

## CHAPTER 13

### Confessions and Statements of Accused Persons

**1. Statements of accused at various stages explained**—The provisions of Sections 164, 342 [Sections 313 of new Code] and 364 [Section 281 of new Code] of the Criminal Procedure Code with regard to the confessions and statements of accused persons should be carefully studied. Section 164 deals with the recording of statements and confessions at any stage before the commencement of an enquiry or trial. Section 342 deals with the examination of accused persons during the course of the enquiry or trial. Section 342-A now enables the accused to appear as a defence witness during the trial and to give evidence on oath in disproof of the charges made against him or a co-accused. Section 364 prescribes the manner in which the examination of an accused person is to be recorded.

#### COMMENTS

Where statements were recorded indicating all necessary precautions prescribed for recording confessional statement, it was held that confession does not suffer from procedural infirmity. I.L.R. (1973) HP 495.

**2. Use of confession of accused during Police trial recorded by Magistrate**—The object of Section 164, Criminal Procedure Code, is to provide a method of securing a reliable record of statements or confessions made during the course of the Police investigation, which could be used, if necessary, during the enquiry or trial. Under Section 25 of the Indian Evidence Act, a confession to a Police Officer is inadmissible in evidence, and hence when an accused person confesses during the Police investigation, the Police frequently get it recorded by a Magistrate under Section 164, Criminal Procedure Code, and it can then be used to the extent to which it may be admissible under the Indian Evidence Act.

**3. Presumption attached to confessions recorded to Magistrate and its evidential value. Safeguards provided in law to obtain a voluntary and precisely recorded confession**—Under Section 80 of the Indian Evidence Act, a Court is bound to presume that a statement or confession of an accused person, taken in accordance with law and purporting to be signed by any Judge or Magistrate, is genuine, and that the certificate or note as to the circumstances under which it was taken purporting to be made by the person signing it, are true, and that such statement or confession was duly taken.

The words “taken in accordance with law” occurring in this section are very important and it is essential that in recording a statement or confession under Section 164, the provisions of that section should be strictly followed. The evidential value of a confession depends upon its voluntary character and the precision with which it is reproduced and hence the section provides safeguards to secure this end. These safeguards are of great importance, as confessions are often

retracted at a later stage and it becomes necessary for the Court to ascertain whether the alleged confession was actually and voluntarily made. The mere fact that a confession is retracted does not render it inadmissible in evidence, but the Court has to scrutinise any such confession with the utmost care and accept it with the greatest caution. It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars it is not prudent to base a conviction in a criminal case on its strength alone, (*Vide A.I.R. 1953 SC 459*) unless from the peculiar circumstances under which it was made or judging from the reasons alleged or apparent, of retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine. [*Vide 30 P.R. 1914 (Cr.) and A.I.R. 1954 SC 4*].

#### COMMENTS

No hard and fast rule can be laid down regarding the necessity of corroboration in the case of a retracted confession in order to base a conviction thereon. But apart from the general rule of prudence where the circumstances of a particular case cast a suspicion on the genuineness of the confession it would be sufficient to require corroboration of the retracted confession.

A confession should not be accepted merely because it contains a wealth of detail which could not have been invented. Unless the main features of the story are shown to be true, it is unsafe to regard mere wealth of uncorroborated detail as a safeguard of truth. *Muthuswami, vs. State of Madras*, AIR 1954 SC 4.

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**4. Important features of Section 164, Criminal Procedure Code**—Some important features of Section 164 are :

- (a) Statements or confessions made in the course of an investigation can be recorded only by a Magistrate of the first class or a Magistrate of the second class who has been specially empowered by the State Government.
- (b) Confessions must be recorded and signed in the manner provided in Section 364.
- (c) Before recording any such confession the Magistrate shall explain to the person making it that he is not bound to make a confession, and that if he does so it may be used in evidence against him.
- (d) No Magistrate shall record any such confession unless upon questioning the person making it he has reason to believe that it was made voluntarily; failure to question has been held to vitiate the confession. (*I.L.R. 2 Lahore 325*).
- (e) The memorandum set forth in Section 164(3) must be appended at the foot of the record of the confession.
- (f) It is not necessary that the Magistrate receiving or recording a confession or statement should be a Magistrate having jurisdiction in the case.

*Note*—In districts in which the experiment of separation of Judiciary from the Executive is being tried the work relating to recording of confessions and statements under Section 164 of the

Code and dying declarations should be done by Judicial Magistrates. (*Punjab Government Letter No. 16848-G-55 11327, dated the 16th February, 1956, to all Deputy Commissioners in Punjab*).

**5. Form prescribed for recording confessions**—The annexed form for recording confessions taken under Section 164 has been prescribed and should invariably be used.

**COMMENTS**

The police investigating agency in our country has not yet acquired the reputation of being proof against the temptation of attempting to secure confessions by questionable methods; the Magistrates recording confessions are therefore expected to devote due attention to all the safeguards provided for ensuring their truly voluntary character. The judicial officers administering criminal law should not ignore that in a civilized and free society, it is largely through justice that the position of the liberty of the subject and of the rule of law is measured. *Mohan Singh Balwant Singh v. State*, AIR 1965 Punjab 291.

Record of a Confession made by an Accused Person

(Section 164 of the Code of Criminal Procedure)

..... Division.

In the Court of.....

The State

*versus*

The confession ..... of..... taken by me..... a \*Magistrate of the ..  
..... District, this ..... day of..... 19 .....

*Memorandum of Enquiry*

(The Magistrate shall first, as required by Section 164(3), Code of Criminal Procedure, explain to the accused person that he is not bound to make a confession, and that if he does so, it may be used as evidence against him and shall then put and record answers to the following questions. If the answers are of such a character as to require him to do so, he should put such further questions as may be necessary to enable him to judge whether the accused person is acting voluntarily. In arriving at his conclusion on this point the Magistrate should consider *inter alia* the period during which the accused person has been in Police custody and make sure that the confession is not the result of any undue influence of ill treatment. Special care should be taken when women or children are produced by the Police for their confessions being recorded).

Q.—Do you understand that you are not bound to make a confession?

A—

Q.—Do you understand that your statement is being recorded by a Magistrate, and that if you make a confession, it may be used as evidence against you ?

A—

Q.—Understanding these two facts, are you making a statement before me voluntarily?

A—

*Statement of accused*

(Make of signature of accused).

\*Magistrate.

I have explained to . . . . . that he is not bound to make a confession, and that if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

\*Magistrate.

Dated. . . . .

**6. Instructions for recording confessions**—Unless there are exceptional reasons to the contrary, confessions should be recorded in open Court and during Court hours. Police officers investigating the case should not be present except as is provided in paragraph 16 below.

**7. Accused who has made a confession should not be kept in Police custody, but should be kept in Judicial lock-up separate from other prisoners**—An accused person who has made confession before a Magistrate should be sent to the judicial lock-up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required, and an order obtained from the Magistrate for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced before a Magistrate for the purposes of making a confession, has declined to make a confession or has made a statement which is unsatisfactory from the point of view of the prosecution, he should not be remanded to Police custody.

*Note*—In districts in which the experiment of separation of judiciary from the executive is being tried, the confession should be recorded by a Judicial Magistrate. (*Punjab Government Letter No. 16848-G-55/11327, dated the 16th February, 1956*).

**8.** When remanding to the lock-up an accused person who has made a confession, the Magistrate shall record an order for him to be kept separate from other prisoners as far as may be practicable.

**9. Accused can be examined to explain the prosecution evidence against him and not to fill up gaps in that evidence**—Section 342 of the Code [Section 313 of new Code] empowers the Court to put questions to the accused at any stage of enquiry or trial to enable him to explain any circumstances appearing in evidence against him. The questions put under this section must be

confined to the points brought out in the evidence and should not be in the nature of cross-examination of the accused person. Nor should the power given by the section be used to elicit information from the accused to fill up gaps in the prosecution evidence (*Vide*, I.L.R. 4 Lahore 55). For, the conviction of an accused person can only be based on the evidence produced by the prosecution. No oath can be administered to the accused when he is examined under Section 342 and the answers given by him can only be taken into consideration in explanation of the prosecution evidence.

#### COMMENTS

The petitioner was convicted of an offence under section 500 of the Indian Penal Code, for having defamed an Extra Assistant Commissioner by publishing an imputation that the latter had compelled him to pay a bribe in order to avoid a prosecution for a certain offence. The petitioner wanted to produce evidence as to the complainant having taken bribes on other occasions, and general evidence as to the complainant's reputation, but this was disallowed by the trial Court.

*Held*, that evidence as to the complainant having taken bribes on other specific occasions would be irrelevant, but that the petitioner was entitled to produce evidence to show that the complainant had the reputation of being a bribe-taker. *Devi Dyal vs. The Crown*, (1923) I.L.R. IV Lah. 55. (*Scott vs. Sampson*, (1882) 8 Q. B. D. 491, and *Odgers on Libel and Slander*, 5th Edition, page 402, referred to.)

It was incumbent on the prosecution to prove that the petitioner made or published the imputation complained of notwithstanding that the petitioner when examined under section 342 of the Code of Criminal Procedure admitted the publication, as a gap in the prosecution evidence could not be filled up by such a statement. A Magistrate is not entitled under section 342 of the Code to put questions to the accused if the prosecution has not let in evidence implicating him in the offence with which he is charged, and answers to questions put in contravention of that section are not admissible in evidence against the accused. *Devi Dyal vs. The Crown*, (1923) I.L.R. IV Lah. 55. (*Mohideen Abdul Qadir vs. Emperor*, (1903) I.L.R. 27 Mad. 238, and *Re Abibulla Ravuthan*, (1915) I.L.R. 39 Mad. 770, referred to.)

**10. Accused can be questioned generally on the case only after prosecution evidence has been finished**—The Magistrate is allowed by Section 342 of the Code of Criminal Procedure to examine the accused at an early stage of the case for the purpose of enabling him to explain any circumstances appearing in the evidence against him. This provision is intended for the benefit of the accused, and must not be used to elicit his defence before the prosecution evidence is complete. Magistrate sometimes question the accused generally on the case as soon as a *prima facie* case has been made out, but before the prosecution evidence is complete. This is incorrect. According to the second part of clause (1) of Section 342, it is only after the completion of the prosecution evidence that the accused can be questioned generally on the case. The necessity for postponing such examination is not avoided by framing a charge at an early stage.

Even when a charge has been framed, the Magistrate should wait until the prosecution evidence is concluded before making a general examination of the accused.

**11. Failure to examine accused at the close of prosecution evidence vitiates the trial**—Section 342 [Section 313 of new Code] makes it obligatory for a Court to examine the accused generally on the case after the witnesses for the prosecution have been examined and before the accused is called for his defence. Even when an accused person has been examined at an earlier stage the Court must examine the accused generally after the close of the prosecution case and before the accused is called upon to produce his defence, so as to give him an opportunity to explain any points, which were not included in the questions put to him at earlier stages. Failure to examine the accused at the close of the prosecution evidence has been held to be an illegality which vitiates the trial (*Vide* 7 I.L.R. Lahore 564).

## COMMENTS

Where the accused was questioned by the Court after two witnesses for the prosecution had given evidence, and, a charge having then been framed to which the accused pleaded not guilty, four more witnesses were examined for the prosecution and then the defence evidence taken, the accused not being further questioned by the Court.

*Held*, that the provisions of section 342 (1) of the Criminal Procedure Code are mandatory and that the conviction and sentence must therefore be set aside, the trial be resumed from the close of the prosecution case, and the accused be examined before entering upon his defence. *Lachhman Singh vs. The Crown*, (1926) I.L.R. VII Lah. 564. (*Surendra Lal Shaha vs. Isamaddi*, (1924) 84 I. C. 325, and *Hamid Ali vs. Sri Kissen Gosain*, AIR 1925 Cal. 574, followed.)

**12.** The mandatory provisions of Section 342 of the Code of Criminal Procedure apply as much to Sessions Judges as to Magistrate. Even when the Committing Magistrate has complied with the requirements of this section, it is not sufficient for the Sessions Court to refer to the statement of the accused as recorded by the Committing Magistrate and the Sessions Judge must make independent enquiry from the accused in the manner provided in the section. (*Vide*, 1951 Supreme Court Reports 729.)

## COMMENTS

When the Sessions Court is required to make the examination under Section 342, the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that Court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them. Moreover the evidence recorded in the Committal Magistrate's Court is not as full and as complete as the evidence recorded in the trial before the Sessions Judge. Accordingly, it often happens that evidence is given in the Sessions Court and facts are disclosed which do not appear on the record of the Committing Magistrate. If the Judge intends to use these against the accused, it is clearly not enough to question him about matters which occurred in the Committal Court: *Tara Singh vs. The State*, AIR 1951 441 : 1951 SCR 729.

**13. Written Statement of accused**—Under Sections 251-A (8) [Section 243(1) of new Code] and 256 of the Code [Sections 246 and 247 of new Code] if the accused person puts in a written statement, it should be filed with the record. But a written statement of this kind does not relieve the Court of the duty of examining the accused in Court after the close of the prosecution evidence as laid down in Section 342.

There should be no reading out of written statements by accused persons, but in Sessions and Jury trials so much of the statement as shall appear to the Sessions Judge to be relevant, shall be read out to the jury.

**14. Mode of recording examination of accused**—Section 364 provides the mode in which the examination of an accused person is recorded. The questions put to the accused and the answers given by him should be distinctly and accurately recorded, but the accused must confine himself to relevant answers to the questions asked by the Court. Section 364 [Section 281 of new Code] does not prevent a Court from refusing to record irrelevant answers to questions put by it to the accused under Section 342 [Section 313 of new Code]. If necessary, the Court may even prevent the accused making lengthy irrelevant answers. The examination of the accused should be recorded in the language in which he is examined, and if that is not practicable in the language of the Court or in English. In cases in which examination is not recorded by the Magistrate or Judge himself he must record a memo, thereof in the language of the Court or in English if he is sufficiently acquainted with the latter language. The examination must be read over to the accused and made conformable to what he declares to be the truth. The Magistrate or Judge must

then certify under his own hand that the examination was taken down in his presence and hearing, and that the record contains a full and true account of what was stated.

**15. When evidence may be led to prove that accused duly made the confession or statement**—Under Section 533 of the Code [Section 463 of new Code] if any Court, before which a confession or other statement of an accused person recorded or purporting to be recorded under Section 164 or Section 364 [Section 281 of new Code] is intended to be or has been received in evidence, finds that any of the provisions of either of such sections have not been complied with by the Magistrate recording the statement, it must take evidence that such person duly made the statement recorded and such a statement may then become admissible in evidence notwithstanding the provisions of Section 91 of the Indian Evidence Act, provided the error has not prejudiced the accused as to his defence on merits.

**16. Instructions about recording confessions**—(i) The following instructions have been issued by the Punjab Government for the guidance of Magistrates recording confessions (*Punjab Government circular Letter No. 6091-J.-36/39329 (H.—Judl.), dated the 19th December 1936, to all District Magistrates in the Punjab*) :

(a) *Accused should be left for some time away from influence of Police*—In order to ensure that a statement or confession under Section 164 of the Code of Criminal Procedure is made voluntarily, the following precautions should be taken. Before the Magistrate proceeds to record the confession, he should arrange so far as is compatible with his safety and that of his staff and with the safe custody of the prisoner—that the latter is left for some time (say, for half an hour) out of the hearing of police officers or other persons likely to influence him.

(b) *Confession recorded should not be handed over to the Police*—The Magistrate who records a confession under Section 164, Criminal Procedure Code, should not hand over the document after completion to the Police Officer in charge of the prisoner, but should forward it as required by sub-section (2) of that section direct to the Magistrate by whom the case is to be enquired into or tried.

(c) *Copy of recorded confession may be given to Police*—These instructions do not prohibit a Magistrate who has recorded a confession or statement from allowing the Police to take a copy of it before it is forwarded to the trial Magistrate; and Magistrates should always permit the Police to take a copy if they express a desire to do so. When permission is so given the Police copy should be written out by a Police Officer or clerk from the dictation of an officer of the Court, in the actual presence of the Magistrate who recorded the confession.

Time and labour can be saved if the Magistrate recording a confession makes a carbon copy which can subsequently be made available for Police purposes, or alternatively dictates a copy to an official of the Court at the same time as he himself writes the original.

**17. Section 343-A [Section 315 of new Code], inserted in the Code by Act No. 26 of 1955,** provides that an accused person shall be competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial. This, however, is subject to the exception that the accused shall not be

so examined except on his own request in writing. Moreover the Court or any of the parties cannot make the failure of the accused to put himself in the witness box a subject of any comment or presumption against the accused or any person charged with him at the same trial.