

**DIVISIONAL JUDICIAL SEMINAR**  
**FOR**  
**JUDICIAL OFFICERS**  
**POSTED IN RAIPUR DIVISION**

**A Paper Presentation on**  
**EVIDENTIARY VALUE OF CONFESSION :-**  
**JUDICIAL & EXTRAJUDICIAL CONFESSION**  
**CONFESSION OF CO ACCUSED**

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## Index

S.No.	Content	Page No.
1.	<b>Confession</b>	3
	i. Type of Confession	4
2.	<b>Extra-Judicial Confession</b>	4
	i. Definition of Extra-Judicial Confession	4
	ii. Types of Extra-Judicial Confession	4
	iii. The Relevancy and Admissibility of Extra-Judicial Confession	5
	iv. Conclusion	-
		14
3.	<b>Judicial Confession</b>	15
	i. Definition of Judicial Confession	15
	ii. Irrelevant confession under Section 24	15
	iii. Basic Principles of Section 164 Cr.P.C. in respect of Judicial Confession	16
	iv. Chhattisgarh Rules and Order	-
	v. Citations	17
	vi. Conviction can be made basis of Judicial Confessions	18
	vii. Conclusion	19
		-
		20
4.	<b>Confession of Co-accused</b>	21
	i. Confession can be used as corroborative evidence but not as substantive evidence	22
	ii. Self-exculpatory statement cannot amount to a confession	-
	iii. Confession only admissible when it leads to discovery of new facts or is a confession of guilt by the accused	23
	iv. Confession of co accused is not the evidence	-
	v. Application of Section 30 : Jamuna Bai Vs. State of Chhattisgarh	25
	vi. Conclusion	26
		-
		29

**EVIDENTIARY VALUE OF CONFESSION:- JUDICIAL  
AND EXTRA JUDICIAL CONFESSION, CONFESSION OF  
CO-ACCUSED**

**Presentation on behalf of District Dhamtari**

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**INTRODUCTION**

The word confession is not defined in the Evidence Act or any other act. Mr. Justice Stephen in his Digest of the law of Evidence defines confession as-

***“Confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.”***

The word “*confession*” appears for the first time in Section 24 of the Indian Evidence Act. This section comes under the heading of Admission so it is clear that the confessions are merely one species of admission.

Confessions may be divided into 2 classes-

1. Judicial confession
2. Extra-judicial Confession

### **DEFINITION OF EXTRA-JUDICIAL CONFESSION**

Extra judicial confession are those which are made to any person other than those authorized by law to take confession. It may be made to any person or to the police during investigation of an offence.

### **TYPES OF EXTRA-JUDICIAL CONFESSION**

1. It may be in writing or oral.
2. In the case of a written confession the writing itself will be the best evidence.
3. If it is not available or is lost, the person before whom the confession was made should be produced before the court.

There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although an extra-judicial confession should be corroborated. The extra-judicial confession should inspire

confidence and the court should find out whether there are other cogent circumstances on record to support it.

### **THE RELEVANCY AND ADMISSIBILITY OF EXTRA- JUDICIAL CONFESSION**

When the foundation of conviction is based on the extra-judicial confession it is required to prove 3 things-

- A. Confession was made
- B. Evidence has to be given that it was made voluntarily
- C. It is true
- D. It can be in the course of conversation with persons other than judge or magistrate seized of the charge against himself.

It is governed by Section 24 and Sec 27 of the Indian Evidence Act. Sec 24 of the act deals with the admissibility of confession made to a person in authority other than a judicial authority and the conditions stipulated for their admissibility. Sec 27 of the Indian Evidence Act relates to the admissibility of fact discovered as a consequence of information given, while the accused is in Police custody.

In **Pulukuri Kottaya v. Emperor 1946 SCC OnLine PC 47 : 1947 MWN (Cri) 45 (PC)** the privy council dealt with the essentials of Sec 27 of the Indian Evidence Act and pointed out as :-

I) The fact of which evidence is sought to be given must be relevant to the issue. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the facts discovered admissible;

ii) The fact must have been discovered;

iii) The discovery must have been in consequence of some information received from the accused and not by accused own act;

iv) The person giving the information must be accused of any offence;

v) He must be in the custody of a Police Officer;

vi) The discovery of a fact in consequence of information received from an accused in custody must be deposed to;

vii) Therefore, only portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

In the recent judgment of **Jamuna Bai Vs State of Chhattisgarh CrMP No 1202 of 2014** Hon'ble Shri Sanjay K. Agarwal and Hon'ble Shri Sanjay S. Agarwal JJ observed that ***“As such, it appears that Section 27 of the Evidence Act is applicable only if the confessional statement relates distinctly to the fact thereby discovered.”***

Hon'ble Supreme Court in **Gura Singh v. State of Rajasthan, AIR 2001 SC 330**, observed that "It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement.

In the case of **Amrit Vs State of C.G. 2008 SCC Online Chh 248** Hon'ble High court of C.G held that "So far as the law on the point of extrajudicial confession is concerned, it is well settled that if the evidence to this effect is given by a truthful witness who appears to be unbiased, not even remotely inimical to accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, words spoken are clear, and unmistakably that the accused is the offender and nothing is omitted by the witness which may militate against it, after subjecting the evidence to rigorous test on the touchstone of credibility, if it passed the test, it can be accepted and can be the basis for conviction."

**In Phuljensiyus Vs State of Chhattisgarh, through Station House Officer 2023 SCC Online Chh 1139** held that- it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These percepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

- (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

Extra-judicial Confession rests on circumstantial evidence. The law with regard to conviction in the case of circumstantial evidence is very well crystallized in the case of **Sharad Birdichand Sarda Vs State of Maharashtra (1984) 4 SCC 116**. It was held that – The circumstances from which the conclusion of guilt is to be drawn should be fully established.

**Nisar Ali v. State of U.P. AIR 1957 SC 366 : 1957 CRI LJ 550:** In this case, the Supreme Court held that extra-judicial confessions, if voluntary and reliable, can form the basis for a conviction. The Court emphasized that the confession must be free from any inducement or threat.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by in the case of **Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793]** it is observed that “Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between ‘*may be*’ and ‘*must be*’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

*These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”*

**Pulukuri Kottaya v. Emperor AIR 1947 PC 67: 74 IA 65: 48 CRI LJ 533** This case established the principle that an extra-judicial confession alone can be sufficient to convict a person if it is found to be true, voluntary, and reliable.

**Kashmira Singh v. State of Madhya Pradesh (1952) 1 SCC 275 : 1952 SCC ONLINE SC 19 : AIR 1952 SC 159 : 1952 CRI LJ 839** : The Supreme Court highlighted that an extra-judicial

confession must be voluntary and made with full understanding, and it should be consistent with other pieces of evidence in the case.

**Lakshmi Singh v. State of Bihar (1976) 4 SCC 394 : 1976 SCC (Cri) 671 : 1976 Cri LJ 1736** In this judgment, the Supreme Court emphasized that extra-judicial confessions should be subjected to rigorous scrutiny and should not be solely relied upon for a conviction.

**Ramchandra v. State of Haryana 1981 AIR 1036, 1981 SCR (3) 12** : The Supreme Court ruled that an extra-judicial confession, if made before a person in authority, should be viewed with caution and scrutinized carefully due to the possibility of coercion or pressure.

**State of Maharashtra v. Damu (2000) Appeal (crl.) 992-993 of 1999:** While this case primarily deals with confessions made by co-accused, it also discusses the principles of extra-judicial confessions and the importance of their voluntariness and truthfulness.

**State of Rajasthan v. Raja Ram (2003) Appeal (crl.) 815-816 of 1996:** The Supreme Court reiterated that extra-judicial confessions, to be admissible, must be voluntary and free from any kind of inducement, threat, or pressure.

In the case of **Balwinder Singh v. State of Punjab 1995 Supp (4) SCC 259** : this Court stated the principle that: An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.”

In **Pakkirisamy v. State of T.N. [(1997) 8 SCC 158** : the Court held that It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.”

Again, in **Kavita v. State of T.N. (1998) 6 SCC 108** Court stated the dictum that: There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made.”

In **State of Rajasthan v. Raja Ram (2003) 8 SCC 180** it is held that “An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to

confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.”

In **Sansar Chand v. State of Rajasthan (2010) 10 SCC 604** it is held that “There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material.”

Dealing with the issue of extra-judicial confession, the Supreme Court held in **Narayan Singh and Ors Versus State of M.P AIR 1985 SC P.1678.** as follows:-

I) It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession;

In **MulkRaj Versus State of U.P AIR 1959 SC P.902.** case, the Supreme Court further laid down as follows:-

- i) An extra- Judicial confession, if voluntary can be relied upon by the court along with other evidence in convicting the accused;
- ii) The confession will have to be proved just like any other fact;

iii) The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witnesses to whom it is made;

iv) It is true that the court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the court should not accept the evidence, if not the actual words used by the accused as nearly as possible.

### CONCLUSION

***To conclude with*** extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it.

## **JUDICIAL CONFESSION**

Confession is a statement made by the accused which must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence (**Jarnail Singh v. State of Punjab AIR 2011 SC 964**)

### **DEFINITION OF JUDICIAL CONFESSION**

Judicial Confession are those which are made before magistrate or court in the course of judicial proceedings. Although confession is not defined in the section, it refers to the relevancy of a confession in section 24 of Indian Evidence Act. According to Section 24 of Indian Evidence Act “ Any confession that is made by an accused will be considered irrelevant, if it is caused by inducement, threat or promise.”

### **IRRELEVANT CONFESSION UNDER SECTION 24**

To attract the prohibition enacted in Section 24 the following facts must be established:

- That the statement in question is a confession,
- That such confession has been made by the accused,
- That it has been made to a person in authority,

- That the confession has been obtained by reason of any inducement, threat or promise, proceeding from a person in authority,
- Such inducement, threat or promise must have reference to the charge against the accused, and
- The inducement, threat or promise must in the opinion of the court be sufficient to give the accused ground, which would appear to him reasonable, for supporting that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

**BASIC PRINCIPLE OF SECTION 164 Cr.P.C. IN RESPECT  
OF JUDICIAL CONFESSION**

Section 164 of the Cr.P.C. empowers a Judicial Magistrate to record a judicial confession made by an accused. The basic principle of Section 164 in respect of judicial confession is to ensure that the confession is voluntarily, without any undue influence, pressure, or threat and made of accused's own free will before a Judicial magistrate.

## **CHHATTISGARH CRIMINAL RULES AND ORDER**

Under Chhattisgarh Criminal Rules and Order deals with judicial confession from Rule 73 to 87. All judicial officers are incumbent to follow these rules.

The recording of confession under 164 of the Code is a matter which requires the utmost care. The wording of section 24 of Indian Evidence Act is a wide and should be carefully studied. It is sufficient to make a confession irrelevant if it is made because of coercion or inducement proceeding from a person in authority sufficient to give grounds which appear to the accused reasonable for supposing that he would gain an advantage. The frequency with which confessions are retracted on the ground that they were not free and voluntary renders it essential that a confession be recorded in circumstances which prevents any suggestion that accused was under the influence of any person interested in obtaining the confession.

Before recording a confession the competent magistrate shall explain to the person making it that he is not bound to make a confession and that he does so it will be taken down and may there after be used as evidence against him.

## CITATIONS

**Bhagwan Singh v. State of Punjab (1952) 1 SCC 514, 1952 SCC OnLine SC 50:** In this case, the Supreme Court emphasized the importance of a judicial confession and held that if it is voluntary, unequivocal, and establishes guilt, it can be the sole basis for conviction.

**Nishi Kant Jha v. State of Bihar (1961) 1 SCC 347 :** The Supreme Court emphasized that a judicial confession must be free, voluntary, true, and reliable. It must not be obtained by any violence, threat, inducement, or improper influence. It must be made in a fit state of mind and with full knowledge of the nature and consequences of the confession. It must also be corroborated by other evidence to establish its veracity.

**Mohan Lal v. State of Punjab (2018) 17 SCC 627, 2018 SCC OnLine SC 974:** This case emphasized the importance of the voluntariness of a judicial confession and the need for a proper recording of the confession in compliance with legal requirements.

## CONVICTION CAN BE MADE ON THE BASIS OF JUDICIAL CONFESSION

In order to prove judicial confession the person to whom judicial confession is made need not be called as witness. Judicial confession can be relied as proof of guilt accused person if it appears to the court to be voluntary and true. A conviction may be based on judicial confession.

**Aloke Nath Dutta v. State of W.B. (2007) 12 SCC 230** : In this case, the Hon'ble Supreme Court held that a confession is ordinarily admissible in evidence. It is a relevant fact and can be acted upon under circumstances, it can form the basis of conviction.

**Ram Lal v. State of Himachal Pradesh, (2019) 10 SCC 21** : This case reiterated the principle that judicial confession can be the sole basis of conviction if it is voluntary and trustworthy. The court held that if the court is satisfied that the confession is voluntary, the conviction can be based upon the same.

**State of Rajasthan v. Rajaram AIR 2003 SC 3601** : In this case, the Hon'ble Supreme Court held that judicial confession voluntarily made can form the basis of conviction of the accused.

## CONCLUSION

Recording a confession under Section 164 of the Code is a process that demands the highest level of caution and attention. In many cases a confession is the mainspring of the prosecution case. The courts are vigilant in seeing that a confession is relevant under section 24 of Indian Evidence Act, and consequently any defect in the procedure of recording a confession giving rise to any suspicion as to its relevancy may be fatal to a case may lead to considerable waste of public money and time of officers engaged in the investigation, prosecution and trial of the case.

Section 80 of the Indian Evidence Act give the evidentiary value to the judicial confession and expresses that a confession made in the presence of magistrate or in the court which is recorded by the magistrate as prescribed by the law then such confession shall be presumed to be true and genuine confession and the accused can be tried with the offence. Section 164 of CrPC empowers magistrate to record confession so it is not necessary that which magistrate recorded the confession unless he is restricted to record the confession. Hence, for raising the presumption the identity of the accused must be clear and proved in the confession to persecute him for the guilt of the offence he committed.

## **CONFESSION OF CO ACCUSED**

Section 30 of the Evidence Act, 1872, provides that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Section 30 of the Evidence Act thus allows use of the confession of one accused against co-accused on fulfilling the following conditions

:-

- i) There must be a joint trial for the same offence.
- ii) The statement of the accused which is sought to be used against co-accused must be a confession.
- iii) The confession of guilt must inculcate himself as well as other i.e. co-accused. It must implicate the maker to the same extent as co-accused.
- iv) The confession of guilt must be duly proved.

**CONFESSION CAN BE USED AS CORROBORATIVE  
EVIDENCE BUT NOT AS SUBSTANTIVE EVIDENCE**

When dealing with a criminal case where one accused person's confession is used against another, a particular procedure is followed. Initially, the court assesses the other evidence against the accused individual. If this additional evidence is found to be substantial and indicates that the charges against the accused person are viable, the court proceeds to consider the confession. This sequential approach is employed to confirm the initial conclusion that the court is inclined to make based on the other evidence.

In the case of **In re. Peryaswami Noopan (1913) I.L.R. 54 Mad. 75** at p. 77, Reilly J. emphasized that Section 30 goes no further than this: "Where there is sufficient evidence against the co-accused, if believed, to support their conviction, then the type of confession described in Section 30 may be considered as an additional reason for believing that evidence."

A confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be utilized in order to lend assurance to the court.

In the case of **Muthu Kutty v. State (2005) 9 SCC 113, 2005 SCC (Cri) 1202, 2004 SCC OnLine SC** : The Supreme Court reiterated that a confession made by a co-accused is not substantive evidence but can be used to lend assurance to the other evidence on record.

In case of **Chandrapal Vs. State of Chhattisgarh 2022 SCC Online SC 705** it was observed that :- In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused. (Para 11)

**Vijayan v. State of Kerala (2010)2 SCC 398, (2010) 1 SCC (Cri) 1488, 2010 SCC OnLine SC**: In this case, the Supreme Court emphasized that the confession of a co-accused is a weak form of evidence and must be corroborated with other evidence to establish guilt.

**SELF-EXCULPATORY STATEMENT CANNOT AMOUNT TO  
A CONFESSION**

The issue of whether the statement made by the accused constitutes a confession or not has been conclusively addressed by an authoritative ruling of the Privy Council in the case of **Pakale**

**Narayan Swami v. Rex, as reported in AIR 1939 P.C. 47**, where it was held as follows:

"No statement that contains self-exculpatory matter can amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession"

In essence, Section 30 of the Indian Evidence Act allows for the consideration of confessions made by one accused person against co-accused individuals in the same trial. However, these confessions must meet certain criteria to be admissible as evidence. They should not contain self-exculpatory matter that contradicts the alleged offence and must provide substantial information about the offence's facts. Merely admitting guilt without additional context or details may not be sufficient for a statement to be classified as a confession in a legal context. These criteria are essential in determining the admissibility and evidentiary value of confessions in criminal proceedings.

**CONFESSION ONLY ADMISSIBLE WHEN IT LEADS TO  
DISCOVERY OF NEW FACTS OR IS A CONFESSION OF  
GUILT BY THE ACCUSED**

In case of **Pakala Narayana Swami v. Emperor (1939) 41 Bom LR 428, 1939 SCC OnLine PC 1**: This case laid down the principle that a confession made by a co-accused is not admissible in evidence against the other accused unless it leads to the discovery of new facts or is a confession of guilt by the accused.

**CONFESSION OF CO ACCUSED IS NOT THE EVIDENCE**

The confession mentioned in Section 30 of the Act is not considered evidence as defined by Section 3 of the Act. Section 30 allows for the use of such a confession, not only against the person who made it but also against a co-accused individual. However, it's important to emphasize that while this confession can be taken into account by the criminal court, it doesn't carry the same weight as other forms of evidence. It's worth noting that unlike other types of evidence presented in court, the court is not obliged to consider a confession. When evidence, as per the Act's definition, is presented, the court is mandated to assess it, but the court has discretion in assigning significance to this evidence.

In the case of a confession, however, the court has the option to choose whether or not to treat it as evidence. Section 30 grants the court the authority to consider the confession but does not make it obligatory to do so. While a confession may be considered evidence in a general sense due to the provisions of Section 30, it's important to note that it doesn't qualify as evidence as per the specific definition provided in Section 3 of the Act. Consequently, when handling a case involving an accused person, the court is not permitted to initiate the proceedings by considering the confession of a co-accused person.

In the case of **Kashmira Singh Vs State of Madhya Pradesh (1952) 1 SCC 275 : AIR 1952 SC 159**. Hon'ble Supreme Court emphasized that Confession against co-accused does not align with the formal definition of "evidence" as per Section 3 of the Evidence Act.

**APPLICATION OF SECTION 30 : JAMUNA BAI VS. STATE OF CHHATTISGARH**

In the case of **Jamuna Bai Vs State of Chhattisgarh CRA No. 1202 of 2014**, Hon'ble Division Bench of the court addressed the question of whether the trial court's conviction of the three appellants

was justified by relying on Section 30 of the Indian Evidence Act, 1872 and made following observations :-

Section 30 of the Indian Evidence Act serves the purpose of allowing the confession of an accused person, who openly admits their guilt and implicates another person jointly tried for the same offence, to be considered against both individuals. This is because the admission of one's guilt acts as a form of assurance, akin to taking an oath, and provides some level of guarantee that the entire statement is truthful.

To use the confession of one accused against another, two specific conditions must be met:

1. The co-accused must have been charged in the same case along with the confessor.
2. Both the confessor and the co-accused must have been tried together in the same trial.

Also relying on the case of **Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence, (2018) 8 SCC 271 : (2018) 3 SCC (Cri) 567 : 2018 SCC OnLine SC 757** made following observations :-

**Firstly**, it emphasized that a confession made by one accused person cannot be treated as substantive evidence against a co-accused person.

**Secondly**, The proper approach involves evaluating the other evidence to determine if it is satisfactory and capable of supporting the charges against the accused. Only when this supporting evidence is deemed sufficient does the court turn to the confession to provide additional assurance regarding the accuracy of its conclusions based on the other evidence.

**Thirdly**, Section 30 acknowledges the role of a confession as a form of evidence, but it does not equate it to the strict definition of evidence under Section 3 of the Act.

**Fourthly**, when dealing with a case against an accused person, the court cannot initiate proceedings solely based on the confession of a co-accused. Instead, it must commence by assessing the other evidence presented by the prosecution.

## CONCLUSION

The confession of one co-accused does not meet the criteria for being classified as evidence under Section 3 of the Evidence Act. It is not given under oath, and it is not made in the presence of the other co-accused individuals who are implicated in the confession. Consequently, its reliability cannot be examined by the co-accused mentioned in the confession. This form of evidence is considered weak and does not establish conclusive proof. Therefore, the confessional statement of one accused cannot be considered substantive evidence against the other co-accused.

Moreover, in the case of **Jamuna Bai v. State of Chhattisgarh CRA No. 1202 of 2014**, it was emphasized that the confessional statement of a co-accused can be used as corroborative evidence under Section 30 of the Indian Evidence Act, 1872. However, it was clarified that a conviction should not solely rely on the confessional statement of the co-accused.

In essence, Section 30 has introduced a significant innovation that has the potential to lead to miscarriages of justice if not correctly understood and applied. The Hon'ble Apex Court has in various cases held that this provision must be very strictly construed so as to avoid doing injustice. *Justice Reilly once said, that the discretion*

*which the courts have been empowered with by this provision must be exercised very cautiously and with the greatest caution and with care, so as to make sure that its real intent is observed, and the probability of doing injustice can be removed.*

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