness, the retraction goes only to weight. In *R v. Mushtaq*,<sup>4</sup> the House of Lords confirmed that the jury must be directed to disregard a confession if they believe it was or may have been obtained by oppression or in circumstances likely to render it unreliable—but this direction is contingent on the jury's own assessment of the circumstances, not on the mere fact of retraction.

The Court of Appeal in *R v. McKenzie*<sup>5</sup> elaborated on the approach where confessions are retracted and where there is a risk of a false confession. The court identified categories of vulnerable suspects—including the mentally disordered and the suggestible—whose confessions ought to be treated with special caution. In such cases, the court may be required to withdraw the case from the jury if the confession is retracted, uncorroborated, and the accused is demonstrably vulnerable. This represents a significant qualification to the general rule that retraction affects only weight.

***B. The United States***

American courts apply a "totality of the circumstances" test to determine the voluntariness of a confession, an approach endorsed by the Supreme Court in *Schneekloth v. Bustamonte*.<sup>6</sup> A retracted confession remains admissible provided it was knowingly and voluntarily made in accordance with *Miranda*. The burden of proving voluntariness rests on the prosecution. Retraction, however, invariably becomes significant at trial: defence counsel typically argue that the retraction demonstrates the falsity of the original statement and may introduce expert psychological testimony on the phenomenon of false confessions.

The literature on false confessions—substantially developed by Professors Saul Kassin, Steven Drizin, and Richard Leo—has had a measurable influence on American courtrooms.<sup>7</sup> Courts have increasingly permitted expert testimony on interrogation-induced false confessions, the psychological vulnerabilities that predispose certain individuals to confess falsely, and the prevalence of false confessions in wrongful conviction cases. This expert evidence provides a principled basis for juries to evaluate retractions, moving beyond the intuitive—but empirically questionable—assumption that innocent people do not confess.

***C. India***

Indian law presents a uniquely bifurcated regime. Under the Indian Evidence Act 1872, s. 25, a confession made to a police officer is wholly inadmissible. Section 26 extends this bar to confessions made in police custody unless made in the immediate presence of a Magistrate. Section 27, however, creates an exception: information given by an accused in police custody is admissible insofar as it leads to the discovery of facts. This trilogy of provisions reflects a legislative judgment that police confessions are inherently unreliable and coercion-prone, while preserving their utility for investigative purposes.



The retraction of a Magistrate-recorded confession is treated more seriously in Indian law than a retraction of an extra-judicial statement. In *Sarwan Singh Rattan Singh v. State of Punjab*,<sup>8</sup> the Supreme Court of India held that a retracted confession can be made the basis of conviction only if it is corroborated in material particulars. The court further observed that the retraction itself is a circumstance that must be evaluated: where the accused offers a plausible and consistent explanation for why the confession was made and why it is false, that explanation cannot be dismissed without engagement. The principle that a conviction may not rest solely on a retracted confession without corroboration is now firmly established in Indian jurisprudence.

#### ***D. Nigeria***

Nigerian law closely tracks the Indian model, reflecting their shared colonial heritage. The Evidence Act 2011, s. 29, provides for the exclusion of confessions obtained by means of undue inducement, threat, or promise by a person in authority. Section 29(3) permits the court to admit a confession even where it appears to have been caused by inducement, if the court is satisfied that the confession was not caused by the inducement. This provision introduces a degree of judicial flexibility, though it has been criticised for potentially permitting the admission of statements obtained through mild coercion.

The Supreme Court of Nigeria has consistently held that a retracted confession, standing alone, is insufficient to sustain a conviction. In *Nwosu v. State*,<sup>9</sup> the court articulated the governing principle: a court may convict on the basis of a retracted confession, but only after subjecting it to "the most careful scrutiny" and satisfying itself that the confession is consistent with other evidence and that the grounds for retraction are not cogent. The requirement of corroboration, while not expressed in the legislation, has been judicially imposed as a matter of prudence and as a safeguard against miscarriage of justice.

### **IV. THEORETICAL TENSIONS AND CONTESTED QUESTIONS**

#### ***A. The Psychology of False Confession***

The empirical literature on false confessions challenges the intuitive assumption that rational, innocent persons would not confess to crimes they did not commit. Research identifies three principal types of false confessions: voluntary false confessions, made without external pressure; compliant false confessions, made to escape an aversive interrogation environment; and internalised false confessions, in which the accused comes genuinely to believe in their own guilt.<sup>10</sup> The prevalence of these phenomena—demonstrated by DNA exoneration data in the United States and the United Kingdom—has fundamentally altered the credibility landscape for retracted confessions.

Courts are increasingly confronted with the question of whether, and to what extent, psychological evidence should inform the evaluation of a retraction. In England, the Court of Appeal in *R v. Blackburn*<sup>11</sup> permitted expert evidence on the psychological characteristics of the accused that made them susceptible to making a false confession. In the United States, the Supreme Court's decisions in *Atkins v. Virginia* and *Hall v. Florida*—while addressing intellectual disability in the context of capital punishment—have prompted broader consideration of how cognitive vulnerabilities should affect the reliability of confession evidence.

#### ***B. Corroboration: Doctrine and Its Discontents***

The corroboration requirement, as it applies to retracted confessions, is both conceptually sound and practically fraught. As a matter of principle, requiring independent evidence to support a confession that has been retracted reduces the risk of wrongful conviction. As a matter of practice, however, the concept of corroboration is notoriously imprecise. Courts have differed on whether corroboration must independently implicate the accused in the offence, or whether it is sufficient that it be consistent with the confession; whether it must go to the substance of the confession, or whether circumstantial evidence in the surrounding context suffices; and whether the corroboration requirement can be satisfied by the very facts that the accused disclosed in the confession (the "discovery of facts" exception under Indian law).

These doctrinal uncertainties create the risk of a circular analysis, where courts effectively use the confession to corroborate itself. A rigorous corroboration standard would require evidence that, independently and without reliance



on the confession, tends to connect the accused with the offence. This is the standard that academic commentators have advocated and that some appellate courts have endorsed, though its consistent application remains elusive.

### ***C. The Limits of Judicial Discretion***

A recurrent theme in the jurisprudence on retracted confessions is the breadth of discretion afforded to trial judges. Whether applying the balancing test under s. 78 of PACE, the "totality of the circumstances" standard under American constitutional law, or the "careful scrutiny" requirement of Indian and Nigerian doctrine, trial judges are ultimately asked to make a holistic assessment of reliability and fairness. This discretion, while necessary, carries risks. It may be exercised inconsistently, producing unpredictable outcomes. It may be influenced by irrelevant factors, including the demeanor of the accused or the seriousness of the offence charged. And it may afford insufficient protection to vulnerable accused persons whose retractions are genuine.

Appellate courts have attempted to structure this discretion by laying down factors to be considered, but the weight assigned to those factors remains a matter for the trial judge. The result is a system that is flexible but potentially arbitrary. The reform proposals considered in Part V below are directed, in part, at reducing this arbitrariness while preserving the core flexibility that the criminal trial process requires.

## **V. A STRUCTURED MULTI-FACTOR FRAMEWORK FOR EVALUATING RETRACTED CONFESSIONS**

The foregoing analysis reveals that no single doctrinal rule can adequately capture the complexity of retracted confessions. What is needed is a structured framework that directs judicial attention to the relevant factors, ensures systematic consideration of each, and provides a transparent basis for the ultimate decision on weight. This paper proposes the following five-factor framework for trial courts:

### ***Factor 1: Circumstances of the Original Confession***

Courts should examine, in detail, the circumstances under which the confession was made: the time, place, and duration of the interrogation; the presence or absence of legal representation; compliance with procedural requirements; and any evidence of physical or psychological coercion. A confession made in conditions that created a heightened risk of unreliability—prolonged detention, absence of counsel, sleep deprivation—should be accorded reduced weight even if it was not excluded at the admissibility stage.

### ***Factor 2: The Timing and Consistency of the Retraction***

Courts should attend carefully to when and how the retraction was made. A retraction made at the first opportunity after the accused was able to consult freely with counsel carries greater weight than one introduced for the first time at trial. Equally, a retraction that is consistent, detailed, and maintains its form across multiple stages of the proceedings is more credible than one that shifts its basis or contradicts the accused's own earlier statements.

### ***Factor 3: The Plausibility of the Explanation for Retraction***

The accused's stated reason for retracting the confession should be examined against the evidence. If the accused claims coercion, that claim should be assessed against the objective circumstances of the interrogation, including any CCTV footage, custody records, medical evidence of injury, and the testimony of custody officers. If the accused claims that the confession was made under a misapprehension or on legal advice that turned out to be misguided, that claim should be assessed against the contemporaneous record of any advice received.

### ***Factor 4: Independent Corroboration***

Courts should assess the extent to which the confession is corroborated by independent evidence. The greater the independent corroboration, the less the retraction can diminish the probative value of the confession. Conversely, a retracted confession that is entirely unsupported by independent evidence should be treated with the utmost caution. Corroboration should be genuine and independent: evidence that is derived from the confession itself cannot constitute corroboration of it.

### ***Factor 5: Characteristics of the Accused***

Finally, courts should consider the personal characteristics of the accused that may bear on their susceptibility to making a false confession: age, intellectual capacity, mental health status, prior experience with the criminal justice



system, and any relevant cultural or linguistic factors. Where expert evidence is available on these characteristics, it should be admitted and accorded appropriate weight. Where the accused is shown to be particularly vulnerable, the threshold for acting on a retracted confession without independent corroboration should be correspondingly higher.

## VI. CONCLUSION

The retracted confession occupies a unique and precarious position in the law of evidence. It is evidence of a confession and evidence of a denial, simultaneously. Its treatment requires courts to navigate the competing risks of wrongful conviction—premised on an unreliable statement that the accused was impelled to make against their interest—and wrongful acquittal, premised on a strategic retraction designed to escape the consequences of a true admission.

The comparative analysis undertaken in this paper reveals that all major common law jurisdictions have grappled with this tension and arrived at a broadly similar conclusion: a retracted confession is not automatically deprived of evidentiary value, but its weight must be carefully calibrated against the full range of relevant circumstances. The differences lie, primarily, in the degree of structure that different legal systems impose on this calibration exercise.

This paper has argued that greater doctrinal structure is both necessary and achievable. The five-factor framework proposed in Part V represents an attempt to rationalise the exercise of judicial discretion without foreclosing the holistic assessment that justice requires. By directing attention to the circumstances of the original confession, the timing and plausibility of the retraction, the presence or absence of corroboration, and the characteristics of the accused, the framework provides a principled basis for decision-making that is sufficiently flexible to accommodate the diversity of circumstances in which retracted confessions arise.

Ultimately, however, doctrinal reform cannot substitute for the systemic safeguards that reduce the incidence of false confessions in the first instance: mandatory recording of all custodial interrogations, guaranteed access to counsel, limits on interrogation duration, and training of investigators in psychologically informed, non-coercive interviewing techniques. The proper treatment of retracted confessions in the courtroom is a second-order problem; the primary goal of a just criminal justice system must be to reduce the production of unreliable confessions before they ever reach the court.

## FOOTNOTES

<sup>1</sup> R v Harz and R v Power [1967] 1 AC 760 (HL).

<sup>2</sup> Ibrahim v R [1914] AC 599 (PC) 609 (Lord Sumner).

<sup>3</sup> Miranda v Arizona 384 US 436 (1966).

<sup>4</sup> R v Mushtaq [2005] UKHL 25, [2005] 1 WLR 1513.

<sup>5</sup> R v McKenzie [1993] 1 WLR 453 (CA).

<sup>6</sup> Schneckloth v Bustamonte 412 US 218 (1973).

<sup>7</sup> See Saul M Kassin and Gisli H Gudjonsson, "The Psychology of Confessions: A Review of the Literature and Issues" (2004) 5 Psychological Science in the Public Interest 33; Steven A Drizin and Richard A Leo, "The Problem of False Confessions in the Post-DNA World" (2004) 82 North Carolina Law Review 891.

<sup>8</sup> Sarwan Singh Rattan Singh v State of Punjab AIR 1957 SC 637.

<sup>9</sup> Nwosu v State (1998) 8 NWLR (Pt 562) 433 (SC).

<sup>10</sup> Richard A Leo, Police Interrogation and American Justice (Harvard University Press 2008) ch 8.

<sup>11</sup> R v Blackburn [2005] EWCA Crim 2549.

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