

CHAPTER-VII

EXTRA-JUDICIAL CONFESSION AND JUDICIAL GUIDELINES/TRENDS

In the previous chapters we have dealt with the statutory provisions on the law of extra judicial confessions and the jurisprudence of fundamental rights that has a connection and a bearing on extra-judicial confession provisions. After having found the provisions in the Evidence Act to be running in conformity with the fundamental rights of the accused as citizens of India, we in this Chapter have tried to identify as to what are the legal principles which provide light and guidance to the lower judiciary of the country, which is to largely deal with the cases of our interest. For this purpose, we have perused the important case law on the point of our interest that has been reported in the Law Journals. To make the study systematic and directed to our purpose, we have tried to read the judgments of the Supreme Court of India (for the reasons of limited time resource, we have not studied High Court judgements) along the basic requirements of an extra-judicial confession. And to start with, we have tried to pick-up the essential characteristics of an extra-judicial confession from the case law itself.

7.1 Essential Requirements of Extra-Judicial Confession

The requirements of an extra-judicial confession are obviously the same as for as confession, however, with an additional requirement that such a confession should have been made before a person otherwise than a Magistrate or a Police officer. For the purpose of knowing the requirements of a confession, we have to refer to 1939 case of the Privy Council titled as *Pakala Narayana Swami v. Emperor*, which still holds good. Lord Atkin defined confession in this case as under:

“.....it may be useful to state that in their Lordships view 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, e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man’s possession.....”

It was further clarified that mere suggesting an inference that the accused committed the offence does not satisfy the requirement of a confession. Distinguishing from the definition of term ‘confession’ given by Stephen, Lord Atkin observed:

“Some confusion appears to have been caused by the definition of ‘confession’ in Article 22 of Stephen’s “Digest of the Law of Evidence” which defines a confession as an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding Articles are examined it will be apparent that the learned author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following Articles, confession, secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872 : and in that Act it would not be consistent with a natural use of

language to construe confession as statement by an accused
 “suggesting the inference that he committed the crime.”

The principles of confessions laid down in *Pakala Narayana Swami* was accepted and adopted by the Supreme Court of India. Reiterating the Privy Council judgement, a 3 Judges Division Bench of the Apex Court in *Palvinder Kaur v. State of Punjab*, declared that confession should be accepted or rejected as a whole and the Court cannot reject the exculpatory part of the statement and accept only the inculpatory portion. Quoting from *Pakala Narayana*, Honourable Justice Mahajan made the following observations:

“.....not only was the High Court in error in treating the alleged confession of Palvinder as evidence in the case but it was further in error in accepting a part of it after finding that the rest of it was false. It said that the statement that the deceased took the poison by mistake should be ruled out of consideration for the simple reason that if the deceased had taken poison by mistake, the conduct of the party as would have been completely different and that she would have then run to his side and raised a hue and cry and would have sent immediately for medical aid; that it was incredible that if the deceased had taken poison by mistake, his wife would have stood idly by and allowed him to die. The Court thus accepted the inculpatory part of that statement and rejected the exculpatory part. In doing so it contravened the well accepted rule regarding the use of confession and admission that it must either be accepted as a whole or rejected as whole and that the court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible.....”

In *Ratan Gond v. State of Bihar*, the Supreme Court, however, suggested that in retracted confession the inculpatory part of the statement may be read

alongwith the circumstances, surrounding the crime story. And if on a combined reading the Court finds the statement of the accused inculpatory and voluntarily made, the truth can be inferred. Hon'ble Mr. Justice S.K. Dass speaking for the Division Bench observed in para 11 of the judgment:

“There can be no doubt that the recovery of the blood-stained balua (even though the origin of the blood could not be determined owing to disintegration) and of the blood-stained strands of the female hair at the place pointed out by the appellant are circumstances clearly proved against the appellant. These circumstances may not be sufficient by themselves to prove that the appellant was the murderer, but there is no doubt that they lend assurance to the confessional statement of the appellant, assurance of a kind which connects the appellant with the crime in question. This is a case in which the confession and the circumstances have to be read together. There is the additional circumstance that soon after the murder the appellant disappeared from his village and when arrested in another village his conduct was such as to show that he was suffering from a guilty mind. On the top of all this, there is the total denial by the appellant that any bloodstained “balua” was recovered from his house or that he disappeared from the village after the murder.....”

At page 24, Apex Court concluded as under:

“To sum up : we see no reasons to differ from the conclusion arrived at by the courts below that the confessional statement made by the appellant was voluntary and admissible; there are no reasons for thinking that it was not true. The circumstances clearly proved against the appellant, even excluding the circumstances which rested on the statements of Aghani, afford sufficient corroboration

to the confession of the appellant, though denied at a later stage, and the corroboration is of such a nature as to connect the appellant with the murder of the child, Baisakhi. The only reasonable inference which can be drawn from the confession read with the circumstantial evidence is that the appellant killed the child Baisakhi between May 7 and 8, 1957, in the hope of getting some money. Whether that hope was realized or not is more than we can tell.....”

The Supreme Court of India, further declared that the exculpatory part of the statement can be excluded if found improbable and only the inculpatory portion can be read as the confession for placing reliance thereon. In *Nishi Kant Jha v. State of Bihar*, it was said:

“In this case the exculpatory part of the statements in Ex. 6 is not inherently improbable, but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant’s attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself. Under Section 342 Cr. P.C. to the effect that he had received the injury in a scuffle with the herdsman. The injury found on his body when he was examined by the doctor on 13th October 1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in river patra, the amount of bleeding and the washing of blood stains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise books and his

belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post mortem report this knife could have been the cause of the injuries on the victim. In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ex. 6 the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime." (Emphasis supplied by Researcher).

In *State of Punjab v. Bhajan Singh*, however, it was suggested to find out weaknesses in the confession story and not to rely upon it if the same lends only a suspicion that the accused committed the offence. In the words of Honourable Mr. Justice H.R. Khanna :

"Coming to the evidence of extra judicial confessions, we find the same to be improbable and lacking in credence. According to Gurmej Singh and Jabarjang Singh PWs, the confessing accused came to them and blurted out confessions. They also requested these two witnesses to produce them before the police. The resume of facts given above would go to show that according to the prosecution case, the murders of the three deceased persons were committed in a most heinous manner and under a veil of secrecy. Persons who commit such murders after taking precautions of secrecy are not normally likely to become garrulous after the commission of the offence and acquire a sudden proneness to blurt out what they were at pains to conceal. In any case it seems rather odd that all the three accused had no particular relationship or connection with Gurmej Singh and Jabarjang Singh PWs. These

two witnesses were also not in such a position that the above mentioned three accused would be willing to repose their confidence in them. If Surjit Singh, Charan Kaur and Jeeto wanted to surrender themselves before the Police, we fail to understand as to why they should not themselves surrender before the Police and go instead to Gurmej Singh and Jabarjang Singh and blurt out confessions before them. The evidence of extra judicial confession in the very nature of things is a weak piece of evidence. The evidence adduced in this respect in the present case lacks plausibility and as observed by the High Court, it does not inspire confidence.”

Holding that suspicion against the accused, emerging from an extra judicial confession and the surrounding evidence, cannot be relied upon for conviction, the bench declared:

“The circumstances of this case undoubtedly create suspicion against the accused. Suspicion, by itself, however, strong it may be, is not sufficient to take the place of proof and warrant a finding of guilt of the accused. Another weakness of the prosecution case is that as many as four persons have been involved in this case. Even if it may be assumed that the dead bodies which were recovered from the place in front of the house of the accused were those of Harbans Singh and Bachan Singh deceased and their death was homicidal it is difficult to say whether the dastardly crime was the act of one or two culprits or of large number of them. In any case it is difficult to fix their identity.”

In *Keshoram Bora v. The State of Assam*, the principle decided was that the ‘prosecution’ case cannot be rejected merely for the reason of certain

infirmities and inculpatory part of the statement can be separated and relied upon as the confession of the accused. Relying upon *Nishi Kant*, it was observed:

“Learned counsel for the appellant submitted that a material part of the prosecution case having been rejected, the High Court was wrong in convicting the appellant on the residue, particularly when he had been acquitted by the trial court. It is now well settled that principle *Falsus in uno Falsus in omnibus* does not apply to criminal trials and it is the duty of the court to disengage the truth from falsehood, to sift the grain from the chaff instead of taking an easy course of rejecting the prosecution case in its entirety merely on the basis of few infirmities.”

The Supreme Court refused to rely upon an extra-judicial confession suffering from discrepancies like the persons to whom the confession was made, time when the same was made and the words of the statement. In *State of Madhya Pradesh v. Dayaram S/o Hemraj*, the Court held:

“.....The extra-judicial confession said to have been made by the accused to PWs 1, 7 and 10 does not also inspire much confidence. The High Court has noticed several discrepancies regarding the persons to whom the confession was made, the occasions when the confession was made and what precisely was said by the accused. Having regard to these discrepancies, we do not think that we would be justified in taking a different view from the view taken by the High Court when we are dealing with an order of acquittal.”

The Supreme Court had, however, earlier declared that the admission itself should establish the guilt of the maker to make it a confession. In *Kanda Padyachi v. State of Tamil Naidu*, speaking through Honourable Mr. Justice Shelat, observed:

“It is true that in *Queen Empress – v. Nana*,¹ the Bombay High Court, following Stephen’s definition of confession, held that a statement suggesting the inference that the prisoner had committed the crime would amount to confession. Such definition would no longer be accepted in the light of Pakala Narayana Swami’s case² and the approval of that decision by this court in Palvidner Kaur’s case. In *State of U.P. v. Deoman Upadhyaya*,³ Shah J. (as he then was) referred to a confession as a statement made by a person stating or suggesting the inference that he had committed a crime”.

From that isolated observation, it is difficult to say whether he widened the definition than the one given by the Privy Council. But he did not include in the expression ‘confession’ an admission of a fact, however, incriminating which by itself would not be enough to prove the guilt of the crime in question, although it might, together with the other evidence on record, lead to the conclusion of the guilt of the accused person. In a later case of *A.N. Nagesia v. State of Bihar*,⁴ Bachawat, J., after referring to Lord Atkin’s observations in *Pakala Narayana Swami’s* case and their approval in *Palvinder Kaur’s* case,⁵ defined the confession as “an admission of the offence by a person charged with the offence”. It is thus clear that an admission of a fact however, incriminating, but not by itself establishing the guilt of the maker of such admission, would not amount to confession within the meaning of Section 24 to Section 30 of the Evidence Act.

Though the approach of the Supreme Court has remained in a good number of cases to separate the inculpatory portion from the exculpatory one in the statement given by the accused as a confession, a Division Bench of the Court has, however, suggested in a recent case that no such separation should be done

¹ (1889) ILR 14 Bombay 207, (FB).

² 66 Ind App. 66 – AIR 1939 PC 47.

³ 1961-1 SCR 14 at p. 21, AIR 1960 S.C. 1125.

⁴ AIR 1966 S.C. 119 at p. 123.

⁵ 1953 SCR 94 = AIR 1952 S.C. 354.

and has laid down for the reading of the whole. Speaking through Hon'ble Mr. Justice N.P. Singh, the Bench, in *Dwarka Prasad v. State of Uttar Pradesh* declared:

“.....the High Court has used a part of the statement of the appellant as an admission. According to us, that part of the statement made by the accused under Section 313 of the Code cannot be used as an admission, supporting the prosecution case. It is well known that an admission has to be taken as a whole. It was not open to the High Court to reject one part so far as the aggression and assault by the prosecution party, which according to the appellant preceded giving of the *ballam* blow, and to accept only the later part of the statement that appellant gave a *ballam* blow, for the purpose of convicting the appellant”.

In the case of *Hanumant Govind Nargundkar v. State of Madhya Pradesh* it was said:

“It is settled law that an admission made by the person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used as a whole or not at all. The High Court should have taken the whole statement made by the appellant as an admission and then should have examined what shall be the effect thereof on the prosecution case. According to us, taking all facts and circumstances into consideration the version of the accused of the occurrence appears to be probable and acceptable.” (emphasis of the researcher)

Leaving aside the judicial controversy on separating exculpatory and the inculpatory parts from the statement, as it is a minor one, it is very difficult and an act of technical craftsmanship to make out from a statement of the accused as to whether the same fulfils the conditions of a confession or not. Our observations get support and substance from the fact that in some reported cases, the Apex Court has differed from the High Courts on this point. When the later accepted a

statement as the confession of the accused worth relying upon, the former found the same insufficient and falling short of the requisites of a confession. *Om Parkash v. State of U.P.* is one such case, wherein Hon'ble Mr. Justice Hidayatullah (as he then was), speaking on his own behalf and for Hon'ble Mr. Justice A.K. Sarkar, observed:

“.....considering the matter as a whole, we are of opinion that other evidence led in the case, apart from Exs. P-3, and P-4, merely established that in the record maintained some permits were shown to have been issued in the names of persons, who had not applied for them. The rest of the case has to be built up against the appellant from what he stated in Exs. P-3 and P-4. These documents reasonably considered, may suggest an inference that the offence was committed, but do not amount to confessions, and cannot, therefore, be used to complete the ingredients of the offence, with which the appellant was charged. We differ, therefore, from the appraisal of this evidence by the High Court, and we think that the documents were wrongly regarded by the High Court as confessions, pure and simple, and that it was in error in holding that the guilt of the appellant was brought home to him. No doubt, the sufficiency of evidence is a matter ordinarily for the High Court. Where, however, the High Court, as on the facts of this case, has construed the two documents as amounting to confessions of guilt, which they cannot reasonably be construed to be and there is no other evidence, this court is entitled to interfere, even though this is an appeal from concurrent judgments of the two courts below. We are therefore, of opinion that the conviction in the present case on its facts cannot be sustained.” (Emphasis of the researcher).

Again in *Heramba Brahma and another v. State of Assam*,⁶ a Division Bench of the Supreme Court declared that the Gauhati High Court was in error for having accepted the Statements of the accused as a confession, without putting the same on the touchstone of test and requirements. In the words of the Court:

“We are at a loss to understand how the High Court accepted the evidence on this extra judicial confession without examining the credentials of PW2 Bisti Ram, without ascertaining the words used; without referring to the decision of this court to be presently mentioned wherein it is succinctly stated that extra-judicial confession to afford a piece of reliable evidence must pass the test of reproduction of exact words, the reason or motive for confession and person selected in whom confidence is reposed. In *Rahim. Beg v. State of U.P.*⁶ this court while examining the evidence as to extra-judicial confession made by two accused to Mohmed Nasim Khan (PW 4) observed that “there was no history of previous association between the witness and the two accused as may justify the inference that the accused could repose confidence in him. In the circumstances, it seems highly improbable that the two accused would go to Mohmed Nasim Khan and blurt out a confession”,..... The evidence here in discussed is all the evidence against the present appellants. Evidence given by PW 5 Dalip Kumar revealed error in identification of the appellant No. 3 High Court was not inclined to act upon it without corroboration. In this background, we sought corroboration to the Evidence of Dalip Kumar as was done by the High Court. The evidence furnished by extra-judicial confession for the reasons herein mentioned is not available. Therefore, there remains the

⁶ (1972)3 SCC 759 = AIR 1973 S.C. 343.

uncorroborated evidence of Dalip Kumar which itself for the reasons herein stated is not sufficient to bring home the charge” (Emphasis supplied by the Researcher).

The above two cases bring to surface that at occasions it becomes difficult to appreciate as to whether a particular statement of the accused reaching the investigating agency and through them before the Courts through the medium of the third untrained and an ordinary person, the extra-judicial confessions, as these are called, constitute the confessions or not; and when the justice is delivered at its highest level, much harm and hurt has already been caused to the accused that cannot be healed. The subject is so technical that even the confessions recorded by the persons with judicial acumen and craftsmanship have also been found to be defective and suffering from deformities, thereby making the same short of confession and thus unreliable. The Division Bench judgment in *Dagdu and others v. State of Maharashtra* brought such an infirmity of a judicial confession to light.

From the above decisions of the Supreme Court of India it can, therefore, be made out that for a confession to be admissible as a piece of evidence, the statement of the accused should not only suggest an inference that he committed the offence but it must admit either in terms the offence or at any rate substantially all the facts which constitute the offence. For satisfying this requirement, however, the inculpatory portion of the statement must be sufficient to constitute the confession. And the evidence available from the surrounding circumstances, can only corroborate the evidence and help to test the veracity of the confessional statement. It is also readable from the judgment of the Apex Court that the task of separating exculpation from inculpation and ascertaining that the later is an admissible and reliable piece of evidence is a task of craftsmanship requiring a sufficient degree of legal skill.

7.2 Extra-Judicial Confession for Relying upon

Extra judicial confession, as a piece of evidence, is admissible but to which extent the same can be relied upon for conviction, the Courts have had a degree of divergence. As to what has remained to be the opinion of the Supreme Court of India and what flows out of such opinions in the name of a principle to be followed by the Lower Courts of our land, is the area of our present discussion.

The Apex Court in *Mulk Raj v. State of U.P.*, declared that an extra-judicial confession can be relied upon for convicting the accused but like other pieces of evidence the confession is essentially required to be proved. The veracity of witnesses, as is the case with normal evidence, the Courts observed, also effects the value of the confession. In the words of Hon'ble Mr. Justice Subha Rao, was pronounced the judgment on behalf of a 3-Judges Bench.

“.....an extra-judicial confession, is voluntary, can be relied upon by the court, alongwith other evidence in convicting the accused. The confession will have to be proved just like any other fact. The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witness to whom it is made. It is true that the court requires the witness to give the actual words used by the accused as nearly as possible, but is not an invariable rule that the court should not accept the evidence, if not the actual words, but the substance were given. If the rule is inflexible that the courts should insist on only on the exact words, more often as not, this kind of evidence, sometimes, most-reliable and useful, will have to be excluded, for, except perhaps in the case of a person of good memory, many witnesses cannot repeat the exact words of the accused. It is for the court having regard to the credibility of the witness, his capacity to understand the language in which the accused made the confession, to accept the

evidence or not in the circumstances, if the evidence of the witness is acceptable, there is no reason why the extra-judicial confession made by the accused cannot be acted upon.”

In *Ratan Gond v. The State of Bihar*, the Apex Court accepted an extra-judicial confession as a reliable piece of evidence, but underscored the need for some more evidence, that may connect the accused with the crime.

In the words of the Court:

“.....As to the extra-judicial confession, two questions arise: is it voluntary, and if so, is it true? The appellant denied at a later stage that he had made a confession, but it is not necessary to consider in this case, the abstract question as to whether, as against its maker, a conviction can be based on a confession, which is found to be voluntary and true. It is enough to state that usually and as a matter of caution, Courts require some material corroboration to such a confessional statement. Corroboration which falls for decision in the present case ‘is the circumstances proved against the appellant for sufficient corroboration to the confessional statement of the appellant. In case we hold that he confessional statement is voluntary and true.”

In *Nishi Kant Jha v. State of Bihar*, the Apex Court, while holding that the exculpatory portion of the confessional statement can be separated and declared that the conviction can be based only on the inculpatory part of the confession.

A three-judges Division Bench headed by Hon'ble Chief Justice Hidayatullah in *Thimma v. State of Mysore* held extra-judicial confession worth acting upon. The court observed:

“.....before us it was contested that the extra-judicial confession said to have been made to PW4 is inadmissible and in any event without corroboration in material particulars form

independent source it is unsafe to act upon it. It was emphasized that PW-4 was at one stage of the investigation suspected of complicity in this murder and, therefore, he should be treated no better than an accomplice. In our opinion, this criticism is not justified. An unambiguous confession, if admissible in evidence, and free from suspicion suggesting its falsity, it is a valuable piece of evidence which possess a high probative force because it emanates directly from the person committing the offence. But in the processes of proof of an alleged confession the court has to be satisfied that it is voluntary, it does not appear to be result of inducement, threat or promise as contemplated by Section 24, Indian Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be proved. For this purpose, the Court must scrutinize all the relevant factors, such as, the person to whom the confession is made, the time and place of making it, the circumstances in which it is made and finally the actual words used Nor has any cogent reason been suggested why the appellant should have made an untrue confession to PW 4 within 24 hours of disappearance of the deceased on the other hand, the appellant appears to have been impelled by some inner urge to take the assistance of PW 4, his real nephew, to go to the place of occurrence to see as to what had happened to the dead body of his victim. Such behaviour cannot be considered unnatural. The confession appears to us to be free from any taint which would throw suspicion on its voluntary character and it has a ring of truth in it. This confession is, therefore, admissible in evidence and being true, deserves to be acted upon.....”

In *Darshan Lal v. State of Jammu and Kashmir*, the Supreme Court of India declaring that the confession made by a Constable to the Commanding Officer and the Inspector is inadmissible for the reasons that these two officers were persons in authority qua the accused but held that the confession made before his killed wife's uncle and cousin was reliable and sufficient for the conviction of the accused.

The Apex Court observed:

“The only evidence to connect the accused with the death of his wife are his extra-judicial confessions. The High Court has very properly left out of consideration the confession made by the appellant to his commanding officer and the Inspector but it has relied upon the confession made by the appellant to his wife's uncle and cousin. The wife's uncle has stated that he told the appellant that what had happened had happened and he should tell the truth about his wife and on his accused told him that he had killed his wife with a knife and thereafter thrown her body in the river. To the same effect is the statement of his son. We agree with the High Court that these two persons cannot be said to be persons in authority and the confession made by the appellant does not suffer from any legal infirmity. If that confession is reliable, the conviction of the appellant has to be upheld. We are of opinion that this confession is reliable.”

A Division Bench of Hon'ble Mr. Justice D.A. Desai and Hon'ble Mr. Justice Ranganath Misra in *State of UP v. M.K. Anthony* also found an extra-judicial confession made by the accused to his friend reliable for conviction. Rejecting the view given by the Apex Court that extra judicial confession is a weak piece of evidence, Hon'ble Mr. Justice D.A. Desai observed:

“There is neither any rule of law nor of prudence that evidence furnished by extra judicial confession cannot be relied upon unless corroborated by some other credible evidence. The courts have considered the evidence of extra-judicial confession a weak piece of evidence (see : *Jagta v. State of Haryana*)⁷ and *State of Punjab v. Bhajan Singh*.⁸ In *Sahoo v. State of U.P.*⁹ it was held that an extra judicial confession may be an expression of conflict of emotion, a conscious effort to stifle the pricked conscience; an argument to find excuse or justification for his act; or a penitent or remorseful act of exaggeration of his part in the crime”. Before evidence in this behalf is accepted, it must be established by cogent evidence what ere the exact words used by the accused. The court proceeded to state that even if so much was established, prudence and justice demand that such evidence cannot be made the sole ground of conviction. It must be used only as a corroborative piece of evidence. In that case, the evidence was that after the commission of murder the accused was heard muttering to himself that he has finished the deceased. The High Court did not interfere with the conviction observing that the evidence of extra-judicial confession is corroborated by circumstantial evidence. However, in *Piara Singh v. State of Punjab*,¹⁰ this court observed that the law does not require that evidence of an extra-judicial confession should in all cases be corroborated. It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law, nor rule of prudence that it

⁷ (1975)1 SCR 165 at p. 170 = (AIR 1974 SC 1545 at p. 1548).

⁸ (1975)1 SCR 747 at p. 751 = (AIR 1975 SC 258 at p. 261).

⁹ (1965)3 SCR 86 = (AIR 1966 S.C. 40).

¹⁰ (1978)1 SCR 597 = (AIR) 1977 SC 2274).

cannot be acted upon unless corroborated. If the evidence comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the 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; the words spoken to by the witness, are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of witness to a rigorous test, on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, truth worthy and beyond reproach the same can be relied upon and a conviction can be founded thereon”.

In another case another Division Bench of the Apex Court, speaking through Hon'ble Mr. Justice Fazal Ali removed the mist that extra-judicial confession was a weak type of evidence. In line with M.K. Anthony, the Supreme Court observed in *Narayan Singh v. State of M.P.* :

“Apart from this there is the evidence of PWs 5 and 9 who state on oath that one of the accused admitted before them that he had murdered the deceased. The learned Sessions Judge, has brushed aside their evidence by presuming that their statements constituting an extrajudicial confession is a very weak type of evidence. This is a wrong view of the law. It is not open to any court to start with the 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 the instant case, after perusing the evidence of PWs 5 and 9, we are unable to find anything which could lead to the conclusion that these independent witnesses were not telling the truth. The evidence of these two witnesses (PWs 5 and 9) which lends support to the evidence of PW 11 was sufficient to warrant the conviction of the accused. The Sessions Judge has committed a grave error of law in analyzing and appreciating the evidence of PWs 5 and 9 and brushing them aside on untenable grounds.”

As against *M.K. Anthony and Narayan Singh*, a Division Bench of the Supreme Court consisting of Hon'ble Mr. Justice A.S. Anand and S.C. Sen in *Balwinder Singh v. State of Punjab*, without referring to the afore-given judgments underscoring the credible importance of an extra-judicial confession, has again declared it to be a weak type of evidence that should be appreciated with much care and caution. In the words of Hon'ble Mr. Justice Dr. Anand :

“An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with 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. The courts generally look for independent reliable corroboration before placing any reliance upon an extra-judicial confession. The trial court relied upon the extra-judicial confession allegedly made by the appellant to PW-3 Satya Walia to the effect that he had killed his daughter and had cremated the dead body of Rozy, to connect the appellant with the crime. It found corroboration of the statement of PW-3 from the evidence relating to the recovery of the dead body from the canal and the disclosure

statement allegedly made by the appellant leading to the recovery of the bones from the place behind Gurdwara Rara Sahib, besides the statement of PW 2..... In view of the hostility which the appellant had with PW3, for leading his wife astray, we find it rather difficult to accept that the appellant could have made any extra-judicial confession to her. The manner in which the extra-judicial confession is alleged to have been made and the silence of PW-3 for 3 days in disclosing the same to the police, even though she has admittedly been with the police between 21st. and 23rd. March, 1984 renders it unsafe to rely upon her statement. This unexplained long delay in lodging the First Information Report Ex. PB detracts materially from the reliability of the prosecution case in general and the testimony of PW-3 in particular. We find that the alleged extra-judicial confession is surrounded by suspicious circumstances and the prosecution has not been able to establish that the appellant had made any extra-judicial confession to PW-3 Satya Walia and, therefore, the circumstances remain unestablished.”

Now if we read the above judgments of the Supreme Court of India together, it comes to surface that only in a few cases the extra-judicial confessions were named to be a weak type of evidence and even in such cases, the Apex Court did not place reliance on such confessional statements, however, demanding some more pieces of evidence to corroborate the same.

And from the latter day judgments, we notice a trend of relying upon extra-judicial confessions and finding them sufficient for conviction. The corroboration, where emphasized, has been aimed at the objective to rest the voluntariness and veracity of the confessional statements. *Balwidner Singh*, though a recent decision of the Division Bench, is a stray case from the present

day ones wherein extra-judicial confession has been named as a weak type of evidence. But the perusal of this reported case well indicates that non-reliance on the extra-judicial confession has been not for the reason of its lower estimation in the law of evidence, but on account of the suspicion surrounding this confession, which thereby makes it not free from the shadow of doubt that the same was true and voluntary. From the reported case law, it can, therefore, be made out that an extra judicial confession is admissible in evidence and can be relied upon for conviction of the accused if the Court feels convinced that the confession fulfilled its essential characteristics of being a true and voluntary statements of the accused. For convincing the Court, only the extra-judicial statement of the accused as well as that of the person to whom the confession was made may suffice or it may require the leading and reading of circumstantial evidence surrounding the crime perpetrated by the accused. In the case of retracted confession, however, a more strict test of Law of Evidence are required to be applied to ascertain as to whether the accused made an extra-judicial confession or not; and for the purpose, a need does arise for corroboration with an independent evidence.

In the case of a judicial confession i.e. retracted by the accused, there remains relatively a lesser need for corroboration for the reason that the Magistrate, recording the confession does take all necessary precautions to ascertain as to whether the confession is true and voluntary or not. Following the same principle, the Supreme Court of India in *Hem Raj Devilal v. State of Ajmer*, where Hon'ble Mr. Chief Justice Mahajan, speaking for the 3 judges Bench perused the confession in detail and observed:

“..... No doubt the confession was recorded in Jail though ordinarily it should have been recorded in the court house, but that irregularity seems to have been made because no body seems to have realized that was the appropriate place to record it, but this

circumstance does not effect in this case the voluntary character of the confession”.

And a Bench of an equal strength dealing with an Extra-Judicial Confession made it plain. In *Arjuna Lal Misra v. The State*, the Supreme Court observed:

“.....We have before us a case where the conclusion of guilt rests solely on retracted confession, not only uncorroborated in material particulars but untrue in many parts. Such a conviction is opposed to law and cannot be allowed to stand.”

Identically another Division Bench in *Pangambam Kalan Joy Singh v. State of Manipur*, speaking through Hon^{ble} Mr. Justice Bose, refused to base the conviction solely on retracted (extra-judicial) confession. He declared:

“.....The confession is inculpatory but corroboration is necessary because of the retraction weighing the evidence as a whole, we are of opinion that there are large elements of doubt and that it would be unsafe to convict:

In *Balbir Singh v. State of Punjab*, the Bench of the Supreme Court declared unambiguously that the objective of corroboration in the case of retracted confession is to test the voluntary and true character of the confession.

The Bench held :

“In this case, both the confessions were retracted subsequently and the proper approach in case of its nature is to consider each confession as a whole on its merits and use it against the maker thereof, provided the court is in a position to come to an unhesitating conclusion that the confession was voluntary and true; and though retracted confession, if believed to be true and voluntary made, may form the basis of conviction, the rule of

practice and prudence requires that it should be corroborated by independent evidence.....”

This judgment having been delivered by the Bench of the Apex Court of our land provides guidance and light to the judiciary of our country.

A three Judges Division Bench of the Supreme Court relying upon *Balbir Singh*, made the point of corroboration further clear in *Subramania Goundan v. State of Madras* that corroboration is not required on all points, but the general corroboration may suffice for conviction of the accused, even if he has retracted his confession. The court, speaking through Hon'ble Mr. Justice Govinda Menon held that minor weaknesses may not help the accused. He observed:

“.....There is no statement in the confession which is contrary to the oral evidence though the details put forward when the witnesses were examined in Court do not appear in extension in the confession and for that reason we are not prepared to say that the confession is untrueA confession of a crime by a person, who has perpetrated it, is usually the outcome of penitence and remorse and in normal circumstances is the best evidence against the maker. The question has very often arisen whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made. For the purpose of arriving at this conclusion the court has to take in to consideration not only the reasons given for making the confession or retracting it but the attending facts and circumstances surrounding the same. It may be remarked that there can be no absolute rule that a retracted confession cannot be acted upon, unless the same is corroborated, materially..... the view taken by this court on more occasions than one is that as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be

made solely the basis of conviction, unless the same is corroborated..... but it does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated nor it is essential that the corroboration must come from facts and circumstances discovered after the confession was made. It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession.....”

Another 3-Judges Bench of the Supreme Court in *Dagdu and others v. State of Maharashtra*, speaking through Hon’ble Mr. Justice Y. V. Chandrachud (as he then was), reiterated that only truthfulness and voluntariness of the accused is required to be tested from the confession to place reliance thereon, but the court declared, no reliance can be placed on the evidence given by an accomplice unless the same is corroborated in its material particulars, meaning thereby that there has to be some independent evidence tending to incriminate the particular accused in the commission of the crime.

Reiterating the position on the evidentiary value of the confessional statement made by the co-accused, the Highest Court of our country in a later case of *Union of India and others v. J.S. Brar*, has relatively diluted the value of retracted extra-judicial confession. Hon’ble Mr. Justice (Dr.) J.K. Thommen, speaking for a three Judges Bench, observed :

“.....Having deposed on behalf of the prosecution, and the defence having been afforded reasonable opportunity to cross-examine them, their evidence as such is not inadmissible, for it is at worst the evidence of the accomplices, which can be safely taken into account, if corroborated in material particulars by other independent evidence. As regards the objection concerning the

retracted confession attributed to the fourth accused, Pradhan, it may be stated that the confession as such is of no value, particularly because it is retracted, except as reassurance, when reliable evidence has already been adduced on behalf of the prosecution”.

Likewise another Division Bench of the Apex Court declared the retracted extra-judicial confession as a weak piece of evidence and in the absence of strong corroborative evidence, the same cannot be relied upon for conviction. The Bench of Hon'ble Mr. Justice J.K. Jayachandra Reddy and S.P. Barucha in *Uttam Sadda and another v. State of Punjab* delivering a brief judgment, observed:

“Having gone through the record, we find that entire case rests on the retracted extra-judicial confession, a weak piece of evidence. The learned Judge has not even extracted the details of the alleged confession. The learned counsel for the State, however, submitted that the medical evidence corroborated the prosecution case. The corroboration, we must note, is only to the extent of cause of death, but it does not in any manner implicate the appellants. The only corroborating evidence relied upon by the prosecution is that all the three were together, but in our view, that by itself is not sufficient to bring the one's guilty and at the most it may raise suspicion which, however strong, cannot take the place of proof.”

Another Division Bench in *Sankar alias Gauri Shankar and others v. The State of Tamil Naidu* felt aggrieved with the principle laid down in *Balbir Singh's case*. The Bench consisting of Hon'ble Mr. Justice J.K. Jayachandra Reddy and G.N. Ray, however, made it further clear that the amount of corroboration required in a case of retracted extra-judicial confession will depend upon the facts of each case. Reiterating that the objective is to test the truth of the confession and its voluntary character, the Court observed :

“.....The rule of prudence namely; requiring corroboration does not mean that each and every circumstance mentioned in the confession with regard to the participation of the accused in the crime must be separately and independently corroborated. It is sufficient if there is general corroboration of the important incidents, just like in the case of an approver's evidence and it is not necessary that the corroborative evidence itself should be sufficient for conviction..... Suffice it to say that it is also laid down that it is not illegal to base a conviction on an uncorroborated confession of an accused person, but as a rule of prudence which has sanctified itself to the rule of law, the courts do look for corroboration before acting upon and accepting the retracted confession and what amount of corroboration would be necessary in a case would be a question of fact to be determined in the light of the circumstances of the case.”

The corroboration of a retracted extra-judicial confession, though a rule of prudence, is an accepted principle and no conviction is based on the sole extra-judicial confession that is retracted.

There are number of cases on extra-judicial confessions as to show whether extra-judicial confession is a true confession in a real sense. Whereas it is also submitted that extra-judicial confession is itself a hearsay evidence as the accused speaking is himself not supporting it. In *Krishan alias Kabil v. State of Haryana*.¹¹ This was a case of rape and murder where the accused gave a extra-judicial confession before an independent person who had no enmity with the accused. The medical evidence corroborated the confession and the accused retracting it but it can be made the basis of recording conviction.

¹¹ 1994(1) RCR 382 (P & H).

In *Balwinder Singh v. State of Punjab*,¹² it was held that extra-judicial confession is by its very nature very weak type of evidence and requires appreciation with a great deal of care and caution. Where an EJ confession is surrounded by a suspicious circumstances its credibility becomes doubtful and it loses its importance. The court generally looks for independent reliable corroboration before placing any reliance upon a extra-judicial confession. Whereas in *Malkiat Singh v. State of Punjab*.¹³ The extra-judicial confession was alleged to be given to a En Surpanch. Who lived in separate village 60 km away and was also not in any relation. The kind of EJ was not relied. Another case of *Mukesh Busse v. State of Haryana*.¹⁴

Where the prosecution witness alleges that the accused made extra-judicial confession. Accused was not even earlier known to him. It can't be relied on for conviction and was acquitted. In *State of A.P. v. Gangula Satya Murthy*,¹⁵ the confession was made during custodial surveillance to any person be he not a police officer is inadmissible in evidence but the accused was not in custody. The EJ confession was relied upon.

In *Ram Khilari v. State of Rajasthan*.¹⁶ The confession was made by the accused to one of his relation he was convicted as court found the confession as truthful & reliable so the person was convicted.

In *Krisbal Lal v. State of Rajasthan*,¹⁷ it was held that for the extra-judicial confession to be relied on it must be clear and unequivocal whether it is in a judicial or in an extra-judicial confession. This was a Bride-burning case the accused made the confession in the Panchayat. In the Panchayat names of a large number of persons referred to as to have confessed the guilt including the accused

¹² 1996 SCC (Cri) 59.

¹³ 1997(1) RCR 504 P & H.

¹⁴ 1997(3) RCR (Cri) 553 P & H.

¹⁵ 1997 SCC (Cri) 325 (SC).

¹⁶ 1999(1) RCR 860 (SC).

¹⁷ 2000 SCC (Cri) 182.

appellant. Names including the names of those who were not even the accused. Fact that the appellant had burnt the deceased was not mentioned in such confession. So number reliance can be based on the so-called confession. Alleged-confession by a large number of persons in more in a general and vague terms.

In *Gura Singh v. State of Rajasthan*.¹⁸ This was the case of murder where accused murdered his father and made confessions before the close relations – held that confession was not voluntary due to these reasons :

- (1) All the witnesses are closely related to the accused in whom under the normal circumstances he would have confided hoping help, protection and being safe guarded.
- (2) Confession has been made instantaneously immediately after the occurrence as is not alleged to have procured under any pressure undue influence, coercion or pressure.
- (3) Though the appellant expected a favour from the witnesses yet none of them is stated to have promised a favour to him in case he made a truthful statement regarding the occurrence.

In *Malkiat Singh v. State of Punjab*,¹⁹ it was held that the confession before a PW. Who was himself involved in two criminal cases was rightly disbelieved.

In *Lambardar v. State of Punjab*.²⁰ In EJ confession where the confessional statement is not supported then it was not relied the accused was acquitted.

In *Satinder Pal Singh @ Sikander Singh v. State of Punjab*,²¹ where an extra-judicial confession after 17 days of the offence and there was no reason as

¹⁸ 2001(1) RCR (Cri) 123 (SC).

¹⁹ 2004(3) RCR 55 (P & H).

²⁰ 2005 (3) RCR (Cri) 251 P & H.

²¹ 2005(4) RCR (Cri) 494 (P & W).

why so much of time is taken by them. Confession does not inspire confidence the confession was not relied.

In *Sunny Kapoor v. State of UT of Chandigarh*,²² the extra-judicial confession was given before a social worker where no eye witness was there and they were also not know to each other so this can't be relied.

The extra judicial confession is a weak kind of evidence where an extra case and caution is to be taken to rely on such confession.

7.3 Person whom Made

The extra-judicial confession, as the same reaches the Court through the medium of a third person to whom the same is said to be made by the accused. The credibility of the person, his/her relationship with the accused and circumstances in which the extra-judicial confession was made turn to be important questions to be addressed by the Court before relying upon an extra-judicial confession.

Ballu and others v. State of Haryana S' is one of the latest judgments on this point, where the Apex Court has disbelieved the extra-judicial confession made to three different persons. The Court observed:

“.....Each of these 3 witnesses stated that after making confession the appellant concerned requested him to produce him before the Police. The story of the three appellants making confessions, which are on identical terms, before three different persons, who live in villages far of from the villages of the respective appellants, at periodical intervals appeared to us to be artificial and unnatural. If really their conscience compelled them to make a clean breast of their guilt the appellants themselves could have surrendered before the Police instead of taking a circuitous route of first approaching the above three witnesses for

²² 2006(3) RCR 48 (SC).

the same purpose, more so when there is nothing on record to show that they were persons of their confidence.”

The time-gap between the confession made by an accused to another person and the later passing on the same to the police has also been considered by the Higher Judiciary to be another test to be applied for judging the veracity of the extra-judicial confession.

7.4 Time Taken in Passing on Confession

There are a good number of reported cases on the point, but the principle can safely be read from a recent judgment of the Supreme Court of India delivered in the case of *Balwinder Singh v. State of Punjab*. The court speaking through Hon'ble Mr. Justice Dr. A.S. Anand *inter-alia* observed :

“.....The manner in which the extra-judicial confession is alleged to have been made and the silence of PW-3 for three days in disclosing the same to the police even though she had admittedly been with the police between 21st. and 23rd. March, 1984 renders it unsafe to rely upon the statement. This unexplained long delay in lodging the First Information Report Ex. PB. Detracts materially from the reliability of the prosecution case in general and testimony of PW3 in particular. We find that the alleged extra-judicial confession is surrounded by suspicious circumstances and the prosecution has not been able to establish that the appellant has made any extra-judicial confession to PW-3 Satya Walia and therefore this circumstance remains unestablished.”

7.5 Emerging Guidelines for Lower Judiciary

From our study of judgments of the Supreme Court of India, the following guidelines emerge out:

1. An extra-judicial confession to be admissible in evidence and one to be relied upon must fulfill the requirements of its voluntary character and truthfulness. The latter turns to be more important and the former is read from it in cases of retracted extra-judicial confessions.

2. It is required to be established from the fact and evidence produced as to whether the accused did make the extra-judicial confession or not.
3. The inculpatory statement, when separated from the exculpatory statement of the accused, must constitute the confession when tested on the requirements of Section 24.
4. The veracity of the extra-judicial confession is read from the credibility of the persons to whom made, the circumstances in which made and the explanations of the delay between the receipt of confession by a person and its transmission to the police.
5. Extra-judicial confessions if voluntary and true can be a sufficient evidence to base conviction of the accused, but if the same is corroborated with some additional independent evidence, the rule of prudence also gets thereby satisfied. In the case of retracted extra-judicial confession such a corroboration turns to be all the more important to take this rule of prudence, the place of a rule of law.