Agreement to give evidence of admission. Where the parties to the suit agree to treat an admission as evidence in the case there can be no objection to its admissibility.5

- 3. Conditional admission. Where an admission is made conditionally and the condition is not fulfilled, the admission cannot be admitted in evidence to prove liability of the maker. Where A contracted to sell his property to B, later on A by a letter requested B to relieve him of his obligation under the contract of sale and accept compensation. B in his reply marked "without prejudice" offered to accept compensation if the amount was paid within 48 hours. It was held that the words "without prejudice" were intended by B to convey that if the offer was not accepted, no further use of the offer in his letter was to be made and that therefore the letter could not be admitted in evidence under this Article.
- 4. Admission in arbitration proceedings. An admission before an arbitrator or panchayat is admissible in evidence. It is for the Court dealing with the facts to attach whatever weight it thinks proper to such an admission. This Article does not apply to such an admission.⁷
- 37. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having inference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Evidence Act, 1872. Article 37 is exact reproduction of section 24 of the Act.

Synopsis

- 1. Scope and object.
- 2. Confession--what is.
- 3. "Made by an accused."
- 4. Confession must be voluntary.
- 5. Confession under police restraint.
- 6. "Appears to the Court."
- 7. Inducement, threat or promise.
- 8. Confession made in hope of pardon or promise.

- 9. "Proceeding from a person in authority".
- 10. Person in authority--who is.
- 11. Admissibility of confession.
- 12. Confession before Magistrate.
- 13. Duty of Judge.
- 14. Admissibility of oral testimony of Magistrate.
- 15. Confession to be taken as a whole.

- 5. AIR 1930 Sind 105.
- 6. AIR 1959 AII. 440=ILR 1949 AII. 735 (DB).
- 7. AIR 1954 Madh. B 58.

8 Extra-judicial confession. Corroboration of confession.

Retracted confession.

Retracted ibility of.

boration of

confession.

species of admission and under the scheme of the Order confessions are treated prima species of admissions. Arts. 37 species of admission and union and prima species of admissions. Arts. 37, 38, 39 facie as relevant or provable under the category of admissions. Arts. 37, 38, 39 42 provide the limitations is the operation of Arts. 37, 38, 39.8 Scope and object. Under Qanun-c-Shahadat, confessions are treated as a

proceeding from a person in authority; (c) that the inducement, threat or promise of this Article is not admissible in evidence. 10 To attract the provisions of Art. 37, the which have been improperly obtained. A confession which falls within the mischief which have been improperly obtained. To attract the provisions of Array is the mischief authority is plainly insufficient to exclude that confessions from evidence.11 cumulatively exist. Therefore the mere fact that a confession is made to a person in nature in reference to the proceedings against him. All these conditions must that he would, by making it, gain any advantage or avoid any evil of a temporal appear to the Court that the accused in making the confession believed or supposed inducement, threat or promise must in the opinion of the Court, be such that it would must have reference to the charge against the accused person, and (d) the of this Article is the summer of this Article is the confession has been made by an following facts need be established: (a) that the confession has been made by an following facts need be established: (b) that the confession has been made by an following facts need be established: (a) that the confession has been made by an following facts need by an following facts need by an interest of the confession has been made by an interest of the conf has been caused or obtained by reason of any inducement, threat or promise accused person in authority; (b) that it must appear to the Court that the confession The provisions of Art. 37 are general and are intended to exclude confessions of Art. 37 are general and are intended to exclude confessions.

mentioned in the Article exist. 12 Art. 37 would be inapplicable to a case where none of the circumstances

without referring to any facts constituting the offence does not amount to allegations constituting the offence. A mere plea of guilty entered by the accused who is charged with the offence which is the subject-matter of the statement." The particulars of the offence should be put to the accused and he should admit the means an admission of certain facts which constitute an offence, made by a person 2. Confession-what is. The word 'confession' is not defined in the Act. 11

Confession is a voluntary statement made by a person charged with the commission of a crime or misdemeanor, communicated to another person, wherein be

Retracted confession-admiss

Ashnowing of the act or the share and participation which he had in it.16

Admission and confession-distinction. The term "admission" is a term of wider

whowledges himself to be guilty of the offence charged, and discloses the

confession-coro

Retracted

23.

evidentiary value of

conviction, it is an admission. 19 satement where some supplementary evidence is needed to authorise a sale it is an admission. 19 police. If on the other hand, the statement falls short of it, it amounts to an other there is direct admission of guilt, it is not noscieta. oder to use statement by itself is sufficient to prove the guilt of the maker, it is a splied. If the statement by itself is sufficient to prove the guilt of the maker, it is a splied. If on the other hand, the statement falls short of it is a which falls short of being an admission of guilt. In distinguish between a confession and an admission of guilt. In Johnission and where conviction can be based on the statement alone it confession. Where there is direct admission of guilt, it is not possible to treat the admission. Where conviction can be based on the not to distinguish between a confession and an admission a simple test can be oder to the statement by itself is sufficient to prove the onit of the omnotation between an admission and a confession. "Confession" does not include a stime in admission, which falls short of being an admission. Multion and it can be used to indicate "confessions" also.¹⁷ But there is a clear manning between an admission and a confession. "Confession." ¹

an only be treated as a confession if he admits having committed the crime, and admission of guilt. 20 Statement made by an accused person, charged with a crime, in a statement made before a Magistrate confesses his having given blows by a active than that ascribed to others named by him is a confession. Where an accused offence and which ascribes to himself a part much less important and much less offence which is not self-exculpatory but which minimises the part he played in the offence of substantially all facts which constitute the offence. The statement of an discloses other incriminating facts. It is a statement which either admits in terms the tagger on the body of the deceased, it amounts to a confessional statement. Admission of guilt necessary. A confession is an admission of facts as well as

confession. Thus the statements made by an accused who was charged with the ingredients required to constitute the offence, his statement amounts to a presence of the Investigating Officer that he (the accused) would point out the rifle; receiving stolen property in the course of police investigation, that he had kept it and leading to the recovery of a rifle, also stated that the accused had told him in the prosecution witness while referring to the information given by the accused. where it was buried, that he buried it there, are in the nature of a confession.5 Where would show it to the police and statements made after he took the police to the spot Where the accused does not, in so many words, admit his guilt but admits all

AIR 1952 SC 354+AIR 1956 Madh-B 107 (DB)+35 Mad. 397 (FB)+6 All. 509 (FB)

1985 P.Cr.L.J. 167 (Pesh).

AIR 1939 PC 47=40 Cr.L.J. 364+AIR 1959 AII. 518. PLD 1952 FC 1=4 DLR 199+AIR 1965 Bom. 195 (DB)

AIR 1936 Lah. 409=37 Cr.L.Jour 732 (DB)

AIR 1920 Bom. 270=22 Cri. L.Jour 68 (FB)

AIR 1951 Orissa 168=ILR 1951 Cut. 65=1952 Cri. L.Jour 1743 (FB).

1968 P.Cr.L.J. 1784 (DB)

Black's Law Dictionary, 6th edition, 1993, p. 296. Madh BLJ 1954 HCR 1269

¹⁰ Cr.L.J. 369 (DB) (Bom.)

NLR 1982 Cr. 117=PLD 1982 Lah. 180=1982 Law Notes 43 (DB)+AIR 1959 All. 518=1959

PLD 1982 Lah. 180=NLR 1982 Ct. 117=1982 Law Notes 43 (DB)+4 Cr.L.J. 471 (FB)

AIR 1946 Cal. 156 (DB) (Suggesting inference that he is guilty)+AIR 1933 Rang. 326

AIR 1956 MB 107=1956 Cr.L.J. 408 (DB). (DB)+AIR 1930 All, 29 (DB)+AIR 1920 Bom, 270.

^{14 Bom.} 260 (FB). 10 Cr.L.J. 584 (DB) (Lah).

the latter part of the information amounted to a confession and was inadmissible in

substantially all the facts which confession of the crime. Where a person charged taken together did not amount to a confession of the crime. Where a person charged be described as suggesting the three accused admitted in terms the offence, or could not be extended to show that the accused admitted in terms the offence, or be was guilty, it is not a contession that the accused committed the crime, build be described as suggesting the inference that the accused admitted in terms the offen. and not ambiguous. Where the statement of the accused is not sufficient to show that substantially all the facts which constituted the offence, the statements individually or and not ambiguous. Where the sweet the effect of the statements might at he was guilty, it is not a confession. Where the accused committed the crime the inference that the accused committed the crime the inference that the accused committed the crime the inference that the accused committed the crime that the c it was held that the accused's affirmative answer did not amount to an admission of taken together did not amount we taken together did not amount with stealing a mare was asked a long composite question by the trying Magistrate, with stealing a mare was asked a long composite puestion by the trying Magistrate, with stealing a mare was asked a long composite question by the trying Magistrate, with stealing a mare was asked a long composite question by the trying Magistrate, with stealing a mare was asked a long composite question by the trying Magistrate, with stealing a mare was asked a long composite question by the trying Magistrate, with stealing a mare was asked a long composite question by the trying Magistrate, with stealing a mare was asked a long composite question by the trying Magistrate, with stealing a mare was asked a long composite question by the trying Magistrate, with stealing a mare was asked a long composite question by the trying Magistrate, with the stealing a mare was asked a long composite question by the trying Magistrate, which were the stealing as the stealing at with stealing a mare was assured whether he had been arrested while riding it whether he had stolen the mare and whether he had been arrested while riding it whether he had stolen the mare and whether he had been arrested while riding it. Admission of guilt must be clearly made. An admission of guilt should be olear Admission of guilt must be clearly made. An admission of guilt must be clearly made. An admission of guilt should be olear admission of guilt must be clearly made. An admission of guilt should be olear admission of guilt should be olear admission of guilt should be olearly made.

neither with the intention to confess nor amounting to an admission of facts from amounts to a confession only if it is made with animus confitendi. A statement made includes a statement by the accused not amounting to a confession. A statement includes a statement by the accused not amounting to a confession. A statement which guilt is directly deducible, does not amount to confession. 10 Intention to admit guilt necessary. A statement in section 164, Criminal P.C.

express admission. In a criminal case if an accused keeps silent and does not speak it coin is not statement and hence the evidence of witnesses saying that the accused made counterfeit coins in their presence is not barred by Art. 37.13 admission by conduct such as by signs, 12 or by acts as by making of a counterfeit accused should be in unequivocal terms admitting the confession of the crime." An would not amount to confession of the guilt on his part. The confession of the Admission must be express. An admission of guilt to be a confession must be an

Admission of intention to commit offence. Where an offence requires the existence of dishonest intention, but the accused does not admit such intention, his admission is not a confession.14

Admission should be relating to offence charged. A confession must relate to the particular crime with which the accused is charged and admission which is not connected with the ingredients of the offence charged would not amount to a

ADMISSIONS

oriminature annot amount to a confession, if the exculpatory statement is of exculpatory matter cannot amount negative the offence alleged to be exculpatory which if true would negative the offence alleged to be exculpatory. offine All fact is not of itself a confession. A statement that contains self-incriminating fact cannot amount to a confession, if the excularious matter cannot amount to a confession, if the excularious matter cannot amount to a confession, if the excularious matter cannot amount to a confession, if the excularious matter cannot amount to a confession, if the excularious matter cannot amount to a confession, if the excularious matter cannot amount to a confession in the excularious matter cannot amount to a confession. the outputs the admission of a gravely incriminating fact even a conclusively offence. An admission of itself a confession. A statement the Art. 371 prisoner delines where part of confessional statement is inculpatory and part his guilt. But where is evidence on record to show that exculpatory and there is evidence on record to show that exculpatory. galement with the split is not a confession and cannot be used in evidence to prove prisoner denies his guilt is not a confession and cannot be used in evidence to prove prisoner denies his guilt is not a confessional statement is incultable. spine fact which read as a whole is of an exculpatory character and in which the spine the desired which read as a confession and cannot be used in anial spines his guilt is not a confession and cannot be used in anial spines his guilt is not a confession and cannot be used in anial spines. exculpatory part and convict the accused on the basis of the Court can ignore the exculpatory part and convict the accused on the basis of the Court can nortion of the confession. 17 his guilt, and there is evidence on record to show that exculpatory part is false, the exculpatory part and convict the accused on the land to the exculpatory part and convict the accused on the land to the exculpatory part and convict the accused on the land to the exculpatory part and convict the accused on the land to the exculpatory part and convict the accused on the land to the exculpatory part and convict the accused on the land to the exculpatory part and convict the accused on the land to the exculpatory part and convict the accused on the land to the lan Exculpatory statement is not a confession. A confession must either admit in Exculpatory or at any rate substantially all the facts which

inculpatory portion of the confession. 17 to a will be accused as really belonging to deceased is not a confession article produced by the accused as really belonging to deceased is not a confession dacous vue and is admissible in evidence. 19 A statement to Police regarding the to a confession and is admissible in evidence. 19 A statement to Police regarding the Thus where says that he committed the dacoity, the statement does not amount dacoits but never says that he committed the dacoity, the statement does not amount Statements which are not of an incriminatory nature are admissible. sonfession and statements which are not of an incriminatory nature are admissible. sonfession and accused person states to the notice that here are accused person states to the notice that here. contession. Thus where an accused person states to the police that he was in the company of thus where eave that he committed the darrier the committed the darrier the committed the darrier than the company of Statement to police. Every statement made to Police by the accused is not

but an admission. 20 false is not a confession. It may be admitted in evidence as an admission. False statement by accused. A statement of the accused which is relied upon as

Joint confession. A joint confession by more than one accused is no confession

in the eye of law.2 not admissible in evidence even though the murderer was not an accused person at court and when he is undoubtedly an accused person. Hence a confession made by a when he made the confession but when the confession is being considered by the accused subsequently. The section refers to the status of the person not at the time accused at the time when he made a confession, but also to one who becomes an confession is made before a report was made to the police and before the person that time but ultimately come to be an accused person. It follows that even when a nurderer to a lambardar on his telling him that if he confessed he would help him, is 3, "Made by an accused." Art. 37 refers to a person who is not only

, 5 is

5 Lah L.J. 128 (DB).

AlR 1942 Pat. 156=43 Cr.L.J. 615 (DB)

AlR 1934 Sind 100=35 Cr.L.J. 1332 (DB)

PLD 1982 Lah. 180=NLR 1982 Cr. 117=1982 Law Notes 43 (DB)

NLR 1978 Cr. 789=PLJ 1978 SC 293+PLD 1975 SC 187+AIR 1952 SC 354+AIR 1939 PC 47.

AIR 1920 Bom. 270 (FB)+48 Cr.L.J. 651 (DB) (Lah)+AIR 1941 Bom. 50.

AIR 1958 Mys. 1=ILR 1957 Mys. 81=1958 Cr.L.J. 54 (DB).

AIR 1945 NUC (Punj) 1381.

AIR 1960 SC 4/9 (Reversed AIR 1957 All, 387)+AIR 1939 PC 47+AIR 1952 SC 354

AIR 1927 Lah. :650=28 Cr.L.J. 767.

AIR 1954 J & K 19=1954 Cr.L.J. 505 (DB) AIR 1937 Nag. 254-ILR 1937 Nag. 524-38 Cr.L.J. 648 (DB

AIR 1930 Lah. 84 (DB).

AIR 1931 All. 9-32 Cr.L.J. 1006.

AIR 1945 Born. 152-ILR 1945 Bom. 278-46 Cr.L.J. 541 (DB) AIR 1934 Pat. 651-36 Cr.L.J. 447.

¹⁹⁹⁸ MLD 299 (FSC) AIR 1937 Mad. 209=38 Cr.L.J. 323 Bom. 270 (FB)+48 Cr.L.J. 651 (Lah). PLD 1960 Lah. 739=12 DLR WR 34+AIR 1965 Guj. 5 (DB)+AIR 1960 SC 1125+AIR 1920

one made by an accused.5 confessing was accused of an offence by others, the confession must be regarded to

indirectly is the result of inducement, threat or promise from a person in authority or indirectly is the result of inducement, threat or promise from a person in authority or indirectly is the result of inducement, threat or promise from a person in authority or indirectly is the result of inducement, threat or promise from a person in authority or indirectly is the result of indirectly or indirectly is the result of inducement, threat or promise from a person in authority or indirectly or indirectly or indirectly or indirectly or indirectly or indirectly is the result of inducement, threat or promise from a person in authority or indirectly or indire upon the Courts to determine it "voluntary" and "true". If the confession directly within the scope of either term "voluntary" and "true". If the confession directly or with confession and each of which is not voluntary, is admissible in evidence even though it may be incorrect in its contents voluntary, is admissible the which is not voluntary, is not admissible the state of the with confession and each of them has its own significance. A confession, which is with confession and each of them has its own significance. A confession, which is would be treated as not voluntary. Voluntary and true are two different terms related would be treated as not voluntary. It is own significance. A confession with the many treated as not voluntary. 4. Confession must be the confession is voluntary and true or is lacking upon the Courts to determine if the confession directly and "true". If the confession directly As against above, a confession is voluntary and true is a question of fact and is to may be true, whether a confession is voluntary and true is a question of fact and is to may be true, whether a confession is voluntary and true is a question of fact and is to may be true, whether a confession is voluntary and true is a question of fact and is to may be true. As against above, a confession, which is not voluntary, is not admissible though it As against above, a confession is voluntary and true is a question of fact. relates to its admissibility, while its truth is looked into for the purpose of assessing relates to its admissibility, while its truth is looked into for the purpose of assessing relates to its admissibility. be determined Kerpins ... Case, be determined Kerpins ... Voluntariness of confession and of being true are totally distinct. Voluntariness Voluntariness of confession and of being true are totally distinct. Voluntariness be determined keeping in view the attending circumstances of each case, be determined keeping in view the attending circumstances of each case, its value. Therefore, for proving confession it shall be both voluntary and true. Confession must be voluntary. In criminal cases great responsibility resu

sufficient enough to compel her to make a confession and take risk of punishment did not satisfy himself if conditions under which she was confessing were natural and confession." Where while recording confession of an accused lady the Magistrate giving rise to suspicion as to voluntariness has been regarded as sufficient to reject to ascertain the voluntariness or involuntariness of a confession and any circumstance also dangerous to allow a man to be convicted on the strength of a confession unless made.9 And while the Court is considering this question, the question whether it is consistent with evidence which was available at the time when confession was and duration of custody; as to whether confessor was placed in a position to seek truthfulness of confession could be evaluated on the considerations viz. the character conviction. In order to determine whether confession was voluntary or not, attending satisfied that it was genuinely made, but it has also to be satisfied that it was made it is made voluntarily and he realises that anything he says may be used against him." true or false does not arise. It is abhorrent to notions of justice and fair play and is available against confessor before he confessed and whether confessions were advice of his relatives or his lawyers; nature and quantum of proof which was alone probative value of confession could be determined. Voluntariness and circumstances must be subjected to very close, minute and rigid scrutiny and then The Courts look into the facts and surrounding circumstances independently in order freely and voluntarily. A confession which is not voluntary cannot be made basis of Before a confession is taken into consideration, the Court has not only to be

> Confessions and duty of Magistrate to make sure that confessional statement of thus bounden duty of torture at the hands of police. Not a single was not a result of torture at the hands of police. Not a single was a single was not a result of the office of the same of t Confessions are mostly extracted through undue influence, coercion and torture, it the correction and torture, thus it could not be made basis of her conviction. 12 through coercion and torture, thus it could not be made basis of her conviction. 12 weaker sex increased statement of lady accused seemed to have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, thus it could not be made basis of have been obtained that the confession and torture, the confession and the confession and torture, the confession and torture, the confession and the confessi we go law the Magistrate to that effect specially when confession came from the was sked by the Magistrate were almost equally related to decease in the was seen though all accused were almost equally related to decease in the was seen though all accused were almost equally related to decease in the was seen that the was seen the was seen that the was seen that the was seen that the was thus proved lady was not a result of torture at the hands of police. Not a single question was result of that effect specially when confession confession from the Magistrate to that effect specially when confession confession from the state of the stat Presked by though all accused were almost equally related to deceased. It was held was reaker sex though statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused seemed to have the reaker confessional statement of lady accused to the reaker confessional statement of lady accused to the reaker confessional statement of lady accused to the lady accused to the lady accused to the lady accused the lady accused to the lady accus

Unuv. The production and not on account of any coercion, duress or violence. 13 Under Islamic Jurisprudence, in order to make a confession reliable, it should the made and not on account of any coercion. direct or minds

before manuse the Court will have to judge for itself from the intrinsic evidence of this regard but the surrounding circumstances as to what consideration the confession. 14 No doubt, no hard and fast rule can be laid down in before making the Court will have to judge for itself from the interior that the Court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have to judge for itself from the interior that the court will have the interior that the court will be interior that the court wi confession is the length of time during which the accused was in police custody consideration the confession.¹⁴ No doubt, no hard and fact mile accused. Conjume of the most important factors which should be taken into confessions one of time during which the accused was in the length of the length of the length of time during which the accused was in the length of the confession and the surrounding circumstances as to whether such confession the confession recorded after favor. It inon 15 A confession recorded after favor. m pure desitated his admission to the hospital and the confession was also retracted necessitated his admission to the hospital and the confession was also retracted in police custody for four months and when he had injuries on his person which should be received the evidence. 16 Where a confession is made after the accused has been is inadmissible in evidence. 16 Where a confession is made after the accused has been the converged upon. 15 A confession recorded after seven days of arrest of accused should be relied upon. 16 Where a confession is made and a confession is made at the converged to the confession is made at the confession is m and consultation of the accused with investigating officer and when it is also gubsequently, it is not admissible. 17 Similarly a confession made after police custody retracted subsequently is not admissible in evidence.18 Confession made under pressures is inadmissible. When considering

be presumed to be voluntarily made unless the contrary is proved. 9 The assumption his interest unless some pressure is exerted on him is not wholly correct. A man who that a person would not make a confession of his guilt, which will be prejudicial to has committed a grave crime, unless he is a confirmed offender hardened by his some person his terrible secret.20 The fact that a confession is more elaborate than repeated crimes, feels an overwhelming desire to unburden himself and share with as a result of persuasion. does not necessarily show that the confession was not voluntary. Similarly the fact necessary or that it contains more particulars than are required at the particular stage being asked to produce stolen articles, does not mean that the confession was made that an accused person confessed guilt on being asked twice or thrice or did so on Confession may be presumed to be voluntary. Under the law, a confession must

AlR 1953 Hyd. 145=ILR 1951 Hyd. 895=1953 Cr.L.J. 785.

AlR 1940 Mad. 136=41 Cr.L.J. 323 (DB)

1992 SCMR 1983. 1996 MLD 924 (DB).

AIR 1950 Mys. 82=ILR 1951 Mys. 239 (DB) PLD 203 SC 704=2004 SCJ 33.

²⁰⁰² SCJ 26+PLD 1964 SC 598=1965 (1) PSCR 304+PLD 1978 Pesh. 38 (DB)+PLD 1961 Lah. 167 (DB)+AIR 1958 Pat. 166 (DB)+AIR 1960 Mys. 199 (DB)

PLD 1986 Quetta 193 (DB).

²⁰⁰² P. Cr. L.J. 1631=2002 AC 435 (DB).

PLD 1958 Dacca 75=9 DLR 511 (DB)+AIR 1956 SC 217.
PLD 1984 Lah. 115=PLJ 1984 Cr.C. 230=NLR 1984 Cr. 18=1984 Law Notes 46+AIR 1981

PLD 1969 Dacca 504 (DB) 1987 P.Cr.L.J. 1773 (DB)

AlR 1919 Cal. 11=20 Cr.L.J. 833 (DB)

AlR 1949 Nag. 405=ILR 1949 Nag. 301=51 Cr.L.J. 224 (DB)

AIR 1951 HP 1=52 Cr.L.J. 50.

AIR 1960 Cal. 519 (DB). AIR 1949 Mad. 817=51 Cr.L.J. 8 (DB)

doubt about the voluntary character of the confession.5 recorded by Magistrates are that the confession was voluntary, long detention of the precautions to satisfy himself that the confession was voluntary, long detention of the presumption is that it was voluntary. But that does not mean that all confessions duly Magistrate after observing an to have recorded it after being so satisfied himself that it was voluntary and to have recorded it after being so satisfied, the Confession recorded by number of the formalities, and he purports to have satisfied Magistrate after observing all the formalities, and he purports to have satisfied to have recorded it after being so satisfied to have recorded t he was called by the Magistrate, he denied having committed any offence arises some accused in police custody coupled with the fact that on the very first occasion when presumption is that it was voluniary, presumption is that it was voluniary, presumption is that it was voluniary, where the Magistrate took all recorded by Magistrates are reliable evidence. Where the Magistrate took all recorded by Magistrates are reliable evidence. Where the Magistrate took all recorded by Magistrates are reliable evidence. Confession recorded by Magistrate. Where a confession was duly recorded by all the formalities, and he purports to have say by

confession was voluntary, and was not made under duress. The question whether a appellant that he would not be sent back to the custody of the police and instead would be sent to the judicial lock-up, it would be extremely doubtful if the where Magistrate has not reliable. Thus where the Magistrate had not informed the made to him is not reliable. Thus where the custody of the police and considered before deciding whether the Court is satisfied that in its opinion the of the case, including the important factor of the time given for reflection, must be rule out the confession. But at the same time, all the factors and all the circumstances that if a certain period is not given for reflection that by itself would be sufficient to confession is voluntary or not is always a question of fact, and there is no rule of law impression caused by any inducement, threat or promise has been fully removed as Where Magistrate has not complied with all the formalities, the confession

nature of the statement, attending circumstances must be subjected to very close, voluntarily made or not is essentially a question of fact. In ascertaining the voluntary evidence and the probabilities of the case.8 But whether a confessional statement was necessary to examine the confession and compare it with the rest of the prosecution voluntary and also that it is true. For the purpose of establishing its truth it is confessing accused, would be sufficient proof of voluntary nature of confession. applicable to a given set of facts is for the judge of fact to decide. 10 It has been held the very nature of things there can be no rigidity about them. What test is best minute and rigid scrutiny.9 Different tests will have to be applied to different sets of gives details of sensitive and delicate facts which could be in knowledge only of that the fact that confessional statement discloses minute details of occurrence and facts. The tests evolved by constant process of judicial thinking are important. But in Tests of voluntariness of confession. It must be established that a confession is

> and unhanner. In the influence of the police. 13 Article 37 does not require strict proof that the subject to the influence from inducement, threat or promise. but that Annual subjection has resulted from inducement, threat or promise. conjecture was voluntary in nature when there is nothing on record to the contrary. 16 confession was voluntary in nature when there is nothing on record to the contrary. 16 confession that the confession was not voluntary. 15 But inference would be drawn that confession was voluntary in nature when there is nothing on record to the confession was voluntary in nature when there is nothing on record to the confession was voluntary in nature when there is nothing on record to the confession was voluntary in nature when there is nothing on record to the confession was voluntary in nature when there is nothing on record to the confession was voluntary in nature when there is nothing on record to the confession was not voluntary. suggest that ... Art. 37 if there are circumstances which afford a well-grounded onlession was not voluntary. Is But inference would be confession was not voluntary. that the confession was not voluntary. It is sufficient to exclude a sufficient number Art. 37 if there are circumstances which afford a sufficient or exclude a sufficient under Art. confession the confession was not voluntary. It is sufficient the confession was not voluntary. It is sufficient to that the confession was not voluntary. subject to uncomposite of from inducement, threat or promise, but that does not mean onlies on declare the confession irrelevant even if there is a confession from the confession irrelevant even if there is a confession irrelevant even if the confession irrelevant even dession in the influence of the police. 13 Article 37 does not require strict. proof wolves mixed questions of both fact and law. 12 The accused must be free confession involves the time when his confession is recorded and all the file. proof of voluntariness of confession. Voluntary or involuntary nature of a

on that the confession was duly recorded. Where the accused alleged that the plant the extorted from him by giving him a harring but at alleged that the confession would be held to be voluntary. 19 contession injuries or marks of injuries on his body to prove that allegation, the were no injuries held to be voluntary. 19 91 mai un was extorted from him by giving him a beating by the police but there confession was extorted from him by giving him a beating by the police but there promise or the onus is on him to displace the presumption which arises under Art. involuntary, the onus is on him to displace the presumption which arises under Art. It is 101 in rement. 17 If an accused person challenges a confession as pomise or inducement. 17 If an accused person challenges a confession as It is for the prosecution to prove that a confession was made without threats or

under S. 342, Cr.P.C. had stated that he had written the confession under duress and accused was not fatal as an accused person was entitled to raise a plea at the stage of had not referred to the inducement offered. It was held that omission on the part of arguments on the basis of proved facts though he might have not raised such plea in Plea as to involuntariness of confession. Where the accused in his statement

confession not precisely hit by Art. 37 may yet be not voluntary. It is the duty of the his statement under S. 342, Cr.P.C. 20 of Art. 37 was in fact given, a Court may well refuse to accept the confession as are proved which suggest that inducement of some kind, although outside the terms desire to tell the truth. This fact introduces an element of suspicion. Hence, if facts wider sense of the term, exhypothesi a person who made it, did not do so from a judge to determine whether it is admissible. If a confession is not voluntary in the Confession not falling under this Article, if may be excluded from evidence. A

Confession true but not voluntary. Where the confession is not voluntary and free the fact that it is true cannot make it admissible. Thus a confession of an

AIR 1951 Kut. 92=1952 Cr.L.J. 10.

¹⁰ Cr.L.J. 125 (DB) (Cal)+AIR 1947 Oudh 95 (DB)+AIR 1922 Oudh 302 (DB)

AIR 1954 Sau 39=1954 Cr.L.J. 561 (DB).

¹⁹⁸⁴ P.Cr.L.J. 2727 (DB)+1984 P.Cr.L.J. 2690 (DB)+PLD 1964 Pesh. 1 (DB)

AIR 1957 SC 937.

AIR 1957 SC 637=1957 SCR 953=ILR 1957 Punj 1602.

¹⁹⁸⁶ P.Cr.L.J. 1153=PLJ 1986 Cr.C. 371=NLR 1986 Cr. 599=KLR 1986 Cr.C. 322 (DB)

AIR 1960 Mys. 199 (DB).

NLR 1993 Cr. 672=1993 P. Cr. L.J. 1403 (SAC)

AIR 1936 Cal. 227=37 Cr.L.J. 676=63 Cal. 1089 (DB)

AIR 1948 Nag. 344=ILR 1948 Nag. 147=49 Cr.L.J. 561 (DB)

PLD 2002 Kar. 530.

AIR 1947 Pat. 305=25 Pat. 612 (DB).

²⁰⁰³ SD 180=2003 YLR 263 (FSC).

AIR 1951 Orissa 168 (FB)+AIR 1951 HP 82+AIR 1958 Pat. 166 (DB)+36 Pat. 141 (DB).

PLD 1962 Pesh. 91 (DB)=APR 1962 WP 103

PLD 1967 Kar. 233.

¹⁹⁸⁹ P.Cr.L.J. 574 (FB)

AIR 1936 Cal. 316=37 Cr.L.J. 775=63 Cal. 1053 (DB) AIR 1936 Cal. 227=37 Cr.L.J. 676=63 Cal. 1089 (DB)

³ Sau LR 14 (DB).

considerations. It cannot be called a free and voluntary statement. the villagers after appearance or is possible that it was induced by fear or other investigation is of little value as it is possible that it was induced by fear or other investigation. the villagers after appearance of police in the village and after they had started the villagers after appearance of police in the villagers after they had started the villagers after appearance of police in the villager and after they had started the villagers after appearance of police in the villager and after they had started the villagers after appearance of police in the villagers after they had started the villagers after appearance of police in the villagers after a police in the villagers and the villagers after a police in the villagers and the villagers after a police in the villagers and the villagers after a police in the villagers and the villagers and the villagers are villagers and the villagers and the villagers and the villagers and the villagers are villagers and the villagers and the villagers are villagers and the villagers and the villagers and villagers are villa accused charged with murder to one of the prosecution witnesses in the presence of

to confess his guilt would be the only may of saving himself.5 does not cease to be no simply because the accused person on his own believes that Voluntary confession made under mistake. A confession otherwise voluntary

involuntary and may be admitted in evidence.6 made to avoid the consequences of other criminal acts, the confession is not Voluntary confession made in self-interest. Where a voluntary confession was

retracted at a late stage goes strongly in favour of the confession being voluntary. Late retraction of confession. The circumstance that the confession was

confessional statement when recovery of knife and blood-stained clothes of deceased excluded from the evidence. There would be no reason to doubt voluntariness of corroborate fully the confessional statement.9 and accused, such statements must be regarded as involuntary and must therefore be continuous interrogation for several hours after the person is treated as an offender leading to discovery were made to the Police as a result of harassment and and if the statement is involuntary, it would be excluded. Where the statements course of investigation. But principle of Art. 37 applies to statements under Art. 37 course of investigation. But principle of Art. 37 applies to statements under Art. 37 admissible under Art. 40, although they are statements made to the Police in the Confession accompanied by recoveries. Statements leading to recoveries are

was not voluntary cannot be taken to be a voluntary one, simply because the accused has signed the statement.10 Signed confession. A statement of the accused containing an allegation that it

given back to police custody, are always relevant in judging the voluntary nature of the confession: It will depend upon the circumstances of each case whether those the Magistrate for recording his confession and for how long, and whether he was made to a Police Officer shall be proved as against a person accused of an offence.12 the influence of the police." Qanun-c-Shahadat, 1984 stipulates that no confession The facts, whether an accused was in police custody before he was produced before unhampered at the time when his confession is recorded and should not be subject to 5. Confession under police restraint. The accused must be free and

from evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused persons making confession remained evidence of truthfulness in it. 4 Where accused the person of the would lead to the inference that the confession was involuntary.¹³ Where a best would lead by police pressure it is irrelevant and must be to the leading of the leading endence or maintaining that they had been tutored by police, appeared to be police custody; maintaining that they had been tutored by police, appeared to be police by their thumb-mark on confessional statement but confession remained in police by police, appeared to be a police by their statement but confession remained in police custody; maintaining that they had been tutored by police, appeared to be a police statement but confession remained in police custody; maintaining that they had been statement but confession remained in police custody; maintaining that they had been statement but confession remained in police statement but confession remained but confession remained in police statement but confession remained but confession remained but confession remained but con bets would reased by police pressure it is irrelevant and must be totally excluded onlession is caused by police pressure it is irrelevant and must be totally excluded onlession is caused by police pressure it is irrelevant and must be totally excluded onlession is caused by police pressure it is irrelevant and must be totally excluded with requirement on probative value and was liable to be rejected as not made confession had no probative value and was entirely indicated. them appeared of law; and were returned to police after making confession. The with requirement of probative value and was liable to be rejected. onlession is and it cannot be looked into for the purpose of finding any intrinsic for the purpose of finding any intrinsic for the purpose of finding any intrinsic for the purpose of finding and intrinsic formal purpose of finding and intrinsic formal purpose of finding and intrinsic for the purpose of finding and intrinsic formal purpose of finding and in the men in the provisions of this make it, amounts to a confession which is irrelevant under the provisions of this make it, where an extra-judicial confession was made in the the fire investigating Sub-Inspector who undoubtedly had offered him inducement to the fire t confession. Statement by the accused when he was entirely under the influence of soluntarily. Is A statement by the accused when he was entirely under the influence of soluntarily. Is A statement by the accused when he was entirely under the influence of soluntarily. Is A statement by the accused when he was entirely under the influence of soluntarily. pliterate by be the result of some tutoring emanating from some person familiar them appeared to be the rault of some returned to police after making and were returned to police after making and the pol police their thumb-mark on confessional statement but confession made by their the result of some tutoring emanating from some some made by officers or an extra-judicial confession obtained by police officials after make in Where an extra-judicial confession was made in the presence of police Article. Where a extra-indicial confession obtained by mimidating the accused was not admissible in evidence.18

neither necessary nor proper even though such officer is not concerned in the The presence of a police officer at the time of recording the confession is

custody, was not admissible. If, however, something related to case was recovered or any fact was discovered in consequence of information conveyed by accused then investigation of the crime.19 same would be admissible in evidence within the purview of Art. 40 of Qanun-e-Police restraint on accused. Confession made by accused, while in police

or through some other agency employed by them for the purpose of securing such a he is a free man or his movements are controlled by the police either by themselves recorded, the crucial test is whether at the time when an accused makes a confession be deemed to be in the custody of the police even in such circumstances. No to prove that the accused was in the custody of the police. Even temporary absence of confession. The immediate presence of a policeman or police officer is not necessary statement made by the accused under these circumstances can be held to be policeman or a police officer would not terminate his custody and the accused shall Whether the accused was in police custody or not when his confession was

AIR 1951 Ajmer 95=52 Cr.L.J. 1523

AIR 1954 Trav-Co. 456=1954 Cr.L.J. 1468 (DB) AIR 1962 SC 1821.

AIR 1954 HP 11=1953 Cr.L.J. 1900

AJR 1960 Bom. 488.

²⁰⁰⁴ SD 300 (DB).

NLR 1984 Cr. 18-PLD 1984 Lah. 155=1984 Law Notes 46=PLJ 1984 Cr.C. 230+AIR 1948 Nag. 344 (DB)

Nag. 344 (DB).

¹² 2001 P. Cr. L.J. 1300

ILR (1954) 4 Raj. 65 (DB).

AIR 1951 HP 82=1952 Cr.L.J. 33.

PLD 1984 Lah. 155=PLJ 1984 Cr.C. 230=NLR 1984 Cr. 18=1984 Law Notes 46+AIR 1933

AIR 1920 Bom. 270=22 Cr.L.J. 68 (FB)

¹⁹⁶⁹ P.Cr.L.J. 1285.

AlR 1955 Manipur 1=1955 Cr.L.J. 139

AIR 1942 Pat. 90=43 Cr.L.J. 36 (DB)

PLJ 2001 FSC 28. All. 518+48 Cr.L.J. 794 (DB) (Lah) (Magistrate performing functions of police-Conlession held not voluntary). oning investigation--Recording of confession at suggestion and in presence of police-

committed a minor oftence. It may be a minor crime by an accused is sufficient a proposition to hold that the confession of a co-accused who has been charged with to corroborate the retracted confession of a co-accused who has been charged with to corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the retracted confession of a co-accused who has been charged with the corroborate the co-accused which the co-accused whin form the basis of conviction it where the confession of an accused was both as to the crime and the criminal accused although the confessing accused was both as to be used against another accused although to be used against another held that it will be laying too wide and danon sought to be used against another accused that it will be laying too wide and danon because the confession of an accused was both as to be used against another accused although the confession of an accused was both as to be used against another accused although the confession of an accused was both as to the criminal accused although the confession of an accused was both as to the criminal accused although the confession of an accused was both as to the criminal accused although the confession of an accused was both as to the criminal accused although the confession accused was sought to be used against another accused although the confession accused had sought to be used against another accused although the confession of an accused was sought to be used against another accused although the confession accused had sought to be used against another accused although the confession accused had sought to be used against another accused although the confession accused the conf retracted confession may be taken is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration form the basis of conviction if there is substantial and independent corroboration for the confession of an accusate the confession of t retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into consideration as against a co-accused and may retracted confession may be taken into confession as against a co-accused and may retracted confession as a co-accused and may retracted confession as a co-accused and may retracted confession as a co-accused and may retracted an accuse the confession as a co-accused and may retracted confession as a co-accused and may retracted an accuse the confession and may retracted an accuse the confession and may retracted an accuse the confession accused accused an accuse the confession accused an accuse the confession accused accused an accuse the confession accused accused an accuse the confession accused accused accused accused an accuse the confe sought to be used against allowed that it will be laying too wide and dangerous committed a minor offence. It was held that it will be laying too wide and dangerous committed a minor offence. It was held that it will be laying too wide and dangerous committed a minor offence. It was held that it will be laying too wide and dangerous committed a minor offence. having committed a graver offence.13

any offence. 38. Confession to police-officer not to be proved. No confession made to a police-officer shall be proved as against a person accused of

Special Military Court. 17

includes increased in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and popular sense as meaning an acknowledgment of put have been used in the wide and put have been used in the wide and put have been used in the put have been used in the wide and th Unity could includes inculpatory statements which suggest guilt of person making them.* It could include here used in the wide and popular sense as meaning an analysis in the wide and popular sense as meaning an analysis.

Only confessions are hit by this Article. The word "confession" in Art. 38

some jauring law. 19 The section excludes only confessions made to police officers of the criminal law, 19 The section excludes only confessions made to police officers of the criminal law, 19 The section excludes only confessions made to police officers not have well-there can be little doubt that it is to be understood in the technical sense some fault. There can be little doubt that it is to be understood in the technical sense some fault.

of the viring statement made by an accused to the police²⁰ and for that matter it does and not every statement of any other matter unconnected with the proof of the police.

subsequent rectings before a Special Military Court. Provisions of Art. 11(2) of the rial and proceedings therefore cannot be applied to the proceedings of any (1) of the rial and proceedings of any (1) Special resolution overrides all other laws contrary to it and anni-

Special Military Court, applicability to. Provisions of Art. 11(2) of P.O.4 of

mal and prove therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 therefore cannot be applied to the proceedings of any Court including p.0.4 of 1982 the p.0.4 of 198

Evidence Act, 1872. This Article is a reproduction of section 25 of Evidence

Synopsis

Object and scope.

Confession in presence of police-Confession to police-officer. Police-officer--who is.

Purpose for which confession to Use of confession against copolice is admissible

Use of confession in favour of maker or co-accused. accused.

> <u></u> 9 accompanied by statement. accused

Statement "Person accused of an offence." ಠ police not

14. Statement to police amounting to confession

conferred upon a specified authority of an administrative department but the scope of should be applied very strictly.13 Recording of confession cannot be delegated embodied in the Article is for the reason that a police officer shall not be encouraged officer shall not be proved against a person accused of any offence. The rule limited powers of recording/collecting an admissible statement/evidence there may be very few and rare exceptional cases wherein under particular law muchless surrendered to investigating agency of whatever nomenclature. No doubt made in the immediate presence of a Magistrate. The prohibition contained in Art.38 confessions, by rendering such confessions absolutely inadmissible in proof unless to extort confession for showing efficiency by securing convictions.14 Intention of Legislature in enacting Arts. 38 and 39 was to deter the police from extorting Object and scope. According to Article 38 a confession made to a police

Recoveries confession. accompanied 9

F.I.R. by accused confession.

amounting to confession.

investigation.4 which the accused is charged. A confession of one crime during the investigation of Art.38 is of a general nature and is not limited only to confessions of offences with another crime is equally inadmissible.6 It follows that a confession made by an Confession of offence other than one charged. The prohibition contained

70 and prohibit the proof of any other matter unconnected with the confession of the amount to a confession, if the exculpatory statement is of some fact which if true

Evidence of police-officer as to

would negative the offence alleged to be confessed.2

Exculpatory statement. No statement that contains self-exculpatory matter can

was inadmissible and such a confession was hit by Art. 38.3

Confession to person in authority. Confession made before a person in authority

officer before any investigation has begun or made otherwise not in the course of an

Confession before investigation. Art. 8 covers a confession made to a police

,NLR 2004 Cr. 84 & 168 (DB).

PLD 1989 Kar. 572 (DB).

AlR 1917 Low Bur 5=19 Cr.L.J. 42 (DB)

35 Mad. 397=13 Cr.L.J. 352 (FB).

AIR 1941 Lah. 82+AIR 1915 Cal. 256+AIR 1959 Bom. 534. 1980 P.Cr.L.J. 201=PLJ 1980 Cr.C. 231 (Pesh) (DB) (Admission of accused of his presence at

occurrence-Not hit by this Article)+AIR 1957 Mys. 50.

1970 SCMR 857.

2000 P.Cr.L.J. 1734 (DB). AIR 1939 PC 47=43 Cr.L.J. 364.

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PLD 2003 SC 704-2004 SCJ 33.

PLD 1960 Kar. 753=PLR 1961 (1) WP 588 (DB)

AIR 1927 Bom. 4-28 Cr.L.J. 122 (FB)+6 All. 509 (FB)

PLD 1968 Lah, 49+AIR 1959 SC 1+AIR 1942 Lah, 271 (DB)+AIR 1946 Sind 43 (DB)

1937 Mad. 209=38 Cr.L.J. 323. AIR 1941 Sind 134-42 Cr.L.J. 805 (DB).

Mere act

not admissible in evidence in a trial for murder on the same facts.? accused to the police, of an offence of culpable homicide not amounting to murder is

whom was the contession "" a Police officer, it shall be excluded. The criterion in Art. 39 for exclusion is the answer to the officer, it shall be excluded. The criterion in Art. 39 for exclusion is the answer to the 39 cannot be treated as an except 38, the criterion is answer to the question was that it was made to a two clear and definite rules. In Art. 38, the criterion is answer to the question was that it was made to a two clear and definite rules. If the answer was that it was made to a two clear and definite rules. Article 39 and Article 30. Article so, Article stay down a cannot be treated as an exception or proviso to Art. 38. The two Articles lay down a cannot be treated as an exception or proviso to Art. 38. The two Articles lay down as cannot be treated as an exception or proviso to Art. 38. The two Articles lay down as cannot be treated as an exception or proviso to Art. 38. The two Articles lay down as cannot be treated as an exception or proviso to Art. 38. The two Articles lay down as cannot be treated as an exception or proviso to Art. 38. The two Articles lay down as cannot be treated as an exception or proviso to Art. 38. The two Articles lay down as cannot be treated as an exception or proviso to Art. 38. The two Articles lay down as cannot be treated as an exception or proviso to Art. 38. two clear and definite ruies. If the answer was that it was made to a police whom was the confession made. If the answer was that it was made to a police whom was the confession made. If the answer was that it was made to a police whom was the confession made. question. "Under what curve custody, it shall be excluded unless it was made whilst in police custody, it shall be excluded unless it was made officer, it shall be excluded. It was the confession made?". If the answer to the question. "Under what circumstances was the confession made?". If the answer was question. "Liter in police custody, it shall be excluded unless it was was Article 39 and Article 38. Articles 38 and 39 do not overlap each other. Article Article 39 and Article 38. Articles 18. Article 39 and Article 38. Articles 38. Articles

Articles 23 and 38. Article 23 does not avoid, in appropriate cases, operation of

Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court or by the Court of Police Officer of any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Any rank about a case triable by the Special Court of Police Officer of Any rank about a case triable by the Special Court of Any rank about a case triable by the Special Court of Any rank about a case triable by the Special Court of Any rank about a case triable by the Special Court of Any rank about a case triable by the Special Court of Any rank about a is not worth the paper it is written on and has to be left entirely out of account. police tending to incriminate him with reference to offence with which he is charged person in custody of the police, if it incriminates him. 12 Statement by accused before against an accused. The law is imperative in excluding what comes from an accused against an accused. The law is imperative in excluding what comes from an accused Police Officer or investigating officer cannot be used as proper and legal evidence general jurisdiction is inadmissible in evidence. 10 Therefore, confession made before police custody, such course was inadmissible and of no legal value in view of Where the prosecution case was based on the disclosure made by accused during a police officer on being halted, if regarded as a confession, will be hit by Art. 38.5 having been made to a Police Officer.14 Similarly a statement made by an accused to under section 161. Criminal P.C. would be excluded at the trial under Art. 38 as Therefore any incriminating statement made by an accused person at an inquiry held Confession to police-officer. Confession of an accused person before any

is making the confession. It is not necessary that the confession should be made when he is in police custody, nor is it necessary that he must be an accused person. The This Article does not set out anything regarding the statement of the person who

ATL 38.

merely means that when an accused person is being tried, a confession, which while merely means occasion made to a police officer cannot be produced accidentation of the produced acciden which merely occasion made to a police officer cannot be produced against him.

I on a previous occasion made to a police officer cannot be produced against him.

I on a specified that the accused person must have been an accused against him. It not specifications the statement, nor need he have been in police custody. 17 mile of making the statement, and accused the have been in police custody. 17 won a previous that the accused person must have been an accused person at the specified that the accused person must have been an accused person at the statement, nor need he have been in police custoda. 17

Bed made to Proceedly, but through a person deputed by the police officer for that officer himself is standing nearby it heromen with a line of the officer himself is standing nearby. nectore, in various officer or not. 18 Where a statement is communicated to the Police and Indian directly, but through a person deputed by the notion officer. made to a possible case the question must be examined whether the statement was in the procedure, in each case the question must be examined whether the statement was in the procedure of the pr communication officer, it is such communication which makes it tainted evidence, and the cach case the question must be examined whether the second officer. Confession to a police officer for the purposes of showing that the statement was omnunication to officer, it is such communication which makes it to be some Office, while the officer himself is standing nearby, it becomes vitiated. 19 Confession to person deputed by police officer. There must be some

plice officer is to be ignored even if it was made in the immediate presence of a Confession to police officer in presence of Magistrate. A confession made to a

Magistrate, as Article 38 is independent and is not controlled by Article 39.20 Repetition of confession before Magistrate. Where an accused person makes a

confession of his guilt before a police officer and subsequently repeats before a mth, Art. 38 makes the statement before the Magistrate inadmissible. Magistrate the fact and contents of his earlier confession but does not vouch for its

oconfession when taken separately but when taken together, show that the accused statements by several accused to a Police Officer during investigation do not amount the statements would amount to a confession and will be inadmissible.? were engaged in a conspiracy. If they are sought to be used to prove such conspiracy, Several statements amounting to confession when read jointly. Where

the punchus but purporting to have been signed also by the accused persons. That sidence. Where in a trial for murder the prosecution proved the panchanama. that the articles recovered in his house were articles of loot is not admissible in ite accused is inadmissible. Therefore a statement made by the accused to the police pull to the police recorded on a recovery list of property recovered at the instance of confession to a police officer when it is signed by the accused.3 A confession of prepared by the police on the day the murder was committed and signed, not only by reginning to the end, by all the accused persons. It was held to be inadmissible and wument was a record which was a complete confession of the crime from the Recovery list signed by accused. A recovery list prepared after a house search is

AIR 1941 Sind 134-42 Cr.L.J. 805 (DB)

⁶ All. 509 (FB).

²⁰⁰⁰ YLR 600+2000 P. Cr. L.J. 652 (DB)+NLR 1999 Cr. 577+1998 P. Cr. L.J. 12 (DB)+PJ

⁼ (Report amounting to confession)+10 Cr.L.J. 193 (SB) (Cal.) (Confession of murder before arrest). PLJ 1997 SC 19+1996 P. Cr. L.J. 1603+1995 SCMR 1793+PLD 1992 Kar. 5 (DB)+PLD 1995 Kar. 572 (DB)+1000 P. Cr. L.J. 1603+1995 SCMR 1793+PLD 1992 Kar. 5 (DB)+PLD 1995 Kar. 572 (DB)+1000 P. Cr. L.J. 1603+1995 SCMR 1793+PLD 1992 Kar. 5 (DB)+PLD 1995 Kar. 5 (DB)+PLD 1 1936 Lah 380 (DB) (Before or after commencement of investigation)+AIR 1919 Lah 466 (DB) (Report amounting a commencement of investigation)+AIR 1919 Lah 466 (DB) Kar. 572 (DB)+1982 P.Cr.L.J. 476=NLR 1982 Cr.L.J. 278=PLJ 1981 Cr.C 112 (DB)+AIR 1936 Lah 380 (DB)+Cr.C.

¹⁰ Cal. 1022+AIR 1925 Bom. 529+26 Cr.L.J. 1478

²⁰⁰² Cr.L.J. 659 (DB).

AIR 1925 Sind 237=26 Cr.L.J. 778.

⁵⁵²⁵⁵ AIR 1954 SC 15-1954 Cr.L.J. 230

¹⁹⁹⁷ P. Cr. L.J. 1610.

PLD 1992 Kar. 5 (DB).

AIR 1965 Guj. 5 (DB).

AIR 1926 All. 737=27 Cr.L.J. 1068 (DB).

PLD 2003 SC 704=2004 SCJ 33. AIR 1925 Bom. 529=26 Cr.L.J. 1473.

AlR 1938 Mad. 893=40 Cr.L.J. 108.

AIR 1954 All. 127=1954 Cr.L.J. 228. AIR 1927 Lah. 343=28 Cr.L.J. 323.

AlR 1957 All. 459=1957 Cr.L.J. 803+12 Cr.L.J. 429 (DB) (Bom).

or goods by imposing officer is not a police officer for the purpose of Art. 38 15 The policy officer is not a policy officer for the purpose of Art. 38 15 The policy officer is not a policy officer for the purpose of Art. 38 15 The policy of the of goods and with they act to prevent smuggling of goods by imposing of officers, act judicially. A police officer never acts indicially.

highly irregular as the provisions of Qanun-e-Shahadat and of the Code of Criminal

Procedure had not been observed.6

statement is made before the policy out the rest as being not admissible. But he should only the part admissible, leaving out the rest as being not admissible. But he should only the part admissible, leaving out the rest as being not admissible. But he should only the part admissible, leaving out the rest as being not admissible. But he should only the part admissible that the should not be a support of the proper course is not to reconstitution. Part of confession mane and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them, the Judge can record statement is made before the police and a part not before them. only the part admissible, icaring should not record the statement in a truncated fashion. The proper course is not to record the statement at all.7 Part of confession made before police. Where a part of the confessional

Police as being true, then my confessions and hence would be inadmissible. If, on the other hand, the statements of confessions and hence would be inadmissible. If, on the other hand, the statements of confessions and hence would be inadmissible. If, on the other hand, the statements of confessions and hence would be inadmissible. If, on the other hand, the statements of confessions and hence would be inadmissible. If, on the other hand, the statements of confessions and hence would be inadmissible. If, on the other hand, the statements of confessions and hence would be inadmissible. If, on the other hand, the statements of confessions and hence would be inadmissible. If, on the other hand, the statements of confessions and hence would be inadmissible. False statement by accused to anount to amount to police as being true, then they may, and in many cases will, be found to amount to police as being true, would be inadmissible. If, on the other hand, the statement to are admissible as admission.8 confessions and nemice where the second are relied on not because of their falsity, they the accused are relied on not because of their falsity, they False statement by accused. If prosecution rely on statements of the accused to

3. Police-officere who are appointed under the Police Act has not anywhere and must be taken in its more popular meaning. The expression is not anywhere and must be taken in its more popular meaning. The expression is not anywhere and must be taken in its more popular meaning. also other officers who exercise the same powers as that of a police officer of confined only to such officers who are appointed under the Police Act, but include confined only to such officers the same nowers as that of a malion of of police-officers.11 exercisable by a police officer-in-charge of a police station. 10 But it does not include inadmissible in evidence under Art.38. The mere fact that they are also given duties inadmissible in evidence under Art.38. The mere fact that they are also given duties inadmissible in evidence under Art.38. The mere fact that they are also given duties in the control of the police station in respect of investigation of certain offences. The confessions men who are provisionally and for a limited purpose only invested with some powers are the powers of investigation under the Criminal Procedure Code, which are they are not police-officers provided the powers of investigation exercised by them recorded by them in exercise of the power of investigation into offences would be 3. Police-officer-who is. The term "police-officer" has not been defined

and a confession made to him is not hit by this Article.14 of the accused to Excise Sub-Inspector or Excise Officer is inadmissible. 13 But an charge of a police station for investigation of offences under section 20 of the Opium Act is a "police-officer" coming within the purview of Art. 38.12 Therefore admission Excise Officer while discharging duties under the Customs Act is not a police officer Excise Officer. An Excise Officer invested with the powers of an officer in

have similarity with those of police officers, for the purpose of detecting smuggling from those of the police officers and their possession of certain powers, which may Customs officer. The duties of the Customs Officers are very much different

AIR 1933 Pesh. 38=34 Cr.L.J. 804 (DB). AIR 1944 Lah. 57=57 Cr.L.J. 555 (DB).

AlR 1951 Punj. (Simla) 283 (DB).

24 Cr.L.J. 136 (Pesh). ¹³ Cr.L.J. 528 (DB) (Mad). AlR 1951 Punj. 387=52 Cr.L.J. 661.

AIR 1957 SC 737=1958 SCR 283=1957 Cr.L.J. 1320

¹⁹³¹ Mad WN 725

persons enrolled under Police Act).

AIR 1938 Sind I (FB)+AIR 1965 Bom. 195 (DB)+26 Cal. 569

AIR 1932 Pat. 293 (SB)+AIR 1955 NUC (Pat) 3261.

AIR 1964 SC 828+AIR 1938 Sind 1 (FB) (AIR 1925 Sind 70 Overruled)+AIR 1934 Cal. 580.
AIR 1965 Born. 1951DDD AIR 1964 SC 828+AIR 1953 Mad. 917 (DB) (AIR 1932 Pat. 293 (SB), Diss)

AIR 1965 Bom. 195 (DB).

is not a police officer. 19 abor classes vision discharging his duties under the Customs Act is also not a police office while discharging his duties under the Customs Act is also not a police outlistation and a police officer for the purpose of Art. 38.15 The Assistant outlines of Customs is not a police-officer as the section should not be purposed for the purpose of Art. 38.15 The Assistant outlines of Customs is not a police-officer as the section should not be purposed for the purpose of Art. 38.15 The Assistant purposed for the Assistant purposed for the purpose of Art. 38.15 The Assistant purposed for the purpose of Art. 38.15 The Assistant purposed for the purpose of Art. 38.15 The Assistant purposed for the purpose of Art. 38.15 The Assistant purposed for the purpose of Art. 38.15 The Assistant purposed for the purpose of Art. 38.15 The Ass Village onfession to him is inadmissible. 18 But in the Punjab a village chaukidar officer. A confession to him is inadmissible. 18 But in the Punjab a village chaukidar procedured to the classes of officers merely on the ground of similarity of function. An Excise of officers merely on the ground of similarity of function. An Excise of officers merely on the ground of similarity of function. An Excise of officers merely on the ground of similarity of function. reusions of Customs is not a police-officer as the section should not be extended to proceed of officers merely on the ground of similarity of function 16 and 16 chasses of officers. madmissible under Art. 38.20 w made by an accused person to the Ward Rationing Officer is on no confession made to a notice officer. waru waru service Officer carrying out a raid on suspected premises and a ball of an Excise Officer carrying out a raid on suspected premises and a different footing from a confession made to a police officer and is therefore the position of a Police Officer.3 admissible in evidence.1 exactly on the same footing as that of any other witness. happen to be lambardars their evidence is not to be rejected. Their evidence stands duties, cannot be regarded as one made to a police-officer.4 confession made to him while he was not on duty, or acting in connection with his officer at all. A confession made to him is admissible in evidence. Village 'chaukidar'. A village chaukidar in Bangladesh and India is a Police Village 'chaukidar' to him is inadmissible. 18 But in the Principle of the Princip Ward Rationing Officer. The position of a Ward Rationing Officer is analogous foreign police officer. A confession made to a foreign police officer is not Frontier constabulary. A member of the Frontier Constabulary is a Police Political Muharrir. The political Muharrir in N.-W.F.P. Tribal Areas occupies 'Lambardar'. Merely because the persons to whom a confession was made Civic guard. A civic guard is a police-officer when called out on duty. But Sub-Divisional Officer. A Sub-Divisional Officer cannot be taken to be a police 7DLR 205 (DB)+AIR 1914 Oudh 414+AIR 1936 All. 753 (FB) AIR 1965 Bom. 195 (DB). AIR 1918 Lah. 127=19 Cr.L.J. 52 (DB). AIR 1947 Mad. 308=ILR 1947 Mad. 788=48 Cr.L.J. 326 (DB)+AIR 1957 AP 81+AIR 1958 Mad. 31. AIR 1962 SC 270 (AIR 1959 Punj. 287 reversed)+AIR 1965 SC 481+AIR 1965 Bom. 195

does amount to a confession and is hit by Art. 38. Thus, an admission by the accused does amount to a confession and received certain property from the dacoits would to a police officer that he had received certain property from the dacoits would to a police officer in respect of an offence under section 411, Penal Code, and amount to a confession in respect of an offence. Where the accused was being tried for would be inadmissible in evidence. Even the statement made by the respondent that the companies the came is a confession to the companies that the companies the came is a confession to the companies that the companies the came is a confession to the confession to had concealed the knite is not conceal an object without possessing it and by the simple reason that he could not conceal its totality will be admitted. The result is admitting such a statement a confession in its totality will be admitted. The result is admitting such a statement a confession in its totality will be admitted. The result is would be inadmissible in even the statement made by the respondent that he possession of an unlicensed arm. Even the statement made by the respondent that he possession of an unlicensed arm. Even the statement made by the respondent that he would be inadmissible because the same is a total confession by produce the knife before the police.6 admitting such a statement a condent is only admissible to the extent that he would that the statement of the respondent is only admissible to the extent that he would that the statement of the police. possession of an unlicensed at a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for had concealed the knife is not admissible because the same is a total confession for the same is a total confession f

Intention of accused in making statement. The mere fact that an accused while making a statement intended it to be self-exculpatory is insufficient to take that making a statement incorporation of the Article. Where its effect is inculpatory is statement out of the operation which the accused might have had in making be inadmissible in spite of the intention which the accused might have had in making making a statement interior of the Article. Where its effect is inculpatory it would statement out of the operation of the Article. Where its effect is inculpatory it would statement out of the operation which the accused might have had:

39. Confession by accused while in custody of police not to be proved against him. Subject to Article 40 no confession made by any such person. in the immediate presence of a Magistrate, shall be proved as against person whilst he is in the custody of a police-officer, unless it be made

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Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1898 (Act V of 1898). of a village discharging magisterial functions unless such headman is Explanation. In this Article "Magistrate" does not include the head

Evidence Act, 1872. This Article reproduces section 26 of Evidence Act.

Synopsis

- Scope and applicability "In the custody of police-
- officer."

- Confession.
- Extra-judicial confession
 - Police-officer.
- - Magistrate--who is. Immediate Magistratc. Use of confessional statement Confession to Magistrate. against co-accused presence
- a doctor or a visitor and makes such confessions inadmissible, if they were made while the accused was in the while the accused was in the custody of police officer.8 Confessions falling within the not to a police officer but to persons other than police officers i.e. to fellow prisoner, Scope and applicability. Article 39 deals with confessions, which are made

morningting are intended to prevent the use of statements made actually to a police hard Articles are intended to prevent the use of statements made actually to a police have Articles do not contain identical propositions of law Transported in But the Articles 1 of Articles 37 to 39 are neither relevant nor admissible in evidence,"

of Articles 37 to 39 are neither relevant nor admissible in evidence,"

purish of Statements made to a police officer are hit by Arts. 38 and a proposition of the propos undelays were. This Article carries the principle further by rendering similar police officers. The Article carries are police officer but though not made to a police-officer but police inadmissible even though not made to a police-officer but the police of Air of Parity of Air of Parity of Statements made to a police officer are hit by Arts. 38 and 39,10 Both morthalicles are intended to prevent the use of statements made activally. officers. This Article carries the principle further hy rendered and a principle further hy rendered a police officer but made by a police officer. Thus Are to police whilst he is in the custody of a police officer. Thus Are to policesions in the custody of a police officer. 12 Thus Art. 39 applies to whilst he is in the custody of a police officer. 12 Thus Art. 39 applies to proportion and statements made while the accused is in police custody. Articles do not contain identical propositions of law. The former for law agencial proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a general proposition against the admissibility of confidence down a the fact we have the statement made to a fellow prisoner, a doctor or a visitor will be all this Article a statement. nonlessional surface made, with the exception of a Magistrate. Therefore under the field whom they are made to a fellow prisoner, a doctor or a military statement made to a fellow prisoner, a doctor or a military statement made to a fellow prisoner. prior whilst in made while the accused is in police custody irrespective of parties in whom they are made, with the exception of a Magistrate Thanks and the made, with the exception of a Magistrate Thanks and the made, with the exception of a Magistrate Thanks and the made is a supplier to the parties of the made in whom they are made, with the exception of a Magistrate Thanks and the made is a supplier to the made in whom they are made, with the exception of a Magistrate Thanks and the made is a supplier to the made in whom they are made, with the exception of a Magistrate Thanks and the made is a supplier to the made in the made in the made in the made is a supplier to the made in the made in the made in the made is a supplier to the made in the made

madmissible in evidence. 13 person willie ... I'd The word "custody" in Art. 39 or Art. 40 does not mean formal rad in evidence. It The word "custody" in Art. 39 or Art. 40 does not mean formal rad in evidence. while in police custody is inadmissible in evidence and the same cannot be rad in the ludes such state of affairs in which the accused can be said to have the hands of a police officer, he is in the absence of unmistakable evidence to the gmeillance or restriction. 15 As soon as an accused or suspected person comes into one into the hands of a police officer or can be said to have been under some sort of ontrary, in custody. Actual arrest and detention is not necessary. 16 This is so because when a person accuses himself though he is formally not arrested, since he is not free n move wherever he likes after disclosure of the information to the Police, he must k deemed to be in the custody of the police.17 1. "In the custody of police-officer." Any statement made by an accused

confessor and that limitation must be imposed either directly or indirectly by the defined, implies that there must be some limitation imposed upon liberty of the plice.18 A person is not in police 'custody' merely because he has been invited to explain certain circumstance unless he has been arrested or is under police supervision.19 Even indirect control over the movements of suspects by the police was in the custody of the police. Temporary absence of a policeman or a police would amount to 'police custody' within the meaning of Art. 39.20 presence of a policeman or police-officer is not necessary to prove that the accused Restriction on liberty-necessary. The word 'custody' in Art. 39 though not Immediate

PLD 2003 SC 704=2004 SCJ 33. AIR 1925 Bom. 65=24 Cr.L.J. 870.

PLD 1974 Quetta 28=PLJ 1974 Quetta 109 (DB)

AIR 1955 NUC (Sau) 5765.

NLR 1984 Cr. 18=PLD 1984 Lah. 155=1984 Law Notes 46=PLJ 1984 Cr. C. 230

AIR 1963 SC 1113.

³⁵ Mad. 397 (FB).

⁶ All. 509 (FB).

AIR 1939 PC 47=40 Cr.L.J. 364.

²⁰⁰³ YLR 263=2003 SD 180 (FSC)+2001 MLD 807=NLR 2001 Cr. 536. 1992 SCMR 1983+AIR 1965 Punj. 5 (DB)+AIR 1964 Orissa 114 (DB)+AIR 1948 All. 7 (DB)

¹⁹⁹² SCMR 1983+AIR 1924 Rang. 173=25 Cr.L.J. 381.

AIR 1965 Guj. 5 (DB).

AIR 1932 Sind 201=34 Cr.L.J. 147 (DB) AIR 1921 Sind 145=26 Cr.L.J. 609 (DB)

AIR 1964 Orissa 144 (DB).

officer would not terminate his custody. Thus a person in the immediate presence of a Magistrate with the police outside to see that he does not escape cannot be said to a Magistrate with the police, simply because they cannot be seen by the

prisoner.

Accused in custody of person deputed by police. An accused person in the Accused in custody of a police-officer, but deputed by the police to keep him in the custody of the police. Thus a statemannial to be in the custody of the police.

custody of a person, not a possible to be in the custody of the police. Thus a statement of custody, would be deemed to be in the custody who is not a police officer and of a custody. confessional nature made to arrested by the headman at the instance of the police accused is in the act of being arrested by a man in police custody, and so must be considered. custody, would be deemed to a village headman who is not a police officer, when the confessional nature made to a village headman at the instance of the main the confessional nature of theing arrested by the headman at the instance of the main the with the greatest care. The next day to the residence of the person before whom was brought in a police van the next day to the residence of the person before whom was brought in a police van the next day to the residence of the person before whom was brought in a police van the next day to the residence of the person before whom very near to a statement. Where accused had been interrogated by a police officer and with the greatest care. Where accused had been interrogated by a police officer and accused is in the act or purity man in police custody, and so must be scrutinised very near to a statement made by a man in police custody, and so must be scrutinised very near to a statement made by a man in police custody, and so must be scrutinised very near to a statement made by a man in police custody, and so must be scrutinised very near to a statement made by a man in police custody, and so must be scrutinised very near to a statement made by a man in police custody, and so must be scrutinised very near to a statement made by a man in police custody, and so must be scrutinised very near to a statement made by a man in police custody. he made an exuaryunced with that person, some other person, who had come in the accused with that person after leaving the accused with that person and the confession. police van, were the next day and formally arrested him. The confession was inadmissible came there the next day and formally arrested him. after leaving the accused made the confession, the police office police van. were left there. After the accused made the confession was included the police office police van. was brought in a purice in Confession. Although regular police officers went away he made an extra-judicial confession, some other person, who had come away

Pointing out of places by accused. Statements of the accused while in custody of a police officer, and of his having pointed out places where he committed the in evidence under Art. 39.4

offence, are not admissible as being of an incriminating nature.

admissible in evidence in view of the provisions of Arts. 37, 38 and 39.6 the police that the articles recovered from his house were articles of loot is no Confessional statement relating to recoveries. A statement made by the accusul

a Police Officer for the purpose of Art. 39. Hence a confession made to the confessions made to a police officer while in custody.8 In Bangladesh a choukidar's occurrence in question took place, are not admissible, being in the nature of made to the 'daroga' by an accused showing the place in the jungle where the circumstance cannot be used in evidence under Arts. 37 and 38.7 Thus statements accused person while in police custody, if it is an admission of an incriminating Confessional statement to police. A statement made to a police officer by an

the was in the custody of the choukidar and the confession made to the villagers that he was in the excluded from evidence. In

mould not be excluded from evidence. 10 custody, the absence of a Magistrate. II But an extra-judicial confession in the presence of the absence of a dmitted in évidence. 12 Lower confession to a third person will become admissible even though made custody, his confession to a Magistrate. But an extra-judicial confession is the custody, absence of a Magistrate. Confessional statement in presence of police. Where the accused is not in

in in evidence. 12 the police cannot be admitted in évidence. 12

converse where that custody is the result of an illegal arrest. 13 lives made by an accused while in the custody of the police, the Article will confessions made that custody is the result of an illegal arrest in Illegal custody of police. Since the policy of the Legislature is to exclude

oustody is not a confession in police custody and is therefore admissible in evidence. accused was in Magisterial custody as opposed to police custody. Hut where the presence of the policeman did not make the confession inadmissible as the The policeman whose duty it was to guard the lock-up was present. It was held that custouy is accused, while in judicial lock-up, made a confession to fellow prisoners.

Where an accused duty it was to guard the lock-up whose duty it was to guard the lock-up. purposes as it was supervised by a police guard headed by a Head Constable who purposes as it was supervised by a police guard headed by a Head Constable who regulated it by rozmameha as was maintained at all the police stations. A confession judicial lock-up to which accused was sent was a police lock-up for all intents and made by the accused was not admissible. 15 But where the accused while he was in judicial custody was temporarily in the custody of the police officer when he was pursuance of which some discoveries were made. It was held that the accused though authorising his detention in police custody gave information to a Circle Inspector, in formally in magisterial custody and before the magistrate had made an order interrogated by the Circle Inspector. His statement was, therefore, perfectly admissible under Art.40 to corroborate the extra-judicial confession made by the Judicial custody. A confession by an accused person when he is in judicial

accused prior to the statement. 16 Where accused makes a confession in judicial custody, it must be relied upon in

the jailor does not become custody of a police officer, though his subordinates, the jail wardens are members of the police force. In the absence of evidence of close watched and guarded thereby a police officer investigating the offence, the evidence custody of the prisoner inside the jail, such as may possibly occur when he is is entirety if it is to be relied upon.17 Jail custody. The keeper of a foreign jail is not a police officer. The custody of

choukidar among the villagers to whom the accused made a confession cannot mean choukidar by the accused is not admissible against him. But the mere presence of a

AIR 1941 Pesh. 22=42 Cr.L.J. 381 (DB)+AIR 1959 All. 518 (DB)+AIR 1941 Outh 561

⁽DB)+AIR 1928 Lah. 282=29 Cr.L.J. 386 (DB).

AIR 1944 Nag. 105=45 Cr.L.J. 673 (FB).

AIR 1914 Lah. 380=15 Cr.L.J. 613 (DB)+13 Cr.L.J. 127 (DB) (Cal)+AIR 1935 Oudh 1(DB)
AIR 1957 All. 459=1957 Cr.L. 1 200

AIR 1933 Cal. 146=34 Cr.L.J. 638 (DB)+1946 Rang LR 229. 7 DLR 205 (DB)+AIR 1947 Pat. 146 (DB)+AIR 1943 Cal. 612 (DB).

AIR 1933 Oudh 192=34 Cr.L.J. 653 (DB) AIR 1965 Gujerat 5 (DB)+AIR 1948 All. 7=48 Cr.L.J. 939 (DB).

AIR 1938 Pat. 308=39 Cr.L.J. 428 (DB) 1969 P.Cr.L.J. 381.

AIR 1934 Lah. 75=35 Cr.L.J. 1432 (DB)

PLD 1973 Lah. 714.

AIR 1960 Mad. 191 (DB)+AIR 1952 HP 68

the accused was in police custody at the time when he made the confession detract 7. Magistrate—who is. Ille to Magistrates specially empowered under in it which limits its operation to Magistrate, 19 or a Magistrate thought nothing in it which limits is An Honorary Magistrate, 19 or a Magistrate thought nothing in Ciminal P.C. is An Honorary has been exercising to a large extent from its evidentiary value. 17 a large extent from the words of the Article are very wide and there is.

7. Magistrate—who is operation to Magistrates specially empowered there is

nothing in it which limits its operation. Magistrate, or a Magistrate though on the limits its operation of the limits its operation. Magistrate, or a Magistrate though on the limits in which he has been exercising jurisdiction of section 164. Criminal P.C. is the district in which he has been exercising jurisdiction of section 164. "Magistrate" within the meaning of Art. 39.20 section 164. Criminal P.C. which he has been exercising jurisdiction is leave and not in the district in which he has been exercising jurisdiction is leave and not in the meaning of Art. 39.20

summon the accused to ascertain the truth, is admissible. that it was a confession of an accused to a Magistrate who was asked by the police to Even the confession of an accertain the truth, is admissible. the accused is in police custouy. It is not liable to rejection on the mere ground immediate presence of a Magistrate. It is not liable to rejection on the mere ground immediate presence of a made while the accused was in the custody of the immediate presence of a made while the accused was in the custody of the immediate presence of a made while the accused was in the custody of the immediate presence of a made while the accused was in the custody of the immediate presence of a magistrate. immediate presence of a made while the accused was in the custody of the police, that it was a confession made to a Magistrate who was asked by the material that it was a coursed to a Magistrate who was asked by the material that it was a course of an accused to a Magistrate who was asked by the material that it was a course of an accused to a Magistrate who was asked by the material that it was a course of an accused to a Magistrate who was asked by the material that it was a confession made while the accused was in the custody of the police. 8. Confession to Magistrate. It is not liable to rejection on the mere in the accused is in police custody, such confession is admissible, as it is one in the agistrate with a gistrate. If a confession is made to a Magistrate, while seconfession to Magistrate, while seconfession is admissible, as it is one while seconfession is admissible.

Oral confession. An oral confession made to a Magistrate will clearly be admissible in evidence under this Article and is not affected by section 164, Criminal admissible in evidence under this Article and not to oral confessions.

P.C. which applies only to recorded and not to oral confessions.4

by section 164. Exculpatory statements may in certain circumstances subsequently section 164. Exculpatory statements may they become confessions and asserted to the theory is a section of the theory of the intend to confess but intends to do just the opposite.5 by any logical process be made to apply when the maker of the statement does not 37 to 40. But the formality indicated in section 164 (3) of the Criminal P.C. cannot become evidence of guilt itself. In that way they become confessions and attract Arts by section 164, Cr. P.C. even though it is not recorded in the manner indicated in statement to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that is admissible in evidence and is also but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not meant to be one under section but only as a supervisor so that the statement was not supervis Exculpatory survey who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police officer statement to a magistrate who had not gone to the place of incident as a police of incident as a poli out only as a super the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and is also not excluded 161, Criminal P.C., the statement is admissible in evidence and the properties of the prop Exculpatory statement to Magistrate. Where an accused makes an exculpatory

admitted only against the deponent and not against his co-accused. A statement which would not have been admissible against an accused if made by himself when amounting to a confession recorded by a Magistrate on solemn affirmation can be in custody under Art. 39 would not become admissible when made by a co-accused Use of confessional statement against co-accused. Any deposition, not

though the corroborate the case against the other co-accused.8 thickness to corroborate the case against the other co-accused.8 incriminative been done, confessional statement of co-accused cannot corroborate his having not been accused.9 Converged against co-accused when co-accused was confronted with scussed can be used against him in the form of confession of other accused evidence against him in the form of confession of other accused. by the report was admissible in evidence it could not be treated as a piece of though the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence it could not be treated as a piece of the pough the report was admissible in evidence in the pough the report was admissible in evidence in the pough the report was admissible in evidence in the pough the report was admissible in evidence in the pough the report was admissible in the report was admissible in the pough the report was admissible in the pough the report was admissible in the re have be used was exculpatory so far as he was concerned himself, it was held that hither report was admissible in evidence it could not be treated to by the the report was admissible in evidence it could not be treated to by the the report was admissible in evidence it could not be treated to be Although, unit support of other evidence. Where the first information report made himself is was exculpatory so far as he was concerned himself is want and accused was admissible in animal was concerned himself. scused can evidence against him in the form of confession of other accused. But inclining not been done, confessional statement of co-accused cannot be accused. when in custory of ession of a co-accused cannot be made foundation of conviction, it the confession of other evidence. Where the first information all halphough in support of other evidence. Where the first information prosecution case against accused.9 when in custody. The confession of a co-accused is an evidence of a weak character. 10. How much of information received from accused may be Corroboration of evidence by confession of co-accused. Confession of one

mountain police-officer, so much of such information, whether it custody of a police-officer, so much of such information, whether it proved in received from a person accused of any offence, in the information received from a person accused of any offence, in the when any fact is deposed to as discovered in consequence of amounts to a confession or not, as relates distinctly to the fact thereby

discovered, may be proved.

Evidence Act, 1872. This Article is reproduction of section 27 of Evidence Act.

Synopsis

Scope and applicability. Evidence of conduct, motive, etc.

"Fact discovered"--what is. Fact discovered on deposition.

Relevancy of fact discovered

'Discovery' -- meaning of. Information by several accused.

900 "Information" -- meaning of. Information must be given by accused person.

5 This Article and section 162, Cr.P.C.

"In the custody of police-officer." "Custody"--meaning of

discovery. Information must lead 6

Information as to past history.

Statement recovery by the accused himself. accompanying

Confessional statement. Involuntary confession.

Confession must be Extent of information admissible. offence charged. of the

Duty of Court.

Statement is admissible maker only. First information report. against

Evidentiary value. Recording of statement.

Witnesses of recovery

AIR 1933 Lah. 956 (DB)+AIR 1930 Lah. 534.(DB)+AIR 1933 Lah. 513 (DB)+15 Cal. 595 (FB)+AIR 1932 Lah. 488 (DB)

AIR 1934 Lah. 417 (DB)+AIR 1933 Lah. 956 (Even though it has not been recorded according to S. 164 C.P.

AIR 1953 All. 792=ILR (1953) 2 All. 307=1953 Cr.L.J. 1829 (DB)

1969 P.Cr.L.J. 381+PLD 1967 Dhaka 1039+AIR 1925 Lah. 557=27 Cr.L.J. 134 (DB)+AIR

AIR 1951 VP 17=52 Cr.L.J. 561

(FB)+AIR 1932 Lah. 488 (DB)+AIR 1918 Lah. 92 (DB).

²⁰⁰⁰ P. Cr. L.J. 1734 (DB)+AIR 1915 Lah. 487=16 Cr.L.J. 257 (DB)

¹⁹⁹² SCMR 1983.

AIR 1948 Lah. 19=48 Cr.L.J. 961 (DB)

deceased. There evidence may be relied upon. 17 their testimony. No connection was established between them and party of the

such inducement, threat or promise has, in the opinion of the Count 141. Confession music relevant. If such a confession by inducement, threat or promise, relevant in impression caused by inducement, threat or promise, relevant. If such a confession as is been fully removed, it is relevant. referred to in Article 37 is made after the impression caused by any referred to in Article 37 is made after the impression caused by any 11. Confession made after removal of impression caused by

Evidence Act, 1872. This Article is reproduction of section 28 of the Act Synopsis

Removal of impression caused by inducement.

Scope.

Impression must be fully removed

these are positive prohibitions necessitated by the exigencies of the conditions in while those prescribed by Arts. 38 to 40 are not strictly speaking so. The rules in 1. Scope. The rule prescribed by Arts. 37 and 91 relate to the rule of relevancy

3 case within the provisions of Art. 37 there is a presumption of its continuance, and of improper inducement, threat or promise has been established so as to bring the on him. The prosecution must prove that the impression had been removed. $^{\mathfrak{D}}$ will not necessarily lessen the effect of the influence which had been brought to bea beating or threats and had time to reflect before making a confession to a Magistrate Therefore where the accused had been 12 days in police custody after the police threat or promise was fully removed when the prisoner made the confession.19 the prosecution has to prove that the impression caused by the original inducement 2. Removal of impression caused by inducement. When once the existence

out the confession. But at the same time, all the factors and all the circumstances of confession is voluntary or not is always a question of fact, and there is no rule of law of the police, being lodged in the judicial lock-up. The confession, even when confession under section 164, Cr.P.C. and when he was no more under the influence correct before the Magistrate after about five or six months of having made the provided in Art. 41. Therefore if the accused had admitted his confession to be impression caused by any inducement, threat or promise has been fully removed as considered before deciding whether the Court is satisfied that in its opinion the the case, including the important factor of the time given for reflection, must be that if a certain period is not given for reflection that itself would be sufficient to rule Period between inducement, etc., and confession. The question whether a

> retracted at the trial will be saved by the provisions of Art. 41.2 On the other hand the period between inducement, threat, etc., is very short in the other hand where the Proof that the impression was removed, the confession would not be definite proof that confession to a Magistrate soon after inducement. retracted in the period between inducement, threat, etc., is very short, in the absence of where the period that the impression was removed, the confession was removed judicial confession. Two hours later he made another confession to made an extra-judicial that there is no evidence to show that definite provides a confession to a Magistrate soon after inducement by a person in admissible. Thus a confession it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is shown that the impression remainstance is inadmissible unless it is inadmissible unl another provide lambardar on the appellant's mind had been removed when he made created by the lambardar of the confession was not relied to confession. Therefore the confession was not relied to the confession. made an cause lead that there is no evidence to show that the impression another person. It was held that there is no evidence to show that the impression another has the lambardar on the appellant's mind had been remark. authority 13 Where the accused was given inducement by a lambardar and he was removed. Where the accused was given inducement by a lambardar and he was removed. admissible inadmissible unless it is shown that the impression caused by inducement authority is inadmissible the accused was given inducement by a finducement authority is where the accused was given inducement by a finducement by a person in created by confession. Therefore the confession was not relied upon. the second confession.

or INPACE. A free and voluntary confession is presumed to flow from the strongest given to it. A free and therefore, it is admitted as proof of the action for the strongest given for the and therefore. or hope or by torture or fear comes in so questionable a shape that no credit can be thoroughly the torture or fear; for, a confession forced from the mind by the flattery created by the torture or fear comes in so questionable a charge in thoroughly, completely, entirely, so as not to leave, any trace of the impression sent to judicial lock-up and not police custody. The fact that after she made the confessional statement she was handed over to Police for medical examination would confessional statement. sense of bearing and that after making that she was not in any way accused was made to understand by the Magistrate that she was not in any way given we will and, therefore, it is admitted as proof of the crime. However where the sense of guilt and, therefore, it is admitted as proof of the crime. However where the bound to make a statement and that after making a voluntary statement she will be not affect the value of the confession.6 3. Impression must be fully removed. The word 'fully' in Art. 41 means

because of promise of secrecy, etc. If such a confession is otherwise on the accused person for the purpose of obtaining it, or when he was under a promise of secrecy, or in consequence of a deception practised relevant, it does not become irrelevant merely because it was made him: make such confession, and that evidence of it might be given against drunk, or because it was made in answer to questions which he need questions, or because he was not warned that he was not bound to pot have answered, whatever may have been the form of those V42. Confession otherwise relevant not to become irrelevant

trial of cases under the laws relating to enforcement of Hudooa Provided that the provisions of this Article shall not apply to the

the addition of the proviso at the end. Evidence Act, 1872. This Article reproduces section 29 of Evidence Act with

PLD 1977 SC 4=PLJ 1977 SC 140=1977 Law Notes 15.

⁶ All. 509 (FB).

AIR 1959 Madh Pra 17=1959 Cr.L.J. 48.

AIR 1951 Kutch 27=52 Cr LJ 257.

AIR 1963 Guj. 135 (FB)+AIR 1957 SC 637

¹² Cr LJ 119=4 Sind LR 209 (DB) PLD 1963 Pesh. 178 (DB). PLD 1960 Lah. 189.

PLD 1983 FSC 62. AIR 1949 Madh Pra 17=1959 Cr LJ 48

Synopsis

Confession in questions by Court. answer to

Non-compliance with section 164 (3), Cr.P.C.

confession arising from any vivillation proceeds to invalidate or negative other possible objections or bars that may be raised proceeds to invalidate or negative other possible objections or bars that may be raised 1. Scope. Art. 42 and it then confession arising from any of the earlier provisions, viz. Arts. 37 to 41 and it then confession arising from any of the earlier possible objections or bars that may be dealt with in its preceding from the Article would lead to repugnancy between it and other view as to the meaning of the Article would lead to repugnancy between it and against its admissionity. Anticles or in other words extra-judicial confessions. Any dealt with in its preceding Articles or in other would lead to repugnancy between Anticle would lead to repugnancy between the Article would lead to repugnance between the Article would lead to repugna against its admissibility? The Article covers the field of confessions other than those 42 is meant to unspection which make judicial confessions inadmissible and circumstances similar to those which make judicial confessions for an under circumstances similar to those which make judicial confessions for an under circumstances. the preceding Articles and may, in certain conditions of things, lead to absurdity. An admissions under conditions not requiring proof of guilt.8 with respect to confessions relevant otherwise than as confessions, for example, as the preceding Attickes with regard to extra-judicial confession made under 42 is meant to dispel doubts with regard to extra-judicial confessions inade under under the confessions inade under the confessions in the confession in the confessio 1. Scope. Art. 42 assumes that there is no bar to the admissibility of a

an erroncous impression that he is bound in law to answer them, the answers are admissible in evidence even where they amount to a confession.9 threat of punishment and the prisoner answers the questions of the Magistrate under Confession in answer to questions by Court. Where there is no torture or

P.C. "The latter section does not override the provisions of the Article. It is the latter evidence aliunde that the confession was in fact voluntarily made would be substantial compliance with the requirements of section 164(3), Cr.P.C. and recording the confession, his record of the confession cannot be said to be acted upon if the provisions of section 164, Cr.P.C. have not been properly complete make a confession.¹² But the Court must find out how far such a confession can be provided, that the Court is satisfied that the accused knew that he was not bound to that he is not bound to make a confession, the confession would be admissible provides that even if the warning is not given to the accused in the negative form make such confession and that it might be given in evidence against him." This Art inadmissible because the accused person was not warned that he was not bound to piece of evidence. Hence a confession otherwise admissible does not become that must be looked at when there is a question of the admissibility of a particular practical application, come in conflict with the operation of section 164, Crimnal Magistrate of the nature prescribed in section 164(3), Cr.P.C., before he starts with.13 Where in fact there has been no adequate explanation of questioning by the Non-compliance with section 164(3), Cr.P.C. Art. 42 does not in is

Art. 42]

admired P.C. to cure such defect. 14 admissible. There is thus no scope for invoking the aid either of Art. 42 or section or criminal P.C. to cure such defect.14

made by one of such persons is proved,-and officers being tried jointly for the same offence, and a confession than the one of such persons is proved. and others jointly under trial for same offence. When more persons 43. Consideration of proved confession affecting person making it

(a) such confession shall be proof against the person; making it;

(b) the Court may take into consideration such confession as circumstantial evidence against such other person

abetment of or attempt to commit, the offence. Explanation. "Offence," as used in this Article, includes the

Illustrations

murdered C." The Court may consider the effect of this confession as against B (a) A and B are jointly tried for the murder of C. It is proved that A said; "B and I

by A and B, and that B said: "A and I murdered C." (b) A is on his trial for the murder of C. There is evidence to show that C was murdered

being jointly tried. This statement may not be taken into consideration by the Court against A, as B is not

30 of Evidence Act. follows. Illustrations to this Article are exact reproduction of illustrations in section Evidence Act, 1872. Corresponding provision of Evidence Act reads as

consideration such confession as against such other person as well as against the himself and some other of such persons is proved, the Court may take into jointly for the some offence, and confession made by one of such persons affecting jointly under trial for same offence. When more persons than one are being tried person who makes such confession. 30. Consideration of proved confession affecting person making it and others

attempt to commit, the offence. Explanation. "Offence," as used in this section, includes the abetment of, or

Synopsis

- Scope and applicability.

 Joint trial of accused and coaccused.
- Death of confessing accused
- 4. Plea of guilty by confessing accused.
- Confession must be proved. Trial must be for same offence.

AIR 1954 Bom. 285=ILR 1954 Bom. 484=1954 Cr LJ 887 (DB)

AIR 1947 Pat. 305=25 Pat. 612 (DB)

¹ Beng LR (O Cr) 15 (FB).

³²⁼⁰ AIR 1932 Mad. 431 (DB)+AIR 1954 Bom. 285 (DB)+AIR 1941 All. 145 (DB) AIR 1951 Orissa 168=ILR 1951 Cut 65 (FB)

ILR (1952) 2 Raj. 93 (DB)+AIR 1957 Raj. 141 (DB). AIR 1950 Mad. 579=51 Cr LJ 1047 (DB).

Retracted confession.

and his co-accused.

which he has not seen and of which he can only have knowledge by hearsay. If he does so the confession cannot be admitted against his co-accused. 18 have the effect of implicating the rule laid down in this Article being an exception to the extent confessed. Is The rule laid down in this Article being an exception to the to the extent confession is only a piece of evidence against the confession to the 1. Scope and appropriating and corroborating the charge as against the co-accused shall have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroborating the charge as against the co-accused have the effect of implicating and corroboration in this Article being an exception. accused may be admitted "be".... but he cannot "confess" as to the acts of other persons acts, knowledge or intentions, but he can only have knowledge by have persons not against others," nust reason by an accused may be admitted against his co-accused and he can confess as to his own accused may be admitted against his co-accused and he can confess as to his own accused may be admitted against his co-accused and he can confess as to his own general rule that a consession by an not against others, in must be construed strictly. 17 Therefore though a confession by an not against others, in must be construed strictly. 17 Therefore though a confession by an not against others, in must be construed against his co-accused and he can confess as to he. to the extent contesseu.

sonly a piece of evidence against the confessor and general rule that a confession is only a piece of evidence against the confessor and general rule that a confession to must be construed strictly. Therefore though a confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession is only a piece of evidence against the confession to general rule that a confession that a Scope and applicability. Judicial confession of each of the accused shall scope and applicability and corroborating the charge as against the con-

but discussed and as he ceases to be on trial with his accomplices; his statement is not a the accused and the meaning of this Article.5

vonfession within the meaning of this Article.5

unreserved by accepting guilt, and not a mere statement from which the guilty one, unreserved and such an admission cannot be used against a market against an admission cannot be used against a market against against a market against against against a market against a market against against

Implied confession. An admission amounting to a confession must be a clear

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may be invested himself with the same brush with which he tarred the others, the accused tarred himself with the admissible under Art A2 provided the others, the one, universed and such an admission cannot be used against a co-accused. If the may be inferred and such the same brush with which he is a co-accused.

statement would, no doubt, be admissible under Art. 43. But where he confessed to

other accused of murder. Implied terming of himself would not make the statement statements in a robbery and it was sought to be produced as evidence against having taken part in a robbery and it was sought to be produced as evidence against

made by the accused admissible in evidence against his co-accused under Art. 43.7

Confession not admissible against maker. Confession of a co-accused can be

cajoled or frightened but retracted before a Magistrate, does not prove the case inadmissible against his co-accused.8 Thus an extra-judicial confession made by boys the confession is inadmissible against the maker, being the result of inducement, it is taken into consideration only if it can be used as evidence against the maker. Where

against persons jointly accused with the boys.9 Similarly statements made by a conspirator to the police are not admissible in evidence if they are incriminating

against the other conspirators.10

Article and is admissible against the co-accused subject to independent evidence

Confession of accused falling under Art. 40 is also a confession under this

being available.11

the common intention of the persons who were members of the conspiracy and are, the trial can hardly be regarded as statements by him as a conspirator in reference to

Confessional statement at trial. Statements made by an accused person during

therefore not admissible under Art. 23, Art. 43 applies only to statements made

before and proved at the trial.12

inadmission withdrawal of a case against him is a competent witness against but discharged on withdrawal of a case against him is a competent witness against but discharged and as he ceases to be on trial with his accomplications. sulement or against his co-accused. A person originally charged with the accused inadmissible against his a component originally charged with the accused inadmissible against him is a component original than the accused inadmissible against him is a component original than the accused inadmissible against him is a component original than the accused inadmissible against him is a component original than the accused inadmissible against him is a component original than the accused inadmissible against him is a component original than the accused inadmissible against him is a component original than the accused inadmissible against him is a component original than the accused inadmissible against him is a component original than the accused inadmissible against him is a component or accused inadmissible against him accused against him is a component or accused inadmissible against him accused aga

accused any solemn affirmation to the magistrate, that statement would be splement on solemn accused. A person originally charged with the spainst his co-accused. A person originally charged with the spainst his co-accused. must have charged. When the person was not an accused at the time he made a accused are charged affirmation to the magistrate, that crateman affirmation to the magistrate.

against him and also against such other persons against whom the confession was against him and also against such other persons against whom the confession was Evidence Act, 1872 confession of co-accused was to be taken into consideration 30, Evidence Act and Art. 43, Qanun-e-Shahadat shows that under S. 30 of the evidence against persons who are being tried jointly for the same offence.19 person making it and the same is to be taken into consideration as circumstantial made but under Article 43 of Qanun-e-Shahadat, a confession is a proof against the Section 30. Evidence Act and this Article--comparison. A comparison of section

offence, or for its abetment or attempt. If these conditions are fulfilled then the Court conditions are fulfilled: (a) that more persons than one are being tried jointly, (b) that above is not fulfilled, then such a confession cannot be taken into consideration the person who makes such confession. But if any of the conditions enumerated the joint trial is permitted by the law, and (c) that the joint trial is for the same against any other person except the maker of such confession.20 himself and some other of such persons, against such other person as well as against may take into consideration the confession made by one of such persons affecting Conditions for applicability. This Article will apply to a case if the following

some sort of sanction in support of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others as well as himself | The Additional of the truth of his confession against others are not as a second of the truth of his confession against others are not as a second of the truth of his confession against other as a second of the truth of his confession against other and the truth of his confession against other as a second of the truth of his confession against other as a second of the truth of his confession against other as a second of the truth of his confession against other as a second of the truth of his confession against other as a second of the truth of his confession against other as a second of the truth of his confession against other as a second of the truth of his confession against other against as himself. The Article applies to confessions, and not to statements which do not based on the view that an admission by an accused person of his own guilt affords admit the guilt of the confessing party. Statement by accused must be of confessional nature. The Article seem to be

19

1992 P. Cr. L.J. 1910 (DB).

PLD 1959 PC 28.

1983 SCMR 573+1984 P. Cr. L.J. 283+PLD 1949 PC 90=2 DLR 39+AIR 1920 Cal. 300 (DB)+13 Cr. LJour 305 (CR)

PLJ 1976 Lah. 176+PLD 1960 Lah. 31+10 Cr.L.Jour 369 (DB).

AIR 1952 All. 796 (DB)+AIR 1955 Mys. 27 (DB)+AIR 1936 Oudh 156+AIR 1931 Mad 171 (DB).

AlR 1920 Cal. 330=21 Cr.L. Jour 5 (DB). AIR 1915 Lah. 487=16 Cr L Jour 257 (FB) AIR 1928 Pat. 473=29 Cr L Jour 913 (DB)

AIR 1929 Bom. 296 (DB)+AIR 1959 Bom. 327 (DB)+10 Cri L Jour 369 (DB).

2003 SCMR 1419+AIR 1923 All. 352+1911 Pun Re (Cr) No. 9

12 Cr L Jour 597=1911 Pun Re (Cr) No. 14 (DB)

AIR 1933 Oudh 86=34 Cr L Jour 124. AIR 1941 Mad. 238=42 Cr L Jour 654 (DB) AIR 1939 Sind 85=40 Cr.L.Jour 882. PLD 1956 Lah. 157=PLR 1956 Lah. 58 (DB)

2003 P. Cr. L.J. 1264 (DB

9

Corroboration of confession.

Evidentiary value of confession

him but have been made by a person accused of the offence with which he and his consult have been made. When the person was not an accused at the consult dare charged. When the person was not an accused at the consultance charged.

charged 101, against his co-accused. A statement to be admissible under this Article him but against his a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with which the him have been made by a person accused of the offence with the him have been made by a person accused of the offence with the him have been made by a person accused of the offence with the him have been made by a person accused the him have been made by the hi

State of any offence by the police is only an admission and is admissible against charged for any against his co-accused. A statement to be admissible made that not against his co-accused.

Statement must be by an accused person. A statement by a person before he is

ADMISSIONS

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